

*Resolved: The obligation to provide safe haven
for refugees should outweigh a government's
right to control its borders*

Stefan Bauschard

MILLENNIAL SPEECH & DEBATE

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Introduction

Legally and morally, governments have obligations to refugees as well as a right to control their borders. These obligations are very well established in political theory, legal tradition, and ethical scholarship.

The question the International Public Policy Forum (IPPF) resolution asks is which of these obligations outweighs the other. Specifically, it contextualizes this more general question in terms of whether or not the obligation to provide a “safe haven” for refugees outweighs a government’s right control its borders.

In this essay, I will unpack some of the key terms in the resolution, discuss political and ethical theories that underlie the debate, identify key arguments for both sides, and conclude with some arguments you can make on each side as to which one outweighs.

To contextualize the obligations that governments have to refugees, it is also important to understand the current refugee crisis and what it mean for someone to be a “refugee.” I will begin our discussion with a brief overview of the global refugee crisis and I will cover it in more detail when I discuss Affirmative arguments.

The Current Refugee Crisis

There are currently 65 million refugees on the move world-wide, constituting the largest refugee crisis since World War II.

Avaneesh Pandey, August 4, 2016, International Business Times, Refugee Crisis: UN Members Reject Concrete Resettlement Target Ahead of Key September Summit, <http://www.ibtimes.com/refugee-crisis-un-members-reject-concrete-resettlement-target-ahead-key-september-2397567>

The ongoing refugee crisis, fuelled by war and persecution in the Middle East and sub-Saharan Africa, is the worst the world has witnessed since World War II. In 2015, an “unprecedented” 65 million people were displaced from their homes — an increase of over 5 million over the 2014 figure. The lack of legal routes to the developed world has forced most of these refugees to seek shelter in low- and middle-income countries located close to the strife-torn areas.

The significance of the current refugee crisis is highlighted in this year’s summer Olympics where the “first ever refugee team will participate at the games in Rio, representing not a country, but the 65 million people displace (internally, or outside their country) by war and persecution” (Merelli, 2016).

It is not a crisis that will end soon.

John Quigly, August 7, 2016, Missoulia, Refugee situation too dire for Europe to stem flow anytime soon, http://missoulia.com/news/opinion/refugee-situation-too-dire-for-europe-to-stem-flow-anytime/article_296e0823-ee45-5a85-a8c5-cabb6f1c033b.html

The recent spate of terrorist attacks in France and Germany has forced a rethinking of European immigration policy. But the violent events, however horrendous they’ve been, have done nothing to change the fact that millions have been displaced by broader violence, particularly in the

Middle East, and are seeking refuge in the West. Until the wider circumstances change, European Union leaders will have a hard time stemming the flow of migrants entering their borders.

No significant action has been taken to address the issue.

Euractiv, August 3, 2016 EU, US reject plan to resettle refugees,
<https://www.euractiv.com/section/global-europe/news/eu-us-reject-un-plan-to-resettle-refugees/>
DOA: 8-7-16

The European Union and the United States among other heavy-weight countries have rejected a UN proposal to resettle 10% of the world's refugees annually as part of a new global effort to tackle the worst refugee crisis since World War II. A document adopted late on Tuesday (2 August) failed to include the resettlement proposal from UN Secretary-General Ban Ki-moon that would have been the centerpiece of a UN summit on refugees in New York on 19 September. Opposition to the UN proposal came from a broad range of countries including the Western European countries along with Russia, China and India. And the United States balked at language that would have committed all countries to not detain undocumented children who arrive at their borders. According to the United Nations, 24 million people worldwide left their home countries because of war or persecution in 2015. More than ten times that number – 244 million – were considered migrants, living somewhere other than the country of their birth.

And the world's wealthiest nations have taken in few refugees.

CNN, July 18, 2016 Oxfam: Poorest nations shouldering responsibility for the world's refugees.
<http://www.cnn.com/2016/07/18/world/oxfam-richest-countries-refugees/>

The world's six wealthiest countries host less than 9% of the world's refugees, according to a new Oxfam report. While the United States, China, Japan, Germany, France and UK make up more than half the global economy, last year they only hosted 2.1 million refugees and asylum seekers - just 8.88% of the world's total, [the aid organization said in its report released Monday](#).

This is despite the fact that 1.3 million migrants applied for asylum in the EU in 2015 (Connor, 2016), with Germany taking in more than 700,000 refugees (CNN, 2016).

There are multiple causes of the current global refugee crisis, including human rights abuses, degrading environmental conditions (Foote, 2016), and war. As the evidence above notes, however, the most direct cause of the is war, and many of those fleeing are members of religious minority groups.

Justin Roy, August 7, 2016. The Federalist. Refugees stuck between war and bureaucracy in Greece. <http://thefederalist.com/2016/08/07/refugees-stuck-between-war-and-bureaucracy-in-greece/>

According to United Nations statistics, the majority [of refugees] come from either Syria or Afghanistan, followed by Iraq and Iran. The ones who come from Syria are just as likely to be fleeing Bashar al-Assad as they are to be fleeing ISIS. Many I talked to recalled Syrian and Russian jets indiscriminately carpet-bombing villages with no military value. Iraqis and Syrians fleeing ISIS recall draconian laws, massacres, and acts of terror meant to intimidate the population. One gentleman was hung from his arms, beaten, and in various places burned with

fire. He only escaped because an airstrike blew up the building he was in, and somehow he miraculously survived. Among the thousands fleeing ISIS include Yezidis, Christians, Kurds, and other religious and ethnic minorities.

More than 3 million have been displaced in Iraq alone (Frantzman, 2016).

Every day, tens of thousands of refugees flee from war-torn states such as Iraq and Syria in the Middle East and North Africa to Lebanon and Turkey and then onto Europe, with some hoping to reach the United States and Canada.

In July, 2,340 Syrian refugees resettled in the US (Fox News, 2016) and intends to accept 10,000 Syrian refugees (Moran, 2016). This, however, is a drop in the bucket. Close to ten thousand attempt to cross into Europe every day and many have made their way to camps in Jordan (1.4 million) and Turkey (2.7 million). And the humanitarian problem is worsening, as Jordan has closed its border to more refugees.

BBC, August 5, 2016, Syria war: Stranded refugees get first aid in weeks,
<http://www.bbc.com/news/world-middle-east-36984759>

The UN says it has for the first time in weeks delivered aid to thousands of Syrian refugees stranded on the border with Jordan. A group of relief agencies said they had completed delivery of a month's worth of food and hygiene supplies. More than 75,000 people had been without aid since June when Jordan sealed the border after a deadly attack there by so-called Islamic State. Conditions in the Rukban and Hadalat camps are said to be desperate. "Unable either to cross the border or turn back, the situation facing these women, men and children has grown more dire by the day," [said a joint statement](#) by the UN World Food Programme (WFP), refugee agency (UNHCR), children's agency Unicef, and International Organization for Migration (IOM). It said the refugees had insufficient food and water, and were sheltering in makeshift tents in temperatures of up to 50C.

And the UK is unlikely to meet its target of resettling 20,000 refugees (Lyons, 2016).

Many made their way to Europe through the Balkans, a route that is now closed to refugees. It has even been reported that Hungary is beating refugees.

Al Jazeera, July 13, 2016 Report: Hungary "breaking all the rules" with refugees.
<http://www.aljazeera.com/news/2016/07/report-hungary-breaking-rules-refugees-160713174914167.html>

Hungarian police and soldiers have severely beaten some refugees and migrants before sending them back across the border to Serbia, according to a new report by the Human Rights Watch. Published on Wednesday, the report by the US-based rights group was dismissed by the Hungarian government. Since July 5, refugees and migrants caught within 8km of the 175-kilometre border with Serbia are being returned to the Serbian side of the razor-wire fence on the border. The fence was built by Hungary in September 2015 to stem the flow of displaced people passing through the country. Police said 621 people were sent back to Serbia since the new rules on Hungary's border controls took effect. The report claims that a group of 30 to 40 refugees and migrants - among them women and children - were beaten by soldiers for two hours after being held in Hungary.

This lack of a Balkan route leaves most with the only option of arriving by boat in Greece, and this route often results in many smugglings and drownings. (Fox News, 2016b)

Who are “refugees”?

There is certainly a debate about how “refugees” should be defined. Defining them is important because “refugees” are entitled to certain legal claims and resources under various international legal conventions that will be discussed in more detail later and because you want to be able to focus your arguments.

Under the 1951 UN Refugee Convention, a Refugee is someone who has been granted asylum, however the UN considers individuals fleeing persecution or war to be refugees even if they have not yet obtained asylum.

All individuals who are moving to improve the quality of their lives are not refugees, they are migrants. Refugees are limited to those persons fleeing war or persecution.

Jeanne Park, September 23, 2015, Europe’s Migration Crisis,
https://www.pravo.unizg.hr/_download/repository/semiunar_migrants.docx

An asylum seeker is defined as a person fleeing persecution or conflict, and therefore seeking international protection under the 1951 Refugee Convention on the Status of Refugees; *a refugee is an asylum seeker whose claim has been approved. However, the UN considers migrants fleeing war or persecution to be refugees, even before they officially receive asylum.* (Syrian and Eritrean nationals, for example, enjoy *prima facie* refugee status.)

An **economic migrant**, by contrast, is person whose primary motivation for leaving his or her home country is economic gain. The term “migrant” is seen as an umbrella term for all three groups. (Said another way: all refugees are migrants, but not all migrants are refugees.)

Once someone is properly designated a Refugee, he or she is *entitled* to asylum in another country under principles of international law. He or she has a right to receive membership *somewhere* and not to be returned (the right of non-refoulement).

Max Cherem, September 29, 2015, assistant professor of philosophy, has been appointed as the Marlene Crandell Francis Assistant Professor of Philosophy, Journal of Political Philosophy, Refugee Rights: Against Expanding the Definition of a “Refugee” and Unilateral Protection Elsewhere, p. 1-23 DOI: 10.1111/jopp.12071

Having moved past the humanitarian definition’s interest-based conception of refugee rights, I conclude by showing why protection elsewhere schemes do not allow legitimate states to permissibly achieve the unilateral exclusion of all outsiders, including refugees. The core of refugee law isn’t simply about meeting a certain kind of need. It is also about avoiding a specific wrong: returning people to persecution. Contrary to popular misconceptions, **refugees do “not have a right to admission as such, but rather a right to protection which includes the right to non-refoulement.”** Refugees cannot be sent back. *They must receive membership*

somewhere. But, beyond the state where they flee, **they can be protected by another state that agrees to accept them as members**. The difference between refraining from refoulement and granting new membership is key to protection elsewhere schemes.

By relying on this difference such schemes distinguish between *respecting* versus *protecting* or *fulfilling* rights. Following standard terminology, we can say **rights claims must be reasonably secured to be enjoyed. To secure rights, actors must discharge three correlative duties: (i) avoid depriving people of their rights, (ii) protect people from being so deprived, and (iii) aid people who are deprived**. These duties can fall on different actors. While everyone has duties to *respect* rights, only certain actors have duties to *protect* specific persons against deprivations and *fulfill* their rights if deprived. Governments may have duties to respect, protect, and fulfill rights of those in their jurisdiction, but merely duties to respect outsiders' rights.

Affirmative teams will want to emphasize this limited definition of “refugee” – someone fleeing war or persecution -- because it means they are not simply arguing for higher levels of immigration for millions (maybe even more than a billion) people simply seeking to improve their quality of life.

What is a “safe haven?”

A “safe haven” is generally defined to be “a place of refugee or security” or “a temporary refuge given to a persecuted person or group.” (Google Definitions, <https://www.google.com/#q=define:+safe+haven>).

The term “safe haven” does appear frequently in the literature on how to best provide protections for refugees, but it is not a term of art. But, since by definition, refugees are considered to be “persecuted,” and the term appears in the literature, it does work well in the resolution.

It is important to understand, however, that the term “safe haven” can have two meanings – it can mean both a temporary and secure resting place or a permanent and secure home.

A “safe haven,” for example, may simply refer to something such as a refugee camp or a safe, *temporary* place to stay, rather than the provision of asylum, which is a new permanent home obtained through the process of seeking asylum. Asylum is more controversial and involves membership in a state, whereas a safe haven is simply a safe spot for someone fleeing war or persecution. The latter is obviously much harder to argue against, but most of the literature on the current refugee crisis is in the context of providing refugees with a permanent place to live through an asylum process.

Smart Affirmative teams, however, may wish to limit their advocacy to protection in a temporary “safe haven”? At a minimum such a safe haven likely includes protection from violence and probably the provision of basic human needs. “Humanitarian needs” are really limited to relief items such as food, shelter, non-food essential items, “clean water, and assistance with hygiene (Humanitarian Coalition, no date, “Humanitarian Needs,” <http://humanitariancoalition.ca/info-portal/factsheets/humanitarian-needs>). Of course, a “safe haven” would also include asylum, which is the solution more frequently argued for in the literature, and teams can defend that as a form of a “safe haven.”

Of course, a safe haven as a *temporary* resting spot may not be enough for a refugee who is fleeing *persecution*. For that, asylum may be required.

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The focus on *membership* is key. The groups have different needs and possible remedies because they have suffered different harms. **Refugee-like outsiders need (often temporary) safe-haven, or suffer a plight remediable by aid. But only new membership will do for refugees. This is because refugee claims arise from persecution and the resultant loss of national protection, not simply from need.**

Realism, Idealism, and US Foreign Policy

Underlying the debate about whether or not obligations toward refugees outweigh a state’s right to control its own borders is the question of how a country should approach the world. Should countries be concerned (mostly) with their own national interests and rely on themselves to solve problems, or should they be concerned with more international interests and embrace more international solutions?

Advocates of acting exclusively in the “national interest” ground their arguments in the tradition of foreign policy *realism*. Realists argue that countries will inevitably act out of self-interest and that countries should therefore act out of self-interest.

Realists argue that the US should only look out for its immediate security and economic interests. Foreign policy realists draw on the 14th century works of Niccolo Machiavelli, the 15th century works of Thomas Hobbes, and the 16th century work of Rosseau. These philosophers argued that human beings are inherently self-interested, that many humans are evil, that interests are often zero-sum, and that centralized power is often necessary to control impulses. Hence, international politics always exists in a “state of war” or “anarchy” and governmental actors should always look to protect the national interest. In adapting the works of these philosophers to foreign policy, realists make a number of statements which they say describe the nature of the international system:

- Some leaders are inherently evil and lust for power
- Leaders of states act to promote the self-interest of the state
- Resources are scarce and interests are often zero-sum
- States are primarily interested in “self-help”
- States will act in their own self-interest
- States will always act to counterbalance the relative power gains of other states
- The nation state is the “primary unit of analysis.” Understanding the action of individuals or private groups is not important to understanding foreign policy.

Leading realist theorists include Hans Morgenthau, Kenneth Waltz, Robert Jervis, and George Kennan (among others)

Writing in 1950, Hans Morgenthau argued that states need to look out for their own interest and *protect their own power* because (a) governments have an obligation to their own citizens, (b) protecting power protects future generations, (c) there is no effective international system to otherwise protect the interest of states; and (d) if the national interest is not protected the state will eventually collapse, making it

impossible to protect any other interest. (The American Political Science Review, The Mainsprings of American Foreign Policy: The National Interest v. Moral Abstractions, p. 853-ff)

For these scholars, a nation should probably not do something like provide protection to refugees *if such action threatened its national interest*, as defined as protecting its power and long-term survival.

Idealists argue that the US is responsible for protecting broader principles. It is important to understand that realists came under attack in the 1980s from their liberal opponents on the grounds that liberalism could not exchange the more peaceful evolution of the international system at the end of the cold war.

The liberal perspective stands in opposition to the realist perspective on international relations. Liberals find their philosophical foundation in the 15th century writings of John Locke and the 16th century writings of Immanuel Kant. According to the theorists who applied these philosophical writings to foreign policy, foreign policy should reflect the rights and duties of individuals. These scholars believe that it is potential to “cultivate” a foreign policy “garden” and to have peaceful relations between states where states don’t perpetually act out of self-interest to balance against each others interests. Foreign policy idealists usually endorse at least some of the following tenants:

- Political constraints impact on foreign-policy decision-making. Self-interest of the state does not determine foreign policy outcomes
- Fostering interdependence amongst states and building multilateral institutions can facilitate cooperation rather than self-interest
- Most states are not interested in balance of power politics, but rather on solving problems and avoiding conflict

Specific criticisms of realism include:

- Lack of ability to define the “National Interest.”
- Doesn’t explain problems conflicts that cross the boundaries of nation-states: environmental pollution, refugees.
- Most contemporary problems trade, multinational investment, migration, environmental are more likely to find solution through international cooperation than war.
- Terrorism is an emerging threat that is not directed against particular states.
- Realism does not explain contemporary phenomenon why did Russia allow its empire to break up if states are completely focused on power?

Liberal internationalist argue that we should embrace international laws, conventions, and norms in order to strengthen the multilateral international system. There are many such laws and conventions relevant to refugees, and, hence, a claim that a country should prioritize its obligations to provide a safe haven for refugees over securing its own borders is, fundamentally, grounded in an idealist international political theory.

As we proceed in this essay, you will see how each of the approaches is grounded in the arguments on one side of this underlying theory.

Core Affirmative Arguments –Humanitarian Needs, International Law, Human Rights, Morality

Humanitarian Needs

The global refugee crisis, particularly the one facing Europe, has created a number of immediate humanitarian crises.

First, as discussed above, thousands of refugees have died attempting to cross the Aegean Sea.

Raziye Akkoc, April 14, 2016, Daily Telegraph, What the Refugee Crisis Looks Like Across Europe over four weeks in six charts, <http://www.telegraph.co.uk/news/2016/04/14/what-the-refugee-crisis-looks-like-across-europe-over-four-weeks/> DOA: 4-21-16

So far, more than 8,000 migrants have died since 2013 trying to reach Europe via the Aegean and Libyan route to Italy. Using the data of several weekly reports from IOM, the following charts provide a snapshot of what the refugee crisis looks like over four weeks across most of March and the first week of April.

Nearly 3,000 have died in 2016 alone (Al Jazeera, 2016).

This could be solved with more aggressive resettlement/safe haven programs in Europe.

Allison Proud, April 21, 2016, Desert News, Why the 500 refugees killed in last week's shipwreck may be part of the "new normal" <http://www.deseretnews.com/article/865652662/Why-the-500-refugees-killed-in-last-weeks-shipwreck-may-be-part-of-a-new-normal.html?pg=all> DOA: 4-21-16

Up to 500 migrants may have died in a shipwreck in the Mediterranean Sea last week when an overcrowded vessel capsized, according to UNHCR, the UN refugee agency.

"My wife and baby drowned in front of me," one of the 41 survivors told the BBC. The migrants, who were fleeing Sudan, Ethiopia, Somalia and Egypt, had paid a smuggler to take them by boat from Libya's northern coast to Italy. Rather than feeling relief and joy at seeing dry land in Greece following their rescue, however, **the survivors** were angry and at first refused to disembark, the BBC reported, because they **wanted to reach Italy, not Greece. Hundreds of thousands of migrants stranded in Greece are set to be turned away under a recent deal struck between the EU and Turkey. The deal has made entering Europe through Greece less viable, squeezing migration flows westward as refugees and migrants seek new routes into Europe. Instead of the short sea crossing from Turkey to Greece, more migrants are attempting the longer — and more deadly — Libya-to-Italy and Morocco-to-Spain crossings,** according to Quartz. **The number of refugees who attempted to cross to Italy during the first three months of 2016 was 85 percent higher than in 2015,** Newsweek reported, with 18,795 people so far this year undertaking the voyage that claims the lives of 1 in 92 people who attempt it. The regular flow of migrants across the Mediterranean is a "new normal," Daniela Segreto, who leads a special initiative for immigration in Sicily, told Quartz. "It's an unstoppable phenomenon that we can only try and manage." In anticipation of increasing numbers attempting the Libya crossing, the EU is continuing anti-trafficking operations in the Mediterranean Sea, turning over suspected smugglers to Italian authorities and destroying their boats, according to Newsweek. But the EU is not allowed within 69 miles of the Libyan coast,

and many smugglers abandon boatloads of refugees at the edge of Libyan waters before turning back to Libya, where they are unlikely to be arrested. **One solution, according to UNHCR, would be to create more regular pathways for the admission of refugees into Europe, "including resettlement and humanitarian admission programmes, family reunification, private sponsorship and student and work visas for refugees.** These will all serve to reduce the demand for people smuggling and dangerous irregular sea journeys." In a May 2015 [Ted Talk](#), Melissa Fleming, head of communications for UNHCR, recounted the harrowing story of Doaa, a young Syrian refugee who survived for four days floating in the Mediterranean before she was rescued after a similar accident. Fleming asked: "What if she didn't have to take that risk? Why did she have to go through all that? Why wasn't there a legal way for her to study in Europe? ... Why is there no massive resettlement program for Syrian refugees, the victims of the worst war of our times? The world did this for the Vietnamese in the 1970s. Why not now? Why is there so little investment in the neighboring countries hosting so many refugees? And why, the root question, is so little being done to stop the wars, the persecution and the poverty that is driving so many people to the shores of Europe?" "One thing is for sure, that no refugee would be on those dangerous boats if they could thrive where they are. And no migrant would take that dangerous journey if they had enough food for themselves and their children. And no one would put their life savings in the hands of those notorious smugglers if there was a legal way to migrate." **The tragedy last week happened almost exactly one year to the day after the worst recorded sea accident since the beginning of the migrant crisis. "It is a haunting coincidence and a reminder of just how desperate people are — not (only) to escape war but to escape from poverty,"** wrote Will Ross for the BBC. "As for the traffickers who are making money overloading the boats — are they not mass murderers, too?"

Second, children are left vulnerable to traffickers because of a lack of safe havens for refugees.

The News, April 16, 2016, Child Refugees in Europe Need Protection from Traffickers, <http://www.thenews.com.pk/print/112201-Child-refugees-in-Europe-need-protection-from-traffickers> DOA: 4-16-16

LONDON: Europe's refugee crisis has created a "huge business opportunity" for human traffickers, and governments should widen the legal routes of entry to protect refugee children, the UN children's agency (Unicef) said on Tuesday. The number of children on the move in Europe has been rising and children now account for more than one-third of all refugees and migrants - compared with just one in 10 in June 2015 - and many are travelling alone, according to Unicef figures. "We know that (child protection and monitoring systems) are well over-stretched and overwhelmed and they need to be strengthened," Sarah Crowe, Unicef's global spokeswoman on the European refugee and migrant crisis, told a media briefing in London. "They need to make sure that they've got a proper system in place with guardianship, with child protection officers who are able to determine where (children's) best interests are and how to reunify them with family otherwise they will abscond and be preyed upon. "More than one million people fleeing conflict poured into Europe, mainly through Greece, last year. The European Union is implementing an accord under which all new arrivals in Greece will be sent back to Turkey if they do not meet asylum criteria. In 2015, 95,000 children who sought asylum in Europe were not accompanied by an adult, Crowe said, adding that this vastly underestimated the number who arrived as many children avoided registering with the authorities from fear of being detained. Unregistered children were not covered by any child protection services and so were most vulnerable to violence, abuse and exploitation, according to Unicef. "We know that thousands and thousands of children are simply unaccounted for and the most horrifying thing of all is we just have no idea where they are or what's happening to them," Unicef deputy executive

director Lily Caprani told the briefing. "It's that complete absence of information that should terrify us the most." Crowe said that although not all children who were unaccounted for were necessarily being exploited by human traffickers, Europe should strengthen child protection systems and widen legal routes such as family reunification. She said that as the migrant route to Europe through the Balkan countries seemed to be shut, people would find alternative and more dangerous routes. "That's why we are saying there has to be a safe and legal alternative," Crowe said. "We're calling for alternatives such as humanitarian visas, scholarship grants that can be seen as ways in especially for young people."

This problem is magnified when countries close their borders.

Joint Agency Briefing Note (Oxfam et al), April 14, 2016 A safe haven? Britain's role in protecting people on the move, <http://policy-practice.oxfam.org.uk/publications/a-safe-haven-britains-role-in-protecting-people-on-the-move-605192> DOA: 4-21-16

Arbitrary border closures cause untold suffering. People trapped at borders will take greater risks, and are more likely to put their lives into the hands of smugglers. They are more vulnerable to disease, family separation and human rights abuses. People who have exhausted their resources may be at higher risk of being subjected to gender-based violence and exploitation as they continue their journey through Europe. In this situation, children and women are left extremely vulnerable, and accounts of exploitation along the journey to and within Europe are manifold.

And children are not safe in refugee camps.

Krisy Brimlow, August 4, 2016, The Guardian. Violence against lone child refugees is escalating – because we let it, <https://www.theguardian.com/commentisfree/2016/aug/04/violence-lone-child-refugees-uk-government-indifference>

Experiencing violence is now a fact of life for child refugees. Hundreds of children have arrived at the camps in Calais and Dunkirk with [no parents or family members to protect them](#). The violence [comes from the police](#), and people outside the camps. There is a name for the latter group who travel to Calais to attack migrants at night – it's called "citizen violence". Those most affected by police violence are frightened of speaking out against officers who should be their protectors from the many threats, including the prowling smugglers and traffickers behind "camp violence".... Speaking to the under-equipped and overworked staff of the [Calais](#) camp's legal advice centre, we heard about a 16-year-old Iranian boy taken to a field outside the town and forced to kneel in a line with others, before the police beat him repeatedly with truncheons; an Eritrean man who, after complying with a police request to get down from a lorry, was violently attacked and had teargas sprayed in his face; and teargas being used at camp entrances to prevent refugees from leaving, being detonated inside vans or shot at people's faces from close range, and of hundreds of empty teargas canisters being dumped in a warehouse. Teargas is used more often in the evenings and at weekends....According to a [Refugee Rights Data Project report](#) in March, 76% of camp residents (and 82% of women) have experienced violence from the police, while 70% have been exposed to teargas. Of the 700 children in the Calais camp, a staggering 78% are on their own...The lack of enforcement of the rights of the children in the camps is a useful human rights barometer. While we set up inquiries to look into past atrocities and abuses and produce weighty reports on past human rights violations, we are in the middle of our own historic wrong.

Europe can't even keep track of its 88,000 child refugees.

Joseph Ataman, August 1, 2016, Wall Street Journal. Europe is losing track of its child refugees. <http://www.wsj.com/articles/europe-is-losing-track-of-child-refugees-1470002526>

European governments are losing track of significant numbers of children who have entered the continent without their parents as refugees from war-torn areas in the Middle East and beyond. In Belgium, authorities can't account for 156 migrant children who entered the country unaccompanied since January 2015, and the number is growing. This year, 90 unaccompanied migrant children have been reported missing to Child Focus, Belgium's center for missing and sexually exploited children....n 2015, 88,245 unaccompanied children—91% of them boys—sought asylum in the European Union, and officials estimate that there are as many as 10,000 missing migrant children. This year, 90% of migrant children arriving in Italy were unaccompanied. Advocates say the families of children often pay smugglers in advance but often this depends on their nationality, with poorer migrants from Afghanistan or Eritrea forced to work for smugglers to pay for their passage. .. A 2016 Unicef report detailed the constant threat of sexual violence, forced prostitution and rape for lone migrant children in transit in Northern France, a danger that advocates say exists across Europe. Mr. Lowyck said his center had received several migrant children who had survived rapes on their journeys. "We are always too late, we see kids who are traumatized, beaten, raped. When they arrive in Europe, the most difficult part of their journey begins," he said. "Some of the worst trauma is happening once they enter Europe," he said. "Kids are more and more desperate. The smugglers know this."

And children in refugee camps in Jordan and Turkey face hunger and an inability to obtain a proper education.

Reuters, August 2, 2016, Spectre of hunger keeps Syrian children out of school, <http://www.reuters.com/article/us-mideast-crisis-education-idUSKCN10D2IZ> DOA: 8-8-16

With just 60 days to go before the start of the new school year, hundreds of thousands of Syrian parents are faced with the stark choice of whether to feed their children or send them to school, experts said on Wednesday. Nearly 1 million Syrian refugee children are out of school in Lebanon, Turkey and Jordan which host the vast majority of the nearly 5 million refugees created by Syria's civil war. Many Syrian children are forced to work to help make ends meet, or unable to pay for transport to school, according to a report written by the head of the London-based think tank, Overseas Development Institute (ODI).

Third, many religious groups are vulnerable to genocide absent a safe haven that will protect them when they flee.

Lauretta Brown, April 21, 2016, CNS News, Refugees Vulnerable to Genocide the Highest Priority, <http://cnsnews.com/news/article/lauretta-brown/uscirf-chair-congress-us-should-give-refugees-who-are-vulnerable>

Robert P. **George, chairman of the U.S. Commission on International Religious Freedom (USCIRF), told a congressional commission** on Tuesday that the **United States should give the highest priority to refugees "who are vulnerable to genocide, enslavement, murder, torture. The U.S. government has declared that Christians and other religious minorities in Syria are being targeted for genocide by the Islamic State** He also emphasized that **"in taking these refugees, prioritization needs to be done on the basis of vulnerability. "The most vulnerable**

need to be given the highest priority, particularly those who are vulnerable to genocide, enslavement, murder, torture,” George said. George added that sufficient resources need to be allocated to the Department of Homeland Security and other agencies that do security vetting for refugees considered for resettlement “to allow them to expeditiously process applications and thoroughly conduct the background checks in order to facilitate resettlement without compromising U.S. national security.” “The public’s not going to support this if they believe our national security’s being put in jeopardy,” George emphasized. “It’s not that they’re cruel. It’s not that they lack compassion. They have legitimate concerns about security. We believe those concerns can be met, and we think we can make the process more expeditious if we make sure that the funding is there for the security checks to be done in a comprehensive and effective way.” Knights of Columbus CEO Carl Anderson also testified before the Commission on Tuesday, echoing some of George’s recommendations. **The Knights of Columbus gave a report documenting eyewitness accounts of the targeting of Christians at the hands of ISIS to the State Department just prior to Secretary of State John Kerry’s March finding that ISIS was committing genocide.** “Now the United States must act to stop this genocide, to prevent its recurrence, to assure the future of Christians and other genocide victims whether they wish to leave or to remain,” Anderson said. “Genocide survivors who wish to come to the United States must not be put at the back of the line,” he emphasized. **Anderson testified that of the 1,366 Syrian refugees admitted to this country in FY 2016, “fewer than three percent came from the groups targeted for genocide.”** As CNSNews.com reported on April 10, the 1,366 Syrian refugees who had been admitted to the U.S. in fiscal 2016 up to that point included 1,330 Sunni Muslims (97.3 percent of the total) and only 9 Christians (or 0.6 percent of the total). “It is wrong when those who faced genocide are excluded – often on the basis of oversight or bureaucratic procedures,” he emphasized.

Fourth, absent a safe haven in Europe or the United States, many refugees will continue to suffer from inadequate medical care and food supplies.

EU Observer, September 25, 2015, Six EU States Slash Food Aid for Syrian Refugees, <https://euobserver.com/migration/130400> DOA: 9-25-15

Every member state, except the Netherlands, has slashed contributions to the World Food Programme (WFP) in 2015. EU leaders at an emergency summit in Brussels on Wednesday (23 September) are being asked to shore up contributions. The drastic cuts over the past year mean the UN agency has been unable to hand out food vouchers to hundreds of thousands of Syrians at refugee camps in Jordan, Lebanon, Iraq, Egypt, and Turkey. The lack of food and deplorable conditions at the camps is, in part, compelling many to take the journey to the EU. At the camp in Jordan, some 229,000 Syrians stopped receiving food aid in September. **In Turkey, around 60,000 women gave birth in the camps since the start of the conflict. WFP has since had to halve assistance to almost 1.3 million Syrian refugees in the region.** Most live off \$0.50 a day. The agency is warning that **disruptions to water supplies could provoke major outbreaks of disease.** **“Faced with such harsh conditions who can blame people for seeking a safe haven in Europe”**, said European parliament president Martin Schulz. **Austria, Estonia, Greece, Hungary, Portugal, and Slovakia made the most drastic cuts. All sliced their contributions by 100 percent this year, compared to last year. Sweden’s contribution dropped by 95 percent, followed by Lithuania at 69.5 percent, and Belgium at 54.7 percent.** The UK also dropped by 29.5 percent. Others like Croatia, Latvia, Poland, and Romania gave nothing in the past two years. The Netherlands stands alone as the only member state, at plus 5.8 percent, which has increased contributions. It means member state contributions went from €895 million in 2014 to €675 million this year, a 38 percent drop. But Sweden, for its part,

contested the 95 percent drop in [figures](#) given by the European Commission. It says it usually makes the disbursements quite late in the year, which was not reflected in the commission's data. "The Swedish contribution for 2015 at the moment stands at \$69.3 million. This is without the increase just announced, which takes the total to about \$72.3 million", said a contact at Sweden's ministry of international development cooperation. The WFP said Sweden's contribution was registered last week.

Temporary camps will not solve the problem.

Ashley Welch, September 25, 2015, Amid crisis, refugees face numerous health risks, CBS News, <http://www.cbsnews.com/news/amid-crisis-refugees-face-numerous-health-risks/> DOA: 9-25-15

The current [refugee crisis](#) in the Middle East and Europe has seen millions of people flee their homes amid horrific violence. While escaping immediate threats is their first priority, experts say **displaced people go on to face numerous health risks, from trauma injuries to disease-causing pathogens to mental illness.** And a **new report from Jane's Intelligence Review cautions of the danger of potential outbreaks among refugees and, to a lesser extent, host populations.** According to the United Nations High Commissioner for Refugees (UNHCR), the [civil war in Syria](#) has left 12.2 million people in need of humanitarian assistance. More than 7 million Syrians are internally displaced and over 4 million are registered as refugees living outside the country. Deteriorating security in Afghanistan, Libya and Yemen, as well as dire living conditions for refugees in Lebanon and Jordan, have also increased the number of people seeking safe haven in the European Union. **"For the refugees coming by boat, the immediate health concerns are exposure, dehydration, and if there's capsizing, there's going to be the risk of drowning or near-drownings,"** Dr. E. Anne Peterson, Senior Vice President of Global Programs at AmeriCares, a disaster relief organization that has delivered millions of dollars in medical aid to the region, told CBS News. **"There's also a portion of refugees who end up in local communities with relatives or places that are culturally similar where they're squatting, so there's overcrowding and displacing of the health care resources available there,"** she said. **"These refugees embedded in host communities are also not always eligible for health care services, making them particularly vulnerable because they're not in the refugee camps where refugee organizations typically go."** Refugee camps present a host of their own health problems, including over-crowding, inadequate access to water and poor sanitation services. This can subsequently lead to outbreaks, such as cholera and typhoid.

In fact, they often aggravate the situation.

Anant Mishra, August 8, 2016, Living in a Tent: What We Can Do About the 'Deplorable' conditions of refugee camps? <http://intpolicydigest.org/2016/08/08/living-tent-can-deplorable-conditions-refugee-camps/>

Today, over 12 million people are displaced due to the ongoing conflict in Syria which is now in its 5th year. Most of Europe is apprehensive about accepting refugees, forcing many to shelter in refugee camps. Refugee camps are jointly administered by governments, UN agencies such as the UN High Commissioner for Refugees (UNHCR) and non-governmental organizations which are tasked with providing necessary services. They act as temporary shelters and hosts for refugees until they are granted asylum in neighboring countries or return to their own country. Shockingly, the refugee shelters have lasted for years, and have become permanent housing rather than temporary settlements. The conditions of these refugee camps are, to say the least, deplorable.

Refugees are forced to live in acute poverty, while vulnerable to diseases and physical abuses. Most of the refugee camps fail to provide adequate food, hygiene and clean water and most of the basic necessities for human survival. There is overcrowding in almost every camp as international aid organizations and other development agencies continue to wrestle with the host countries for finances. This fact is especially evident in the wake of Syrian refugee crisis. People are forced to survive on one meal a day and new born infants are wrapped in plastic instead of warm blankets...Since the refugee camps of today became operational, the conditions have deteriorated, lacking access to clean water, food, and shelter, and are vulnerable to physical abuses, human rights abuses, sexual exploitation and rape.

More than a million refugees are in dire need of an immediate safe haven.

Amnesty International, July 5, 2016, The Global Refugee Crisis – Genuine Responsibility
Sharing – Amnesty International’s Five Proposals,
<https://www.amnesty.org/en/documents/ior40/4380/2016/en/>

More than one million refugees are considered by UNHCR to be vulnerable and urgently in need of resettlement to other countries. Vulnerable refugees include survivors of violence and torture, women and girls at risk, and those with serious medical needs. Only around 30 countries offer resettlement places for vulnerable refugees, and the number of places offered (known as “resettlement places”) annually falls far short of the needs identified by UNHCR.

In addition to the US, Europe has the capacity to provide a safe haven for more refugees.

George Soros, April. 9, 2016, New York Review of Books Daily, Europe: A Better Plan for Refugees, <http://www.nybooks.com/daily/2016/04/09/europe-how-pay-for-refugees/> DOA: 4-21-16

A humanitarian catastrophe is in the making in Greece. The asylum seekers are desperate. Legitimate refugees must be offered a reasonable chance to reach their destinations in Europe. It is clear that the EU must undergo a paradigm shift. EU leaders need to embrace the idea that effectively addressing the crisis will require “surge” funding, rather than scraping together insufficient funds year after year. Spending a large amount at the outset would allow the EU to respond more effectively to some of the most dangerous consequences of the refugee crisis—including anti-immigrant sentiment in its member states that has fueled support for authoritarian political parties, and despondency among those seeking refuge in Europe who now find themselves marginalized in Middle East host countries or stuck in transit in Greece.

Most of the building blocks for an effective asylum system are available; they only need to be assembled into a comprehensive and coherent policy. Critically, refugees and the countries that contain them in the Middle East must receive enough financial support to make their lives there viable, allowing them to work and to send their children to school. That would help to keep the inflow of refugees to a level that Europe can absorb. This can be accomplished by establishing a firm and reliable target for the number of refugee arrivals: between 300,000 and 500,000 per year. This number is large enough to give refugees the assurance that many of them can eventually seek refuge in Europe, yet small enough to be accommodated by European governments even in the current unfavorable political climate. There are established techniques for the voluntary balancing of supply and demand in other fields, such as with matching students to schools and

junior doctors to hospitals. In this case, people determined to go to a particular destination would have to wait longer than those who accept the destination allotted to them.

The asylum seekers could then be required to await their turn where they are currently located. This would be much cheaper and less painful than the current chaos, in which the migrants are the main victims. Those who jump the line would lose their place and have to start all over again. This should be sufficient inducement to obey the rules. At least €30 billion (\$34 billion) a year will be needed for the EU to carry out such a comprehensive plan. This includes providing Turkey and other “frontline” countries with adequate funding to maintain their very large refugee populations, creating a common EU asylum agency and security force for the EU’s external borders, addressing the humanitarian chaos in Greece, and establishing common standards across the Union for receiving and integrating refugees.

Thirty billion euros might sound like an enormous sum, but it is not when viewed in proper perspective. First, we must recognize that a failure to provide the necessary funds would cost the EU even more. There is a real threat that the refugee crisis could cause the collapse of Europe’s Schengen system of open internal borders among twenty-six European states. The Bertelsmann Foundation has estimated that abandoning Schengen would cost the EU between €47 billion (\$53.5 billion) and €140 billion (\$160 billion) in lost GDP each year; the French Commissioner for Policy Planning has estimated the losses at €100 billion (\$114 billion) annually. Moreover, there is no doubt that Europe has the financial and economic capacity to raise €30 billion a year. This amount is less than one-quarter of one percent of the EU’s combined annual GDP of €14.9 trillion, and less than one-half of one percent of total spending by its twenty-eight member governments. It is Europe’s political capacity that is lacking, at least at the moment—its ability to make effective unified decisions about such an urgent matter. Most member states are restricted by the EU’s fiscal rules from running larger deficits and financing them by issuing new debt in the capital markets. Even though German Finance Minister Wolfgang Schäuble lifted hopes in Davos in January when he spoke of a European Marshall Plan to deal with the migration crisis, he also insisted that any spending should be financed out of revenues rather than by adding to the existing government debt.

Taking on new common European debt, backed by the joint and several guarantee of the EU’s members, would raise strong objections, particularly in Germany. Even if the debt were restricted to addressing the migration crisis, Germany and others would see it as a dangerous precedent toward creating debt backed by EU members collectively, with Germany responsible to step in if other countries fail to repay their share of the debt. Berlin has diligently avoided providing such a precedent throughout the euro crisis. That is why the question has not even been raised, let alone seriously considered. But there are other ways to raise the necessary funds using existing EU structures.

Member states could raise new tax revenue in order to fund what is needed. However, Europe does not have the political capacity to raise the necessary sums needed in time to contain the crisis. For a new tax to be perceived as fair, it would have to be imposed equitably across the EU. The proper route for such a tax increase would be for the European Commission to propose new legislation to be adopted with the unanimous support of all members. This would likely fail, since it would give every country the right to veto the tax. If a “coalition of the willing” of at least nine countries could be assembled, the Commission could opt for “enhanced cooperation,” the approach used for the proposed European financial transaction tax (FTT). If the recent experience with the FTT is any guide, this process would take months to conclude.

A more promising alternative would be to re-open the European Commission’s Multiannual

Financial Framework, which establishes the EU's broad budgetary parameters, including the maximum amounts the EU may spend in different areas. The forthcoming mid-term review of this EU budget offers an opportunity to increase the VAT contribution of member states, and designate that some of the new funds raised should go to a refugee crisis fund. This would also be difficult but offers the most realistic path forward.

It will be crucial, however, to make a large part of the funding available very quickly. Making large initial investments will help tip the economic, political, and social dynamics away from xenophobia and disaffection toward constructive outcomes that benefit refugees and countries alike. In the long run, this will reduce the total amount of money that Europe will have to spend to contain and recover from the refugee crisis. This is why I call it "surge" funding.

Where will the necessary funds come from? There is a strong case to be made for using the EU's balance sheet itself. The EU presently enjoys a triple-A credit rating that is underused and that allows it to borrow in the capital markets on very attractive terms. And with global interest rates at near historic lows, now is a particularly favorable moment to take on such debt.

Soros continued in a more recent article –

George Soros, July 19, 2016, Foreign Policy, This is Europe's Last Chance to Fix its Refugee Policy, <http://foreignpolicy.com/2016/07/19/this-is-europes-last-chance-to-fix-its-refugee-policy-george-soros/> DOA: 8-7-16

The refugee crisis is not a one-off event; it augurs a period of higher migration pressures for the foreseeable future, due to a variety of causes including demographic and economic imbalances between Europe and Africa, unending conflicts in the broader region, and climate change. Beggar-thy-neighbor migration policies, such as building border fences, will not only further fragment the union; they also seriously damage European economies and subvert global human rights standards.

What would a comprehensive approach look like? It would establish a guaranteed target of at least 300,000 refugees each year who would be securely resettled directly to Europe from the Middle East — a total that hopefully would be matched by countries elsewhere in the world. That target should be large enough to persuade genuine asylum-seekers not to risk their lives by crossing the Mediterranean Sea, especially if reaching Europe by irregular means would disqualify them from being considered genuine asylum-seekers.

This could serve as the basis for Europe to provide sufficient funds for major refugee-hosting countries outside Europe and establish processing centers in those countries; create a potent EU border and coast guard; set common standards for processing and integrating asylum-seekers (and for returning those who do not qualify); and renegotiate the Dublin III Regulation in order to more fairly share the asylum burden across the EU.

...

First, the EU and the rest of the world must take in a substantial number of refugees directly from front-line countries in a secure and orderly manner, which would be far more acceptable to the public than the current disorder. If the EU made a commitment to admit even just 300,000 refugees each year, and if that commitment were matched by countries elsewhere in the world, most genuine asylum-seekers would calculate that their odds of reaching their destination are

good enough for them not to seek to reach Europe illegally, since that would disqualify them from being legally admitted. If, on top of this, conditions in front-line countries improved thanks to greater aid, there would be no refugee crisis. But the problem of economic migrants would remain.

This brings us to the second point: The EU must regain control of its borders. There is little that alienates and scares publics more than scenes of chaos. Fifteen months after the acute phase of the crisis began, confusion continues to reign in Greece and its Mediterranean waters. More than 50,000 refugees live in squalor in a series of poorly organized, impromptu camps throughout the country. Europeans see this on their screens and wonder why the mighty European Union is incapable of supplying even basic provisions to children and women fleeing war. Meanwhile, the most advanced navies of the world appear incapable of saving those crossing the Mediterranean; the number of drownings has [increased](#) dramatically this year. The cynical explanation for all this — that the EU is intentionally allowing these conditions to persist so that they serve as a deterrent — is equally troubling.

The immediate remedy is simple: provide Greece and Italy with sufficient funds to care for asylum-seekers, order navies to make search-and-rescue missions (and not “protection” of borders) their priority, and implement the promise to relocate 60,000 asylum-seekers from Greece and Italy to other EU member states.

Third, the EU needs to develop financial tools that can provide sufficient funds for the long-term challenges it faces and not limp from episode to episode. Over the years, the EU has had to finance an ever-growing number of undertakings with a shrinking pool of resources. In 2014, member states and the European Parliament agreed to reduce and cap the overall EU budget at a modest 1.23 percent of the sum of its members’ GDPs until 2020. That was a tragic mistake. The EU cannot survive with a budget of this size.

At least 30 billion euros a year will be needed for the EU to carry out a comprehensive asylum plan. These funds are needed both inside the union — to build effective border and asylum agencies and ensure dignified reception conditions, fair asylum procedures, and opportunities for integration — as well as outside its borders — to support refugee-hosting countries and spur job creation throughout Africa and the Middle East. Robust border and asylum agencies alone could cost on the order of 15 billion euros.

Although 30 billion euros might seem like an enormous amount, it pales in comparison to the political, human, and economic costs of a protracted crisis. There is a real threat, for instance, that Europe’s Schengen system of open internal borders will collapse. The Bertelsmann Foundation has [estimated](#) that abandoning Schengen would cost the EU between 47 billion and 140 billion euros in GDP lost each year.

The current approach is based on reallocating minimal amounts from the EU budget and then asking member states to contribute to various dedicated vehicles, such as the [Facility for Refugees in Turkey](#) and the [EU Regional Trust Fund](#) for Syria, which were used, respectively, to provide financial compensation for Turkey and additional EU funding to international organizations and neighboring countries as a response to the Syrian crisis. These, however, can only be a temporary solution, as they are neither sustainable nor large enough to finance efforts that must grow in size and scope. Although these trust funds can be powerful instruments in the short term to redeploy resources and allow member states to commit more funds to a particular

endeavor, they also illustrate the fundamental deficiency of the current system — namely that it remains dependent on the good will of the member states at each step.

International Law

There have been refugees since the beginning of time. It is only relatively recently, however, that refugees could claim any type of protection based on international law/legal principles/norms.

There are certain obligations to refugees that are established under international law, which governs relationships between sovereign states, international organizations, and private organizations. It establishes obligations and responsibilities among the parties.

The most generally applicable international legal convention is the Convention is the Refugee Convention, which was amended in 1957 to protect all refugees.

Dieter Kugelman, lawyer and professor, March 2010, Refugees, Max Planck Encyclopedia of Public International Law, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e866> DOA: 9-25-15

In the history of mankind, there have always been people fleeing their habitual place of residence and seeking refuge elsewhere. However, it was only in the 20th century that refugees became an issue on the international level. Before World War I, refugees were treated in accordance with national laws concerning aliens. There were no rules of customary international law taking into account the specific situation of refugees; nor did any bilateral or multilateral agreement exist to regulate their status. As a consequence of the peace treaties after World War I, huge numbers of people had to seek refuge in foreign countries. The League of Nations had to cope not only with the protection of minorities within States but also with complicated refugee problems across borders. Initially, the Assembly of the League of Nations and the States in general thought that the refugee problem would be a temporary phenomenon. But within a short period of time, the problem turned out to be serious and of lasting character.

In 1928 the first international instrument with relevance to the legal status of refugees was developed within the League of Nations, the Arrangement relating to the Legal Status of Russian and Armenian Refugees. It was followed by the first legally binding treaty, the 1933 Convention relating to the International Status of Refugees, which was limited in its application to the then existing refugees. As a model instrument, it dealt not only with the issue of travel documents (see also Passports) but with a variety of matters affecting the daily lives of refugees such as personal status, employment, social rights, education, exemption from reciprocity, and expulsion.

Based on preparatory work under the auspices of the United Nations, especially within the Economic and Social Council ('ECOSOC') (United Nations, Economic and Social Council [ECOSOC]), the Refugee Convention was adopted on 28 July 1951 as a fundamental legal instrument of refugee law. As the application of the Refugee Convention was limited to the refugee problems known at the time of its adoption, its terms were later made applicable to all new refugee situations by the 1967 Refugee Protocol.

There are also a number of regional conventions that provide protections, including Africa's SARPA and The Cartagena Declaration on Refugees (Latin America) the establish legal obligations to refugees living in those areas.

And there are a number of different types (or "disciplines") of international law apply in the instance of responding to humanitarian needs — International Humanitarian Law, International Criminal Law, International Refugee Law, International Human Rights Law, International Disaster Response Laws.

International Humanitarian Law (IHL) (like the definition) of "humanitarian", supports action to alleviate *immediate suffering*.

Max Cherem, September 29, 2015, assistant professor of philosophy, has been appointed as the Marlene Crandell Francis Assistant Professor of Philosophy, Journal of Political Philosophy, Refugee Rights: Against Expanding the Definition of a "Refugee" and Unilateral Protection Elsewhere, p. 1-23 DOI: 10.1111/jopp.12071

Focusing on non-refoulement. While often conflated, humanitarianism and human rights are different. Each arose out of separate historical trajectories, bodies of law, and representative institutions. Each has different goals and notions of impartiality. International humanitarian law began to arise in 1864 to codify answers to *jus in bello* debates on noncombatant protection and acceptable means of war. It addresses urgent needs amidst war regardless of their source or a person's side, and tries to lessen needless suffering. The main group associated with humanitarian law, the International Committee of the Red Cross, sets aside culpability and condemnation so as to better access and serve needy victims.⁸ The thought is that "one cannot be at the same time a champion of justice and charity. One must choose ... the CRC has long since chosen to be a defender of charity."

In contrast, contemporary human rights law emerged after World War II with the 1948 United Nation's Universal Declaration of Human Rights and subsequent conventions. It is traditionally concerned with individual rights against abuses of state power in both war and peacetime, and with the lower limits of state duties towards constituents and outsiders.¹⁰ Human rights involve judgments within and across societies, calls to action or reform, and verdicts of accountability. Human rights advocacy groups like Amnesty International pioneered "naming and shaming," which foregrounds the culpability of rights-violators and identifies parties responsible for remedy. Although human rights set minimal thresholds, they often require radical transformations. In contrast to humanitarian pragmatism, human rights are aspirational: they condemn and praise to induce reform or prevent harm instead of seeking to define and mitigate unnecessary suffering.

Both IHL and IHRL apply when refugees are fleeing conflict

Huma Haider, International Development Research Fellow, March 2013, International Legal Frameworks for Humanitarian Action: Topic Guide, <http://reliefweb.int/sites/reliefweb.int/files/resources/International%20Legal%20Framework%20for%20Humanitarian%20Action.pdf> DOA: 10-2-15

Refugees caught up in armed conflict are protected under both IHL and international refugee law. Article 5 of the Refugee Convention allows for the concurrent application of the Convention and other instruments granting rights and benefits to refugees. IHL and refugee law can also apply successively. The existence of an armed conflict is not in itself sufficient criteria to qualify someone as a refugee under the Convention. Where a victim of armed conflict is forced to leave his or her country due to violations of IHL (or IHRL), however, such violations can form part of the refugee definition and become a key factor in triggering refugee protection (Jaquemet, 2001). This may be more likely where armed conflicts have an ethnic or religious dimension, as it could trigger the condition of fleeing because of fear of persecution (ICRC, 2005a). In situations where armed elements are engaging in severe violations of IHL, this could be sufficient to accept that all civilians belonging to or associated with the 'enemy' side will have a well-founded fear of persecution, without having to engage in individual determinations (Jaquemet, 2001).

And, at the very least, IHL establishes obligations to meet the needs of refugees.

Huma Haider, International Development Research Fellow, March 2013, International Legal Frameworks for Humanitarian Action: Topic Guide, <http://reliefweb.int/sites/reliefweb.int/files/resources/International%20Legal%20Frameworks%20for%20Humanitarian%20Action.pdf> DOA: 10-2-15

Prevention of displacement and protection of refugees under IHL

- _Prohibition of forced displacement: Parties to a conflict are expressly prohibited from forcibly moving civilians, whether in cases of occupation (GCIV, Art 49) or non-international armed conflicts (APII, Art 17). There is an exemption under exceptional circumstances (where the security of the civilian population involved or imperative military reasons so demand). Violations of these provisions are war crimes under international criminal law (ICC Statute, Art 8).
- _Protection from the effects of hostilities in order to prevent displacement: The prohibitions against targeting civilians and civilian property/objects, as well as duties to take precautions to spare the civilian population, are also aimed at preventing displacement (ICRC, 2005a).
- _Protection during displacement: IHL provisions that seek to protect displaced and legally evacuated civilians include the need to ensure that any necessary evacuations are carried out under satisfactory conditions of hygiene, health, safety and nutrition; and that the displaced have appropriate accommodation and that families are not separated. Refugees also benefit from protections afforded to aliens in the territory of a party to a conflict under the GCIV (ICRC, 2005a)

Article 9 of the 1951 Convention allows for derogation from treaty provisions in times of war. Unlike international human rights law, the Convention does not provide for certain non-derogable rights. IHL can therefore be a particularly important safeguard in such situations.

And IHL applies to all governments as part of customary international law, which are the norms and practices of international law.

Huma Haider, International Development Research Fellow, March 2013, International Legal Frameworks for Humanitarian Action: Topic Guide, <http://reliefweb.int/sites/reliefweb.int/files/resources/International%20Legal%20Frameworks%20for%20Humanitarian%20Action.pdf> DOA: 10-2-15

The absence of effective national protection results in the need for international protection. International refugee law applies to states that are party to the relevant treaties and to all states under customary law. Internally displaced persons, who remain within the borders of their own country, are subject to national law and applicable international law such as IHL and IHRL. IHL and IHRL are incorporated in binding regional instruments as applicable and as reflected in the *Guiding Principles on Internal Displacement* (1998). While not part of binding treaty law, the Guiding Principles establish standards for the protection of IDPs. It can be challenging, however, to encourage states to comply with non-binding frameworks. In recent years, there have been significant developments in elaborating binding legislative frameworks – including, for example, the codification of the African Union Convention for the Protection and Assistance of IDPs in Africa, and the Great Lakes Protocol on the Protection and Assistance to IDPs.

One cornerstone principle of these laws is that refugees cannot be forcibly returned.

Guy S. Goodwin-Gill, August 2014, Professor Guy S. Goodwin Gill was formerly Professor of Asylum Law at the University of Amsterdam, served as a Legal Adviser in the Office of United Nations High Commissioner for Refugees (UNHCR) from 1976-1988, and was President of the Media Appeals Board of Kosovo from 2000-2003. He is the Founding Editor of the International Journal of Refugee Law and has written extensively on refugees, migration, international organizations, elections, democratization, and child soldiers. Recent publications include *The Limits of Transnational Law*, (CUP 2010), with Hélène Lambert, eds., *The Refugee in International Law*, (OUP, 2007), 3rd edn. with Jane McAdam; *Free and Fair Elections*, (Inter-Parliamentary Union, 2nd edn., 2006); *Brownlie's Documents on Human Rights*, (OUP, 2010), 6th edn., with the late Sir Ian Brownlie, QC, eds; and introductory notes to various treaties and instruments on refugees, statelessness and asylum for the 'Historic Archives' section of the [UN Audio-Visual Library of International Law](http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021). He practises as a Barrister from Blackstone Chambers, London, *The International Handbook of Refugee Protection* <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021> DOA: 9-25-15

The 1951 Convention is sometimes portrayed today as a relic of the Cold War, inadequate in the face of 'new' refugees from ethnic violence and gender-based persecution, (p. 45) insensitive to security concerns, particularly terrorism and organized crime, and even redundant, given the protection now due in principle to everyone under international human rights law.

The 1951 Convention does not deal with the question of admission, and neither does it oblige a state of refuge to accord asylum as such, or provide for the sharing of responsibilities (for example, by prescribing which state should deal with a claim to refugee status). The Convention does not address the question of 'causes' of flight, or make provision for prevention; its scope does not include internally displaced persons, and it is not concerned with the better management of international migration. At the regional level, and notwithstanding the 1967 Protocol, refugee movements have necessitated more focused responses, such as the 1969 OAU Convention and the 1984 Cartagena Declaration; while in Europe, the development of protection doctrine under the 1950 European Convention on Human Rights has led to the adoption of provisions on 'subsidiary' or 'complementary' protection within the legal system of the European Union.

Nevertheless, within the context of the international refugee regime, which brings together states, UNHCR, and other international organizations, the UNHCR Executive Committee, and non-governmental organizations, among others, the 1951 Convention continues to play an important

part in the protection of refugees, in the promotion and provision of solutions for refugees, in ensuring the security and related interests of states, sharing responsibility, and generally promoting human rights. Ministerial Meetings of States Parties, convened in Geneva by the government of Switzerland to mark the 50th and 60th anniversaries of the Convention in December 2001 and December 2011, expressly acknowledged, ‘the continuing relevance and resilience of this international regime of rights and principles...’ and reaffirmed that the 1951 Convention and the 1967 Protocol ‘are the foundation of the international refugee protection regime and have enduring value and relevance in the twenty-first century’.²⁵

In many states, judicial and administrative procedures for the determination of refugee status have established the necessary legal link between refugee status and protection, contributed to a broader and deeper understanding of key elements in the Convention refugee definition, and helped to consolidate the fundamental principle of *non-refoulement*. While initially concluded as an agreement between states on the treatment of refugees, the 1951 Convention has inspired both doctrine and practice in which the language of refugee rights is entirely appropriate.

The concept of the refugee as an individual with a well-founded fear of persecution continues to carry weight, and to symbolize one of the essential, if not exclusive, reasons for flight. The scope and extent of the refugee definition, however, have matured under the influence of human rights law and practice, to the point that, in certain well-defined circumstances, the necessity for protection against the risk of harm can trigger an obligation to protect.

Understanding international law, the various types, and how those apply to the treatment of refugees takes a bit of work, but hopefully I have at least laid out the basics here in a way that will increase your understanding.

Countries that have signed on to these treaties (which includes most nations) have legal obligations to provide, at a minimum, safe havens for refugees.

Human Rights

Refugees suffer many violations of their human rights.

Ann Lise Purkey, Faculty of Law, McGill University, Montreal, 2014, Journal of Refugee Studies Vol. 27, No. 2, A Dignified Approach: Legal Empowerment and Justice for Human Rights Violations in Protracted Refugee Situations, p. 260-1

Although it is well accepted that the law and legal institutions and mechanisms can play an important role in ensuring that every individual within a society is able to live a dignified life in which their rights are fully realized, this knowledge has had little impact on the way in which states and the international community at large address the situation of one of the world’s most vulnerable groups of people: individuals caught in protracted refugee situations. In many ways, protracted refugee situations are a form of social, political, legal and even economic purgatory for those trapped within them. These refugees often share many of the characteristics of other marginalized and vulnerable groups including poverty, discrimination, lack of access to services, social exclusion, and routine and systemic human rights violations, but face the added challenge of lacking an effective citizenship and/or formal legal status in the country in which they are living. The great number of refugees caught in increasingly prolonged states of ‘rightlessness’ presents a fundamental challenge to the international human rights regime and demands a reimagining of responses to these situations. The

rightlessness of refugees is not a given; the rights of refugees are protected under international human rights law, the 1951 Refugee Convention, regional human rights treaties and often domestic human rights law. The problem arises with the implementation and enforcement of these rights. In practice, refugees in protracted situations rarely benefit from anything near the full range of rights to which they are legally entitled. In these situations, the rights actually enjoyed by refugees are contingent upon a broad range of political and economic factors including the level of international assistance provided and the perceived potential outcome of the refugee crisis (Goodwin- Gill and McAdam 2007). Host states often lack the necessary resources and have little political incentive to guarantee a broad range of rights to refugees. Thus, instead of being regarded as individuals in need of protection or as potential assets to the state, refugee communities are more often viewed as burdens and sources of insecurity to be contained and minimized (Loescher and Milner 2004). The dignity and human rights of refugees are made subordinate to the entrenched interests of the host state, other states, humanitarian actors and donors.

Specifically, individuals have a right to seek *protection* from physical violence as part of their basic human rights.

Jacqueline Bhabha, Jr. Lecturer in Law at Harvard Law School, director of Harvard's University Committee on Human Rights Studies, 2009, Human Rights Quarterly, "Arendt's Children: Do Today's Migrant Children Have a Right to Have Rights?" Project Muse.
<http://muse.jhu.edu/search/results?action=search&searchtype=author§ion1=author&search1=%22Bhabha%2C%20Jacqueline.%22>.

Access to basic shelter, subsistence level welfare payments, and in-kind benefits is as fundamental to modern conceptions of rights in general, and children's rights in particular, as is *protection* from physical violence. The same is true for access to such social and economic rights as education and health care, as the Committee on the Rights of the Child has frequently noted in its concluding observations on states parties' periodic reports. Yet here too, public officials operate under personal codes of conduct that translate into dramatic rights denials. Sylvia da Lomba has remarked, "Curtailments of social rights for irregular migrants in host countries have become essential components of restrictive immigration policies. . . . The threat of destitution as a deterrent against irregular migration generates acute tensions within host states between immigration laws and human rights protections." 39 Consider this Spanish case: Sixteen-year-old 'Abd al Samad R. has been in Ceuta [an autonomous Spanish city located on the Moroccan coast] for about five years, including two and a half years living at the San Antonio Center. While at San Antonio he was diagnosed as suffering from renal disease, a potentially life-threatening medical condition, and he received medical treatment. Then, in October 2001 he was told to leave San Antonio, apparently for disciplinary infractions. When we interviewed 'Abd al Samad on November 8, 2001, he was living with a group of other children and youth in makeshift hovels squeezed between a breakwater and piles of ceramic tiles and other building supplies. He had received no medical treatment since leaving San Antonio, although he was frequently in severe pain. "The pain comes often, when it is cold, or when someone hits me," he said. "I tried to go to the hospital when I was in pain but they wouldn't admit me. *They won't accept you at the hospital unless some one from San Antonio comes with you.* When the pain comes I can't move so who will come to take me to the hospital?" Without official confirmation of the child's social entitlements, he remained outside the categories established by the state—in effect not a person before the law. These exclusionary attitudes were translated directly into rightlessness. The acute risks to which this willful exclusion, combined with the fear of detection as an irregular migrant by state officials, can give rise were noted by the European Court of Human Rights in the case of *Siliadin v. France*. In this case, an unaccompanied child from Togo, "unlawfully present in [France] and in fear of arrest by the police . . . was . . . subjected to forced labour . . . [and] held in servitude," compelled to carry out housework and child care for fifteen hours a day without holidays. 41 The Court commented that the applicant "was entirely at [her employers'] mercy,

since her papers had been confiscated . . . [S]he had no freedom of movement or free time. As she had not been sent to school . . . the applicant could not hope that her situation would improve.”

42 Irregular migration status increases the risk of invisibility and thus gross rights violations. As the Court pointed out, states parties must recognize this serious risk and act “with greater firmness . . . in assessing the infringements of the fundamental values of democratic societies.” In other words, according to the Court, states have an obligation to “see” Arendt’s children—willful and selective blindness is not a legitimate option .

Refugee human rights are protected under a number of Conventions. These include the rights to have their basic needs met.

Dieter Kugelman, lawyer and professor, March 2010, Refugees, Max Planck Encyclopedia of Public International Law, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e866> DOA: 9-25-15

Sources of Human Rights for Refugees

38 There are relevant provisions on refugees in human rights instruments. The Universal Declaration of Human Rights stipulates some *habeas corpus* rights which are applicable without discrimination (Art. 9 UDHR), the right to seek and to enjoy in other countries asylum from persecution (Art. 14 UDHR), the right to a nationality (Art. 15 UDHR), and the right to freedom of movement and residence within the borders of each State (Art. 13 UDHR; Movement, Freedom of, International Protection). The latter right is also provided for in Art. 12 ICCPR. The two Covenants are based on the non-discriminatory character of human rights. According to Art. 2 (1) ICCPR, each State Party must ensure the rights in the ICCPR to ‘all individuals within its territory and subject to its jurisdiction’. Referring to this provision, the Human Rights Committee has adopted General Comment No 15: The Positions of Aliens under the Covenant ([9 April 1986] GAOR 41st Session Supp 40, 117), in which it holds that the ICCPR does not recognize the right of aliens to enter or reside in the territory of a State Party. Yet it also states that in certain circumstances the ICCPR may afford protection to an alien ‘even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise’ (No 5 General Comment No 15).

39 The protection of children seeking refuge is guaranteed by Art. 22 Convention on the Rights of the Child (‘CROC’ [adopted 20 November 1989, entered into force 2 September 1990] 1577 UNTS 3). The duty of States to protect the family unity of refugees is in general affirmed by State practice, and the necessary *opinio iuris* can be derived from legal material. The obligation of States to protect the family is laid down in Art. 23 ICCPR and relating to family unification in Art. 10 CROC. The obligations of States do not necessarily result in an individual right of a family member.

40 The European Court of Human Rights (ECtHR) holds the view that States have the right to control the entry, residence, and expulsion of aliens (*Vilvarajah v the United Kingdom* [ECtHR] Series A No 215 at 34 para. 102). There is no right to political asylum in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (‘ECHR’) or its Protocols. Nevertheless, the ECtHR holds that the rights safeguarded by the ECHR can provide for a legal position of aliens implying far-reaching State obligations towards refugees.

41 Within the scope of Art. 3 ECHR, the ECtHR has strengthened the protection of aliens from torture or inhuman or degrading treatment or punishment (eg *Chahal v UK* [ECtHR] Reports

1996-V 1831 at 21 para. 74); see also Human Dignity, International Protection). It is well established in the case-law of the ECtHR that expulsion or any other kind of removal by a State Party may engage the responsibility of that State. If substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Art. 3 ECHR in the receiving country, Art. 3 ECHR implies the obligation not to expel the person in question to that country (see *Soering Case* [ECtHR] Series A No 161 at 35 paras 90–91; *Cruz Varas v Sweden* [ECtHR] Series A No 201 at 28 paras 69–70). In favour of third-country nationals, the right to family life guaranteed in Art. 8 ECHR can—on exceptional conditions—encompass the right to remain in a country (*Dalia v France* [ECtHR] Reports 1998-I 76 at 91 para. 52; *Boultif v Switzerland* [ECtHR] Reports 2001-IX 119 at 130 para. 46). For specific situations, the ECtHR holds that the right to family life provides for the right to legalize the stay by granting a formal residence permit or a similar document (*Sisojeva v Latvia* [ECtHR] App 60654/00 paras 104–107; in this case, the Grand Chamber struck the application in its judgment of 15 January 2007; in *Rodrigues da Silva v Netherlands* [ECtHR] Reports 2006-I 223, the Grand Chamber rejected the application on 3 July 2006).

There is an obligation to protect the human rights of the stateless, as their rights will not otherwise be protected

Seyla Benhabib, professor of political science and philosophy at Yale, June 2004, “The Rights of Others.”

http://books.google.com/books?id=3cuUHAJNmuYC&dq=Seyla+Benhabib+“Rights+of+Others”&printsec=frontcover&source=bl&ots=d-pqxd2bJq&sig=Oyb7-wKIE-80M8AlnsdkH3bLD80&hl=en&ei=rqtKSqWVIYqmNurxjIoO&sa=X&oi=book_result&ct=result&resnum=1

After Kant, it was Hannah Arendt who turned to the ambiguous legacy of cosmopolitan law, and who dissected the paradoxes at the heart of the terminally based sovereign state system. One of the great political thinkers of the twentieth century, Hannah Arendt argued that the twin phenomena of “political evil” and “statelessness” would remain the most daunting problems into the twenty-first century as well (Arendt 1349.;,134; [1951]1968;seeBenhabib[1996] 21103). Arendt always insisted that among the root causes of totalitarianism was the collapse of the nation—state system in Europe during the two world wars. The totalitarian disregard for human life and the eventual treatment of human beings as “superfluous” entities began, for Hannah Arendt, when millions of human beings were rendered “stateless” and denied the “right to have rights.” Statelessness, or the loss of nationality status, she argued, was tantamount to the loss of all rights. The stateless were deprived not only of their citizenship rights; they were deprived of any human rights. The rights of man and the rights of the citizen, which the modern bourgeois revolutions had so clearly delineated were deeply imbricated. The loss of citizenship rights, therefore, contrary to all human rights declarations, was politically tantamount to the loss of human rights altogether. This chapter begins with an examination of Arendt contribution; thereafter, I develop a series of systematic considerations which are aimed to show why neither the right to naturalization nor the prerogative of denaturalization can be considered sovereign privileges alone; the first is a universal human right, while the second - denaturalization - is its abrogation.

The Right to asylum protected by international law, particularly international human rights law.

Maria-Teresa, Gil Bazo Senior Lecturer in Law, Newcastle Law School (Newcastle University), *International Journal of Refugee Law*, 2015, Vol. 27, No. 1, 3–28, Asylum as a General Principle of International Law, p. 5

These instances show that the question of asylum is very much alive and that the debate as to its nature and content remains controversial. The purpose of this article is to explore the nature of asylum as a general principle of international law. The analysis that follows is informed by the understanding that '[t]he development of the law on asylum is inextricably bound up with the general development towards the greater recognition and protection of the human rights and fundamental freedoms of the individual by international law', including the right to asylum as a human right. The analysis in this article is also grounded in international law itself. In this regard, it is worth noting that, while in common law judicial decisions constitute primary sources of law, in international law they are secondary sources and enjoy the same status as the views 'of the most highly qualified publicists of the various nations' (article 38(d) of the Statute of International Court of Justice (ICJ), emphasis added). Article 59 of the ICJ Statute further affirms that '[t]he decision of the Court has no binding force except between the parties and in respect of that particular case'. Judicial decisions will be considered in this article, as appropriate, insofar as they constitute an expression of state practice, or if they reflect the authentic interpretation of treaties by international courts or human rights monitoring bodies, but not as primary sources of law or authority of higher rank than the most qualified doctrine. This article will also engage with the doctrinal views of the most qualified authors, especially those elected by the United Nations General Assembly to serve at the International Court of Justice, or by state parties to international human rights treaties to serve at United Nations Treaty Bodies (such as the Committee Against Torture) or at regional human rights courts (such as the Inter-American Court of Human Rights).

Protecting human rights protects several important interests

Allen Buchanan, political philosopher at Duke, 2004 *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Kindle Edition, page/location number at end of card

Consider first the right not to be tortured. As I have already observed, securing this right protects several important interests, thereby contributing significantly to individual well-being. First, and most obviously, there is the interest in avoiding pain, suffering, and terror. Second, there is the interest in avoiding the gross indignity of being a mere object, completely at the mercy of another who acknowledges no constraints on how he treats one. (Whether we consider this indignity merely as detracting from well-being or as being incompatible with recognizing the autonomy of persons understood as a value independent of well-being, it supplies an important reason for regarding the right not to be tortured as a human right.) Third, the effects of torture, both physical and psychological, are often debilitating, robbing the victim of the capacity for pursuits and enjoyments that would contribute to her well-being, including the capacity for intimacy and healthy family relations." Fourth, so far as torture has a point (as opposed to being an exercise in pure sadism), being tortured or being under the threat of being tortured makes one vulnerable to betraying one's principles, one's associates, or both. Fifth, where institutions do not secure the right against being tortured, individuals may fear that they will fall victim to it and this sense of vulnerability itself reduces well-being and constrains choices. For all of these rather obvious reasons, there is a strong case for the assertion that the right not to be tortured is a basic human right. Allen Buchanan. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford Political Theory) (Kindle Locations 1702-1703). Kindle Edition.

In the next session of the essay, I will turn to the moral obligation. Some of the moral obligation claims stem from the need to protect the human rights of refugees.

Morality

A strong case can be made that there is a moral obligation to help refugees who are impoverished and dying.

Daniel Altman, 9-8-15, Foreign Policy, We Should Be Competing to Take in Refugees, <http://foreignpolicy.com/2015/09/08/we-should-all-be-competing-to-take-in-refugees-europe-syria/> DOA: 9-22-15 Daniel Altman is senior editor, economics at Foreign Policy and is an adjunct professor at New York University's Stern School of Business.

Refugees are spending thousands of euros to make treacherous journeys over land and sea. As the world has lately been reminded (but too infrequently for my taste), many die along the way. This is an economic problem as well as a moral one. An impoverished refugee will have a harder time making a fresh start, and a dead refugee never gets the chance. That's why it makes sense for Germany and other host countries to pay for refugees' safe transit; they'll have to shell out less to support refugees upon arrival, and they'll likely have more successful refugees paying taxes in the future.

These refugees have no choice but to flee.

Michael Ignatieff is a professor at the Harvard Kennedy School, September 5, 2015, New York Times, The refugee crisis isn't a 'European Problem,' http://www.nytimes.com/2015/09/06/opinion/sunday/the-refugee-crisis-isnt-a-european-problem.html?_r=0 DOA: 9-22-15

The Vietnamese and Hungarians were fleeing Communism. What's holding back sympathy for the Syrians? They've been barrel-bombed in Aleppo by their own regime, they've been tortured, kidnapped and massacred by miscellaneous jihadis and opposition militias. They've been in refugee camps for years, waiting for that cruelly deceiving fiction "the international community" to come to their aid. Now, when they take to the roads, to the boats and to the trains, all our political leaders can think of is fences, barbed wire and more police. What must Syrians, camped on the street outside the Budapest railway station, be thinking of all that fine rhetoric of ours about human rights and refugee protection? If we fail, once again, to show that we mean what we say, we will be creating a generation with abiding hatred in its heart. So if compassion won't do it, maybe prudence and fear might. God help us if these Syrians do not forgive us our indifference.

And they cannot survive in refugee camps due to a lack of support.

EU Observer, September 25, 2015, Six EU States Slash Food Aid for Syrian Refugees, <https://euobserver.com/migration/130400> DOA: 9-25-15

Every member state, except the Netherlands, has slashed contributions to the World Food Programme (WFP) in 2015. EU leaders at an emergency summit in Brussels on Wednesday (23

September) are being asked to shore up contributions. The drastic cuts over the past year mean the UN agency has been unable to hand out food vouchers to hundreds of thousands of Syrians at refugee camps in Jordan, Lebanon, Iraq, Egypt, and Turkey. The lack of food and deplorable conditions at the camps is, in part, compelling many to take the journey to the EU. At the camp in Jordan, some 229,000 Syrians stopped receiving food aid in September. In Turkey, around 60,000 women gave birth in the camps since the start of the conflict. WFP has since had to halve assistance to almost 1.3 million Syrian refugees in the region. Most live off \$0.50 a day. The agency is warning that disruptions to water supplies could provoke major outbreaks of disease. "Faced with such harsh conditions who can blame people for seeking a safe haven in Europe", said European parliament president Martin Schulz. Austria, Estonia, Greece, Hungary, Portugal, and Slovakia made the most drastic cuts. All sliced their contributions by 100 percent this year, compared to last year. Sweden's contribution dropped by 95 percent, followed by Lithuania at 69.5 percent, and Belgium at 54.7 percent. The UK also dropped by 29.5 percent. Others like Croatia, Latvia, Poland, and Romania gave nothing in the past two years. The Netherlands stands alone as the only member state, at plus 5.8 percent, which has increased contributions. It means member state contributions went from €95 million in 2014 to €675 million this year, a 38 percent drop. But Sweden, for its part, contested the 95 percent drop in figures given by the European Commission. It says it usually makes the disbursements quite late in the year, which was not reflected in the commission's data. "The Swedish contribution for 2015 at the moment stands at \$69.3 million. This is without the increase just announced, which takes the total to about \$72.3 million", said a contact at Sweden's ministry of international development cooperation. The WFP said Sweden's contribution was registered last week.

One foundation for this obligation is that we should treat others as we want to be treated – the Golden Rule.

Arizona Central, September 24, 2015, Pope Francis Urges Congress to Show Compassion for Immigrants, <http://www.azcentral.com/story/news/politics/immigration/2015/09/24/pope-francis-urges-congress-show-compassion-immigrants/72734356/> DOA: 9-25-15

Pope Francis delivered lawmakers a message of compassion and understanding for immigrants Thursday as part of his historic, nearly hour-long speech to joint session of Congress, a bitterly divided body that has grappled with border-security and immigration-reform issues for a decade. In doing so, the pope appealed to the United States' time-honored reputation as a nation of immigrants. "We, the people of this continent, are not fearful of foreigners, because most of us were at once foreigners," said Pope Francis, the first-ever leader of the Roman Catholic Church to address U.S. senators and representatives. "I say this to you as the son of immigrants, knowing that so many of you are also descendants of immigrants." Citing the global refugee crisis as well as immigration to the United States from Mexico and Central America, the pope, who was often interrupted by applause, reminded lawmakers of the Golden Rule, "Do unto others as you would have them do unto you." He also told the joint session on Capitol Hill that immigrants are looking for a better life for themselves and their loved ones, which is the same that anyone would want for their children. "We must not be taken aback by their numbers, but rather view them as persons, seeing their faces and listening to their stories, trying to respond as best we can to their situation," the pope said. "To respond in a way which is always humane, just and fraternal. We need to avoid a common temptation nowadays, to discard whatever proves troublesome." The Golden Rule guides in "a clear direction," he said. "Let us treat others with the same passion and compassion with which we want to be treated," Pope Francis said. "Let us seek for others the same possibilities which we seek for ourselves. Let us help others to grow, as we would like to be

helped ourselves. "In a word, if we want security, let us give security," he continued. "If we want life, let us give life. If we want opportunities, let us provide opportunities."

A second moral foundation is empathy. We should have empathy for the refugees and be moved to provide assistance.

Robert Kuttner is co-editor of *The American Prospect* and a visiting professor at Brandeis University's Heller School. His latest book is *Debtors' Prison: The Politics of Austerity Versus Possibility*, Co-founder and co-editor, *American Prospect*, September 9, 2015, Huffington Post, *Refugee Blues*, http://www.huffingtonpost.com/robert-kuttner/post_10092_b_8097064.html DOA: 9-22-15

On Sunday, I accompanied the employment minister, Ylva Johansson, to a rally organized by the youth movements of the Social Democrats, the Greens, and other progressive parties. The featured speaker was the prime minister himself. As thousands braved a nasty rainstorm to attend the outdoor rally, Löfven declared, "We need to decide right now what kind of Europe we are going to be. My Europe takes in refugees. My Europe doesn't build walls," he said. Johansson added, in our conversation, "In Sweden we are different and we need to stay different. To feel empathy with the suffering of another person, a person who is not like ourselves, is part of being human. To solve this refugee crisis is not rocket science, it is not impossible."

A third foundation relates to the fact that many countries in the world are responsible for the violence, either failing to stop it or by causing it.

Anne Applebaum is a Pulitzer Prize-winning author. Her most recent book is *Iron Curtain: the Crushing of Eastern Europe, 1944-1956*, 9-4-15, Slate, *Europe's Deadly Denial*, http://www.slate.com/articles/news_and_politics/foreigners/2015/09/europe_refugee_crisis_the_eu_has_failed_to_confront_the_wars_in_syria_and.html DOA: 9-7-15

But if those praising Merkel's "brave" stance were honest, they would acknowledge that she isn't offering any long-term solutions either. Even if Europe does take another couple of hundred thousand people, dividing them up between countries—as it should—won't prevent others from coming. To avoid accusations of heartlessness, the Italian coast guard rescues thousands of people from tiny boats and rubber dinghies. As a result, **people keep taking the terrible risk. Here is what no one wants to say: This is, in essence, a security crisis. For years now, Europeans have chosen to pretend that wars taking place in Syria and Libya were somebody else's problem. It's also a foreign policy crisis: At different times and for different reasons, all of the large European states—the United Kingdom, France, Italy, Germany—have blocked attempts to create a common foreign and defense policy, and as a result they have no diplomatic or political clout. They haven't wanted European leadership, and most of them wouldn't have wanted American leadership either, even if any had been on offer. The richest economy in the world has a power vacuum at its heart and no army. Now the consequences are literally washing up on Europe's shores.**

And the US invasion of Iraq is a significant cause of the current problem.

Steve Hilton is co-founder and chief executive of Crowdpac and former senior adviser to the British prime minister, *New York Times*, September 10, 2015, *Who's Responsible for the Refugees?* <http://www.nytimes.com/2015/09/11/opinion/whos-responsible-for-the-refugees.html> DOA: 9-10-15

And here's the second simple truth. While we can argue forever about the causes of conflict in the Middle East, it is impossible to ignore the impact of American foreign policy on what's happening in Europe. It was shocking to see an "expert" from the Council on Foreign Relations quoted on Saturday saying that the situation is "largely Europe's responsibility." How, exactly? The Iraq invasion (which could reasonably be described as "largely America's responsibility") unleashed a period of instability and competition in the region that is collapsing states and fueling sectarian conflict.

Fourth, there is a strong obligation to protect refugee children because they are uniquely vulnerable.

Julianne Duncan, Ph.D. Director, Office of Children's Services Migration and Refugee Services/U.S. Conference of Catholic Bishops. Joint Testimony of Migration and Refugee Services/U.S. Conference of Catholic Bishops and Lutheran Immigration and Refugee Service before The Senate Subcommittee on Immigration February 28, 2002. <http://www.usccb.org/mrs/duncantestimony.shtml>

Because of our long experience in caring for and advocating on behalf of unaccompanied minors, Mr. Chairman, our testimony today will point out changes in law we believe are required, as laid out in Senator Feinstein's bill, to reform the current system. In the view of MRS/USCCB and LIRS, our government's treatment of unaccompanied alien children should be governed by the following principles: The Federal government has a special responsibility to ensure that unaccompanied alien children are treated with dignity and care. Children are our most precious gifts. Their youthfulness, lack of maturity, and inexperience make them inherently vulnerable and in the need of the protection of adults. Unaccompanied alien children are among the most vulnerable of this vulnerable population. They are separated from both their families and their communities of origin, they are often escaping persecution and exploitation, they often find themselves in a land in which the language and culture are alien to them, and they are thrust into complex legal proceedings that even adults have great difficulty navigating and understanding. Unaccompanied minors should be held in the least restrictive setting as possible, preferably with family members or with a foster family. Secure facilities should be used on a very limited basis and only when absolutely necessary to protect a child's immediate safety or the safety of the community. Minors should be reunited with parents, guardians, or other family members within the United States as soon as possible. While a family is in temporary detention, they should not be separated unless it is in the best interest of the child. Because of their special vulnerability and inability to represent themselves, unaccompanied children should be provided with legal representation and guardians *ad litem* to assist them in immigration proceedings and to see that care and placement decisions are made with a child's best interest in mind. Mr. Chairman, these principles are not currently governing U.S. policy toward unaccompanied alien children in the United States. Instead, thousands of children each year are held in detention, some with juvenile criminal offenders, with little or no access to legal assistance and with decreasing ability to reunite with family members.

Fifth, we should be hospitable and welcome others in need -- embracing is a means to overcome our own racism and fear of the other.

Karima Laachir, lecturer in cultural theory at university of Birmingham, *Mobilizing Hospitality*, 2007, p. 177-8

The European popular imagination has been haunted by images of Europe inundated by foreigners — economic and political refugees — perceived as 'we scroungers', 'job-snatchers' and

'threats to security'.' Some politicians started to foment these fears to pick up extra votes, especially extreme right- movements, which have been gaining ground in local and parliamentary elect The increasing popularity of leaders of far right parties, who all publicly voice xenophobia and racism against those perceived as foreigners, are alarming examples of the return of exclusionist popular nationalism and fascism to haunt postcolonial Europe. 'Immigration' demands and those of ethnic minorities, especially religious demands, have become contentious issues in Europe. Hospitality has become more difficult since the 9/11 attacks and the subsequent 'war on terror' led by the American Government. The terrorist bombings in Madrid (March 2004) and London (July 2005) have been interpreted by some as a conflict between contending civilizations, Western and Islamic. The lives of diasporic Muslims and of immigrants in Europe and the United States have become subject to constant surveillance and are the subject of various regulations that aim to keep Muslim Fundamentalist networks under control. However, the lives of ordinary European Muslims have been deeply affected by these changes and, as a result, their loyalty, together with their European citizenship and strong cultural affiliation to Europe as their homeland, have been brought into question. They are now viewed with distrust and caution. Hospitality is important, therefore, as an analytical concept since it opens up the debates of welcoming 'otherness' beyond issues of the reception of immigrants by their 'host' countries, towards more important problems of living together with people of 'different' cultural, religious and social affiliations. More than ever before, the world is a melting pot of different cultures and thus we are confronted with the theme of how to survive with the 'other', or those perceived as others, without seeing them as a threat or danger. The problem of xenophobia and racism (which is not limited to Europe) in the last decades after the horrors of colonialism and fascism raises a crucial question about the relationships between communities of different 'race', religion and culture. The 'us' and 'them' differentiation — camouflaged in various discourses: 'ethnic' (a soft word for 'racial'), 'religious', but mainly cultural terms — is marked by a strong degree of xenophobia, fear and racism. Technological and communicative revolutions, economic and political upheavals, such as deindustrialization, unemployment, poverty and the mass displacement of populations are all factors that have 'once again invited many to find in populist ultranationalism, racism, and authoritarianism, reassurance and a variety of certainty that can answer radical doubts and anxieties over self-hood, being, and belonging' (Gilroy, 2000: 155).

The primary ethical responsibility is to support the other – the person we do not know.

Leonard Grob, Professor of Philosophy at Farleigh Dickinson University, 99, Ethics After the Holocaust, p. 8-11

This face-to-face encounter is thus no cognitive event. As we have seen, I cannot know the Other as Other without diminishing his or her otherness. I can, however, encounter that Other in what Levinas terms an ethical event. Indeed, it is only with the rending of the ontological schema that ethics first becomes possible. Prior to my meeting with the Other, there is no ethics as such. Within the totality of being, I am limited in my egoist ambition only by a lack of power. The Other who meets me face-to-face challenges my very right to exercise power. In so doing, ethics is born. Cognition no longer represents the highest activity of which a human is capable; it is replaced by "revelation" of the Other as an ethical event in which, for the first time, I come to realize the arbitrariness of my egoist ambitions. The thematizing of the cognitive subject is replaced by nothing short of an act of witness on the part of a being who now becomes an ethical subject. The Other who contests me is an Other truly independent of my appropriative powers and thus one to whom I can have, for the first time, ethical obligations. As Levinas puts it, this Other is the first being whom I can wish to murder. Before the totality is rent by the manifestation of the face, there can be no will to act immorally, as there can be no will to act morally, in any ultimate

sense of that word. If one begins with the "imperial I" appropriating its world, ethics as such can never be founded. The other with whom I inter-act is simply a datum, an aspect of my universe. Morality makes its first appearance when I confront the Other who is truly Other. Although the Other appears to me now, on principle, as someone I could wish to kill, he or she in fact summons me to respond with nonviolence: I am called to willingly renounce my power to act immorally. What I hear from the Other, Levinas claims, are the words "Thou shalt not kill." Harkening to this injunction constitutes my inaugural act as an ethical being. In Levinas's words, "Morality begins when freedom, instead of being justified by itself, feels itself to be arbitrary and violent." Addressing the face of the Other I become ethical. In a turnabout from what has been the norm in the history of Western thought, ethics now is seen, by Levinas, to constitute the essence of philosophy. Ethics is now "first philosophy," a position usurped until now by the ontological enterprise. The meeting with the Other—who-is-truly-Other is a primordial event: "Since the Other looks at me," Levinas exclaims, "I am responsible for him, without even having taken on responsibilities in his regard." In encountering the Other, I assume responsibility for him. "Responsibility," Levinas proclaims, "is the essential, primary and fundamental structure of subjectivity.... Responsibility in fact is not a simple attribute of subjectivity, as if the latter already existed in itself, before the ethical relationship." In other words, my structure as a human being, in any significant sense of that word, is to be responsible to the Other. My personhood is not to be identified with that of the solitary ego appropriating its world; it is rather a personhood fundamentally oriented toward the Other. Ethics, for Levinas, is thus not to be identified with any ethical or even meta-ethical position. Levinas speaks neither as deontologist nor consequentialist. He does not attempt to articulate any list of rights or obligations, or even the principles on which the latter would be based. All ethical theories, he implies, are secondary to, or derivative from, a primordial or founding moment: the encounter with the face of the Other. It is this moment-of-all-moments which institutes the very possibility of the "ethical" systems so hotly debated within the history of Western thought. Before there can be any ethical positioning—before there can be discussions of virtue, happiness, duties—there is the meeting with the Other.

These moral obligations extend even when large numbers of refugees are involved.

Michael Walzer, philosopher, 2008, *Spheres Of Justice: A Defense Of Pluralism And Equality*, p. 51

The cruelty of this dilemma is mitigated to some degree by the principle of asylum. Any refugee who has actually made his escape, who is not seeking but has found at least a temporary refuge, can claim asylum—a right recognized today, for example, in British law; and then he cannot be deported so long as the only available country to which he might be sent "is one to which he is unwilling to go owing to well-founded fear of being persecuted for reasons of race, religion, nationality ... or political opinion." 20 Though he is a stranger, and newly come, the rule against expulsion applies to him as if he had already made a life where he is: for there is no other place where he can make a life. But this principle was designed for the sake of individuals, considered one by one, where their numbers are so small that they cannot have any significant impact upon the character of the political community. What happens when the numbers are not small? Consider the case of the millions of Russians captured or enslaved by the Nazis in the Second World War and overrun by Allied armies in the final offensives of the war. All these people were returned, many of them forcibly returned, to the Soviet Union, where they were immediately shot or sent on to die in labor camps. 21 Those of them who foresaw their fate pleaded for asylum in the West, but for expedient reasons (having to do with war and diplomacy, not with nationality and the problems of assimilation), asylum was denied them. Surely, they should not have been

forcibly returned—not once it was known that they would be murdered; and that means that the Western allies should have been ready to take them in, negotiating among themselves, I suppose, about appropriate numbers. There was no other choice: at the extreme, the claim of asylum is virtually undeniable.. Walzer, Michael (2008-08-05). *Spheres Of Justice: A Defense Of Pluralism And Equality* (p. 51). Basic Books. Kindle Edition.

And even if we don't think we are responsible for the refugee crisis, we should show solidarity and demonstrate compassion.

Komorowski et al, September 22, 2015, *The Guardian*, Our duty in Central Europe is to show compassion to refugees, <http://www.theguardian.com/world/2015/sep/22/our-duty-in-central-europe-is-to-show-compassion-to-refugees> DOA: 9-22-15

But this rift within a united Europe resurfaces today. **This time it has a moral dimension.** It is true, **we are not accountable for the instability and collapse of refugees' home countries. We are not the ones who have turned them into states plagued by incessant fear, where people are at risk of violent death, and where human life is brutish and short.** Unlike the former colonial and imperial powers that took in large numbers of immigrants after the second world war, we have little experience of coexisting with people of different cultures, from far-off lands. **Nonetheless, as human beings, we have a duty to show compassion and to provide them with assistance. This is also our duty as Europeans. The European community was founded on the principle of solidarity. Today we must not refuse to take joint responsibility for the union, nor turn a blind eye to human suffering and the situation of countries most affected by the rising tide of migration.**

Bronisław Komorowski *President of Poland from 2010 to 2015*

Aleksander Kwaśniewski *President of Poland from 1995 to 2005*

Danilo Türk *Former president, Slovenia*

Human survival requires that we act based on ethics.

Violet Ketels, associate professor of English at Temple University, where she formerly directed the Intellectual Heritage Program, 1996, *THE HOLOCAUST: REMEMBERING FOR THE FUTURE: "Havel to the Castle!" The Power of the Word*, *Annals of The American Academy of Political and Social Science*, November, 1996, p. 50-1

Even though, as Americans, we have not experienced "by fire, hunger and the sword" n19 the terrible disasters in war overtaking other human beings on their home ground, we know the consequences of human hospitality to evil. We know about human perfidy: the chasm that separates proclaiming virtue from acting decently. Even those of us trained to linguistic skepticism and the relativity of moral judgment can grasp the verity in the stark warning, "If something exists in one place, it will exist everywhere." n20 That the dreadful something warned against continues to exist anywhere should fill us with an inextinguishable yearning to do something. Our impotence to action against the brutality of mass slaughter shames us. We have the historical record to ransack for precedent and corollaries--letters, documents, testaments, books--written words that would even "preserve their validity in the eyes of a man threatened with instant death." The truths gleanable from the record of totalitarian barbarism cited in them may be common knowledge; they are by no means commonly acknowledged. They appear in print upon many a page; they have not yet--still not yet--sufficiently penetrated human consciousness. Herein lies the supreme lesson for intellectuals, those who have the projective

power to grasp what is not yet evident to the general human consciousness: it is possible to bring down totalitarian regimes either by violence or by a gradual transformation of human consciousness; it is not possible to bring them down "if we ignore them, make excuses for them, yield to them or accept their way of playing the game" in order to avoid violence. The history of the gentle revolutions of Poland, Hungary, and Czechoslovakia suggests that those revolutions would not have happened at all, and certainly not bloodlessly, without the moral engagement and political activism of intellectuals in those besieged cultures. Hundreds of thousands of students, workers, and peasants joined in the final efforts to defeat the totalitarian regimes that collapsed in 1989. Still, it was the intellectuals, during decades when they repeatedly risked careers, freedom, and their very lives, often in dangerous solitary challenges to power, who formed the unifying consensus, developed the liberating philosophy, wrote the rallying cries, framed the politics, mobilized the will and energies of disparate groups, and literally took to the streets to lead nonviolent protests that became revolutions. The most profound insights into this process that gradually penetrated social consciousness sufficiently to make revolution possible can be read in the role Vaclav Havel played before and during Czechoslovakia's Velvet Revolution. As George Steiner reflects, while "the mystery of creative and analytic genius . . . is given to the very few," others can be "woken to its presence and exposed to its demands." Havel possesses that rare creative and analytic genius. We see it in the spaciousness of his moral vision for the future, distilled from the crucible of personal suffering and observation; in his poet's ability to translate both experience and vision into language that comes as close as possible to truth and survives translation across cultures; in the compelling force of his personal heroism. Characteristically, Havel raises local experience to universal relevance. "If today's planetary civilization has any hope of survival," he begins, "that hope lies chiefly in what we understand as the human spirit." He continues: If we don't wish to destroy ourselves in national, religious or political discord; if we don't wish to find our world with twice its current population, half of it dying of hunger; if we don't wish to kill ourselves with ballistic missiles armed with atomic warheads or eliminate ourselves with bacteria specially cultivated for the purpose; if we don't wish to see some people go desperately hungry while others throw tons of wheat into the ocean; if we don't wish to suffocate in the global greenhouse we are heating up for ourselves or to be burned by radiation leaking through holes we have made in the ozone; if we don't wish to exhaust the nonrenewable, mineral resources of this planet, without which we cannot survive; if, in short, we don't wish any of this to happen, then we must--as humanity, as people, as conscious beings with spirit, mind and a sense of responsibility--somehow come to our senses. Somehow we must come together in "a kind of general mobilization of human consciousness, of the human mind and spirit, human responsibility, human reason."

Prioritization/Weighing

The resolution does not just ask the question of whether or not there is an obligation to provide refugees with a safe haven but also whether or not that outweighs a state's right to control its borders. There are a number of arguments Affirmative debaters can make in favor of this.

One, the arguments identified above prove there is a moral obligation to provide a safe have for refugees. Affirmative debaters can argue this moral obligation creates inherently outweighs any competing concern.

Two, obligations under international law establish that those obligations trump concerns related to sovereignty and protection of the border. This is something nations agree to when they ratify treaties.

Three, if we fail to prioritize human rights over the national interest, genocide is possible.

Paul Hoffman is the Chair of the International Executive Committee of Amnesty International. He is a civil rights and human rights lawyer with the Venice-based law firm of Schonbrun, DeSimone, Seplow, Harris & Hoffman LLP, Human Rights Quarterly, November 2004, p. 932-955

History shows that when societies trade human rights for security, most often they get neither. Instead, minorities and other marginalized groups pay the price through violation of their human rights. Sometimes this trade-off comes in the form of mass murder or genocide, other times in the form of arbitrary arrest and imprisonment, or the suppression of speech or religion. Indeed, millions of lives have been destroyed in the last sixty years when human rights norms have not been observed." Undermining the strength of international human rights law and institutions will only facilitate such human rights violations in the future and confound efforts to bring violators to justice.'

Four, in the context of providing a safe haven for refugees, it's not even that large of a resource commitment. This is not something that threatens the nation.

Luke William Hunt, 2014, Human Rights Quarterly, The Global Ethics of Helping and Harming, v. 36(4), pp. 798-819 (Luke William Hunt is on fellowship at the University of Virginia, where he is pursuing a Ph.D. focused on philosophy of law and political philosophy. Prior to beginning his doctoral studies, he completed law school and was a law clerk for Judge James P. Jones, United States District Court for the Western District of Virginia. He then worked at the US Department of Justice for six years.)

Buchanan's moral theory of international law is based upon his conception of a natural duty of justice, "according to which **each of us—independently of which institutions we find ourselves in or the special commitments we have undertaken—has a limited moral obligation to help ensure that all persons have access to institutions that protect their basic rights.**"¹² One of the goals of his project is to determine the extent of a state's positive duties to other states. While **this project would include basic humanitarian aid, like rescue and beneficence**, Buchanan assumes **there is a human right to subsistence resources** and thus focuses on whether and to what extent international law should recognize rights of international distributive justice (social and economic rights, for instance).¹³ The present focus is on how Buchanan's theory applies to the weaker positive duty regarding the extent to which a state is required to provide international humanitarian aid in the form of rescue and beneficence. This is an appropriate starting point because **rescue and beneficence are arguably less demanding and less controversial duties than distributive justice.**

Given that it is a relatively limited resource commitment, it is easier to argue that resources should be invested in creating safe havens within borders.

Answering Negative Arguments

The Right to Exclude

The primary Negative argument is, "Countries Have a Right to Exclude."

Countries do have some right to exclude immigrants, but it is not very strong and it is almost completely inapplicable to those fleeing unlivable conditions.

Michael Blake, *Philosopher*, 2003, *Philosophy & Public Affairs*, Volume 41, Issue 2, Immigration, Jurisdiction, and Exclusion, pages 103–130, Spring 2013

The second objection is more simple, but also potentially more important. It notes, simply, that the structure of the argument is as follows: we can exclude unwanted would-be immigrants, because these immigrants already have adequate rights-protection within their countries of origin, and are seeking now to oblige us to act in defense of their rights. The argument only holds, that is, when there in fact *is* adequate rights-protection in the country from which the individual is seeking to emigrate. This was, of course, true for me in my emigration from Canada, and it is doubtless true of many would-be immigrants. It is unlikely to be true of most immigrants, however, many of whom are fleeing circumstances that could be described (rather bloodlessly) as insufficiently rights-protecting. This means, of course, that the justificatory story now fails to hold. We are unable to exclude the unwanted migrant, because the story we would have to tell—namely, that we have no obligation to become obligated to protect that migrant's rights—is inaccurate. The migrant would, upon entry into our territory, simply acquire that set of rights-protections to which she is entitled. If we propose to use force to prevent that individual from entering into our territory, we are simply using force to keep her in a morally indefensible situation. There is no possibility of that use of force being legitimate. As such, we might think that the story I tell here—despite its general defense of the right to exclude—is, in fact, considerably more radical than it would at first appear. It would mandate something like a radically revised account of refugee and asylum law, on which we cannot use force to exclude outsiders from entry when those outsiders are coming from countries that are insufficiently attentive to basic human rights. This is, again, an objection to the view if interpreted as a blanket defense of our current practices; it is not, however, an objection I want to reject in its entirety. I will suggest two means by which the objection's force is potentially subject to some limitations, but on the whole I believe the objection to be accurate. Indeed, if we focus on the justification for the use of force, I believe we are likely to arrive at an account of refugee and asylum law on which we are unable to refuse admission to a great many would-be migrants.³⁷ This view of immigration will be, I think, considerably more robust than a related view given by Christopher Heath Wellman, who allows the legitimate state to purchase the right to exclude by devoting an adequate share of its resources and efforts to development in foreign countries.³⁸ On my view, this is not even in principle permissible. We cannot justify the use of force against one party by citing benefits to others; the justification must be in terms that the coerced party can accept without requiring that party to unduly identify with the interests of others. This is, after all, the lesson John Rawls taught about the separateness of persons: it is wrong to demand that an individual who is treated badly by a coercive institution be mollified by the comparatively greater benefits received by others.³⁹ The idea that we can justify using force against someone whose rights are unprotected by citing the fact that we have helped other people elsewhere seems to fly in the face of this idea. We can only justify the coercive force of the border if we use it against people whose rights are adequately protected in their current homes. To use it elsewhere seems simply to use force to defend an illegitimate status quo; this is morally impermissible regardless of how just our foreign policy might otherwise be. If we are going to limit the rights of immigrants from oppressed countries, then we will have to do so in a manner that defends their right to be treated as a moral equal. Is there any way of doing this? I believe there are, in principle, two ways of doing so, although neither will offer much consolation to those who want to defend the international status quo. The first way begins with the simple fact that the obligation to become obliged is held not simply by an individual state, but by all legitimate states collectively. To return to the modified violinist case: a dying violinist might have a right to have

someone offer her the necessary support needed for a decent life, but she does not have the right to pick her favorite agent as provider. Nothing in the picture of basic rights we are imagining here mandates that we are allowed to insist that the *general* obligation to protect the rights of persons can be made into a *particular* obligation—that is, an obligation to be pressed against one particular agent—simply through the wishes of the one to whom we are obliged. This means, I think, that the story we can tell about exclusion might have to be more complex. We are not entitled to use force to exclude individuals who want to enter our jurisdiction when they come from jurisdictions that do not adequately protect their rights. But nothing in this says that we are obligated to be the jurisdiction in which those individuals ultimately make their lives. If the burden of refugee flows is one that ought to be borne by the wealthy states of the world collectively, then it is entirely open to a particular state to argue that some other state is refusing its share of the bill. This opens up the possibility that we can develop a secondary moral analysis of what fairness would demand in the allocation of the burdens of doing justice through immigration. It also opens up the possibility of legitimate international covenants excluding individuals when they have passed through rights-protecting countries on their way to their chosen country of refuge. The Dublin Regulation, for example, insists that an individual's asylum claim must be heard by the first European Union state into which that individual enters.⁴⁰ This regulation may be unfair toward border states, which tend to bear a higher proportional cost from refugee flows; but it cannot be said to be unfair toward refugees themselves. The second sort of restriction we can imagine is more complex—and, potentially, more dangerous. It goes to the idea that we can, under some circumstances, demand that people pay some costs to maintain just institutions. This is, of course, hardly a controversial idea, stated this generally; we accept that individuals have the duty to pay taxes to support just states, for example. But we might similarly think that individuals have the obligation to bear some of the costs involved in setting up just institutions, too. We might, for example, demand that individuals from a particular state bear some of the costs involved in transitioning that state toward democratic legitimacy. These costs, moreover, might include things other than financial burdens; we do, under some circumstances, insist that individuals bear some personal risk in the name of justice. (Most accounts of just war, after all, include the idea that justice is a sufficient ideal to warrant the imposition of a risk of violent death.) So: if individuals want to emigrate to a given country from a non-rights-respecting country, we might want to have the right to insist that those individuals remain where they are, and improve circumstances in their country of origin.⁴¹ Is this a sufficient reason for us to think that we can insist that people fleeing from a non-rights-respecting country return to that country and improve it from within? I do not want to reject these ideas entirely; I do believe, however, that they are insufficient to generate anything like a right to exclude would-be migrants from oppressed states. The reason is, I think, the fairly simple one that it is unfair to insist that someone fleeing an oppressive state has more duties to that state than someone outside of it.⁴² The relationship between that state and the emigrant is hardly that of someone who is a party to an ongoing, valuable relationship, who thereby acquires some duties to the other parties in that relationship. If we did not accept this simply in virtue of the fact that the state is engaging in unjustified coercion, we might accept it in virtue of the fact that the emigrant is actively trying to sever that relationship. To insist that this relationship generates duties, then, is something very much like insisting that an ascriptive fact—a mere fact of birth—is sufficient to generate an obligation. This, however, seems to be morally impermissible. Why, the migrant might ask, should she be asked to bear a higher burden of the shared task of democratizing her country of origin? She was born there, but that hardly seems sufficient to justify a greater obligation to help that place than there is for those lucky enough to be born in more wealthy jurisdictions. (She may have greater knowledge, and therefore ability, to help, but those seem to be separate issues; and, besides which, it seems unjust for us to insist that obligation increases with ability.) The only way, I think, in which we might use the idea of a burden to work for democratization is if the argument treats all parties—current residents and would-be immigrants—as moral equals, with

each having an equivalent duty to build the democratic capacity of the state in question. This might legitimate asking the would-be immigrant to bear some costs in rebuilding the state from which they come; but it would equally ask those who currently reside within the rights-respecting jurisdiction to give of themselves to help the shared task of building a rights-protecting world. The idea of a special duty to one's home country, I said, was dangerous because it tempts us to see those who come from a place as specially obligated to sacrifice themselves to improve that place. The shared sacrifice, I think, must be actually shared, justly, among all the citizens of the world; it seems hard to imagine that we could actually use these ideas to exclude would-be immigrants, at least unless we ourselves are bearing costs equivalent to those we expect these migrants to pay. This is a test, of course, I do not think any current state is likely to meet. The result of all this is that the right of a state to exclude people from underdeveloped and oppressive nations is likely to prove rather weak. I do not think this is a defect; it strikes me as true that a state that proposes to use force to keep people out of its jurisdiction has to account for the rights of the people against whom that force is directed. I have ignored, here, many relevant questions. We have reason to ask what human rights are those that ought to be defended by international law and by immigration law. We have reason to ask what sorts of considerations other than the protection of basic human rights ought to affect the right to exclude.⁴³ For the moment, I am content to leave these questions to one side. What I have said here, I believe, might give us some reason to think that the right to exclude exists, and that this right is far from able to justify the sorts of policies all wealthy societies currently undertake. We have, collectively, the right to exclude some unwanted would-be immigrants. We should not, however, take any comfort from this fact; much of what we are doing now is profoundly unjust, and should be recognized as such. This defense of a right to exclude should therefore be taken as a plea for reform, not for quietism; we can indeed seek to exclude some unwanted immigrants, but we should not therefore conclude that we are allowed to exclude as we currently do. Justice, I suggest, demands more discussion both of the moral foundations of this right and of the relationship between that right and our own acts. I will, therefore, be quite satisfied if I have shown the need for such a discussion to take place.

Christopher Wellman argues for a right to exclude refugees based on the argument that there is an absolute right to association – that people are free to associate or not associate with any people they desire. There are two basic problems with this argument —(1) the right to association is not an absolute right and (2) a civic community is more than an association

Michael Blake, *Philosopher*, 2003, *Philosophy & Public Affairs*, Volume 41, Issue 2, Immigration, Jurisdiction, and Exclusion, pages 103–130,

Wellman's argument is a step forward, in that the right he defends begins with deontic considerations rather than mere interests; it is not, however, without its problems. In the first instance, it is not clear that the right to freedom of association is quite such a strong right as Wellman takes it to be. We regularly weigh this right against the competing rights of others in domestic policy, as we do with antidiscrimination law; the right to freedom of association does not always outweigh such competing considerations domestically, and it is hard to see why it should therefore outweigh them in considerations of immigration.¹⁰ The second issue is that Wellman takes the source of the right to be the relations of people in civil society; what matters is that people do not want to deal with one another in public life, to see one another in markets and in churches. This vision makes the fact that people are bound together by politics a merely incidental fact. Individuals have the right to develop a particular picture of what they want their civil society to look like, and then to employ politics to defend that picture. This, to my mind, ignores what is distinctive about a political community, namely, that it *is* a political community,

bound together by ties of law and politics rather than simply by the shared understandings of its inhabitants. Wellman's vision might be more appropriate if we were excluding people from a social reality constituted by the mental states of its members—if, for example, we were excluding people from a society of people gathered together out of a shared love of knitting (for, presumably, not loving knitting with adequate fervor). What is striking about politics, though, is that it applies to the members of a given jurisdiction regardless of what happens to be in those members' heads. Wellman's analysis, while powerful, reduces politics to an accidental aspect of what is shared in a society; such a reduction, on my view, is a reason to regard Wellman's account as flawed.

Human Rights Foundation

Others argue that is no foundation for human rights but one foundation for human rights is human dignity.

Dr. Georg Lohmann, philosophy professor, 2015, *Fudan J. Hum. Soc. Sci.* (2015) 8:369–385, Different Conceptions and a General Concept of Human Rights,

New in this international conception is the emergence of the term “human dignity”. First, it is only mentioned in Article 1 (“All human beings are born free and equal in dignity and rights”, Article 1 UDHR), but then, as further defined in the German Grundgesetz (basic law), human dignity is determined to be a justificatory and motivational fundament for having human rights. In the preambles to the International Covenants on Civil and Liberal Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR), in 1966, States Parties formulate that they are convinced “that these rights derive from the inherent human dignity of the human person”. [UNDR=Universal Declaration of Human Rights”]

The National Interest

Since many Negative debaters will make a strong defense of acting in the “National Interest,” I will address it in more detail here by making a list of arguments that you can make against it.

One, the concept is too vague to prioritize. There are many different definitions of the national interest and it means many things to many different people. I covered this problem in more detail and with definitional support in the first essay.

Two, if we interpret the ‘national interest’ to be what is in the interest of the country in terms of preserving its absolute power (a realist perspective), it means questions of morality are ignored.

John Baylis, Professor of International Politics, University of Wales, *Alternative Nuclear Futures: The Role of Nuclear Weapons in the Post-Cold War World*, eds. Baylis and O'Neill, 2000, p. 71

For some realist writers, the laws of morality cannot be applied to nuclear weapons or indeed to any weapons of war. Given the cultural diversity of the world in which we live and the lack of consensus on a universal moral code, ethical issues are regarded as being irrelevant to policy decisions about the use, or threat to use, nuclear weapons. According to this Machiavellian view, a nation's national interests are - or should be - all that considers in its interactions with other nations. Prudence is seen as having a higher priority than morality.

This leads to decisions like the one to drop nuclear bombs on Japan.

Francis Harbour, Professor of Government, George Mason University, THINKING ABOUT INTERNATIONAL ETHICS, 1999, p.95.

From the basically realist perspective that virtually the entire U.S. government applied, by early summer 1945 there was every incentive to use atomic bombs in any way that would bring the end of the war sooner. Virtually all costs to the United States at this point were "sunk costs." That is, the enormous expense of designing the first atomic bombs and putting them into production and the lesser costs of training the crew had already been incurred, whether or not the bombs were used. The only new costs to the United States were a few planes, crews, and observers -and the actual bombs themselves. Not giving the Japanese explicit warning of an atomic bombing to come even eliminated the possibility of loss of "face" if the bombs turned out not to work after all. No other potential alternative could significantly reduce costs to Americans, since these were already so low.

And, to argue that the national interest is a trump card is really absurd -- certainly there are other moral obligations and it would be immoral to ignore them.

Luke William Hunt, 2014, Human Rights Quarterly, The Global Ethics of Helping and Harming, v. 36(4), pp. 798-819 (Luke William Hunt is on fellowship at the University of Virginia, where he is pursuing a Ph.D. focused on philosophy of law and political philosophy. Prior to beginning his doctoral studies, he completed law school and was a law clerk for Judge James P. Jones, United States District Court for the Western District of Virginia. He then worked at the US Department of Justice for six years.)

In order to clear a path for a more robust conception of a state's positive duties, **Buchanan critiques** two justifications for the **Permissible Exclusivity Thesis**: (1) the Fiduciary Realist Justification and (2) the Instrumental Justification. **The Fiduciary Realist Justification is based upon the idea that state leaders—as fiduciaries—are morally required to act in ways that maximize the national interest.** Buchanan points out several inconsistencies with this justification, but **his central problem with the Fiduciary Realist Justification seems to be that it requires state leaders to subordinate all other moral duties to the single moral duty of conducting foreign policy for the national interest. He rightly explains the absurdity of this view with various analogies relating to the duties of individual persons: “If I agree to become your guardian or your financial counselor or your doctor, this does not relieve me of all pre-existing moral obligations, and it certainly does not extinguish those obligations that are the correlatives of human rights.”** More colorfully, **the fiduciary role of a parent does not relieve one's moral duty to not “kill someone else's child and take its liver to transplant into her own dying child.”**¹⁴ Of course, these points would be equally obvious to any natural duty theory that holds national interest to be the first priority of the state, in other words, any theory holding that there are basic moral requirements. Assuming there exists some sort of minimum moral duty (e.g., a negative duty not to harm others), joining some sort of association (a state, a club, a profession, etc.) does not relieve that minimum moral duty. Indeed, Buchanan's critique of Fiduciary Realism gets off the ground only because he likens it to a very strict form of so-called Hobbesian realism, which views states as being analogous to individuals in Thomas Hobbes's non-moralized state of nature.

Three, Affirmative teams need to *minimize* any harm to the national interest. For example, if the Negative makes a terrorism argument, Affirmative teams need to argue that terrorism is not a significant risk. If the Pro concedes that meeting the needs of the refugees will somehow destroy the national interest/the nation state, it will not be persuasive to argue that we should not prioritize it.

For example, we can certainly afford to take more refugees; it's just a question of whether or not we want to spend the money.

Amanda Taub, 9-5-15, Vox, Europe's refugee crisis, explained, <http://www.vox.com/2015/9/5/9265501/refugee-crisis-europe-syria> DOA: 9-7-15

That problem would be much easier to solve if it were just a question of money. **Europe is wealthy, and so are Australia and the United States. There is no doubt that we could bear the costs of resettling and sheltering the refugees who need help, even with their growing numbers. And in the long run, such a program would likely pay for itself: immigration tends to be a net economic positive for immigrants and their new home countries alike.** But the problem isn't really about money. Rather, the challenge is about overcoming the domestic political forces that drive nativism, right-wing populism, and anti-immigration policies. The political forces are complex, but they often come down to an anxiety about change.

And even resettling all of the refugees in Europe would not be that big of a deal.

Martin Wolf, September 22, 2015, Financial Times, A refugee crisis that Europe cannot escape, <http://www.ft.com/intl/cms/s/0/3967804c-604b-11e5-a28b-50226830d644.html#axzz3mTKajB48> DOA : 9-22-15

The number of accepted asylum seekers this year would still amount to only 0.1 per cent of the EU's population, hardly an unmanageable figure. The numbers reaching the EU are also small relative to the total number of refugees. The number of forcibly displaced people in the world at the end of last year was 59.5m. Moreover, nearly two-thirds of the displaced remain within the borders of their own countries, while 86 per cent of all refugees are in developing countries. Turkey hosts at least 1.7m, Lebanon 1.3m and Jordan 1m. Given the size and prosperity of the EU, the task it faces is relatively trivial,

Fourth, teams should argue that they are simply arguing that the needs of refugees should be *prioritized* at the moment, not that the national interest should be sacrificed. A pretty strong case has been made above for prioritizing it.

Fifth, ignoring foreigners in order to protect the national interest threatens the human rights of foreigners.

Luke William Hunt, 2014, Human Rights Quarterly, The Global Ethics of Helping and Harming, v. 36(4), pp. 798-819 (Luke William Hunt is on fellowship at the University of Virginia, where he is pursuing a Ph.D. focused on philosophy of law and political philosophy. Prior to beginning his doctoral studies, he completed law school and was a law clerk for Judge James P. Jones, United States District Court for the Western District of Virginia. He then worked at the US Department of Justice for six years.), p. 804

Buchanan takes issue with this view for a number of reasons, including because he believes that exclusively pursuing the national interest is not the best way to respect the human rights of

foreigners. For example, he argues that there are a great many instances in which a state's exclusive pursuit of national interest results in harm to persons in other states.

Terrorism

A core argument made by many negative debaters is that we cannot prioritize providing a safe haven for refugees because such a safe haven will increase the risks of terrorism.

The negative will highlight their argument with the fact that one of the terrorists who took part in the massacre in the concert hall in France last November was found with a Syrian passport next to him and there is reason to believe this person moved with migrants seeking refuge in Europe.

One of the men who attacked Paris held an emergency passport or similar document, according to an unnamed French senator who was briefed by the French Ministry of the Interior. The senator told CNN the bomber falsely declared himself to be a Syrian named Ahmad al Muhammad, born on September 10, 1990, and was allowed to enter Greece on October 3. From there he moved to Macedonia, then Serbia and Croatia, where he registered in the Opatovac refugee camp, the lawmaker said. Eventually, he made his way to Paris, where he was one of three men who blew themselves up at the Stade de France. Fingerprints on the passport matched those of the Stade de France bomber, the French senator told CNN. The fingerprint was not in the French database, the senator said, and therefore officials believe the man was among a group of refugees and migrants. The two others who detonated themselves at the stadium carried false Turkish passports, the French senator said. "This is what we had feared," a senior French official told the Wall Street Journal. European officials told CNN that they believe a new professional squad of terrorists is inserting itself into some of these migrant voyages. Pope Francis had already thought about this possibility back in September. He told a Portuguese radio station, "It's true, nowadays, territorial security conditions are not the same as they were in other periods (of mass migration). ... The truth is that just 400 kilometres (250 miles) from Sicily there is an incredibly cruel terrorist group. So there is a danger of infiltration, this is true," The Telegraph reported.

Although this argument is intuitively strong, there are a number of compelling answers to it.

First, it is important to minimize the link between the Paris bombing and any terrorist threat via refugees.

One, even assuming this person was a terrorist who entered with the refugees, *the attacks would have occurred anyhow*. There are at least six other terrorists (they think a seventh is still on the loose) that are all citizens of Belgium and France and they would have committed the attacks. At the site of greatest violence -- the Bataclan -- where 80 people were shot, one of the terrorists was a *French national*. There are already 5,000 potential terrorists in France who are French citizens, in addition to those other countries.

Two, at least one of the other terrorists (now they are saying two) was from Belgium. It also appears that the attacks were planned from Belgium. Should all countries close their borders to everyone? This would collapse the global freedom of movement and make trade impossible. Since there are 5,000 suspected terrorists in France, should the US not allow French nationals into the US? Should it exclude Belgium nationals?

And if their link is the offensive "Muslims likely to be terrorists arguments," it will not be solved by excluding refugees.

Erasmus, November 15, 2015, Economist, No European Democracy has the perfect answer for handling Islam, <http://www.economist.com/blogs/erasmus/2015/11/europe-and-islam?fsrc=scn/fb/te/bl/ed/europeandislam> DOA: 11-15-15

Even before the latest attacks, it was clear that the leading governments of Europe faced broadly the same dilemma. Within the large and growing Muslim communities which every European state now hosts, a minority is attracted by the cause of violent extremism, at home or abroad.... France has done its collective best to offer Muslim citizens a hard secularist bargain: accept the ideals of the republic, which include the religious neutrality of the state, and you will be as free to practice your religion as any Catholic, Protestant or Jew. It has more-or-less successfully imposed that bargain on the organisations which speak for Islam in France. But inevitably, there are those who reject it. For the great majority of French citizens of Muslim heritage, the republic's offer is probably acceptable. But if only 1% of young French Muslims radically reject it that is easily enough to provide terrorist movements with ample recruits.

Many French nationals are radicalized simply because they do not fit in in France.

J. Newton Small, 11-15-15, Time, Paris Attacker is an Example of France's Home-Grown Terrorists, <http://time.com/4113864/paris-attacks-isis-homegrown-terrorism/> DOA: 11-15-15

The street that Ismael Omar Mostefai grew up on was like any middle class neighborhood across France. The two-story cream houses in the development curve into tiny cul-de-sacs, providing ideal lanes for children like Mostefai and his two brothers to play soccer. This is a neighborhood of taxi drivers, utility workers and accountants. Or, in Mostefai's case, a bakery assistant. How Mostefai went from a hipster teenager in Chartres, about 80 miles southwest of Paris, to suicide terrorist is beyond anyone who knew him in this bucolic hamlet at the mouth of the famous Loire Valley. Mostefai, thus far the only assailant identified in the Paris terror attacks, lived here from at least 2004 to 2012 with his parents, two brothers and two sisters. Neighbors say the 29-year-old married here and had a baby daughter before moving away. The family was Muslim enough for the women to cover their heads and not work, says another neighbor, but not so Muslim that the women wore burkas and walked three steps behind their husbands, like some other families in the neighborhood. Mostefai and his father—but no one else in the family—attended a mosque up the street, Anoussia, but “Omar was timid, gentle. There was no radicalization in him,” says Ben Bammou, the mosque's president. “We are devastated. We pray for the victims and their families.” He fears that their mosque will now come under more scrutiny and surveillance. “We were already stigmatized before this.” It is partly that stigmatization that drove Mostefai, who was of Algerian descent, to extremism, argues Myriam Benraad, a research fellow specializing in Iraq and the Middle East at the Foundation for Strategic Research in Paris. “ISIS promises to avenge all the injuries of colonialism, the Iraq wars; all the injuries of the past. ISIS is a myth, but it's one that they stick to versus other myth—the French dream, as it were—that they see as unfair and oppressive,” says Benraad, who wrote her dissertation on the imam who radicalized the Kouachi brothers, who helped carry out the *Charlie Hebdo* attacks in January. “These guys never felt fully French, especially Algerians, or the children of Algerians. To them, the memory of [France's occupation and war in Algeria] is always here. It's profound. It's an injury that the children of immigrants have been living with their whole life, while also facing discrimination.”

Three, we can separate terrorists from deserving refugees, including orphans and women.

Al Weaver, 11-15-15, Washington Examiner, Obama not 'reconsidering' plan to bring in Syrian Refugees, <http://www.washingtonexaminer.com/obama-not-reconsidering-plan-to-bring-in-syrian-refugees/article/2576398> DOA: 11-15-15

When pressed by "Fox News Sunday" host Chris Wallace, White House Deputy National Security Advisor Ben Rhodes said they are not "reconsidering" their plan to take in nearly 10,000 Syrian refugees, a plan that has been panned by many GOP 2016 candidates in the wake of the brutal terror attack, which left 129 dead and 350 injured. One of the attackers in the French slaughter was carrying a Syrian passport that seemed to indicate that he had been a refugee that had come into Europe along with a flood of migrants in October," Wallace said. "Given that, is President Obama reconsidering his plan to accept 10,000 Syrian refugees over the next year?" "No, Chris, we're still planning to take in Syrian refugees," Rhodes said. "We have very robust vetting procedures for those refugees. It involves our intelligence community, our national counter-terrorism center, extensive interviews, vetting them against all information." "What we need to be able to do, frankly, is sort out that foreign fighter flow, those who have gone into Syria and come out and want to launch attacks or those who have connections with ISIL in Syria," Rhodes said. "We need to be able to have the intelligence base to identify and target those people." "At the same time, we have to recognize there are tragic victims of this conflict," he added. "There are women, children, orphans of this war, and I think we need to do our part, along with our allies, to provide them a *safe haven*."

The screening procedures that we have in place for refugees are *more extensive* than we have for others visiting the US.

Daniel Burke, November 17, 2015, CNN, "Don't Scapegoat Syrian Refugees," <http://www.cnn.com/2015/11/17/politics/catholics-evangelicals-refugees/index.html> DOA: 11-17-15

But the United States has a "strong track record" for screening refugee applicants, Anderson said. "It is more thorough and careful than the screening for tourist and student visas to the United States. A tourist with a French passport does not need screening or a visa; a refugee from Syria must pass multiple careful tests for eligibility." Elizondo echoed that thought, noting that refugees must pass security checks and multiple interviews before entering the United States.

And Max Fisher offers even more detail:

Max Fisher, November 17, 2015, <http://www.vox.com/2015/11/17/9750538/syrian-refugees> Dear Politicians Who Want to Bar Refugees: Here are Six Reasons You're Wrong DOA: 11-17-15

In fact, the US has extremely stringent vetting processes and standards for refugee resettlement candidates — standards so cumbersome and onerous, requiring mounds of paperwork and series of interviews, that even refugees who perfectly qualify must wait months and are frequently turned away.

In Europe, refugees arrive in huge numbers to places like Greece and Italy. European governments do indeed have security controls in place, but the scale and immediacy of the problem is simply leagues beyond anything America faces. Boats of refugees are not washing up on the Maryland shore. We only need to resettle as many refugees as we choose to, and we can put them through whatever process we like before they arrive. And that process is indeed a doozy.

Slate's Williams Dobson sums up the process here:

It takes anywhere from 18–24 months for a Syrian refugee to be cleared to live in the United States. First he or she must be registered with the U.N. High Commissioner for Refugees. This agency interviews refugees, conducts background checks, takes their biometric data, and establishes whether they belong to one of roughly 45 "categories of concern" given their past lives and work history in Syria. Typically, the applicants are women and children. If anything looks amiss, they are pulled from consideration. Then the U.S. government begins its own vetting. The applicants are interviewed again, and their names and particulars are run through terrorism databases. They receive additional screening when they arrive in the United States and then again after their first year in the country.

Yet to listen to anti-refugee politicians, you would think that none of these safeguards or processes existed.

So when, for example, Michigan Gov. Rick Snyder demands that the Department of Homeland Security look into security vetting processes, and insists he will accept no refugees until it does, it's a little like angrily insisting that his state will allow no commercial flights until the Federal Aviation Administration provides some answers on its plan to prevent midair collisions. The FAA does have a plan. It's a good plan. And we know this because it's been doing it successfully for years.

Four, the authorities investigated the passport and found that it was a *fake*. *Yes*, someone supported by ISIS did travel to Europe from Syria with a fake passport in the refugee flow, but ISIS has enormous financial resources and could generate fake passports with other nationalities. Are we going to exclude everyone from entering the US until they are "thoroughly vetted"?

Five, this argument is rather offensive and arguably racist. The US already resettles 70,000 refugees per year and has resettled over 700,000 since September 11th, 2001 (this includes refugees from Iraq, where ISIS is also substantially present). Not a single refugee has committed a terrorist attack in the US. ONE person who disguised himself as a refugee entered Europe this year (out of one million!) has engaged in terrorist activity, and through an event that would have *likely* occurred without him; the other terrorists were European nationals.

[

Six, the terrorists are sophisticated (which the Negative actually needs to win to win a significant impact), and do not need to rely on smuggling terrorists in disguised as refugees.

Associated Press, November 15, 2015, German Official: Don't Link Terrorism, Refugees, https://www.washingtonpost.com/world/europe/the-latest-eu-attacks-on-syria-opposition-create-refugees/2015/11/15/5012139a-8b96-11e5-934c-a369c80822c2_story.html DOA: 11-15-15

Germany's defense minister is pushing back against the idea that terrorists are entering Europe as refugees. European officials have expressed concern after a passport discovered close to the body of one of the Paris attackers was found to have been used last month passing through Greece and the Balkans. Ursula von der Leyen said Sunday that linking Europe's migrant crisis to the threat

of terrorism would be wrong. She says that “terrorism is so well organized that it doesn’t have to risk the arduous refugee routes, and the sometimes life-threatening crossings at sea.”

Think about it. ISIS has adequate financial resources to fly potential terrorists anywhere in South America and then they could make their way into the US with other illegal immigrants. This US has been completely ineffective in reducing illegal immigration. Why would a terrorist even try to enter the US as a refugee and subject himself or herself to an extensive vetting process when they could more easily enter this way.

Seven, if Europe (and the US) start excluding refugees, even more will pour into Jordan, Lebanon, and Turkey, risking the collapse of these countries.

Richard Minter, 11-14-15, Forbes, 9 After Shocks of the Paris Attacks, <http://www.forbes.com/sites/richardminter/2015/11/14/8-after-shocks-of-the-paris-attacks/> 11-14-15

If Europe slows or stops Syrian migration, Turkey, Lebanon and Jordan will totter, or even tumble, under the weight of refugees. Each nation already hosts nearly 1 million displaced people. The cost of feeding and housing these displaced people is enormous—as are the security risks. Turkish and Arab officials fear that strain could bring down their governments or that the war will follow the refugees into their tent cities. Crime is climbing, both among refugees and between refugees and natives. And the coming winter will only make some of the desperate still more dangerous.

And if these countries collapse, there will be even more war, more terrorism, and more refugees.

James Fearon is the Theodore and Frances Geballe Professor in the School of Humanities and Sciences, a professor of political science, and a Senior Fellow in the Freeman Spogli Institute for International Studies, all at Stanford. He is a member of the National Academy of Sciences “Instability In The Middle East” <http://www.hoover.org/research/instability-middle-east>, DOA: 11-15-15

Since the mid 1990s we see some decline and a leveling out, despite the outbreak of several large-scale conflicts in the Middle East and North Africa (MENA). Quite a few civil wars, many of them long running, ended in the second half of the 1990s, in Latin America, Asia, Eastern Europe, and sub-Saharan Africa (though almost as many started in the late 90s in Africa). Since 9/11 and the Arab Spring, however, new **state failures have been concentrated in the MENA region, with dramatic instances in Iraq, Syria, Libya, and Yemen. Three of these were middle-income countries not too long ago.** Syria and Iraq had developed business sectors. Iraq, Syria, and Libya had all attempted nuclear weapons programs, with various degrees of competence. Although civil wars are not new to this region – or to these states, excepting Libya—the degree of state collapse is of a whole new order in all of them. Further, the prospects for a return of stable central control in Syria and Iraq do not seem good. **State collapse and failure in this region** is much more consequential for U.S. economic and security interests than in sub-Saharan Africa because it **raises the risk of a spread of civil wars** and state failures to other states in the region that are important for regional and international stability—Lebanon, Jordan, Saudi Arabia, Bahrain, Egypt, Algeria, Morocco, and Pakistan. **Refugees put direct strains on neighboring states’ economies and political balances.** Regional conflict over the failed states increases militarization, cross-border support for insurgents or opposition movements in regional adversaries, and risks of regional interstate military conflicts (including, to give just one example,

more war between Israel and Hezbollah in Lebanon). **State failure encourages the transnational jihadi movement, gives it recruits and training, some of whom will return to plot attacks in their home countries and perhaps in Western countries as well.** And all this takes place in a region with states that have the capability (before they suffer major failure or collapse) to mount serious nuclear weapons programs, or to purchase weapons.

Even if these terrorists wouldn't then make it to the US, there would be more terrorism in this area, where US citizens vacation, work, and study. And the lives of US allies would be at-risk as well.

If Negative teams argue that Jordan, Lebanon, and Turkey should also reject refugees, you should make a couple of arguments.

One, there is no evidence that these really can. These countries border the conflict zones and there is no evidence that they can stop millions of people from entering their countries. Even Europe can't really block the flow.

Nick Robins-Early, November 15, 2015, Why a Backlash Against Refugees Only Helps ISIS, http://www.huffingtonpost.com/entry/paris-attacks-refugees_5648961ae4b060377349702c DOA: 11-16-15.

Europe has struggled to find a common policy to address the humanitarian crisis, resulting in a massive influx of largely unregulated migration. **Security deterrents such as border fences have done little to stop people seeking safety and asylum, as constantly shifting routes result in new ways for people to enter the continent.** " It really is a very dangerous moment for Europe; right-wing politicians are taking advantage of this horrific massacre to try to whip up anti-immigrant sentiment, but it's a moment for Europe to pause and really think about what lies ahead," **Peter Bouckaert, emergency director of Human Rights Watch, told The WorldPost. "It's simply impossible for Europe to shut the door on the flow of people trying to come to Western Europe; they will continue to come," he continued.**

Two, if the refugees are forced to go back to (or stay in) Syria, they will die.

Christiane Ammanpour, 11-15-15, CNN, "Passport linked to terrorist complicates refugee crisis" <http://www.cnn.com/2015/11/15/europe/paris-attacks-passports/index.html> DOA: 11-15-15

This development will likely intensify a bitter argument. One side believes it's important to provide shelter to thousands of helpless people who may die if they remain in Syria. The other side believes letting in Syrian war refugees will put host countries at greater risk for terrorist attacks. Vetting every incoming refugee would require huge resources. It likely would slow down a widening river of refugees that has already posed logistical problems in many nations. Just look how slowly the European Union is moving on its promise to relocate refugees: As of a few days ago, the EU had only relocated 147 of 160,000. But the other end of the spectrum, closing borders to Syrian war refugees could force many Syrians to remain at home -- exposing them to deadly fighting between anti-government rebels and government forces. Many feel they must leave the region to save their lives.

This is why we have to help people, *even if* there is some risk of terrorism.

Benjamin Wittes is editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books is co-chair of the Hoover Institution's Working Group on National Security, Technology, and Law, November 17, 2015, In Defense of Refugees, <https://www.lawfareblog.com/defense-refugees> DOA: 11-17-17

Let's concede the point that our rigorous and slow screening system will fail in some small percentage of cases and that we will admit some number of people who turn out to be bad. If that is enough to stop all Syrian refugees from finding shelter here, why do we grant visas—and we grant many of them—to people from that part of the world at all? Why do we let students come here from the Persian Gulf? Why do we let tourists come here from just about anywhere? And, more to the point, why have we let refugees come here from all sorts of nasty places in the world? Each refugee community brings with it a certain number of bad apples. But I wouldn't give back the Mariel boatlift, though it involved a fair number of Cuban criminals. The United States also sheltered a large number of Iranians after the Revolution in 1979. We are, by a few country miles, the world's leader in refugee resettlement. To suddenly say that the risk of ISIS infiltrating this particular refugee flow makes it categorically different from all others is really a backhanded way of saying that we should make a different set of security presumptions about Arabs, even those we know to be victims of the worst forms of oppression by our own military enemies. The sentiment is not just ugly. It may also be profoundly self-defeating in security terms. Yes, if we admit tens of thousands of refugees, we will likely admit some who will give the FBI headaches. We will also create a community that values American liberty and religious freedom, that engages constructively with our economy and with our law enforcement and that sees this country as part of the solution to—or at least a haven from—the tragedy that is Syria.

Eight, we shouldn't exclude refugees who are trying to flee the same forces that committed the attacks in Paris.

Frank Jordans, 11-14-15, AP, Paris Attacks Provoke Fresh Migrant Fears in Europe, http://hosted.ap.org/dynamic/stories/E/EU_MIGRANTS_RISING_TENSIONS?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2015-11-14-15-31-54 DOA: 11-14-14

Asylum seekers fleeing war and poverty in Syria and other war-ravaged countries condemned the Paris attacks, saying they feared it may become more difficult for the refugees to start new lives in Western Europe. **Zebar Akram, a 29-year-old Iraqi man, was among those streaming through Slovenia toward Austria on Saturday. He said those attacking Paris were behaving "like they act in Syria or Iraq."** Abdul Selam, 31, who was fleeing Syria, said he fears refugees now "will be considered as probable attackers." Merkel's deputy warned Saturday against cracking down on migrants coming to Europe because of the Paris attacks. **Vice-Chancellor Sigmar Gabriel said those seeking refuge in Europe shouldn't be made to suffer just because "they come from those regions where terror is being exported to us and to the world." "We stand to protect them too, and to ensure that they don't have to suffer because murderers in France are threatening people and Europe in the name of a religion,"** he said.

Nine, if destitute and desperate refugees do not receive assistance, they could end up becoming mercenaries for terrorist groups or simply become alienated and support radical groups.

Daniel Byman, Brookings Institute, October 27, 2015, Do the Syrian refugees pose a terrorism threat? <http://www.brookings.edu/blogs/markaz/posts/2015/10/27-syrian-refugees-terrorism-threat-byman> DOA: 11-15-15

If the refugees are treated as a short-term humanitarian problem rather than as a long-term integration challenge, then we are likely to see this problem worsen. Radicals will be among those who provide the religious, educational, and social support for the refugees – creating a problem where none existed. Indeed, **the refugees need a comprehensive and long-term package that includes political rights, educational support, and economic assistance as well as immediate humanitarian aid**, particularly if they are admitted in large numbers. **If they cannot be integrated into local communities, then they risk perpetuating, or even exacerbating, the tensions between Muslim and non-Muslim communities in Europe. Despite their current gratitude for sanctuary in Europe, The actual security risks now are low, but the potential ones are considerable if the refugee crisis is handled poorly.**

ISIS wants us to exclude refugees, because the refugees are currently considered enemies of ISIS and it will make the caliphate more appealing relative to the US.

Zach Beauchamp, November 17, 2015, Vox, Turning Back Syrian Refugees Isn't Just Wrong -- It Helps ISIS, <http://www.vox.com/world/2015/11/17/9747042/paris-attacks-isis-refugees> DOA: 11-17-15

At least 23 US governors said on Monday that they'd attempt to block any efforts to resettle Syrian refugees in their states, and the few Republican presidential candidates who didn't outright declare that all Syrian refugees should be banned from entering the United States suggested that only Christian refugees should be allowed in. **But such reactions play right into ISIS's hands. ISIS despises Syrian refugees: It sees them as traitors to the caliphate. By leaving, they turn their back on the caliphate. ISIS depicts its territory as a paradise, and fleeing refugees expose that as a lie. But if refugees do make it out, ISIS *wants* them to be treated badly — the more the West treats them with suspicion and fear, the more it supports ISIS's narrative of a West that is hostile to Muslims and bolsters ISIS's efforts to recruit from migrant communities in Europe. "It makes them look bad," Daveed Gartenstein-Ross, a senior fellow at the Foundation for the Defense of Democracies, explains. Refugee flight from Syria "undermines IS' message that its self-styled Caliphate is a refuge," Aaron Zelin, a fellow at the Washington Institute for Near East Policy, writes on the site Jihadology. "If it was [a refuge as they claim], individuals would actually go there in droves since it's so close instead of 100,000s of people risking their lives through arduous journeys that could lead to death en route to Europe." To demonstrate his point, Zelin looked through a number of ISIS's public statements on the refugee crisis. ISIS speakers "warn that the 'Jews and Christians' do not have their interests at heart, and will force them to convert in order to remain in their countries," he found. "They assert that the Islamic State will remain strong despite those leaving. [Refugees] will find happiness only in the land of the caliphate."**

It will also radicalize more Muslims living outside the caliphate.

Harleen Gambir, a counterterrorism analyst at the Institute for the Study of War, November 17, ISIS is Setting a Trap for Europe, Business Insider, 2015, <http://www.businessinsider.com/isis-is-setting-a-trap-for-europe-2015-11>

The Islamic State's strategy is to polarize Western society — to "destroy the grayzone," as it says in its publications. The group hopes frequent, devastating attacks in its name will provoke overreactions by European governments against innocent Muslims, thereby alienating and radicalizing Muslim communities throughout the continent. The atrocities in Paris are only the most recent instances of this accelerating campaign. Since January, European citizens fighting

with the Islamic State in Iraq and Syria have provided online and material support to lethal operations in Paris, Copenhagen and near Lyon, France, as well as attempted attacks in London, Barcelona and near Brussels. Islamic State fighters are likely responsible for destroying the Russian airliner over the Sinai. These attacks are not random, nor are they aimed primarily at affecting Western policy in the Middle East. They are, rather, part of a militarily capable organization's campaign to mobilize extremist actors already in Europe and to recruit new ones.

The fewer refugees the West lets in, and the chillier their welcome on arrival, the better for ISIS.

This is magnified if we leave refugees stranded in the camps.

Benjamin Wittes is editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and is co-chair of the Hoover Institution's Working Group on National Security, Technology, and Law, November 17, 2015, In Defense of Refugees, <https://www.lawfareblog.com/defense-refugees> DOA: 11-17-15

It is worth reflecting at least briefly on the security risks of turning our backs on hundreds of thousands of helpless people fleeing some combination of ISIS and Assad. Imagine teeming refugee camps in which everyone knows that America has abandoned them. Imagine the conspiracy theories that will be rife in those camps. Imagine the terrorist groups that will recruit from them and the righteous case they will make about how, for all its talk, the United States left Syria to burn and Syrians to live in squalor in wretched camps in neighboring countries. I don't know if this situation is more dangerous, less dangerous, or about as dangerous as the situation in which we admit a goodly number of refugees, help resettle others, and run some risk—which we endeavor to mitigate—that we might admit some bad guys. But this is not a situation in which all of the risk is stacked on the side of doing good, while turning away is the safe option. There is risk whatever we do or don't do. Most profoundly, there is risk associated with saying loudly and unapologetically that we don't care what happens to hundreds of thousands of innocent people—or that we care if they're Christian but not if they're Muslim, or that we care but we'll keep them out anyway if there's even a fraction of a percent chance they are not what they claim to be. They hear us when we say these things. And they will see what we do. And those things too have security consequences.

Ten, we will discredit the appeal of radical Islam if we treat the refugees with compassion.

Kori Schake is a fellow at the Hoover Institution and contributor to Foreign Policy's Shadow Government blog, 11-15-15, ForeignPolicy.com, The Right Time for America to Lead from Behind, <http://foreignpolicy.com/2015/11/15/the-right-time-for-america-to-lead-from-behind-paris-france-nato/> DOA: 11-15-15

As François Heisbourg, chairman of the International Institute for Strategic Studies, argued in the Financial Times Saturday, **how other countries respond to the attacks in Paris will determine whether the Islamic State succeeds. They will succeed if the world treats refugees fleeing from their terror in Iraq and Syria as terrorists.** The threat of terrorists using the cover of refugees to infiltrate Western societies is real, as is the radicalization of Muslims already living in the West. But **vetting and surveillance are better, more precise tools than closing borders against the agony of people who are overwhelmingly victims of the same threats the West is afraid of.** Norway-based activist Iyad el-Baghdadi has made a compelling case on Twitter that *compassion for those victims is a major element of how the West discredits the Islamic*

State's appeal and positively shapes attitudes in the Middle East. Obama should not only be the West's leading voice, but he should also adopt policies that others can emulate instead of treating Syrian refugees as a European problem.

Demonstrating humanitarianism toward refugees is way more likely to prevent terrorism than attacking "structural causes," as Negative teams often propose.

Jesse Berne, **11-14-15**, Rolling Stone, After Paris Attacks, Don't Close Our Borders to Refugees – Open Them, <http://www.rollingstone.com/politics/news/after-paris-attacks-dont-close-doors-to-refugees-open-them-20151114> DOA: 11-15-15

There will be more calls in the coming days to close the United States' borders to refugees, and in France and the rest of Europe, those voices will likely be deafening. Already in the midst of a refugee crisis, European nations may give in to anger and fear and shut their doors for good. Congress will urge President Obama to do the same and cancel modest plans to resettle some refugees from Syria. But we should do the opposite. **When we see attacks like the horror in Paris, we should open our borders to a flood of refugees, not close them. We should shower those families with generosity.** We should make sure they have jobs that fit their skills. We should educate their children. We should provide them health care and whatever social services they need. **The West should do everything in its power to make those fleeing ISIS and extremism everywhere feel welcome and wanted. We've been at war with terror for nearly a decade and a half now. We killed Osama bin Laden. We replaced hostile governments in Iraq and Afghanistan with client states. We defeated tyrants, yes, but we left chaos in their place. And nothing we have done has stopped the tide of terrorist recruitment.** One eyewitness account from Paris described a shooter in the Bataclan theater as 20 to 25 years old; that would have made him a child on 9/11. **How do we stop the next generation of terrorists from radicalizing? Bombing them sure doesn't seem to be doing the trick.** Keeping open the prison at Guantanamo Bay isn't doing it either. **Eliminationist rhetoric directed at Muslims isn't going to convince terrorists not to attack us. To win the War on Terror, to actually defeat the terrorists, we have to dry up their recruiting once and for all. We have a chance of doing that by showing Muslims everywhere – Muslims targeted by terrorists in their homeland – that we stand with them as fellow humans, and that when they face violence and oppression in their homelands, we should welcome them in ours.** Even if the Paris terrorists turn out to have come from Syria – a Syrian passport was reportedly found at the scene of one bombing, though it may not have been real, and ISIS has claimed responsibility – we should still open our doors to more Syrians and other Muslims escaping extremism. It will take a very long time to make a difference – generations. **But if we want a world where terrorists can no longer recruit young people to give their lives to senseless murder, we have to show that the United States is not their enemy. Welcoming those fleeing terror is a critical first step. And rejecting refugees won't keep terrorists determined to attack us from finding a way in.** Yes, in the short term we will ramp up our military effort against ISIS in an attempt to find some kind of justice for the deaths in Paris. But so long as we meet death only with death, the only associations we are creating in future generations with the United States and our allies are ones of pain and, frankly, terror. **We've bombed hospitals and weddings. We've killed children with drones. If those are the only responses we can muster to terrorism, we will create generation after generation of people who want to strike back.** That doesn't make us responsible for attacks against us; only those who carry them out bear that responsibility. **Our responsibility is to be better than the terrorists, and to show those who might be seduced by their hatred that the world isn't narrow and ugly. Closing off our borders to terrorized refugees sends exactly the wrong message.**

Social Contract Theory

Some argue that providing refugees a safe have cannot outweigh the rights of a state to control its borders because of *social contract theory* – a claim that a state only has an interest in protecting the rights of individuals who sign-on to a social contract that is focused on the needs of their own society.

There are a number of answers to this argument.

One, there is an obligation to provide aid and to strangers outside of our political community

Michael Walzer, philosopher and social contractarian, 2008, *Spheres Of Justice: A Defense Of Pluralism And Equality*, Kindle Edition, p. 33

I won't try to recount here the history of Western ideas about strangers. In a number of ancient languages, Latin among them, strangers and enemies were named by a single word. We have come only slowly, through a long process of trial and error, to distinguish the two and to acknowledge that, **in certain circumstances, strangers (but not enemies) might be entitled to our hospitality, assistance, and good will. This acknowledgment can be formalized as the principle of mutual aid, which suggests the duties that we owe**, as John Rawls has written, "not only to definite individuals, say to those cooperating together in some social arrangement, but **to persons generally.**" ¹ *Mutual aid extends across political (and also cultural, religious, and linguistic) frontiers.* Walzer, Michael (2008-08-05). *Spheres Of Justice: A Defense Of Pluralism And Equality* (p. 33). Basic Books. Kindle Edition.

Two, the social contract does not justify wealthy states excluding immigrants. Governments are obligated to enter into a contractual relationship with those immigrants

Michael Blake, Philosopher, 2003, *Philosophy & Public Affairs*, Volume 41, Issue 2, Immigration, Jurisdiction, and Exclusion, pages 103–130, Spring 2013

This right to exclude, however, is not a trump against the rights of all would-be immigrants; these immigrants have rights to the circumstances under which their basic human rights are protected. As such, there will be many circumstances under which the liberal state is not permitted to exclude unwanted would-be immigrants, since liberalism obliges the inhabitants of that state to enter into a legal relationship with these prospective immigrants. The right to exclude, I suggest, exists, but cannot justify anything like the exclusionary practices undertaken by modern wealthy states.

Three, their argument is not specific to refugees fleeing unlivable conditions—*there is No right to exclude persecuted refugees from war zones*

Michael Blake, Philosopher, 2003, *Philosophy & Public Affairs*, Volume 41, Issue 2, Immigration, Jurisdiction, and Exclusion, pages 103–130, Spring 2013

The second objection is more simple, but also potentially more important. It notes, simply, that **the structure of the argument is as follows: we can exclude unwanted would-be immigrants, because these immigrants already have adequate rights-protection within their countries of origin**, and are seeking now to oblige us to act in defense of their rights. The argument only holds, that is, when there in fact *is* adequate rights-protection in the country from

which the individual is seeking to emigrate. **This was, of course, true for me in my emigration from Canada, and it is doubtless true of many would-be immigrants.** It is unlikely to be true of most immigrants, however, many of whom are fleeing circumstances that could be described (rather bloodlessly) as insufficiently rights-protecting. This means, of course, that the justificatory story now fails to hold. We are unable to exclude the unwanted migrant, because the story we would have to tell—namely, that we have no obligation to become obligated to protect that migrant's rights—is inaccurate. The migrant would, upon entry into our territory, simply acquire that set of rights-protections to which she is entitled. If we propose to use force to prevent that individual from entering into our territory, we are simply using force to keep her in a morally indefensible situation. There is no possibility of that use of force being legitimate. As such, we might think that the story I tell here—despite its general defense of the right to exclude—is, in fact, considerably more radical than it would at first appear. It would mandate something like a radically revised account of refugee and asylum law, on which we cannot use force to exclude outsiders from entry when those outsiders are coming from countries that are insufficiently attentive to basic human rights. This is, again, an objection to the view if interpreted as a blanket defense of our current practices; it is not, however, an objection I want to reject in its entirety. I will suggest two means by which the objection's force is potentially subject to some limitations, but **on the whole I believe the objection to be accurate. Indeed, if we focus on the justification for the use of force, I believe we are likely to arrive at an account of refugee and asylum law on which we are unable to refuse admission to a great many would-be migrants.**³⁷ This view of immigration will be, I think, considerably more robust than a related view given by Christopher Heath Wellman, who allows the legitimate state to purchase the right to exclude by devoting an adequate share of its resources and efforts to development in foreign countries.³⁸ On my view, this is not even in principle permissible. We cannot justify the use of force against one party by citing benefits to others; the justification must be in terms that the coerced party can accept without requiring that party to unduly identify with the interests of others. **This is, after all, the lesson John Rawls taught about the separateness of persons: it is wrong to demand that an individual who is treated badly by a coercive institution be mollified by the comparatively greater benefits received by others.**³⁹ The idea that we can justify using force against someone whose rights are unprotected by citing the fact that we have helped other people elsewhere seems to fly in the face of this idea. **We can only justify the coercive force of the border if we use it against people whose rights are adequately protected in their current homes. To use it elsewhere seems simply to use force to defend an illegitimate status quo; this is morally impermissible regardless of how just our foreign policy might otherwise be.** If we are going to limit the rights of immigrants from oppressed countries, then we will have to do so in a manner that defends their right to be treated as a moral equal. Is there any way of doing this? I believe there are, in principle, two ways of doing so, although neither will offer much consolation to those who want to defend the international status quo. The first way begins with the simple fact that the obligation to become obliged is held not simply by an individual state, but by all legitimate states collectively. To return to the modified violinist case: a dying violinist might have a right to have someone offer her the necessary support needed for a decent life, but she does not have the right to pick her favorite agent as provider. Nothing in the picture of basic rights we are imagining here mandates that we are allowed to insist that the *general* obligation to protect the rights of persons can be made into a *particular* obligation—that is, an obligation to be pressed against one particular agent—simply through the wishes of the one to whom we are obliged. This means, I think, that the story we can tell about exclusion might have to be more complex. **We are not entitled to use force to exclude individuals who want to enter our jurisdiction when they come from jurisdictions that do not adequately protect their rights.** But nothing in this says that we are obligated to be the jurisdiction in which those individuals ultimately make their lives. If the burden of refugee flows is one that ought to be borne by the wealthy states of the world collectively, then it is entirely open to a particular state to argue that some other state is refusing

its share of the bill. This opens up the possibility that we can develop a secondary moral analysis of what fairness would demand in the allocation of the burdens of doing justice through immigration. It also opens up the possibility of legitimate international covenants excluding individuals when they have passed through rights-protecting countries on their way to their chosen country of refuge. The Dublin Regulation, for example, insists that an individual's asylum claim must be heard by the first European Union state into which that individual enters.⁴⁰ This regulation may be unfair toward border states, which tend to bear a higher proportional cost from refugee flows; but it cannot be said to be unfair toward refugees themselves. The second sort of restriction we can imagine is more complex—and, potentially, more dangerous. It goes to the idea that we can, under some circumstances, demand that people pay some costs to maintain just institutions. This is, of course, hardly a controversial idea, stated this generally; we accept that individuals have the duty to pay taxes to support just states, for example. But we might similarly think that individuals have the obligation to bear some of the costs involved in setting up just institutions, too. We might, for example, demand that individuals from a particular state bear some of the costs involved in transitioning that state toward democratic legitimacy. These costs, moreover, might include things other than financial burdens; we do, under some circumstances, insist that individuals bear some personal risk in the name of justice. (Most accounts of just war, after all, include the idea that justice is a sufficient ideal to warrant the imposition of a risk of violent death.) So: if individuals want to emigrate to a given country from a non-rights-respecting country, **we might want to have the right to insist that those individuals remain where they are, and improve circumstances in their country of origin.**⁴¹ Is this a sufficient reason for us to think that we can insist that people fleeing from a non-rights-respecting country return to that country and improve it from within? **I do not want to reject these ideas entirely; I do believe, however, that they are insufficient to generate anything like a right to exclude would-be migrants from oppressed states. The reason is, I think, the fairly simple one that it is unfair to insist that someone fleeing an oppressive state has more duties to that state than someone outside of it.**⁴² The relationship between that state and the emigrant is hardly that of someone who is a party to an ongoing, valuable relationship, who thereby acquires some duties to the other parties in that relationship. If we did not accept this simply in virtue of the fact that the state is engaging in unjustified coercion, we might accept it in virtue of the fact that the emigrant is actively trying to sever that relationship. To insist that this relationship generates duties, then, is something very much like insisting that an ascriptive fact—a mere fact of birth—is sufficient to generate an obligation. This, however, seems to be morally impermissible. Why, the migrant might ask, should she be asked to bear a higher burden of the shared task of democratizing her country of origin? She was born there, but that hardly seems sufficient to justify a greater obligation to help that place than there is for those lucky enough to be born in more wealthy jurisdictions. (She may have greater knowledge, and therefore ability, to help, but those seem to be separate issues; and, besides which, it seems unjust for us to insist that obligation increases with ability.) The only way, I think, in which we might use the idea of a burden to work for democratization is if the argument treats all parties—current residents and would-be immigrants—as moral equals, with each having an equivalent duty to build the democratic capacity of the state in question. This might legitimate asking the would-be immigrant to bear some costs in rebuilding the state from which they come; but it would equally ask those who currently reside within the rights-respecting jurisdiction to give of themselves to help the shared task of building a rights-protecting world. **The idea of a special duty to one's home country, I said, was dangerous because it tempts us to see those who come from a place as specially obligated to sacrifice themselves to improve that place. The shared sacrifice, I think, must be actually shared, justly, among all the citizens of the world;** it seems hard to imagine that we could actually use these ideas to exclude would-be immigrants, at least unless we ourselves are bearing costs equivalent to those we expect these migrants to pay. This is a test, of course, I do not think any current state is likely to meet. **The result of all this is that the right of a state to**

exclude people from underdeveloped and oppressive nations is likely to prove rather weak. I do not think this is a defect; it strikes me as true that a state that proposes to use force to keep people out of its jurisdiction has to account for the rights of the people against whom that force is directed. I have ignored, here, many relevant questions. We have reason to ask what human rights are those that ought to be defended by international law and by immigration law. We have reason to ask what sorts of considerations other than the protection of basic human rights ought to affect the right to exclude.⁴³ For the moment, I am content to leave these questions to one side. What I have said here, I believe, might give us some reason to think that the right to exclude exists, and that this right is far from able to justify the sorts of policies all wealthy societies currently undertake. **We have, collectively, the right to exclude some unwanted would-be immigrants. We should not, however, take any comfort from this fact; much of what we are doing now is profoundly unjust, and should be recognized as such. This defense of a right to exclude should therefore be taken as a plea for reform, not for quietism; we can indeed seek to exclude some unwanted immigrants, but we should not therefore conclude that we are allowed to exclude as we currently do.** Justice, I suggest, demands more discussion both of the moral foundations of this right and of the relationship between that right and our own acts. I will, therefore, be quite satisfied if I have shown the need for such a discussion to take place.

Four, international obligations to justice because all human beings are equal, *regardless as to where they live*

Allen Buchanan, political philosopher at Duke, 2004 Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law, Kindle Edition, page/location number at end of card

Taking the Moral Equality Principle seriously commits us to the Natural Duty of justice, because **a proper understanding of the Moral Equality Principle implies that to show proper regard for persons we must help ensure that their basic rights are protected.** And this in turn requires us to embrace a cosmopolitan view of international law, rejecting both the idea that states are moral persons and the position that states are merely institutional resources for their own peoples. **As Brian Barry puts it: "At the heart of moral cosmopolitanism is the idea that human beings are in some fundamental mental sense equal."** The Natural Duty of justice as I understand it says that **equal consideration for persons requires helping to ensure that they have access to institutions that protect their basic human rights.** This will sometimes require creating new institutions and will often require reforming existing institutions. Allen Buchanan. Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law (Oxford Political Theory) (Kindle Locations 1120-1122). Kindle Edition.

Finally, we should design a society to protect those who lost the birth lottery, including those who lost the lottery and live outside our borders.

JD Roth, March 31, 2010, Warren Buffett on the Lottery of Birth, Get Rich Slowly, <http://www.getrichslowly.org/blog/2010/03/31/warren-buffett-on-the-lottery-of-birth/> DOA: 11-4-15

"Before you enter the world, you will pick one ball from a barrel of 6.8 billion (the number of people on the planet). **That ball will determine your gender, race, nationality, natural abilities, and health — whether you are born rich or poor, sick or able-bodied, brilliant or below average,** American or Zimbabwean. This is what Buffett calls the ovarian lottery. As he explained to a group of University of Florida students, **"You're going to get one ball out of**

there, and that is the most important thing that's ever going to happen to you in your life." According to the world's third-richest man, that's a good perspective to have when setting the rules for our world. We should be designing a society that, as Buffett says, "doesn't leave behind someone who accidentally got the wrong ball and is not well-wired for this particular system." He points out that he is designed for the American system — and he was lucky to be born

Sovereignty

A government's right to control its border stems not only from its need to act in its own national interest but also to protect its *sovereignty* – that authority of the state to govern itself. While sovereignty is a strong Negative argument, there are also good answers.

First, sovereign states should act morally.

Joseph Carens, 2013, Joseph H. Carens is a professor at the Department of Political Science of the University of Toronto, Canada. His research interests are mainly focused on contemporary political theory, especially on issues related to immigration and political community, *The Ethics of Immigration*, Kindle Edition, page number at end of card.

Another argument in defence of the state's discretionary control over immigration is that a norm of open borders would be intrinsically incompatible with state sovereignty. A general right of free movement, some think, would require a world government with the power to enforce such a right. A world government would be a bad idea (for everyone) for reasons of excessive centralization and risks of tyranny. So, we need to divide the world into independent political units like contemporary sovereign states. In a world divided into sovereign states, each state must have the power to control its own borders and so there can be no general right of free movement. Carens, Joseph (2013-10-16). *The Ethics of Immigration* (Oxford Political Theory) (p. 270). Oxford University Press. Kindle Edition.

Second, sovereign states can agree to allow refugees to settle in their states.

Joseph Carens, 2013, Joseph H. Carens is a professor at the Department of Political Science of the University of Toronto, Canada. His research interests are mainly focused on contemporary political theory, especially on issues related to immigration and political community, *The Ethics of Immigration*, Kindle Edition, page number at end of card.

There is nothing in the nature of sovereignty that prevents a democratic state from recognizing that outsiders are morally entitled to enter and settle on its territory and that it has an obligation to permit them to do so, at least under normal circumstances. It may be unlikely that democratic states will agree to recognize such a claim, but that does not make the idea intrinsically incompatible with sovereignty. Carens, Joseph (2013-10-16). *The Ethics of Immigration* (Oxford Political Theory) (p. 271). Oxford University Press. Kindle Edition.

Third, border control is not essential to sovereignty.

Joseph Carens, 2013, Joseph H. Carens is a professor at the Department of Political Science of the University of Toronto, Canada. His research interests are mainly focused on contemporary political theory, especially on issues related to immigration and political community, *The Ethics of Immigration*, Kindle Edition, page number at end of card.

The assumption that controlling borders is essential to sovereignty is actually of relatively recent vintage. For a long time, there was no connection between the idea of exercising political control over population flows and the sort of territorial jurisdiction that is the idea at the heart of modern sovereignty (namely, the state's monopoly over the legitimate use of violence within a particular geographical space). States in the modern form date back to the seventeenth century, but they began to try to regulate entry and exit in a serious way only in the late nineteenth century. Passports were not introduced until World War I. 29 As I have said before, having open borders is not the same as having no borders. Sovereignty and control over admissions are linked in the popular imagination and in political discourse, but they are often disentangled in actual political arrangements in the real world. Sovereignty itself is less simple than some assume. Federal systems often have complex separate and shared sovereignty arrangements. 30 Externally, in relation to other states, sovereignty may be unitary (though in a few cases even that power is divided). Internally, the central government has some powers and jurisdiction over some issues, and other units of government (provinces, states in the United States) have other powers and jurisdiction over other issues. Carens, Joseph (2013-10-16). *The Ethics of Immigration* (Oxford Political Theory) (p. 271). Oxford University Press. Kindle Edition.

Fourth, if the sovereign does not protect individual rights, it has no authority.

Michael Ignatieff is a former leader of the Liberal Party of Canada and a fellow of Massey College at the University of Toronto, *New Republic*, February 16, 2012, p. 27

These processes are absent in many of the states of the world. And where sovereignty is unconstrained, we could argue that human rights invigilation by third party outsiders becomes justified, to exercise the scrutiny and control of sovereignty that insiders would exercise if their sovereigns allowed them to. On this account, the moral authority of human rights NGOs together with U.N. bodies is a residual right to protect the subjects of a sovereign when they lack the institutional means to protect themselves. But why, Roth might reply, do they have the right to assume functions of invigilation that belong to the sovereign people alone? The answer, I think, is that the legitimacy of collective self-determination—the right of states to be sovereign—derives in turn from individual self-determination, the right of individuals to be free. If this individual right is crushed, an individual retains the right to appeal for help outside, and those outside have a duty to assist. The duty to assist is not indeterminate. It is correlated to the individual rights that have been abused and stays there, in peaceful advocacy of change from within, unless the sovereign goes further and pushes abuse to the level of wholesale murder or massacre, ethnic cleansing or genocide. At this point, an individualized duty to assist and support rights claimants would evolve into a responsibility to protect whole populations whose existence is threatened. This is the doctrine of sovereign responsibility articulated in the report of the International Commission on Intervention and State Sovereignty. It appeared in 2001, was ratified by the U.N. General Assembly in 2005, and saw its first application in the Libyan intervention of 2011.

Fifth, Globalization means that nation states are not containers of sovereignty.

Michael Goodhart, *University of Pittsburgh, International Studies Quarterly*, 2011 (55), p. 1056

The problem with the new sovereigntists' move from identifying the tension between democratic popular sovereignty and global governance to the condemnation of the latter is that it gets this relationship backward. Rabkin's comments notwithstanding, the new sovereigntists argue that global governance should be rejected as undemocratic because it conflicts with popular sovereignty. The normative ideal of popular sovereignty justifies their opposition to recent empirical developments. From the point of view we are presenting, these developments instead provide evidence that the empirical presumptions on which the normative ideal of popular

sovereignty rests are increasingly shaky. Although globalization is notoriously hard to define, at a minimum it connotes increasing global interdependence, a growing density and significance of various types of transnational and international transaction and interaction. These trends stimulate (among other things) increasing demand for governance of these transactions and interactions, whether in the form of law, regulation, bureaucratization, or politicization (the creation of political entities to decide transnational policy questions). Increasing interdependence leads to an increasing demand for global governance; like other states, the United States faces pressure to embrace this trend toward global governance and the internationalist outlook animating it. This trend is both an instance of and a response to globalization, one that undermines independence, autonomy, and control and renders the notion of states as containers of politics implausible. Moreover, globalization has penetrated the public consciousness through academic and political debate and through the popular media, such that there exists today a widespread and growing perception that interdependence and interconnectedness are transforming politics profoundly. Both reality and perceptions of it are changing in ways that directly challenge the empirical presumptions of popular sovereignty as a normative ideal. Extensive empirical evidence supports these claims.¹⁵ There is no point reviewing it here, however, because the new sovereigntists themselves acknowledge that globalization is profoundly transforming governance. It is precisely this transformation that they deem so threatening to popular sovereignty and constitutional government. The ICC seeks to impose binding rules to limit the conduct of states; the WTO, through its appellate body, creates mechanisms that allow for binding trade rules to be imposed without the consent of all members (Rabkin 2005: chapter 8); the citation of foreign court decisions and CIL transforms the domestic systems of constitutional government, allowing a way for international norms to find their way into domestic law and policy;¹⁶ European-style regulatory regimes dealing with labor, the environment, and human rights subordinate democratic legislative processes to supranational judges and bureaucrats and empower non-governmental organizations and so-called global civil society to influence international regulators directly, circumventing domestic political processes and altering the constitutional dynamics of sovereign government.

It's in states' own interests to participate in global governance structures

Michael Goodhart, University of Pittsburgh, *International Studies Quarterly*, 2011 (55), p. 1056

Each of the new sovereigntists' own examples of dangerous developments in global governance can be understood as an effort by states to regain or retain control or influence in areas where heightened interdependence undercuts them. To the extent that globalization compromises states' capacity to protect and promote their citizens' rights, welfare, and interests effectively, these efforts could be seen as democratically required. As Drezner (2001) and others have shown, the US government itself uses global governance to promote American aims and interests—just as Bolton recommends. To abandon global governance would necessarily (further) reduce American control and influence vis-à-vis other actors (and in the case of unilateral withdrawal, vis-à-vis other states). This too has democratic costs that the new sovereigntists simply overlook—perhaps because American power blinds them to what observers in other countries can see more clearly. The Irish, for example, no more want to leave the EU than they want to cede influence within it.¹⁷ If democracy obliges states to protect and promote their citizens' rights and interests, the fact of growing interdependence strongly implies that states should seek to assert whatever control and influence they can. It is of course true that doing so through global governance regimes undermines domestic authority in the traditional sense, as the new sovereigntists assert. But it is equally true that with respect to the requirements of popular sovereignty, this simply means that states are damned if they do and damned if they don't. Paradoxically, popular sovereignty requires and also rules out global governance.

Core Negative Arguments: The National Interest, Sovereignty, and the Problem of Morality in Foreign Policy

Taking the Negative side will be a bit difficult.

Why? Because the Affirmative will make a compelling case to meet the dire humanitarian needs of millions of individuals and the Negative will be left defending a vague concept like the rights of states to control their borders.

To win, I think the Negative needs to win three arguments:

- Establish the importance of protecting the national interest
- Minimize the relevance of humanitarian claims in the resolution
- Argue it is bad to base foreign policy on morality

If the Negative can win these arguments, they can win the debate.

The National Interest

To start, I think the Con should clearly define the national interest as being what is in the self-interest of the US in terms of protecting its own power. This is the Realist definition of the national interest.

There are a number of reasons the national interest should be prioritized.

First, Governments have to concern themselves with their own survival because their decisions impact many people and impact future generations

Hans Morgenthau, political scientist, 1950, The American Political Science Review, The Mainsprings of American Foreign Policy: The National Interest v. Moral Abstractions, p. 853

Indeed, the rule of morality in this respect is not precisely the same between nations as between individuals. The duty of making its own welfare the guide of its actions, is much stronger upon the former than upon the latter; in proportion to the greater magnitude and importance of national compared with individual happiness, and to the greater permanency of the effects of national than of individual conduct. Existing millions, and for the most part future generations, are concerned in the present measures of a government; while the consequences of the private actions of an individual ordinarily terminate with himself, or are circumscribed within a narrow compass.

Second, since no international body can protect individual nations, individual nations must protect themselves.

Hans Morgenthau, political scientist, 1950, The American Political Science Review, The Mainsprings of American Foreign Policy: The National Interest v. Moral Abstractions, p. 854-5

The fundamental error which has thwarted American foreign- policy in thought and action is the antithesis of national interest and moral principles. **The equation of political moralism with morality and of political realism with immorality is itself untenable. The choice is not**

between moral principles and the national interest, devoid of moral dignity, but **between one set of moral principles, divorced from political reality, and another set of moral principles, derived from political reality. The basic fact of international politics is the absence of a society able to protect the existence, and to promote the interests, of the individual nations. For the individual nations to take care of their own national interests is, then, a political necessity. There can be no moral duty to neglect them; for as the international society is at present constituted, the consistent neglect of the national interest can only lead to national suicide. Yet it can be shown that there exists even a positive moral duty for the individual nation to take care of its national interests.** In the absence of an integrated international society, in particular, the attainment of a modicum of order and the realization of a minimum of moral values are predicated upon the existence of national communities capable of preserving order and realizing moral values within the limits of their power. It is obvious that such a state of affairs falls far short of that order and realized morality to which we are accustomed in national societies. The only relevant question is, however, what the practical alternative is to these imperfections of an international society based upon the national interests of its component parts. The attainable alternative is not a higher morality realized through the application of universal moral principles, but moral deterioration through either political failure or the fanaticism of political crusades. The juxtaposition of the morality of political moralism and the immorality of the national interest is mistaken. It operates with a false concept of morality, developed by national societies but unsuited to the conditions of international society. In the process of its realization, it is bound to destroy the very moral values which it is its purpose to promote. Hence, the antithesis between moral principles and the national interest is not only intellectually mistaken but also morally pernicious. **A foreign policy derived from the national interest is in fact morally superior to a foreign policy inspired by universal moral principles.**

Failure to protect the national interests of the state will result in its destruction.

Kenneth Waltz, Political Scientist, 1984 (NEOLIBERALISM AND ITS CRITICS, ed. Keohane, pp. 117-8)

A self-help system is one in which those who do not help themselves, or who do so less effectively than others, will suffer. Fear of such unwanted consequences stimulates states to behave in ways that tend toward the creation of balances of power. Notice that the theory requires no assumptions of rationality or of constancy of will on the part of all the actors. The theory says simply that if some do relatively well, others will emulate them or fall by the wayside. Obviously, the system won't work won't work if all states lose interest in preserving themselves. It will, however, continue to work if some states do, while others do not, choose to lose their political identities, say, through amalgamation. Nor need it be assured that all of the competing states are striving relentlessly to increase their power. **The possibility that force may be used by some states to weaken or destroy others does, however, make it difficult for them to break out of the competitive system.**

Negative teams could mount an even greater defense of acting in the national interest, but this is a good start.

Sovereignty

As sovereign nations, states have the right to control their own borders.

Guy S. Goodwin-Gill, August 2014, Professor Guy S. Goodwin Gill was formerly Professor of Asylum Law at the University of Amsterdam, served as a Legal Adviser in the Office of United Nations High Commissioner for Refugees (UNHCR) from 1976-1988, and was President of the Media Appeals Board of Kosovo from 2000-2003. He is the Founding Editor of the International Journal of Refugee Law and has written extensively on refugees, migration, international organizations, elections, democratization, and child soldiers. Recent publications include *The Limits of Transnational Law*, (CUP 2010), with Hélène Lambert, eds., *The Refugee in International Law*, (OUP, 2007), 3rd edn. with Jane McAdam; *Free and Fair Elections*, (Inter-Parliamentary Union, 2nd edn., 2006); *Brownlie's Documents on Human Rights*, (OUP, 2010), 6th edn., with the late Sir Ian Brownlie, QC, eds; and introductory notes to various treaties and instruments on refugees, statelessness and asylum for the 'Historic Archives' section of the [UN Audio-Visual Library of International Law](http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021). He practises as a Barrister from Blackstone Chambers, London, *The International Handbook of Refugee Protection* <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021> DOA: 9-25-15

The movement of people between states, whether refugees or 'migrants', takes place in a context in which *sovereignty* remains important, and specifically that aspect of sovereign competence which entitles the state to exercise *prima facie* exclusive jurisdiction over its territory, and to decide who among non-citizens shall be allowed to enter and remain, and who shall be refused admission and required or compelled to leave. Like every sovereign power, this competence must be exercised within and according to law, and the state's right to control the admission of non-citizens is subject to certain well-defined exceptions in favour of those in search of refuge, among others. Moreover, the state which seeks to exercise migration controls *outside* its territory, for example, through the physical interception, 'interdiction', and return of asylum seekers and forced migrants, may also be liable for actions which breach those of its international obligations which apply extra-territorially ([Goodwin-Gill 2011](#); [Moreno Lax 2011, 2012](#)).¹

Maintaining a strong system of sovereign states is important to maintaining the global order

Mohammed Ayoob, James Madison, Michigan State, INTERNATIONAL JOURNAL OF HUMAN RIGHTS, Spring 2002, p. 81

The concept of international society privileges the states as the sole repository of sovereign authority and is based on the assumption that international order can be best maintained if states respect each other's sovereignty by adhering to the norms of non-intervention in the external affairs of other states. This has been the fundamental premise on which international law, diplomacy, and international organizations, have been traditionally established. Respect for state sovereignty, therefore, forms the cornerstone of what Robert Jackson has termed the "global covenant" which, in turn, acts as the foundation for international order. Respect for this covenant is all the more important in the contemporary context where membership of the international system has expanded exponentially and the notion of common (European) culture undergirding international order has been dramatically eroded.

Social Contract/Right to Associate

Social contractarian theorists hold that individuals form societies by creating figurative contracts between members of a given society. These contracts create certain opportunities and obligations for members of

the given society, but those obligations do not extend beyond the members of that society. Since refugees exist outside that society, our obligations are not bound by any ethical or political contract.

Philosopher Christopher Wellman takes this a step farther, arguing that we have the freedom to associate with who we want and therefore have no obligations to refugees.

Christopher Heath Wellman, professor of philosophy, University of St. Louis, 2008, Immigration and the Freedom of Association, Published in *Ethics*, October,
<http://philosophyfaculty.ucsd.edu/faculty/rarneson/phil267fa12/Immigration%20Proofs.pdf> DOA: 9-30-15

In this article I appeal to freedom of association to defend a state's right to control immigration over its territorial borders. Without denying that those of us in wealthy societies may have extremely demanding duties of global distributive justice, I ultimately reach the stark conclusion that every legitimate state has the right to close its doors to all potential immigrants, even refugees desperately seeking asylum from incompetent or corrupt political regimes that are either unable or unwilling to protect their citizens' basic moral rights.

States, via sovereign right and supported by social contract theory, have the absolute right to control membership in their own state

Christopher Heath Wellman, professor of philosophy, University of St. Louis, 2008, Immigration and the Freedom of Association, Published in *Ethics*, October,
<http://philosophyfaculty.ucsd.edu/faculty/rarneson/phil267fa12/Immigration%20Proofs.pdf> DOA: 9-30-15

What is more, for several reasons it seems clear that control over membership in one's state is extremely important. To see this, think about why people might care about the membership rules for their golf club. It is tempting to think that club members would be irrational to care about who else are (or could become) members; after all, they are not forced to actually play golf with those members they dislike. But this perspective misses something important. Members of golf clubs typically care about the membership rules because they care about how the club is organized and the new members have a say in how the club is organized. Some members might want to dramatically increase the number of members, for instance, because the increased numbers will mean that each individual is required to pay less. Other members might oppose expanding the membership because of concerns about the difficulty of securing desirable tee times, the wear and tear on the course, and the increased time it takes to play a round if there are more people on the course at any given time.

And if there is nothing mysterious about people caring about who are (or could become) members of their golf clubs, there is certainly nothing irrational about people being heavily invested in their country's immigration policy. Again, to note the lack of intimacy among compatriots is to miss an important part of the story. It is no good to tell citizens that they need not personally (let alone intimately) associate with any fellow citizens they happen to dislike because fellow citizens nonetheless remain political associates; the country's course will be charted by the members of this civic association. The point is that people rightly care very deeply about their countries, and, as a consequence, they rightly care about those policies which will effect how these political communities evolve. And since a country's immigration policy affects who will share in controlling the country's future, it is a matter of considerable importance.

The right to exclude immigrants is deontological, turning any affirmative morality claim.

Christopher Heath Wellman, professor of philosophy, University of St. Louis, 2008, Immigration and the Freedom of Association, Published in *Ethics*, October,
<http://philosophyfaculty.ucsd.edu/faculty/rarneson/phil267fa12/Immigration%20Proofs.pdf> DOA: 9-30-15

Before turning to the case against political freedom of association, I would like to highlight two features of the view I am advancing here: (1) I defend a deontological right to limit immigration rather than a consequential account of what would be best, and (2) my view might be dubbed “universalist” rather than “particularist” insofar as it neither suggests nor implies that only distinct nations, cultures, or other “communities of character” are entitled to limit immigration. Consider each of these points in turn.

First, let me stress that I seek to defend a deontological conclusion about how legitimate states are entitled to act, not a consequential prescription for how to maximize happiness or a practical recipe for how states might best promote their own interests. I understand that groups can have weighty reasons to limit immigration in certain circumstances, but what the best policy would be for any given state’s constituents (and/ or for those foreigners affected) will presumably depend upon a variety of empirical matters, matters about which others are more knowledgeable. Thus, I doubt that any one-size-fits-all immigration policy exists, and I, qua philosopher, have no special qualification to comment on the empirical information that would be relevant to fashioning the best policy for any given state. However, if anything, I am personally inclined toward more open borders. My parents were born and raised in different countries, so I would not even be here to write this article if people were not free to cross political borders. What is more, my family and I have profited enormously from having lived and worked in several different countries, so it should come as no surprise that I believe that, just as few individuals flourish in personal isolation, open borders are typically (and within limits) best for political communities and their constituents. Still, just as one might defend the right to divorce without believing that many couples should in fact separate, I defend a legitimate state’s right to control its borders without suggesting that strict limits on immigration would necessarily maximize the interests of either the state’s constituents or humanity as a whole. My aim is merely to show that whatever deontological reasons there are to respect freedom of association count in favor of allowing political communities to set their own immigration policy.

Terrorism

One concrete reason why countries need to prioritize the protection of their borders is that accepting more refugees increases the risk that terrorists will enter Western countries.

Widespread acceptance of refugees in many countries in Europe places the continent at-risk of terrorism.

Fox News, July 27, 2016 Europe terror attacks spotlight security failings amid refugee crisis,
<http://www.foxnews.com/world/2016/07/27/europe-terror-attacks-spotlight-security-failings-amid-refugee-crisis.html> DOA: 8-8-16

The European policy Germans call “Willkommenskultur” -- the enthusiastic embrace of refugees from Syria and other Muslim-majority countries -- has morphed into a summer of terror. Loose screening of refugees, lax counter-terrorism policies and lenient treatment of those with terrorist links or sympathies has led to a spate of attacks by terrorists already flagged by authorities. Tuesday’s attack in France, where a jihadist already under house arrest slit a priest’s throat, came

just two days after a suicide bombing in Germany by a terrorist who a medical expert had predicted would “commit suicide in a spectacular fashion.” Critics say such cases are piling up. “It has happened in France and the UK -- people who were on the radar and eventually were caught up in plots,” said Davis Lewin, deputy director at the Henry Jackson Society, a UK based counter-terrorism think tank. “It will inevitably happen again.” Sunday’s suicide bombing in the southern city of Ansbach was the first attributed to ISIS to take place in Germany. Mohammed Daleel injured 15 people when he detonated a bomb outside a concert, killing himself. The attack has Germans asking why a Syrian refugee known as highly dangerous to the authorities as early as 2015 was still in the country. Daleel “can be trusted that he will commit suicide in a spectacular fashion,” a medical report stated. His digital trail showed “constant contact with a soldier of the Islamic State,” according to German investigators. It is unclear why the authorities did not arrest him, but they did move to deport him earlier this year. The effort was blocked by German Left Party MP Harald Weinberg, who demanded that Daleel get medical care for a knee injury. “After everything I knew at that time, I would decide the same today,” Weinberg told the newspaper BILD. One of the self-described “soldiers of ISIS” in Tuesday’s attack in the Normandy region of France, Adel Kermiche, had been arrested in 2015 after twice trying to enter Syria through Turkey to join ISIS. Upon his return to France, he was placed under police supervision and wore an electronic tag to monitor his movements. The device was turned off for four hours each day, and it was in that window that he and Abdel Malik killed an 85-year-old priest during Mass. “What was France thinking about when they turned off his electronic bracelet for a couple of hours a day?” Lewin said. But, he added, “the threat is severe and the intelligence services do not have the resources to follow up everyone. And they have to make decisions who to follow.” Europe must invest heavily in security services, implement much stricter controls on immigration and clamp down on radical ideology, he said. “It is much too easy to propagate radical Islamic views,” Lewin said. “Politicians need to clamp down on the ideology.” France has been the target of the most devastating ISIS attacks, including the Nov. 13, 2015, coordinated attacks in Paris and the July 14 attack in Nice. More than 200 people died in the two attacks. Germany is reeling from a fresh wave of terrorism this month, including the Ansbach attack and another July 18, in which Mohammed Riyad took an ax to passengers on a Bavarian train, yelling “Alahu Akbar” as he injured five. Riyad claimed to be from Afghanistan, but authorities now believe he may be from Pakistan, and lied to have a better chance at asylum. There are currently 59 ongoing investigations of refugees because of the “suspicion that they are involved in terrorist structures,” according to Germany’s interior ministry.

Even Germany’s Merkel, who has been supportive of Germany accepting large numbers of refugees, admits this is a problem.

Reuters, July 11, 2016, “Terrorists” smuggled into Europe with refugees, Merkel says, <http://www.reuters.com/article/us-europe-migrants-extremists-merkel-idUSKCN0ZR1AH> DOA: 8-8-16

Militant groups smuggled some of their members into Europe in the wave of migrants who have fled from Syria, German Chancellor Angela said on Monday. “In part, the refugee flow was even used to smuggle terrorists,” Merkel told a rally of her Christian Democrats in eastern Germany

It also places the US at-risk.

Kristine Wong, 4-16-16, The Hill, State seeks to pick up pace on bringing Syrian refugees to the US, <http://thehill.com/policy/defense/276441-state-seeks-to-pick-up-pace-on-bringing-syrian-refugees-to-us> DOA: 4-21-16

The State Department is hoping to bring an average of nearly 1,500 Syrian refugees to the United States per month in order to meet President Obama's target of settling 10,000 refugees in the country by September. About 1,300 refugees have already been placed in the United States since Obama first made the commitment in September. That's far fewer than those taken in by European countries such as Germany, who has dealt with an unprecedented wave of migrants fleeing Syria's civil war, as well as the Islamic State in Iraq and Syria. Yet the settlement has provoked a significant backlash, mostly from Republicans, who argue it puts the U.S. at risk from terrorism. "It's clear that ISIS wants to, has planned on attempting to infiltrate refugee populations. This is a problem. If one person gets through who is planning a terrorist attack in our country, that's a problem," House Speaker **Paul Ryan**, who recently returned from a trip to the region, said Thursday. **"The administration — whether it's Homeland Security or the FBI, cannot tell us that they can adequately screen people.** There isn't really a Syria to talk to on that end of the equation to vet people, so it is a problem," **Ryan told reporters. The State Department says it has fallen behind schedule in meeting Obama's goal partly due to a lack of personnel available to interview refugees.** It is now doing a "surge operation" in Amman, Jordan, that is designed to process the rest of the Syrian refugees in as little as three months and leave them enough time to get to the U.S. before September. **The State Department has devoted more staff in Amman to focus on processing Syrian refugees, as well as hired new employees, which the department says it needed anyway.** "By putting more officers in one place we can conduct more interviews. **Partly we have a backlog because we don't have enough officers to interview people,**" Larry Bartlett, the State Department's director of the Office of Refugee Admissions, told The Hill in a recent interview. "So part of it is a little bit of shifting. We've also done some new hiring, and it was hiring that was timely. Those were people we needed anyway but they came onboard in time for this surge operation," said Bartlett. He did not say how many staff were added in Amman. The United Nations High Commission for Refugees (UNHCR) has prioritized sending more refugees to the U.S. than other countries, he said **So far, about 9,500 Syrians have been interviewed in Amman since February 1, and 12,000 interviews should be completed by April 28,** according to a State Department spokesperson. Republican **critics argue that speeding up the process to as little as three months will make it easier for terrorists to slip through.**

Vetting procedures are not likely to be effective at reducing terrorism.

Abraham H. Miller is an emeritus professor of political science, University of Cincinnati, and a senior fellow with the Salomon Center for American Jewish Thought, 4-14-16, The American Spectator, Obama's Surge – It's Not Against Jihadis, http://spectator.org/66038_obamas-surge-its-not-against-jihadis/

Of course, maybe that doesn't make a difference since the **vetting was a hoax** anyway. **Our security agencies have already noted that it is impossible to vet people from a failed state.** It is, however, possible to go to the Department of State website and be reassured that our vetting processes are as rigorous as they are extensive. **Just ask the victims of the San Bernardino massacre how extensive our vetting processes are.** San Bernardino butcher Tashfeen Malik was given a visa in just weeks despite giving a non-existent address in Pakistan. The approval was just plain sloppy on a number of issues. If you live in one of the 82 preferred communities, the normal, expected number for absorption is a floor of 100. Since Obama's focus on an additional 10,000, preferred communities have been asked to absorb additional refugees. My local refugee contractor denies that, which leads me to believe that nothing about refugee resettlement is to be believed until it is denied. Obama started with 10,000, but John Kerry went

to Congress and spoke of our taking 30,000 refugees. And then there is the omnibus agreement, as Breitbart notes, that funds 300,000 visas to migrants from Muslim countries in the next year alone. As anyone remotely acquainted with immigration policy knows, visa allocations are generally interchangeable across categories. Besides, overstaying a legitimate visa is a common way to stay in this country as an illegal immigrant. **In Paris, one of the jihadists shot dead at the concert venue was in possession of a fake Syrian passport,** prompting a debate whether refugees or more commonly Muslims born in Europe were more likely to be responsible for acts of violence on European soil. So far, the numbers seem to stack up in favor of those born in Europe. This seems to suggest that **we have only to await the maturation of the children of refugees before we experience the violence visited upon Europe.**

Minimizing the Relevance of Humanitarian Claims

At face value, it is difficult to minimize the relevance of humanitarian claims. The size of the humanitarian emergency is simply enormous. But even with that conceded (there is no point in arguing it), there are three strong arguments the Negative can make.

One, the Negative isn't making a claim that humanitarian assistance should not be provided. There is humanitarian assistance now and more should certainly be provided by governments, international organizations, and private actors. The Negative supports that. The Negative simply does not support the claim that providing it *should outweigh a state's right to control its borders*. And any arguments the Pro makes that we can afford to provide more just means that we can do more *without undermining the control of borders*.

Three, the Negative can argue that a state's rights to control its own borders should be prioritized, just *not in an unlimited manner*. Most of the Affirmative's, "National Interest Bad" evidence will be in the context of treating it as an absolute.

Allen Buchanan, political philosopher at Duke, 2003 Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law, Kindle Edition, page/location number at end of card.

By arguing that the state's posture toward international law should be shaped by a commitment to protecting the basic human rights of all persons, **I am plainly rejecting the dominant view in international relations, namely, that state policy should or at least may exclusively pursue "national interest."** According to the conception of justice I lay out in Part One, **the state is not merely an instrument for advancing the interests of its own citizens; it is also a resource for helping to ensure that all persons have access to institutions that protect their basic human rights. This is not to deny that state leaders are obligated to accord priority to the interests of their own citizens, of course, but it is to insist that this priority is not without limits.**

A *limited* prioritization of the national interest is certainly justified.

Allen Buchanan, political philosopher at Duke, 2003 Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law, Kindle Edition, page/location number at end of card

Of course, rejecting the discretionary association model does not entail viewing the state simply as a resource for fulfilling the Natural Duty of Justice. Instead, the same reasons noted in Chapter 1 in favor of having a system of states as opposed to a single world-state speak in favor of constraining the use of state resources for the pursuit of global justice by recognizing that **the state's resources are to be used first and foremost, though not exclusively, to serve the interests of its own citizens. And there may be a deeper reason why the citizens of a state may rightly assume that their well-being, at least up to a point of reasonable sufficiency, ought to be a priority for their state: It may turn out, as many moral theorists have argued, that any acceptable view of morality will allow a *limited priority* for our own interests.** In other words, **the position I am advocating-that we reject the discretionary association view of the state as being incompatible with the Natural Duty of Justice-requires only what Samuel Scheffler has called a moderate cosmopolitanism about justice.**¹³ According to moderate cosmopolitanism, we do have moral obligations beyond our own borders, **but these are seen as being compatible with giving special priority to the needs and interests of our fellow citizens.** The view is cosmopolitan because it recognizes genuine moral obligations to those outside our own polity, and that for this reason the special priority given to our own polity cannot be absolute. It is moderate because it rejects the extreme cosmopolitan position that all of our particular obligations, including our obligations to our fellow citizens, are strictly derivative upon our obligations to humanity at large. Allen Buchanan. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford Political Theory) (Kindle Locations 1318-1321). Kindle Edition.

Four, humanitarian claims are minimized by other considerations that will be discussed below.

Answering International Law Claims

Although the affirmative international law arguments are strong, there are some limitations to the claim that can be used as negative answers.

One, no international conventions define asylum and it is up to states to apply it.

Guy S. Goodwin-Gill, August 2014, Professor Guy S. Goodwin Gill was formerly Professor of Asylum Law at the University of Amsterdam, served as a Legal Adviser in the Office of United Nations High Commissioner for Refugees (UNHCR) from 1976-1988, and was President of the Media Appeals Board of Kosovo from 2000-2003. He is the Founding Editor of the *International Journal of Refugee Law* and has written extensively on refugees, migration, international organizations, elections, democratization, and child soldiers. Recent publications include *The Limits of Transnational Law*, (CUP 2010), with Hélène Lambert, eds., *The Refugee in International Law*, (OUP, 2007), 3rd edn. with Jane McAdam; *Free and Fair Elections*, (Inter-Parliamentary Union, 2nd edn., 2006); *Brownlie's Documents on Human Rights*, (OUP, 2010), 6th edn., with the late Sir Ian Brownlie, QC, eds; and introductory notes to various treaties and instruments on refugees, statelessness and asylum for the 'Historic Archives' section of the [UN Audio-Visual Library of International Law](http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021). He practises as a Barrister from Blackstone Chambers, London, *The International Handbook of Refugee Protection* <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021> DOA: 9-25-15

No international instrument defines 'asylum'. Article 14 of the 1948 Universal Declaration of Human Rights simply says that 'Everyone has the right to seek and to enjoy in other countries asylum from persecution.' Article 1 of the 1967 UN Declaration on Territorial Asylum notes that

‘Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights...shall be respected by all other States.’ But it is for ‘the State granting asylum to evaluate the grounds for the grant of asylum’ ([Goodwin-Gill 2012](#)).

Neither instrument creates any binding obligations for states. Indeed, both texts suggest a considerable margin of appreciation with respect to who is granted asylum and what exactly this means. In practice, however, states’ freedom of action is significantly influenced by ‘external’ constraints, which follow from an internationally recognized refugee definition, the application of the principle of *non-refoulement*, and the overall impact of human rights law. Regional instruments and doctrine have also had an important impact on the ‘asylum question’. Again, the 1969 OAU Convention was among the first to give a measure of normative content to the discretionary competence of states to grant asylum (Article II).¹⁷ Within the EU, the 2000 Charter of Fundamental Rights declares expressly that ‘the right to asylum shall be guaranteed...’, and that no one may be removed to a state where he or she faces a serious risk of the death penalty, torture, or other inhuman or degrading treatment or punishment (Articles 18, 19). The Qualification Directive provides in turn that member states ‘shall grant’ refugee status to those who satisfy the relevant criteria (Article 13; see also Article 8 of the Temporary Protection Directive) ([Gil-Bazo 2008](#)).

Two, states are not obligated to left refugees resettle locally

Guy S. Goodwin-Gill, August 2014, Professor Guy S. Goodwin Gill was formerly Professor of Asylum Law at the University of Amsterdam, served as a Legal Adviser in the Office of United Nations High Commissioner for Refugees (UNHCR) from 1976-1988, and was President of the Media Appeals Board of Kosovo from 2000-2003. He is the Founding Editor of the International Journal of Refugee Law and has written extensively on refugees, migration, international organizations, elections, democratization, and child soldiers. Recent publications include *The Limits of Transnational Law*, (CUP 2010), with Hélène Lambert, eds., *The Refugee in International Law*, (OUP, 2007), 3rd edn. with Jane McAdam; *Free and Fair Elections*, (Inter-Parliamentary Union, 2nd edn., 2006); *Brownlie’s Documents on Human Rights*, (OUP, 2010), 6th edn., with the late Sir Ian Brownlie, QC, eds; and introductory notes to various treaties and instruments on refugees, statelessness and asylum for the ‘Historic Archives’ section of the [UN Audio-Visual Library of International Law](#). He practises as a Barrister from Blackstone Chambers, London, *The International Handbook of Refugee Protection* <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021> DOA: 9-25-15

Local integration, that is, residence and acceptance into the local community where the refugee first arrives, is the practical realization of asylum. States may be bound to the refugee definition and bound to observe the principle of *non-refoulement*, but they retain discretion as to whether to allow a refugee to settle locally; this point was underlined by the UNHCR Executive Committee in its 2005 Conclusion on local integration,²⁰ although with little if any regard or reference to states’ other obligations under international law which govern the treatment of non-nationals on state territory.

Answering Moral Claims

Negative teams need to make strong arguments against the Affirmative claim that there is a moral obligation to provide a safe haven for refugees.

One, as a *priority* matter, States have an obligation to protect the rights of their own citizens, not the rights of other citizens.

Michael Blake, Philosopher, 2003, *Philosophy & Public Affairs*, Volume 41, Issue 2, Immigration, Jurisdiction, and Exclusion, pages 103–130, Spring 2013

What I want to emphasize, in this context, is that, while the first demand is universal, the second two are emphatically local. The state is under a universal demand to avoid violating human rights, that is, whether the violation occurs within its jurisdiction or not. But the state is under no correspondingly universal obligation to protect or fulfill the rights of humans qua humans. The state is instead obliged to protect and fulfill the rights of only some humans, namely, those who happen to be present within its territorial jurisdiction. This limitation does not seem by itself to run up against the liberal demand for the equality of persons; it is instead the means by which that equality is to be made operational in a world of territorial states. Thus, an assault in France upon a French citizen is undoubtedly a violation of human rights, and is undoubtedly to be regretted by all states, French or otherwise. But the United States is not obliged to devote its institutional capacity to the vindication of the rights of the French citizen to be free from assault. (Indeed, it would likely strike the French government as rather problematic if the Americans began to build institutions devoted to the punishment of French rights-violators.) The United States is able to devote its own institutional capacity to the protection and fulfillment of the rights of those present on American soil. It does this not because it values French lives less than American lives; after all, it would—if it were just—devote just as much time and effort to an assault upon a French tourist as to an assault upon an American citizen. It is able to devote its own institutional capacity in this way because of the jurisdictional limitation of the United States government, which is authorized and obligated to protect and fulfill human rights only within a particular part of the world's surface.¹⁸ Those who participate in the American system, further, are authorized and obligated to help support this system's ability to protect and fulfill human rights in this way. If we believe—as I do—that we have as individuals a general duty to uphold just institutions, then those who live and work within the jurisdiction of the United States have an obligation that is both legal and moral to protect and fulfill the human rights of their (jurisdictional) neighbors.¹⁹

Two, governments do not have an *obligation* to protect the rights of others who are not its citizens.

Michael Blake, Philosopher, 2003, *Philosophy & Public Affairs*, Volume 41, Issue 2, Immigration, Jurisdiction, and Exclusion, pages 103–130, Spring 2013

What I want to emphasize, in this context, is that, while the first demand is universal, the second two are emphatically local. **The state is under a universal demand to avoid violating human rights**, that is, whether the violation occurs within its jurisdiction or not. **But the state is under no correspondingly universal obligation to protect or fulfill the rights of humans qua humans.** The state is instead obliged to protect and fulfill the rights of only some humans, namely, those who happen to be present within its territorial jurisdiction. This limitation does not seem by itself to run up against the liberal demand for the equality of persons; it is instead the means by which that equality is to be made operational in a world of territorial states. Thus, **an assault in France upon a French citizen is undoubtedly a violation of human rights**, and is undoubtedly to be regretted by all states, French or otherwise. **But the United States is not obliged to devote its institutional capacity to the vindication of the rights of the French citizen to be free from assault.** (Indeed, it would likely strike the French government as rather problematic if the Americans began to build institutions devoted to the punishment of French

rights-violators.) **The United States is able to devote its own institutional capacity to the protection and fulfillment of the rights of those present on American soil. It does this not because it values French lives less than American lives;** after all, it would—if it were just—devote just as much time and effort to an assault upon a French tourist as to an assault upon an American citizen. **It is able to devote its own institutional capacity in this way because of the jurisdictional limitation of the United States government, which is authorized and obligated to protect and fulfill human rights only within a particular part of the world's surface.**¹⁸ Those who participate in the American system, further, are authorized and obligated to help support this system's ability to protect and fulfill human rights in this way. If we believe—as I do—that we have as individuals a general duty to uphold just institutions, then those who live and work within the jurisdiction of the United States have an obligation that is both legal and moral to protect and fulfill the human rights of their (jurisdictional) neighbors.¹⁹

The only *moral* responsibility we have in foreign policy is to *avoid harm*.

George Kennan, Director of the State Department's Policy Planning Staff, Ambassador to the USSR and Yugoslavia, Professor at the Institute of Advanced Studies 1986 Foreign Affairs Winter 85-86, <http://faculty.arts.ubc.ca/price/373/kennan.pdf> DOA: 9-30-15

In a less than perfect world, where the ideal so obviously lies beyond human reach, it is natural that the avoidance of the worst should often be a more practical undertaking than the achievement of the best, and that some of the strongest imperatives of moral conduct should be ones of a negative rather than a positive nature. The strictures of the Ten Commandments are perhaps the best illustration of this state of affairs. This being the case, it is not surprising that some of the most significant possibilities for the observance of moral considerations in American foreign policy relate to the avoidance of actions that have a negative moral significance, rather than to those from which positive results are to be expected. Many of these possibilities lie in the intuitive qualities of diplomacy -- such things as the methodology, manners, style, restraint and elevation of diplomatic discourse -- and they can be illustrated only on the basis of a multitude of minor practical examples, for which this article is not the place. There are, however, two negative considerations that deserve mention here. The first of these relates to the avoidance of what might be called the histrionics of moralism at the expense of its substance. By that is meant the projection of attitudes, poses and rhetoric that cause us to appear noble and altruistic in the mirror of our own vanity but lack substance when related to the realities of international life. It is a sad feature of the human predicament, in personal as in public life, that whenever one has the agreeable sensation of being impressively moral, one probably is not. What one does without self-consciousness or self-admiration, as a matter of duty or common decency, is apt to be closer to the real thing.

This is particularly true since we can't precisely determine how and to what extent states should sacrifice their own interests in order to achieve a moral good

Luke William Hunt, 2014, Human Rights Quarterly, The Global Ethics of Helping and Harming, v. 36(4), pp. 798-819 (Luke William Hunt is on fellowship at the University of Virginia, where he is pursuing a Ph.D. focused on philosophy of law and political philosophy. Prior to beginning his doctoral studies, he completed law school and was a law clerk for Judge James P. Jones, United States District Court for the Western District of Virginia. He then worked at the US Department of Justice for six years.), p. 819

Indeed, the examples examined suggest that strict compliance with negative duties could be quite demanding for states. The larger point is this: Until there is a more principled account of how and to what extent a state must sacrifice its national interest in favor of positive duties to aid other states, compliance with negative duties is of central concern. The question of our moral duty to the global poor, then, may ultimately be more about the ways in which we are obligated to refrain from acting.

Three, Levinasian arguments about “infinite responsibility” are nonsense because we can never maintain it.

Dr John Fitzsimmons and Dr Wally Woods, Faculty of Arts, Health and Sciences at Central Queensland University, “Chapter 3 - Herman Melville's "Bartleby, the Scrivener" and "Benito Cerino," 2000, <http://www.ahs.cqu.edu.au/humanities/litstud/52283/schedule/chap3/p5.htm>, accessed 11/8/02

Anderson believes that the lawyer's charity seems to go beyond what most would have given. This raises a question, he believes, which underpins the story: is it possible to perform acts of altruism without, finally, having regard to self-interest? What this suggests is that Christ's commandments reflect an ideal, one that the rest of us find impossible to live up to because, at a certain point, we all turn back to self-preservation (that is, unlike Christ who went "all the way" and gave up his life). The contrast between capitalism (Wall Street being one of its dominant symbols) with its self-interest, and the Christ-like Bartleby could not, Anderson argues, be stronger. He concludes that the "divine-logos," which Bartleby represents, shows itself as an impossible practice within the confines of "institutionalised self-interest". Or to put it another way, if we are our brother's keeper, Bartleby, in demanding to be kept without offering anything in return, is so exasperating that even the apparently charitable lawyer gives in and moves out when Bartleby refuses to quit his offices.

Sixth, arguments about the importance of helping refugees do not apply when there are enormous numbers of refugees.

Michael Walzer, philosopher, 2008, *Spheres Of Justice: A Defense Of Pluralism And Equality*, Kindle Edition, p. 50

Since ideological (far more than ethnic) affinity is a matter of mutual recognition, there is a lot of room here for political choice— and thus, for exclusion as well as admission. Hence it might be said that my argument doesn't reach to the desperation of the refugee. Nor does it suggest any way of dealing with the vast numbers of refugees generated by twentieth-century politics. On the one hand, everyone must have a place to live, and a place where a reasonably secure life is possible. On the other hand, this is not a right that can be enforced against particular host states. (The right can't be enforced in practice until there is an international authority capable of enforcing it; and were there such an authority, it would certainly do better to intervene against the states whose brutal policies had driven their own citizens into exile, and so enable them all to go home.) Walzer, Michael (2008-08-05). *Spheres Of Justice: A Defense Of Pluralism And Equality* (p. 50). Basic Books. Kindle Edition.

Arguing Against Prioritizing Morality in Foreign Policy

There are a number of arguments Negative teams should make against prioritizing morality in foreign policy.

First, adopting any strong ethical code in foreign policy is dangerous

Didier Pollefeyt, Professor of Moral Theology, Katholieke Universiteit, 1999, *Ethics After the Holocaust*, p. 37

Second, in an important way Levinas's thought leads towards a reduction of the Jewish religion to an ethical religion. Religion is threatened in that its concerns can become exclusively a matter of ethics, that is, doing what is good. But what if the person fails, if courage falls short, and one falls into sin? An ethical God can only judge. Here the danger and terror of ethics arises. The paradox is that Nazism could also be interpreted along these lines, as becomes clear in the thought of Peter Haas. Nazism seems to be founded on a definite, ruthless (indeed perverted) "ethical" code. Nazism was in all possible respects merciless. Whoever did not comply with its "ethical" demands inevitably "deserved" to be eliminated. Of course, Levinas's ethics and Nazi ethics are fundamentally different (see my contribution to this volume), precisely because Levinas's ethics is centered on openness and Nazi ethics on closedness. But at the same time, Levinas's ethics should also be questioned as to its possibility of becoming fanatic in confrontation with evildoers. We must therefore also put forth the question: "What comes after ethics?" The Judaeo-Christian tradition is also a tradition of mercy. Ethics can hereby be saved from its mercilessness. A person's existence can never be completely reduced to one moment. One is always more than what one has done. For ethics after Auschwitz, however, one of the most pressing questions is whether there are situations where humanity has done such great violence that we find ourselves in the ethical impossibility of forgiveness. In the case of genocide one can without the least doubt speak of him as pardonable." If not, a forgiveness that is too easily granted leads once again to a trivialization of ethics. The philosophy of Levinas, in other words, should be an occasion that initiates reflection on the relationship between ethics and forgiveness.

Moralizing has produced disastrous wars in the past.

William Pfaff, syndicated columnist, *International Herald Tribune*, FOREIGN AFFAIRS, January/February 2001, p.226-7

Wilsonian sentimentality has led to disastrous consequences over the past 80 years, yet these fiascoes seem to have left no trace on the minds of Wilson's modern followers. His naivete about universal national self-determination contributed to the conditions in central and eastern Europe that, in the 1930s and 1940s, invited Hitler's intervention. His influence on Franklin Roosevelt led the latter to oppose Winston Churchill's efforts to use "Power politics" in central Europe to secure it from postwar Soviet control. Wilson's legacy was also responsible for Roosevelt's belief that a new League, the United Nations, could resolve postwar geopolitical problems. Even U.S. policy in the Vietnam War was a confused amalgam of anticommunism and Wilsonian sentimentality: Lyndon Johnson justified his foreign policy as a means to give others what they "want for themselves -liberty, justice, dignity, a better life for all."

And remember that was is what has caused the refugee crisis in the first place!

Second, people don't elect their leaders to make value judgments – there's no consensus about values in America (or any country) and promoting them abroad is divisive and is undemocratic.

Robert Kagan, Professor of History and Classics – Yale 1983 Washington Quarterly v.6 n.1, p. 138

Elected officials of a representative republican government, however, have no such right. While always professing a general morality, they do not run for office on the basis of a specific, declared hierarchy of moral values and judgments, but rather, at best, on a stated notion of the national interest. Certainly none has ever run on a program of subordinating the security and interests of the country to any particular view of the morality of foreign governments. Yet such a program is implicit in any policy that is shaped by the internal behavior of foreign nations. Such a policy is not only at odds with a correct understanding of representative government and impossible to follow consistently and honestly, but it would also be dangerously divisive. However much Americans may disagree on what is in their national interest, they differ far more strongly and deeply on the application of particular views of morality to foreign policy. We are a people of varied origins with vestigial attachments to the lands of our heritage. During World War I Americans of German and Irish descent felt very differently about the morality of the British blockade and of German submarine warfare than did Americans of British origin. Only attacks on American ships created a consensus that made war against Germany possible. On the eve of World War II many German-Americans and Italo-Americans were of a decidedly different view than were others of the need to fight against the wickedness of Nazi Germany and fascist Italy alongside the wickedness of communist Russia, nor were ethnic differences the only deep and important ones. Only Japan's attack on their country rallied all Americans to the common cause. Although Wilson and then Roosevelt had no doubt where virtue and iniquity lay, neither could have brought his nation into war on that basis; both had to wait until the nation's security and vital interests were obviously at stake. Even to try to do otherwise would have rent the nation into bitterly hostile factions and done it great harm. When Americans vote for presidents and members of Congress they do not think their votes give the government the right to make moral judgments for them -- only prudential ones, especially when the possibility of war exists. The losing 45 percent or more of the electorate can tolerate the winning party making practical decisions on their behalf, but not far-ranging moral ones. In a disparate, plural society moralism in foreign affairs divides, while enlightened self-interest unites.

Arguing Against Cosmopolitanism

Some Affirmative debaters may argue for a greater cosmopolitan ethic to look out for international interests, but there are some problems with this –

One, although embracing immigration appears to embrace a cosmopolitan ethic, including many different immigrant groups is likely to create a number of internal conflicts, not a cosmopolitan ethic.

Susan Motomura, Professor of Law at UCLA, 2006, *Americans in Waiting: The lost Story of Immigration and Citizenship in the United States*, p. 13-14

This entire inquiry reflects my hope that national citizenship in the United States can be a viable context for a sense of belonging and for participation in civic, political, social, and economic life that is inclusive and respectful of all individuals. There are certainly other models of belonging, including transnational models that reflect a sense of belonging to more than one nation, and postnational models that think beyond national citizenship entirely. But the apparent

inclusiveness of these other approaches to belonging can mask other modes of exclusion. If national citizenship matters less, ties of religion, race, class, and other groupings that are less cosmopolitan or democratic than national citizenship will matter even more than they do already. The result may be a world without national walls but also a world of a “thousand petty fortresses,” as political philosopher Michael Walzer once put it. Making national citizenship into an inclusive vehicle is not easy. It requires a welcome of immigrants—crystallized in the idea of Americans in waiting—that has faded from law and policy in the United States. Although this idea has weakened and is in danger of weakening further, it should be restored to prominent influence because it captures this basic truth: a sensible we/they line must reflect the understanding that many of them will become part of us. This understanding was the conceptual engine for integrating generations of immigrants—mostly those from Europe. With much of this understanding gone, we should not be surprised if more recent waves of immigrants, especially immigrants of color, seem more reluctant to cross the we/they line into American society. Recovering the lost story of immigrants as Americans in waiting is thus crucial not only to giving immigrants their due, but also to recovering the vision of our national future that is reflected in the phrase “a nation of immigrants”—that America is made up of immigrants, but still one nation.

Two, acting to promote a cosmopolitan ethic and global human rights is likely to trigger conflict and war, not peace

Joseph S. Nye, 1986, Director, Center for Science and International Affairs, Kennedy School of Government, Harvard University, *Nuclear Ethics*, p. 33

While the cosmopolitan approach has the virtue of accepting transnational realities and avoids the sanctification of the nation-state, **an unsophisticated cosmopolitanism also has serious drawbacks**. First, if morality is about choice, then to underestimate the significance of states and boundaries is to fail to take into account the main features of the real setting in which choices must be made. To pursue individual justice at the cost of survival or to launch human rights crusades that cannot hope to be fulfilled, yet interfere with prudential concerns about order, may lead to immoral consequences. And **if such actions**, for example the promotion of human rights in Eastern Europe, **were to lead to crises and an unintended nuclear war, the consequences might be the ultimate immorality**. Applying ethics to foreign policy is more than merely constructing philosophical arguments; it must be relevant to the international domain in which moral choice is to be exercised.

Third, the nation-state is the only check on structural violence—cosmopolitanism is unsustainable as an alternative

Pheng Cheah, Professor of Rhetoric at UC-Berkeley, 1998, “Given Culture,” *Cosmopolitics: Thinking and Feeling Beyond the Nations*, 312-314

The aporia, however, is that in the current conjuncture, nationalism cannot be transcended by cosmopolitan forms of solidarity no matter how pathological it may appear in its ineradicably oppressive moments. First, transnational networks are, in and of themselves, neither mass based nor firmly politically institutionalized. Proponents of a global civil society or an international public sphere that already exists independent of nation-states must gloss over the fact that we inhabit a decentralized political system in which global loyalty is thin, an ideal vision largely confined to activists and intellectuals.⁴³ This means that in order to be effective at the level of political institutions or the popular masses, transnational networks have to work with and through the nation-state in order

to transform it. They have to negotiate directly with the state in the hope of influencing its political morality and/or mobilize local support into popular national movements that press against the state. As Alexander Colas observes, the nation-state is both a constraining factor and an emancipatory potential in its relation to global networks. Global networks are subject to the same constraining social and historical forces that shape other social actors, but "the nation-state is not necessarily at odds with the emancipatory aspirations of cosmopolitanism... [and] cosmopolitan political action would actually involve the defense of social and political rights via the democratic nation-state."⁴⁴ Second, the necessity of the nation-state as a terminal that progressive global-local networks must pass through is especially salient in the postcolonial South, where economic poverty is the root cause of economic, social, and political oppression. Although foreign capital-led market growth and development may alleviate poverty when actively regulated by strong host governments to serve official national interests, such as in high-growth Southeast Asia, high economic growth cannot lead to social development or gender equity unless the existing inequitable sociopolitical-economic structures within these nation-states are overhauled. Indeed, high growth may provide greater legitimation to authoritarian regimes, as in the case of Singapore. In the worst-case scenario, as in some African nations, we have the development of underdevelopment that produces the Fourth World. The point is that in the absence of a world-state capable of ensuring an equitable international political and economic order, economic globalization is uneven. Instead of engendering an emancipatory cosmopolitan consciousness, globalization produces a polarized world in which bourgeois national development and industrialization in the periphery are necessarily frustrated by state adjustment to the dictates of transnational Capital. To alleviate the shortfalls of global restructuring in the South, the state needs to be an autonomous agent of economic accumulation. But the state can resist capitulation to trans-national forces only if it is transformed from a comprador regime into a popular national-state. This is why popular rearticulations of postcolonial national identity are ethically imperative and cannot be dismissed per se as statist ideologies that hinder the rise of a more equitable cosmopolitan consciousness, even though the exclusionary dimension of popular nationalism can always be manipulated by state elites and captured by official nationalism. Contemporary revivals of postcolonial nationalism that are primarily instances of negative identification in defense against neocolonial globalization should therefore be seen as weak repetitions of the earlier phase of negative identification in decolonization that initially united the people into a nation. This ambivalent necessity of postcolonial nationalism deforms the concept of cultural agency at the heart of old and new cosmopolitanisms. In Marx's version of the culture-concept of philosophical modernity, economic forces of production constitute an autotelic realm of necessity that points beyond itself to a realm of human freedom from the given—the proletarian world community—based on, but subsuming, the realm of necessity. The urgency of postcolonial nationalism in contemporary globalization, however, refutes Marx's economistic assumption that transnational forces of production necessarily lead to transnational movements that engender mass-based loyalty to a transnational body or a popular global consciousness. In his critique of orthodox Marxist cosmopolitanism, Samir Amin points out that peripheralization and the North-South conflict are the two truths of really existing capitalism. He argues that socialist revolution is not possible in the current conjuncture because "the expansion of capitalism in the periphery . . . ruins the chances of national crystallization and accentuates the fragmentation and atomization of society."⁴⁶ Consequently, he suggests that there is "no real alternative to popular national transformation in the societies of the periphery" (SM, 124) and that African and Asian popular nationalist-socialism are inheritors of the true vocation of Marxism.⁴⁷ In his vision of a polycentric world, Amin rejects the orthodox Marxist-cosmopolitanist idea of the withering away of the state because strong post-colonial states, and hence popular nationalism, are crucial to resist recompradorization (SM, 127). Put another way, postcolonial nationalism is the irreducible stuttering that the permanent threat of peripheralization introduces into the dialectic of global socialism. Therefore, contrary to neo-Marxist critiques of postcolonial nationalism such as Partha Chatterjee's and Ranajit Guha's, postcolonial nationalism is not necessarily an ideology imposed from above, a "forced resolution . . . of the contradiction between capital and the people-

nation."⁴⁸ Postcolonial nationalism is not a contradiction that we can and ought to transcend in the name of a cosmopolitanism, because it does not obey the logic of dialectical contradiction. Both medicine and poison, postcolonial nationalism is a double-edged stricture that, instead of being transcended, is made necessary by neocolonial globalization. By pulling us back from a cosmopolitical realm of freedom into nationalism as given culture, globalization problematizes the Marxist understanding of the given as something we can transcend through normative human action.

“Refugees” Defined

“Refugee” as defined by the Convention and interpreted by other authorities

William Thomas Worster, Lecturer, International Law, The Hague University of Applied Sciences, The Hague, The Netherlands; LL. M. (Adv.) in Public International Law, cum laude, Leiden University, Faculty of Law, Leiden, The Netherlands; J.D., Chicago-Kent College of Law, Illinois Institute of Technology, Chicago, Illinois; B.A., Modern European History, University of Kansas, Lawrence, Kansas, *Berkeley Journal of International Law, The Evolving Definition of the Refugee In Contemporary International Law*, p. 95-8

The beginning for any inquiry into the definition of a refugee is the Refugee Convention and its protocol.

¹ The Refugee Convention specifies that a person qualifies as a refugee if (1) the person has already been considered a refugee under prior treaty arrangements ² or (2) the person is outside the country of his nationality (or not having a nationality) and is unable or unwilling to avail himself of the protection of that country due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion. ³ The latter are commonly referred to as the "inclusion" clauses. Failure to qualify under the former does not defeat the possibility of qualification under the latter. ⁴

This Article will not address in depth the requirements of persecution or social group membership, other than to note in passing that the classification of social group membership appears to be broadening to consider cultural changes. ⁵ Also one of the most significant developments in interpretation is that some states have begun to recognize non-state actors as potential sources of persecution, rather than only states. ⁶ These two developments suggest that at least the applicable inclusion provisions within the definition of refugee appear to be interpreted dynamically with a focus on the object and purpose of the Refugee Convention, and the contemporary meaning of the treaty text

However, there are also several provisions that defeat refugee status for otherwise qualified individuals. Individuals who do qualify under (1) or (2) above may fall outside the definition if they have voluntarily re-availed themselves of the protection of their country of nationality; ⁷ have voluntarily re-acquired the nationality of their state; ⁸ have acquired a new nationality and protecting state; ⁹ or voluntarily re-established themselves in the state which they left or remained outside of owing to fear of persecution. ¹⁰ In the case of multiple nationals, the individual must qualify as a refugee as per all the states of nationality. ¹¹ This latter possibility has been interpreted so far as to refuse refugee status to persons who have the potential nationality (perhaps even ethnicity) of another state. ¹² However, this dual nationality (or residence) provision is not always strictly applied under municipal law, evidencing a purposive application of the terms of the convention. For example, North Koreans who avail themselves of South Korean nationality are considered firmly resettled in South Korea by the United States, ¹³ but if they do

not move to acquire South Korean nationality, they cannot be returned to the Korean peninsula on the theory that they could be considered South Korean nationals

Persons will also not qualify if the persecuting circumstances within the relevant state have ceased to exist under the so-called "cessation" clauses¹⁵. According to the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR), the cessation clauses are to be applied sparingly. Further, in order to invoke a cessation clause:

“Refugee” definition

Joint Agency Briefing Note (Oxfam et al), 4-14-16, A safe haven? Britain’s role in protecting people on the move, <http://policy-practice.oxfam.org.uk/publications/a-safe-haven-britains-role-in-protecting-people-on-the-move-605192> DOA: 4-21-16

The term ‘refugee’ describes people who are outside their countries of origin and are legally entitled to international protection. In this paper, we use the term to cover both refugees who meet the definition under the 1951 Convention on the Status of Refugees (‘Convention refugees’) and ‘subsidiary protection beneficiaries’ under EU and international human rights law. A Convention refugee is someone who ‘owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’ A subsidiary protection beneficiary is someone who is not a Convention refugee but who may not be returned to their countries as she faces ‘serious harm’ if returned, namely the death penalty or execution; torture, inhuman or degrading treatment; and some individual risks from indiscriminate violence in conflict. Some people may be excluded from these statuses, for instance war criminals and those who have perpetrated genocide. However, no one may be returned to face torture, inhuman or degrading treatment, as this prohibition is absolute in international human rights law. While governments often use the term ‘refugee’ to refer only to those who have been recognized as such after an asylum procedure, in international law refugee status is declaratory, so ‘refugees’ are refugees ‘as soon as they fulfil the criteria in the definition.

Most migrants to Europe meet the definition of “refugee”

Jess McHugh, 4-14-16, Violence Against Refugees in Europe, International Business Times, <http://www.ibtimes.com/violence-against-refugees-europe-tear-gas-rubber-bullets-can-be-lethal-doctors-2353046> 4-22-16

Nearly 11,000 people have been stranded along the border between Greece and Macedonia, some of them for nearly two months. Under a deal struck by the European Union and Turkey in March, all people who cross illegally from Turkey to Greece can be sent back to Turkey unless they are granted asylum. With an immigration system in place that is capable of processing a few dozen asylum applications a day, authorities have been overwhelmed and began conducting the adjudications for asylum via Skype, Naude said. Given the sheer number of people calling in at once, however, the process has continued to stall. The vast majority of all arrivals to Europe in 2015 and into 2016 have been bona fide refugees, according to the United Nations, which defines a refugee as a person fleeing violent persecution. Most asylum-

seekers want to continue on from Greece to Germany, Sweden or another Northern European country where they often already have family.

Definition of “refugee” customarily interpreted to help individuals in need

William Thomas Worster, Lecturer, International Law, The Hague University of Applied Sciences, The Hague, The Netherlands; LL. M. (Adv.) in Public International Law, cum laude, Leiden University, Faculty of Law, Leiden, The Netherlands; J.D., Chicago-Kent College of Law, Illinois Institute of Technology, Chicago, Illinois; B.A., Modern European History, University of Kansas, Lawrence, Kansas, *Berkeley Journal of International Law, The Evolving Definition of the Refugee In Contemporary International Law*, p. 99-100

This provision is usually interpreted more broadly than even the UNHCR appears to advise and refugee status usually will not be considered to have ceased as long as the situation remains one of general danger or instability. In general, however, the application of the Refugee Convention appears to be customarily interpreted dynamically with very heavy reliance on its apparent objective and purpose of protecting individuals in need.

OAU definition of refugees

William Thomas Worster, Lecturer, International Law, The Hague University of Applied Sciences, The Hague, The Netherlands; LL. M. (Adv.) in Public International Law, cum laude, Leiden University, Faculty of Law, Leiden, The Netherlands; J.D., Chicago-Kent College of Law, Illinois Institute of Technology, Chicago, Illinois; B.A., Modern European History, University of Kansas, Lawrence, Kansas, *Berkeley Journal of International Law, The Evolving Definition of the Refugee In Contemporary International Law*, p. 110-11

1. The Organization of African Unity Convention on Refugees

The 1969, the Organization of African Unity (OAU) Convention on the Specific Aspects of Refugee Problems in Africa expanded the definition of refugee in the Refugee Convention to include those fleeing "external aggression, occupation, foreign domination or events seriously disturbing public order." ⁶⁶ Due to a lack of documentation on the drafting history of the OAU Convention, there has been considerable debate about the intention of the drafters, and speculation has been unhelpful. ⁶⁷ However, note that this instrument was signed by some of the largest recipients of refugees in the world, specifically: Tanzania, Chad, Kenya, Uganda, Sudan, Democratic Republic of Congo, Zambia, Egypt, Algeria, Ethiopia, Cameroon, and Rwanda. ⁶⁸

In addition to these major recipients of refugees, the OAU Convention was also signed by Burundi, the Central African Republic, Congo, Gabon, Gambia, Ghana, Guinea, Cote d'Ivoire, Mali, Nigeria, Rwanda, and Sierra Leone, which are all in the upper half of states receiving the most numbers of refugees. States such as South Africa, ⁶⁹ Tanzania, ⁷⁰ and Uganda ⁷¹ for example, have additionally adopted the OAU definition into municipal law. The second of the states incorporating the Convention criteria, Tanzania, is the single highest recipient of refugees in Africa and the sixth highest recipient in the world.

In addition to these refugee numbers, which magnify the impact of the state practice of those

states on the formation of customary international law, also note that Mexico has adopted into state law the definition established by the OAU convention.⁷² Clearly, Mexico is under no obligation to adopt this definition from another region, but this act demonstrates a growing acceptance outside the region of the norms established by the region. In sum, the OAU Convention, although only binding states in the region under treaty law, has significantly contributed to the formation of a general rule of customary international law due to its highly representative nature of establishing the norms of treatment for a high percentage of the individuals seeking refuge in the world.

The Asian-African Legal Consultative Organization Bangkok Principles definition

William Thomas Worster, Lecturer, International Law, The Hague University of Applied Sciences, The Hague, The Netherlands; LL. M. (Adv.) in Public International Law, cum laude, Leiden University, Faculty of Law, Leiden, The Netherlands; J.D., Chicago-Kent College of Law, Illinois Institute of Technology, Chicago, Illinois; B.A., Modern European History, University of Kansas, Lawrence, Kansas, *Berkeley Journal of International Law, The Evolving Definition of the Refugee In Contemporary International Law*, p. 110-113

The Asian-African Legal Consultative Organization agreed in June 2001 on a set of principles concerning the treatment of refugees, known as the "Bangkok Principles."⁷³ Although they are not binding themselves,⁷⁴ they could nonetheless serve as a source of *opinio juris*. The Bangkok Principles define refugee essentially the same way as the Refugee Convention, but they also cover:⁷⁵

Every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁷⁶

The Bangkok Principles contain other provisions similar to those in the Refugee Convention, such as dual nationality,⁷⁷ cessation, and exclusion.⁷⁸ It specifically accepts the concept of refugee *sur place*.⁷⁹ It also provides that a "refugee" may not be expelled "to a State or Country where his life or liberty would be threatened for reasons of race, colour, nationality, ethnic origin, religion, political opinion, or membership of a particular social group."⁸⁰

A large number of specially interested states has adhered to the Bangkok Principles. This list includes the following states with large influxes of refugees: Syria, Iran, Pakistan, Jordan, Tanzania (also a party to the OAU Convention), PR China, Kenya, Saudi Arabia, Uganda, Sudan, India, Nepal, Thailand, Yemen, Zambia, Egypt, and Cameroon.⁸¹

The above states are among the top twenty-five state-recipients of refugees.⁸² Additional signatories to the Principles that fall within the top half of states receiving refugees are Bangladesh, Gambia, Ghana, Lebanon, Nigeria, Senegal, Sierra Leone, and Turkey. Of these states, Gambia, Ghana, and Nigeria are also parties to the OAU Convention. The Bangkok Principles have thus provided a very strong statement of *opinio juris* by the major recipients of world refugee flows.

Cartegena Declaration definition

William Thomas Worster, Lecturer, International Law, The Hague University of Applied Sciences, The Hague, The Netherlands; LL. M. (Adv.) in Public International Law, cum laude, Leiden University, Faculty of Law, Leiden, The Netherlands; J.D., Chicago-Kent College of Law, Illinois Institute of Technology, Chicago, Illinois; B.A., Modern European History, University of Kansas, Lawrence, Kansas, *Berkeley Journal of International Law*, The Evolving Definition of the Refugee In Contemporary International Law, p. 112-3

2. The Cartagena Declaration

The 1984 Cartagena Declaration, regarding forced migrants in Central and South America, expresses the same principles as the foregoing documents, even going so far as to explicitly refer to Article I(2) of the OAU Convention as inspiration for its definition of "refugee," although the two texts do differ.⁸³ Of the Central and South American states, Costa Rica participated in drafting the Cartagena Declaration but has only received approximately 12,000 refugees, placing it almost in the top fifty states receiving refugees. Ecuador is in the in top fifty recipient states, but did not participate in the conference. Brazil and Argentina did not participate, but have received approximately 3,000 refugees each.

Although Brazil and Ecuador neither attended the drafting conference nor signed the Cartagena Declaration, the Declaration's principles have been adopted into municipal law in both countries.⁸⁴ The Declaration, although not legally binding in itself, has been endorsed by the Organization of American States, the UNHCR Executive Committee and by states party to the universal refugee treaties.⁸⁵ Further, the Declaration has been cited in turn by the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas, which was signed by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.⁸⁶ The Brasilia Declaration "highlighted" the expansive regional definition of refugee,⁸⁷ suggesting that the participants at the Brasilia Declaration Conference understood that an expansive legal definition already existed in the region, due to the formally non-binding Cartagena Declaration and supporting instruments. Based on these participants and other factors, and notwithstanding the declaratory nature of the document, the Cartagena Declaration does further crystallize customary international law.

3. The Mercosur Rio de Janeiro Declaration

The Mercado Comun del Sur (Mercosur), along with Bolivia and Chile, has also adopted the Rio de Janeiro Declaration on the Institution of Refuge.⁸⁸ This declaration provides that "international protection should be given to individuals persecuted for reasons of race, nationality, religion, membership of a particular social group, political opinion or victims of serious and generalized violation of human rights."⁸⁹ Specifically, the states parties proclaimed that they "will study the possibility of including in the refugee definition the protection of victims of serious and generalized human rights violations,"⁹⁰ and that they:

Will not apply refoulement measures to a refugee who has been recognised in another Contracting or associate State, to a country where his life, freedom or physical integrity are threatened by reasons of race, nationality, membership of a particular social group, political opinion or serious and generalised violation of human rights, according to the international norms governing this issue.⁹¹

The practices of Latin American countries is unlikely to heavily influence the formation of customary international law because these countries do not receive the high numbers of refugees that countries in other regions do. However, the Declaration remains important as it expresses an *opinio juris*. Further, the consideration of geographically diverse practice may be necessary to support a finding of the existence of customary international law. Thus, Latin American practice should be considered regardless of whether states in the region are specially interested based on refugee flows.

“Refugee” as defined by Customary International Law

William Thomas Worster, Lecturer, International Law, The Hague University of Applied Sciences, The Hague, The Netherlands; LL. M. (Adv.) in Public International Law, cum laude, Leiden University, Faculty of Law, Leiden, The Netherlands; J.D., Chicago-Kent College of Law, Illinois Institute of Technology, Chicago, Illinois; B.A., Modern European History, University of Kansas, Lawrence, Kansas, *Berkeley Journal of International Law*, The Evolving Definition of the Refugee In Contemporary International Law, p. 158-60

This Article has examined the various ways in which customary international law is changing the definition of refugee in international law. It has attempted to balance the competing demands of international law, the state-centered and human-centered interests, in order to reach what is hopefully a convincing conclusion about the state of contemporary customary international refugee law.

First, this Article examined the Refugee Convention itself and its current interpretation. The initial and overriding conclusion to be drawn from the interpretation of the Convention is that it is usually interpreted with an emphasis on the teleological method, possibly in line with the intention of the drafters. This interpretive technique was applied in cases of the inclusion/exclusion and cessation provisions of the Convention. In some cases the interpretive technique has been used so as to verge on amending the treaty's explicit terms.

Second, this Article examined customary international law as applied in cases of refugees or individuals in refugee-like situations. Many scholars have concluded that there is no definition of refugee under customary international law. This Article refutes this conclusion by drawing on the extensive practice of states. As a preliminary matter, this Article identified the specially interested or specially affected states in matters of refugee law. This aspect of the formation of customary international law appears to be largely omitted in most analyses of customary international law on point. It was submitted that specially interested states in this case are those states that experience inward refugee flows, as measured by statistical studies of such flows by the UNHCR. With specially interested states identified, the analysis of the formation of customary international law on the definition of refugee can be appreciated in an entirely new light, especially the influence of certain regional instruments. This finding suggests that under customary international law, the definition of refugee may include: individuals persecuted on the basis of gender or sexual orientation, individuals fleeing from external aggression, occupation or other serious disturbances of public order, possibly including massive violations of human rights and/or torture, or even the imposition of the death penalty.

Continuing with the analysis of customary international law, this Article considered the influence of the widespread practice of "subsidiary protection," both under international law and municipal law. In many instances, however, this examination suggested that the subsidiary protection was enacted partly with the purpose of insulating the definition of refugee from further development under customary international law. Nevertheless, although the formal categories were in most cases retained, the consideration and

actual treatment of individuals shows, at the minimum, that there may be a growing customary international legal obligation to provide for subsidiary protection and, at most, that subsidiary protection is now defining the new outer parameters of the definition of the refugee.

This Article has also considered, albeit cautiously, the contribution of the practice of international organizations to the definition of refugee. It still does not appear that contemporary international law has specifically accepted the practice of international organizations as contributing to the formation of customary international law, that is, as opposed to the practice of states within and through international organizations, where there is much more acceptance. The practice of international organizations suggests, again, a growing norm of subsidiary protection, if a conservative approach is taken to the appreciation of the formation of customary international law. Taking a more aggressive approach, there might even be something more significant happening. However, the overall practice appears a little too inconsistent for finding a new norm.

Last, this Article has had to look at the other side of the formation of customary international law: not the expansion of the definition, but the contraction. There are many instances of state practice attempting to narrow the definition, although the great majority of them are inconsistent, singular, or clearly perceived to be violations of refugee law rather than evolving customary law. One of the more significant developments in the narrowing of the definition is the growth of the concept of internal flight or relocation alternatives to regions within the state that are considered safe. From a comparative study of the practice of states on relocation alternatives, the law appears to permit, at a minimum, that individuals may be returned to a different region of a state where there is genuine access to meaningful protection, not illusory or unpredictable protection (e.g., the House of Lords "first approach," discussed in *Januzi v. Sec'y St. Home Dep't*, [2006] U.K.H.L. 5 (H. Lords Feb. 15, 2006)).³⁴³ However, some states adopt the more restrictive "second approach" (that conditions in the proposed region of the state not be so different from the conditions of non-persecuted persons in the original region), and that approach may eventually crystallize into customary international law, though it does not appear to have done so yet. Safe third country and country of origin designation policies are also becoming increasingly popular; however, these policies do not appear to have moved into customary international law. First, they directly violate the Refugee Convention and therefore any customary international legal analysis will need to see evidence of clear intent to reverse a well-established treaty norm. Second, those blanket rules have failed in some jurisdictions for precisely that reason of their failure to consider cases on their merits, thus the states themselves have determined that their proposed policies were in violation of the norms on refugees, preventing the contrary norm from emerging in customary international law. A [*160] number of other potential narrowing measures were each in turn found to have not crystallized into customary international law, including practices of automatic refusals of manifestly unfounded applications. The final practice that was considered was the reliance on diplomatic assurances that the acts against the person would not occur. This practice is not provided in the Refugee Convention as an exception to non-refoulement, but it appears to have crystallized in customary international law. That being said, the practice comes with the express condition that the assurances provide a credible basis for ensuring that the prohibited acts not occur. Where states have a systematic practice of engaging in the prescribed acts, assurances cannot be used as an exception to non-refoulement.

Therefore, the evolving definition of a refugee under conventional and customary international law is:

I. A person who, owing to a well-founded fear of being subjected to a situation of

(1) persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion;

(2) torture, inhuman or degrading treatment and/or punishment; and/or

(3) a threat to life, security or liberty due to events seriously disturbing public order; that

(a) is so widespread that it exists in all parts of the state of origin where the person could flee and also exists in every state the person reached upon leaving his state of origin; and

(b) is unable to be cured by credible, reliable and genuine assurances offered by the state of origin, and any other state that the individual previously reached, of the situation not occurring to that individual;

and

II. Such person is outside the country of his or her nationality of former habitual residence and is unable or, owing to such fear, unwilling to avail himself of the protection of that country or return to it.

Based on the above, there is customary international law in the field of refugee law. Finding that such law exists does not, however, necessarily mean that refuge is only available to an expanded group of persons. International law is not always so kind. Instead, it means that protection is available for more persons, but also that that protection is also limited by additional rules. In the field of refugee law, there is usual balance between state freedom of action and state limitation on action, with states demanding increasingly liberal moral standards from themselves, but showing increasing reluctance to live by those standards. People in need of protection fall somewhere between these two extremes.

Definition of “Refugee” should be interpreted beyond the narrow confines of the Convention

William Thomas Worster, Lecturer, International Law, The Hague University of Applied Sciences, The Hague, The Netherlands; LL. M. (Adv.) in Public International Law, cum laude, Leiden University, Faculty of Law, Leiden, The Netherlands; J.D., Chicago-Kent College of Law, Illinois Institute of Technology, Chicago, Illinois; B.A., Modern European History, University of Kansas, Lawrence, Kansas, *Berkeley Journal of International Law, The Evolving Definition of the Refugee In Contemporary International Law*, p. 105-7

It has been argued that the definition of refugee does not exist under customary international law but only under treaty law.⁴⁸ Most scholars of international refugee law have concluded as much. In particular, as far as the European Union is concerned, Kay Hailbronner has concluded, "The assumption of an international legal obligation to grant protection to victims of war, civil war and general violence must still be considered as "wishful legal thinking." "⁴⁹ Similarly, the American Society of International Law has concluded that there is no customary international law obliging states to provide protection to individuals who fall outside the strict terms of the Refugee Convention.⁵⁰ Even as active an advocate as Guy Goodwin-Gill has stated that:

Practice reveals a significant level of general agreement not to return to danger those fleeing severe internal upheavals or armed conflict in their own countries ... nearly four decades of practice contain ample recognition of a humanitarian response to refugees falling outside the 1951 Convention. Whether practice has been sufficiently consistent over time and accompanied by the *opinio juris* essential to the emergence of a customary rule of refuge, is possibly less certain, even at the regional level.⁵¹

This Article will question the validity of these conclusions.

The conference that adopted the Refugee Convention immediately adopted a recommendation and attached it to the Final Act, urging states to extend refugee benefits to individuals not qualifying under the

narrow terms of the Refugee Convention: The Conference expresses the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of the Convention, the treatment for which it provides.⁵²

This statement could be interpreted to acknowledge, or possibly even express *opinio juris*, that a complementary definition would develop under customary international law.

Many authors have attempted to argue that just such a definition under customary international law has arisen. Some have argued that the prevailing restrictive reading of the term "refugee" in the Convention is incorrect, disregards usage of the term prior to the Convention and is not supported by the *travaux préparatoires*.⁵³ Some have even argued that the Refugee Convention is merely one in a collection of human rights instruments that must be read as a whole so that the protections described by the Refugee Convention apply to any person who enjoys some form of non-refoulement from any human rights instrument. Thus, non-refoulement is a general principle and the Refugee Convention is merely one kind of situation in which non-refoulement arises.⁵⁴ For example, Maria-Teresa Gil-Bazo argues that "in addition to refugees within the meaning of the Geneva Convention, there are other categories of individuals that have a right to protection under international law and accordingly, they are 'refugees' in a broader sense."⁵⁵ However, many of these authors have not cited extensive practice and *opinio juris* to support their argument. This Article will attempt to identify practice and *opinio juris* on point.

Climate migrants don't meet the definition of a "refugee" under the 1951 Refugee Convention

Abdikarim Ali, M.A. in Public & International Affairs, & B.Soc.SC with Honors in Conflict Studies and Human Rights, April 2015, Climate-Induced Migrants, International Law, and Human Rights, <http://environmentalmigration.iom.int/climate-induced-migrants-international-law-and-human-rights-assessment> DOA: 10-7-15

As the planet's ocean and seawaters continue to rise, coastal land becomes inundated, staple crops are destroyed by salinity intrusion, ecosystems are decimated or altered due to salt toxicity, and human populations are forcibly displaced.ⁱ **The resulting displaced persons, safely referred to as climate-induced migrants,** either become internally displaced persons (IDP's) within their borders or cross international borders as a means of survival.ⁱⁱ **Legally these migrants fall outside the rigid framework of the International Legal Regime for the protection of refugees.** Unfortunately **the plight of these climate-induced migrants is not aligned with the scope and definition of the 1951 United Nations Convention on the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.** The United Nations Convention Relating to the Status of Refugees is upheld by Article 14 of the 1948 Universal Declaration of Human Rights (UDHR), which acknowledges the right of persons to seek refuge and or asylum from persecution in other countries.^{ccvii} **With the 1951 Convention, and 1967 Protocol Relating to the Status of refugees in mind, the classification of climate-induced migrants as refugees, cannot be justified under international refugee law due to the absence of persecution.**

There is a difference between a "colloquial" definition of a refugee and those who qualify under the refugee convention and are fleeing persecution. Famine victims do not qualify

James Hathaway, Social Research: An International Quarterly, Volume 81, Number 2, Summer 2014, pp. 327-339, Food Deprivation: A Basis for Refugee Status? James C. Hathaway, the James E. and Sarah A. Degan Professor of Law, is a leading authority on international refugee law whose work is regularly cited by the most senior courts of the common law world. He is the founding director of Michigan Law's Program in Refugee and Asylum Law, Distinguished Visiting Professor of International Refugee Law at the University of Amsterdam, and Professorial Fellow at the University of Melbourne. From 2008 to 2010, Professor Hathaway was on leave to serve as dean of the Melbourne Law School, where he established Australia's first all-graduate (JD) law program, p. 326-7

It is commonplace to speak of those in flight from famine, or otherwise migrating in search of food, as "refugees." Over the past decade alone, **millions of persons have abandoned their homes in countries such as North Korea, Sudan, Ethiopia, Congo, and Somalia,** hoping that by moving they could find the nourishment needed to survive. **In a colloquial sense, these people are refugees:** they are on the move not by choice, but rather because their own desperation compels them to pursue a survival strategy away from the desperation confronting their home communities. **In legal terms, however, refugee status is defined in a significantly more constrained way. The key standard,** set by the United Nations Convention relating to the Status of Refugees of 1951,¹ as supplemented by the Protocol relating to the Status of Refugees of 1967,² **limits refugee status to a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to**

avail himself of the protection of that country. . . (Convention, supra n.1, at Art. 1([A][2])).

People who are just seeking to improve their lives are not refugees

Joseph Carens, 2013, Joseph H. Carens is a professor at the Department of Political Science of the University of Toronto, Canada. His research interests are mainly focused on contemporary political theory, especially on issues related to immigration and political community, *The Ethics of Immigration*, Kindle Edition, page number at end of card.

People seeking asylum in democratic states often meet a skeptical and critical inquiry into the question of whether they are really refugees. Every democratic state has established a set of laws and institutions to determine whether particular asylum claimants meet the requirements of the Convention. The use of the term “persecution” is clearly intended in part to recognize the principle that we should not lightly override the normal rule that states are free to exercise discretionary control over entry and settlement by noncitizens. Given the premises of this chapter, that is a reasonable concern. No state is perfect. The ordinary failures of law enforcement, like the ordinary inequalities of the modern world, do not provide grounds for giving someone refugee status. 19 To deserve refugee status a person must be facing a serious threat to her fundamental interests, not simply the risks faced in ordinary life in a society that normally protects people’s basic human rights. Carens, Joseph (2013-10-16). *The Ethics of Immigration* (Oxford Political Theory) (p. 200). Oxford University Press. Kindle Edition.

Persecution includes the threat of death

Guy S. Goodwin-Gill, August 2014, Professor Guy S. Goodwin Gill was formerly Professor of Asylum Law at the University of Amsterdam, served as a Legal Adviser in the Office of United Nations High Commissioner for Refugees (UNHCR) from 1976-1988, and was President of the Media Appeals Board of Kosovo from 2000-2003. He is the Founding Editor of the *International Journal of Refugee Law* and has written extensively on refugees, migration, international organizations, elections, democratization, and child soldiers. Recent publications include *The Limits of Transnational Law*, (CUP 2010), with Hélène Lambert, eds., *The Refugee in International Law*, (OUP, 2007), 3rd edn. with Jane McAdam; *Free and Fair Elections*, (Inter-Parliamentary Union, 2nd edn., 2006); *Brownlie’s Documents on Human Rights*, (OUP, 2010), 6th edn., with the late Sir Ian Brownlie, QC, eds; and introductory notes to various treaties and instruments on refugees, statelessness and asylum for the ‘Historic Archives’ section of the [UN Audio-Visual Library of International Law](http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021). He practises as a Barrister from Blackstone Chambers, London, *The International Handbook of Refugee Protection* <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021> DOA: 9-25-15

Although central to the refugee definition, ‘persecution’ itself is not defined in the 1951 Convention. Articles 31 and 33 refer to threats to life or freedom, so clearly it includes the *threat of death*, or the *threat of torture, or cruel, inhuman, or degrading treatment or punishment*. A comprehensive analysis requires the general notion to be related to developments within the broad field of human rights,⁶ and the recognition that fear of persecution and lack of protection are themselves interrelated elements. The persecuted do not enjoy the protection of their country of origin, while evidence of the lack of protection on either the internal or external level may create a presumption as to the (p. 39) likelihood of

persecution and to the well-foundedness of any fear. However, there is no necessary linkage between persecution and government authority. A Convention refugee, by definition, must be *unable* or *unwilling* to avail him- or herself of **the protection of the state or government, and the notion of inability to secure the protection of the state is broad enough to include a situation where the authorities cannot or will not provide protection, for example, against persecution by non-state actors.** The Convention does require that the persecution feared be for reasons of ‘race, religion, nationality, membership of a particular social group, or political opinion’. This language, which recalls the language of non-discrimination in the Universal Declaration of Human Rights and subsequent human rights instruments, gives an insight into the characteristics of individuals and groups which are considered relevant to refugee protection. These reasons in turn show that the groups or individuals are identified by reference to a classification which ought to be irrelevant to the enjoyment of fundamental human rights, while persecution implies a violation of human rights of particular gravity; it may be the result of cumulative events or systemic mistreatment, but equally it could comprise a single act of torture ([Hathaway 2005](#); [Goodwin-Gill and McAdam 2007](#)).

“Protection” Includes Asylum

Asylum is the institution of protection, refugees are those seeking protection

Maria-Teresa, Gil Bazo Senior Lecturer in Law, Newcastle Law School (Newcastle University), *International Journal of Refugee Law*, 2015, Vol. 27, No. 1, 3–28, Asylum as a General Principle of International Law, p. 4

Asylum is different from refugee status, as the former constitutes the institution for protection while the latter refers to one of the categories of individuals –among others– who benefit from such protection. Aware of this distinction and of its historical, international, and constitutional significance, an emerging trend developing among European states has been to blur it by restricting the use of the term asylum to refugees within the meaning of the Convention Relating to the Status of Refugees (the Refugee Convention)³ while developing alternative institutions for protection (such as temporary protection and subsidiary/complementary protection).

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Idealist Perspective & Should Not Prioritize the Protection of the National Interest

Luke William Hunt (2014). Human Rights Quarterly, The Global Ethics of Helping and Harming, v. 36(4), pp. 798-819. Hunt argues that since we cannot determine how or to what extent the national interest should be sacrificed to moral obligations that the only moral obligation of the state is to avoid harm, not to act to be beneficial (in instances in which there is a trade-off between that action and the national interest).

Justice, Legitimacy, and Self-Determination: The Moral Foundations of International Law (Bookk). This book articulates a systematic vision of an international legal system grounded in the commitment to justice for all persons. It provides a probing exploration of the moral issues involved in disputes about secession, ethno-national conflict, "the right of self-determination of peoples," human rights, and the legitimacy of the international legal system itself. *Buchanan advances vigorous criticisms of the central dogmas of international relations and international law, arguing that the international legal system should make justice, not simply peace among states, a primary goal, and rejecting the view that it is permissible for a state to conduct its foreign policies exclusively according to what is in the "national interest."* He also shows that the only alternatives are not rigid adherence to existing international law or lawless chaos in which the world's one superpower pursues its own interests without constraints. This book not only criticizes the existing international legal order, but also offers morally defensible and practicable principles for reforming it. *Justice, Legitimacy, and Self-Determination* will find a broad readership in political science, international law, and political philosophy.

Robert O. Keohane and Joseph Nye Jr., Power and Interdependence, 3rd ed. (Boston: Addison Wesley Longman, 2000). Keohane and Nye argue that foreign policy should not be based on Realism because the international system is not inherently Hobbesian. See also: Anne-Marie Slaughter, "International Law in a World of Liberal States" and "International Law and International Relations Theory: A Dual Agenda," American Journal of International Law 6 (1993): 503-38; Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics," International Organization 51 (1997): 513-54.

Marshall Cohen exposes this confusion between morality and moralizing (or moralism). "Moral Skepticism and International Relations;" International Ethics: A Philosophy and Public Affairs Reader, ed. Charles Beitz et al. (Princeton, N.J.: Princeton University Press, 1985), 6-7

Morality Beyond the National Interest Debate

Bad to Portray Refugees as Victims

Price, Matthew. 2009. *Rethinking Asylum: History, Purpose and Limits*. Cambridge: Cambridge University Press.

Dauvergne, Catherine. 1999. Amorality and humanitarianism in immigration law. *Osgoode Hall Law Journal*, 37, 597–623

The Political Philosophy of Cosmopolitanism (Book). In a period of rapid internationalization of trade and increased labor mobility, *is it relevant for nations to think about their moral obligations to others? Do national boundaries have fundamental moral significance, or do we have moral obligations to foreigners that are equal to our obligations to our compatriots?* The latter position is known as cosmopolitanism, and this volume brings together a number of distinguished political philosophers and theorists to explore cosmopolitanism: what it consists in, and the positive case which can be made for it. Their essays provide a comprehensive overview of both the current state of the debate and the alternative visions of cosmopolitanism with which we can move forward, and they will interest a wide range of readers in philosophy, political theory, and law.

General Obligation to Refugees

Dummett, Michael. 2001. *On Migration and Refugees*. London: Routledge. Dummett Miller argues that refugees living in unlivable conditions have the right to migrate and live in other states.

Miller, David. 2007. *National responsibility and global justice*. Oxford: Oxford University Press. Miller argues that refugees living in unlivable conditions have the right to migrate and live in other states.

Smith, Merrill. 2004. Warehousing refugees: a denial of rights, a waste of humanity. In *World Refugee Survey 2004*. Washington: US Committee on Refugees. This paper argues that there is general right to exclude immigrants but that it does not apply to refugees.

Schotel, Bas. 2012. *On the Right of Exclusion: Law, Ethics, and Immigration Policy*. Oxford/New York: Routledge

Legomsky, Stephen. 2009. Refugees, asylum seekers and the rule of law in the USA. Pp. 122–170 in Susan Kneebone (ed.), *Refugees, Asylum Seekers and the Rule of Law*. Cambridge: Cambridge University Press

Governments Don't Have the Right to Exclude Refugees

Michael Blake, Philosopher, 2003, *Philosophy & Public Affairs*, Volume 41, Issue 2, Immigration, Jurisdiction, and Exclusion, pages 103–130, Spring 2013 -- Argues there is no right to exclude refugees, even if there is a right to exclude other immigrants. He directly answers Wellman (below).

Michael Walzer, Spheres of Justice (New York: Basic Books, 1983); As Walzer puts it: “Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be communities of character, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of

their common life.” BUT Walzer makes an exception for refugees: Even if legitimate states have no duty to open their borders to the world’s poor, however, surely it would be unconscionable for a state to slam its doors on people desperately fleeing unjust regimes. After all, even authors like Walzer, who are in general prepared to defend a state’s right to control its membership, make an exception for refugees. The core idea behind this exception is that, unlike those who merely lack exportable resources, some asylum seekers are actively threatened by their states, and thus they cannot be helped by an international transfer of goods; their only escape from peril is to be granted asylum. (Wellman, 2008, above)

Foster, Michelle. 2007b. Protection elsewhere: the legal implications of requiring refugees to seek protection in another state. *Michigan Journal of International Law*, 28, 223–286

Michael Huemer, “Is There a Right to Immigrate?” *Social Theory and Practice* 36 (2010): 429–461. -- Makes a general case in favor of not restricting refugee flow.

Governments Have the Right to Exclude Refugees

Wellman, Christopher H. 2011. Freedom of association and the right to exclude. pp. 13–155 in Wellman, Christopher H. and Phillip Cole. *Debating the Ethics of Immigration: Is there a Right to Exclude?* Oxford: Oxford University Press.

Wellman, Christopher H. 2008. Immigration and freedom of association. *Ethics*, 119, 109–141.; 93- -- Wellman argues that the right to freedom of association protect the right to exclude whoever one wishes. It is worth noting that Wellman thinks there is a general obligation to help -- either through aid or military intervention -- and that the status quo is not acceptable.

Carens, Joseph. 1992. Refugees and the limits of obligation. *Public Affairs Quarterly*, 6, 31–44.

Carens, “Aliens and Citizens”; Arash Abizadeh, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Border,” *Political Theory* 36 (2008): 37–65;

David Miller, *On Nationality* (Oxford: Oxford University Press, 1997). Wellman (2008, above): In a similar vein, Miller suggests that “the public culture of their country is something that people have an interest in controlling: they want to be able to shape the way that their nation develops, including the values that are contained in the public culture.” He is especially interested in political groups being able to preserve their distinctive identities because he believes that states must maintain a decent level of social solidarity in order to secure social justice. Unless compatriots sufficiently identify with one another, Miller argues, it is unlikely that the political climate will engender mutual trust or fellow feeling, elements liberal democratic states need if they are to inspire their constituents to make the sacrifices necessary to sustain a healthy democracy and an equitable welfare state.

Accepting only refugees is morally arbitrary: It is important to note, though, that those who make an exception for refugees (as defined by international law) apparently cannot do so on principled grounds. As theorists like Andrew Shacknove and Michael Dummett have pointed out, restricting the status of refugees to those who have crossed an international border because of a well- founded fear of persecution is morally arbitrary. See Andrew Shacknove, “Who Is a Refugee?” *Ethics* 95 (1985): 274–84; and Michael Dummett *On Immigration and Refugees* (New York: Routledge, 2001). (Wellmann, 2008, cited above)

Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).

Sarah Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State," *International Theory* 4 (2012): 39–68.

Should Help -- US

Christopher Hill. (2015). Who caused the refugee crisis? September 23. <https://www.project-syndicate.org/commentary/who-caused-the-refugee-crisis-by-christopher-r-hill-2015-09?barrier=true>

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Casey Lodge. (2015). Pope Francis: We must not stay silent while refugees suffer. *Christianity Today*. October 2. <http://www.christiantoday.com/article/pope.francis.we.must.not.stay.silent.while.refugees.suffer/66431.htm>

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Why welcoming refugees makes economic sense

Should Establish Asylum Claims Centers Outside of Europe

Kavitha Surana, July 9, 2005, Data Show How Manageable Europe's Refugee Crisis Could Be, <http://qz.com/448228/data-show-how-manageable-europes-refugee-crisis-could-be/> DOA: 9-30-15 -- Argues that if people could apply for asylum outside of Europe they wouldn't have to use smugglers to cross the Meditteraenan.

Pushing out the boundaries of humanitarian screening

Should Adopt a Tradeable Refugee Quota System

Kuosmanen, Jaakko. 2013. What (if anything) is wrong with trading refugee quotas? *Res Publica*, 19, 103–119 Kuosmanen defends a tradeable quota scheme

In the context of migration ‘a tradable quota scheme’ refers to an institutionalised system of interstate migration in which quotas of migrants are traded between recipient states. In this type of system migrant quotas are established through certain criteria, and the quotas are then allocated to states participating in the scheme. The participating states can either provide access to the quota migrants that were assigned to them during the initial allocation process, or they can try to offer compensation to other countries that might be willing to accommodate their quota of migrants on their behalf. Tradable migrant quotas can, at least in principle, be formulated in many different ways and through the use of different criteria. Schuck (1997) was the first to introduce the idea of tradable quotas in the context of the existing asylum regime founded on the UN Convention and Protocol Relating to the Status of Refugees (‘Convention’ hereafter). Schuck proposed that the tradable quota scheme could function as a model for providing protection to persons that the Convention recognises as being eligible for asylum. Following Schuck’s seminal article other writers have pursued the idea, and some have examined whether tradable quotas could function more broadly as a means for poverty reduction (De la Croix and Gosseries 2007; Ferna´ndez-Huertas Moraga and Rapoport 2011). Before turning to examine the ethical dimensions of the tradable refugee quota scheme, let us focus on its general characteristics. The establishment of a tradable refugee quota scheme in any particular circumstance requires the following: (1) a process for determining the number of those in need of protection; (2) criteria for allocating burdens of refugee protection; (3) an international administrative authority; (4) a market for buying and selling quotas (Schuck 1997, p. 271). [p. 104-5]

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