

Chapter 12: Sovereignty and Borders

Case Study: The Syrian Refugee Crisis in Europe

In March 2016 the United Nations High Commissioner for Refugees Filippo Grandi declared that ‘Syria is the biggest humanitarian and refugee crisis of our time.’¹ The civil war that has been tearing the country apart since 2011 has produced over 5 million refugees, and over 6 million internally displaced people within Syria itself—from a pre-war population of just over 20 million. This crisis has been keenly felt in Europe, where 1.3 million refugees requested asylum in 2015, around half of them from Syria.² At the height of what has become known as the ‘European migrant crisis’, 200,000 migrants crossed from Turkey to Greece—and thus into the European Union (EU)—in October 2015 alone.³ A large amount of political acrimony resulted. Under the ‘Dublin Regulation’, asylum applicants must be processed within the EU country in which they first registered, and returned there if they attempt onward migration. Hungary broke ranks on this rule in June 2015, refusing to allow applicants to be returned by other EU countries, on the grounds that it was already overburdened. In August 2015 German Chancellor Angela Merkel suspended the Dublin Regulation by permitting refugees who first registered at other EU countries to apply for asylum in Germany. This was praised as an act of compassion by many, but also led to a political backlash, both within Merkel’s own Christian Democratic Union party and in the rise of the far-right, anti-immigration Alternative for Deutschland. In March 2016 the EU negotiated a deal with Turkey in order to discourage migration. This included paying Turkey €3.3 billion to accept migrants returned from Greece to Turkey and to tighten border controls, with the EU then accepting Syrians from Turkish refugee camps once they had been processed there—but only up to a maximum of 72,000 in total. Yet while across the EU countries sought to reduce migration and find means of discouraging refugees from reaching their shores, UN High Commissioner Grandi emphasized that what was needed most was ‘more countries to share the load by taking a greater share of refugees from what has become the biggest displacement crisis of a generation.’ Indeed, the vast majority of refugees from Syria and elsewhere are not in Europe, which is a point that we will return to at the end of this case study.

In this case study we will consider what political theory might say about the European response to the Syrian refugee crisis—which, of course, is simply one example of a much broader, all-too-common phenomena. This is a question that clearly relates to the issues of

¹ Source: <http://www.unhcr.org/afr/news/press/2016/3/56e6e3249/syria-conflict-5-years-biggest-refugee-displacement-crisis-time-demands.html>.

² Source: <http://www.pewglobal.org/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/>.

³ Source: <https://www.npr.org/sections/parallels/2018/03/09/589973165/europe-does-not-see-us-as-human-stranded-refugees-struggle-in-greece?t=1535451680423>.

sovereignty, borders, political membership, and control over population discussed in Fine's chapter, and that she touches on in her discussion of the work of Ayelet Shachar.⁴

As Fine noted, deciding which non-citizens are allowed to enter and settle in a territory is one of the core rights associated with sovereignty.⁵ Yet there is also a widespread recognition that states have a duty to offer asylum to refugees. It would be wrong to force people back to countries where they would be in grave danger. This is a limitation on sovereignty, and on border control, but one that many accept as morally required in order adequately to protect human rights. Nonetheless, there is a great deal of disagreement concerning the precise nature of this duty.

One common suggestion is that states' duty toward refugees is 'a duty of rescue': a humanitarian duty to help those in peril (Miller 2016, p. 78). Just as it would be wrong for an individual to refuse to rescue a drowning child from a pond, it would be wrong for a state to send refugees back to a place where they are unsafe. A significant implication of thinking about things this way is that it means that the duty has a cost condition. One is obligated to rescue those in peril only if one can do so at reasonable cost to oneself. Those within Europe who sought to limit the numbers of Syrian arrivals might thus argue that the economic and social costs of accepting all of the potential refugees from Syria were simply too high, such that there was no duty to do so. While this might well be an implausible claim, it fits within the logic of a duty of rescue.

Some duties to refugees might instead be grounded in reparation, however (Gibney 2018, p. 4). This applies whenever receiving states bear some responsibility for the situation in the origin state. In these cases, accepting refugees can be seen as a reparative duty. This is significant because these duties are less limited with regard to the costs that one can be expected to bear; one must pay reparations for wrongdoing even if this is costly. This would therefore ground a more expansive duty to admit refugees. Does this apply to Europe and Syria? This is a highly contestable question, since it depends on whether European states have acted wrongly by failing to intervene more extensively in Syria during the civil war, or bear some responsibility for the situation in some other way. Suffice to say that such an argument could be made.

A third way to think about states' duties to refugees is that they are obligations that are created by the state system itself. As Fine notes, the state system gets us the benefits of sovereignty, but that sovereignty also generates risks and problems.⁶ One of its predictable results is the existence of refugees—individuals whose human rights are unprotected by their own sovereign. In this sense, refugees are 'orphans of the state system' (Carens, quoted in Gibney 2018, p. 4). This imposes an obligation on all other states to admit refugees, because the legitimacy of the system of sovereign states depends on those states being ready

⁴ p. 14 of my version of the chapter.

⁵ p. 13 of my version of the chapter.

⁶ pp. 7-8 of my version of the chapter.

to correct for this foreseeable failure of the system. As Joseph Carens puts it, ‘because the state system assigns people to states, states collectively have a responsibility to help those for whom this assignment is disastrous’ (Carens 2013, p. 196). If this is correct, then states cannot appeal to ideas of sovereignty or border control to justify a right to *refuse* to accept refugees, because the legitimacy of their sovereignty and border control *itself depends* on their willingness to accept refugees. This is a limit on sovereignty generated by the normative requirements of justifiable sovereignty itself.

This argument also points to another crucial question: how should the burdens associated with accepting refugees be distributed among states? If all states share a collective duty to help refugees then how does this duty distribute among different states?

The answer to this in international law is the principle of non-refoulement, which forbids states from sending refugees back to their country of origin if they would still face grave danger there. This is clearly a good start. But since it places the obligation to care for refugees on the state where they first claim asylum, it does not ensure any kind of fairness in the overall distribution of refugees. The same problem can be seen in the EU’s Dublin Regulation. Now, technically, both non-refoulement and the Dublin Regulation are simply about allocating responsibility for verifying that individuals are refugees; legitimate refugees could then be sent on to another safe country. But in practice other countries do not often accept refugees who have been processed elsewhere. This has led Carens to argue that the key to a fairer system is ‘to break the link between where a refugee initially files a claim for asylum and where she receives safe haven’ (Carens 2013, p. 216). The EU sought to do this during the migrant crisis. For example, in September 2015 EU interior ministers agreed a plan to relocate 120,000 asylum seekers from Italy, Greece, and Hungary—to countries across the EU.

But what would a fair distribution involve? Tally Kritzman-Amir (2009, pp. 372-6) and Carens (2013, 213-15) list several relevant criteria. The most important is a country’s ‘absorption capacity’—its ability to take in refugees and settle them effectively. This is determined by factors such as the size of the existing population, gross domestic product (GDP), and demand for employment. Another criterion might be ‘special solidarity bonds’ between countries: countries with strong financial or cultural ties, or that already have communities from the origin country, might take special responsibility for refugees from that country. Countries should also take special responsibility when they have reparative duties, as we saw earlier. Exactly how these different criteria should be used to determine fair shares is contested. For example, Gibney (2015, p. 457) argues we should simply focus on population, GDP, and existing refugee population. But it is clear that some principle for working out a fair distribution of burdens is required.

How would this fair distribution then be achieved? The most straightforward way would be for countries to agree to quotas, perhaps within regional groupings such as the EU (Kritzman-Amir 2009, pp. 378-81). There is some debate over whether countries should then be able to

trade these quotas⁷— i.e. whether country A should be permitted to pay country B to take refugees allocated to country A. Some argue that this allows countries to bear their share of the burdens in ways that suit them best, while others criticize this proposal for commodifying refugees (Miller 2016, pp. 88-9). Of course, countries might also consider bearing their share of the burdens by taking actions that seek to address problems in the origin countries, such as offering financial aid or engaging in humanitarian intervention, in order to reduce the number of refugees (Kritzman-Amir 2009, p. 387). Arguably, this would allow them to protect their sovereignty by maintaining control of their borders; but some means of doing this risk violating the sovereignty of *origin* states.

Imposing duties based on a fair distribution of the burdens of helping refugees arguably undermines sovereignty much more than the principle of non-refoulement. That principle does not impose any duties beyond one's territory; states merely need to protect refugees that come into their territory. This very fact has perverse effects, however, since it incentivizes states to prevent refugees from reaching their shores. As Fine notes,⁷ Western states do this in various ways: strict visa regimes, sanctioning airlines and other carriers who transport people without proper documentation, and even declaring the arrival area of airports not to be part of their territory for the purposes of asylum (Carens 2013, p. 199). It is these kinds of policies that drive refugees into the hands of smugglers, such as those transporting people across the Mediterranean, often in overcrowded and unseaworthy vessels. The EU's deal with Turkey can also be seen in this light, as an attempt to stop EU countries from being liable under the principle of non-refoulement. All of this would change if states recognized their fair duties toward refugees, such that they would bear their fair share of the costs no matter which state refugees originally arrived at. This would greatly reduce the incentives to invest in these extra kinds of border control.

Gibney raises another concern regarding distributing the burdens of helping refugees, however, which is that it will involve 'ignoring the preferences of refugees as to where they want asylum' (Gibney 2015, p. 457). Many theorists argue that this does not matter; as long as refugees are protected within a safe country they do not have a moral claim to choose where this is (Carens 2013, p. 216; Miller 2016, p. 86). But Gibney argues that refugees do not merely have an interest in the protection of their basic rights, but in being able to 'rebuild a meaningful social world' (Gibney 2015, p. 460)⁷—to successfully integrate into a new society. This kind of rebuilding will be easier in some countries than others, and refugees are best positioned to judge where they can best integrate. But letting refugees choose would likely lead to some states having to accept large numbers of refugees. In the case of the European migrant crisis, a large proportion of Syrian refugees sought to reach Germany and Sweden. Even if other states provided financial compensation for this, popular states would face unfair strains with regard to integration and social adaption. Nonetheless, Gibney argues that this would be justified as a way to respect refugees' interest in where they receive asylum.

⁷ p. 14 of my version of the chapter.

A different kind of concern regarding the fair distribution of the burdens of helping refugees is that it is highly likely that some states will not do their fair share. This raises the question of whether other states are obligated to ‘take up the slack’. Do states have a duty to take more than their fair share of the burden, in order to cover for states that have failed to take their fair share? Some would answer ‘no’. Once a collective responsibility has been fairly allocated among a group of agents, each agent’s duty is simply to do their fair share. Going beyond this might be admirable, but it cannot be required, especially since it creates unfairness within the group. On the other hand, the duties we are talking about are duties to help people in *dire need* – people whose basic human rights are under threat. Zofia Stemplowska (2016) argues that the fundamental moral importance of helping people in dire need means that there is a duty to do so even when it involves taking up the slack. Fairness among the group is important, but it cannot outweigh the value of helping those in such a desperate plight. Another possible view here, suggested by Miller (2011), is that there is some duty to take up the slack, but it is a weaker duty than the duty to do one’s fair share. For example, perhaps the fair share duty is enforceable, while the taking up the slack duty is not. Whatever view one takes on this question, it will have a big effect on one’s view of individual European state’s duties toward refugees (from Syria and elsewhere), given that very few such states are currently taking their fair share of the burden of helping, so there is plenty of slack to take up.

In this case study we have examined various questions concerning refugees in the context of the Syrian civil war and the European migrant crisis. It is important to finish by emphasizing that this is a relatively small part of a much bigger picture, however. Even if we achieved a fair distribution of refugees within the EU, very large global inequalities would remain. Most refugees are not in EU countries, or indeed in Western countries. This is true both for refugees created by Syria’s civil war and more generally; 3.5 million Syrian refugees are in Turkey. Almost 1 million are in Lebanon, making up about 1/5th of the country’s total population. 668,000 more are in Jordan, 249,000 in Iraq, and 130,000 in Egypt. Moving to a global perspective, Gibney (2015, p. 450) notes that ‘a striking feature of [the] world’s refugee population is that it is overwhelmingly congregated in poor states.’ According to the UN’s Refugee Agency, developing countries hosted a staggering 85 per cent of the world’s refugees in 2017 (UNHCR 2017, p. 2). The top 8 refugee hosting countries were: Turkey, Pakistan, Uganda, Lebanon, Iran, Germany, Bangladesh, and Sudan (UNHCR 2017, p. 3). A major reason for this is simple geographic proximity—most refugees are in countries close to their country of origin, since other countries refuse to accept them but the principle of non-refoulement prevents them from being sent home. The global statistics make it clear that no matter how European politicians and citizens view their own migrant crisis, Western states are currently bearing far less than their fair share of the burden of hosting or helping the world’s 25.4 million refugees. This is true on any plausible view of what a fair distribution would involve. As Stemplowska (2016, p. 591) puts it, it is *developing* states that are currently taking up the slack left behind by affluent states. This is clearly unjust, and something that Western states ought to act to remedy.

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