

Who are refugees, and what do we owe to them?

PH338: Philosophy & Politics

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PH338 week 9: Who are refugees, and what do we owe to them?



On the road to Louvain, Edward Jeffrey Irving Ardizzone, 1940. Imperial War Museum.

- 1 The debate about the definition of “refugee”
- 2 A severed bond to one’s home country makes one a refugee
- 3 Refugees are those to whom we ought to give refuge
- 4 Luara Ferracioli on political feasibility
- 5 The harm of being a refugee
- 6 Refugees and the “other”

Who is a refugee?

- Even if states have the right to exclude, some would-be immigrants arguably have overridingly strong claims to be admitted anyway: Refugees.
- But who is a refugee? Cf. “genuine refugees”, “bogus asylum seekers”, “economic refugees”, “economic migrants”.

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- But who is a refugee? Cf. “genuine refugees”, “bogus asylum seekers”, “economic refugees”, “economic migrants”.

“Genuine refugees have tended to be groups of people, ethnic groups or religious groups who were directly under persecution and were fleeing in fear of their lives. [...] The problem we’ve got now if you look at the definition of the EU’s common asylum policy if includes anyone fleeing from a war torn country and it even includes people fleeing extreme poverty. [...] We’ve lost sight of what it is to be a refugee.”



Nigel Farage on BBC Radio 4, September 1, 2016

Should we go beyond the UN Convention?

“A refugee is someone who, owing to a 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 to or, owing to such fear, is unwilling to avail himself of the protection of that country.”

UN Convention Regarding the Status of Refugees

- Farage is right that by extending refugee status to non-Convention forced migrants, we depart from who counts as a “refugee” in the terms of the Convention.
- But does the Convention get it right? Who *should* count as a refugee and be granted especially strong rights to settle in another country?

“Refugee” as a thick concept

- Saying that someone is a “genuine refugee” is already saying that they ought to be admitted by another country, except (maybe) in exceptional circumstances.
- Saying that a given genuine refugee may be sent back to their country of origin is almost a contradiction in terms.
- “Refugee” is thus a **thick concept**: Its meaning has a descriptive and a normative aspect.
 - cf. “cowardice” & “praiseworthy cowardice”
- Whether a person is a refugee, and whether there are extremely strong reasons to admit her, are thus not separate questions.
- A definition of who is a refugee must be both normatively and descriptively plausible:
 - Normative: Does the definition pick out persons for whom there are almost indefeasible reasons for being admitted?
 - Descriptive: Does it make sense to use the term “refugee” for that person?

Supreme reasons for admitting a person I

- Which grounds for wanting to leave one's country of origin are particularly strong, so that they trump (almost) all reasons not to admit the person?
- Convention grounds: Persecution on the basis of
 - race,
 - religion,
 - nationality,
 - membership of a particular social group,
 - political opinion.

Supreme reasons for admitting a person II

- Other grounds:
 - Persecution on the basis of
 - gender, sexual orientation and sexual identity.
 - language.
 - Generalized war and violence: inter-state wars, civil wars, gang violence.
 - Poverty.
 - Environmental degradation.
- Does it matter whether the person is outside of her country of nationality?
- What about stateless persons who have no country of nationality?

Why the definition matters: numbers

- A wider definition of refugees includes more people in the category, and accepts that more people have a near-indefeasible claim to refuge.
- 19.5 million Convention refugees (UNHCR Global Trends 2014)
- 38.2 million internally displaced persons (UNHCR Global Trends 2014)
- Without further protection, 72 to 187 million people will be displaced by 2100 assuming a mean sea level rise of 0.5-2.0m. (IPCC 2014 Part A)
- About 275 million people live within 30 km of a coral reef and derive some benefits from the ecosystem.
- 702 million people live in extreme poverty (USD 1.90 per day, PPP adjusted) in 2015.

The definition as battleground

- Almost no one wants to deny that their country has to help “genuine” refugees.
 - We all understand “refugee” as a thick concept.
- So if you do not want to admit a certain group of people onto your territory, you must argue that they are not refugees.
- This is exactly what happens in the public debate: debate about who should count as a refugee.

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Background theory of Andrew Shacknove's definition I

- The relationship between citizen and state is defined by a minimal bond, where the state provides security to the citizen.
 - Whenever this bond is severed, a state's citizen becomes a refugee.
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- A portrait photograph of Andrew Shacknove, a man with short grey hair, smiling. He is wearing a dark sweater over a white collared shirt and a dark tie. The background is slightly blurred, showing what appears to be an indoor setting with a lamp.
- Ways in which the bond can be severed:
 - the state actively persecutes the citizens: the classical refugee.
 - the state is too weak to protect the citizen against aggressive other states or non-state actors.
 - the state fails to provide minimal infrastructure for economic provision: economic and environmental refugees.

Shacknove's definition of a refugee

A refugee is someone

- whose state has failed to secure their basic needs, and
- who is so situated that international assistance is possible.

Evaluation of Shacknove's definition

- Being a refugee is here conceptually independent from migration.
 - It only matters whether the person's country of nationality is willing to allow international assistance, or unable to prevent it.
- Descriptively revisionistic: a person can be a refugee at their home.
- Captures a normative truth: Whether the person actually flees their home need not be indicative of the extent of their need for assistance.
- Normatively revisionistic: "giving refugee" becomes "giving assistance".

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Matthew Lister's methodology: starting from duties to grant refuge

- Starting point: Normative component of “refugee”: A person who ought to be given refuge, on the basis of their need.
 - Non-refoulement: Must not be sent back to where they fled from.
 - Durable solutions: The person must eventually be given permanent residency and citizenship.
- Judges any supposed descriptive component of “refugee” to fit people to whom the normative component applies.



Lister vs. Shacknove

- Not everyone whose state has failed to secure their basic needs must be given refuge to help them.
 - Others people whose state of nationality has failed may have just as strong claims to assistance. But they are not designated claims to get refuge.

Lister's definition of "refugee"

- Refugees are only those who specifically ought to be granted refuge in order to secure their basic needs:
 - those who cannot realistically be helped in any other way than by granting them refuge.
 - those in situations where other ways of assistance are ruled out on other grounds.

Why being a refugee is linked to persecution and crossing an international border

- If a state has control over its territory and persecutes some of its citizens, then the international community cannot offer timely help other than by engaging in a full military conflict.
- Short of persecution that amounts to genocide, such military intervention with its cost in lives will not be proportionate.
- The only way to help a given persecuted person that is morally acceptable and obligatory is to admit them into another country without threat of being sent back.
- This option is only available once they have left their country of nationality.
- Since persecution has no clearly foreseeable end, durable solutions must be found, i.e. full residency and eventually citizenship, must be granted.

Why only persecution on the basis of protected characteristics

- These characteristics are essential to one's identity.
- They either cannot be changed, or can not be expected to be changed to avoid persecution.

Economic deprivation vs. being a refugee

- Economically deprived people can be *better* helped in the country of origin by means of international aid than by allowing migration to wealthier countries.
 - Those in most desperate poverty do not have the means to attempt migrating.
- Hence economic deprivation generally does not bestow refugee status.
- Exception: Economic deprivation as a result of discrimination: tantamount to persecution.
 - Harder to alleviate from the outside, as aid administration will likely be discriminatory.

Environmental disaster and being a refugee

- Typically, the threat to basic needs has a foreseeable end: does not grant refugee status, but instead grant temporary residence.
- Exception: Unequal distribution of impacts may be due to discrimination and be indicative of persecution.

Why Lister's definition should be even wider

- Gender and sexual orientation share the same aspects as the other protected characteristics and should be protected as well.
- Irreversible environmental disasters and degradation put people into situations where only long-term resettlement will help them.
 - Most extreme: Loss of territory due to rising sea levels.
 - But also: Desertification, soil erosion, war damage to territory due to toxic substances, radiation, landmines.
- Economic deprivation, if a state rejects international aid, cannot realistically be alleviated in the country of origin.
- Generalized war and other forms of violence, e.g. gang violence.

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Luara Ferracioli on concrete political steps to improve the international refugee regime

- Even Lister's more conservative argument needs to concede that the UN Convention does not include everyone who should count as a refugee.
- So what should we now do? Should we re-negotiate the convention?
- Here we need to attend to the concrete political environment and must be aware of dangerously idealistic reasoning.



A puzzle about feasible improvements to the international refugee regime

The feasibility puzzle

- The UN Convention is underinclusive: There are many people who cannot live minimally decent lives in their countries of nationality but who do not count as refugees under the Convention.
 - A wide reading of the existing Convention as advocated by Lister does not grant *robust* protection to everyone who needs it.
- The UN Convention can only be made more inclusive by opening it to reform.
- But opening the UN Convention to renegotiation in the present political climate might lead to a *less robust* protection regime.
- So it seems that we both ought to, and ought not to, initiate a reform process.

Background to solving the puzzle: What you ought to do, and what you and others in fact do I

- “Pete ought to donate money to charity.”
- It is *in principle* irrelevant whether Pete wants to, or in fact *will*, donate money, as long as he *can* donate it.
 - “I don’t want to do it” is just not a valid reply to an “ought” claim.
 - Note: It may be relevant whether Pete will become disgruntled and give much less in the future if he gives now.
- It may be relevant what others do: Sue threatens to harm Pete’s children if Pete donates.
- General principle:
 - To determine whether A ought to ϕ , it is *in principle* irrelevant whether A will ϕ .
 - It may be relevant what else A may do if she does ϕ .
 - It may be relevant what others do if A ϕ -s.

Solving the puzzle

- “We ought to have a stronger refugee convention.”
 - Shorthand for: “We ought to: (vote for opening the refugee convention to reform and support a stronger convention).”
- Who are “we”?
- 1) We = all humankind / the international community.
 - It is here irrelevant whether the international community wants a stronger convention or will support it.
- 2) We = country X / activist group Y / individual Z.
 - It is here relevant what *other* agents do, e.g. other countries.
- Because “we” is ambiguous, it can be both the case that “we” ought and that we ought not vote for opening the refugee convention to reform and support a stronger convention.

Motivational and institutional constraints on willingness to strengthen the refugee Convention

- Diplomatic constraints.
- Security concerns about controlling unauthorized migration.
- Sceptical and at times hostile attitude of the public towards refugees, perceiving them as untrustworthy and acting unfairly.

How to lift the feasibility constraints

- *Resettlement* in a third country should be the preferred mode for countries to provide durable solutions for genuine refugees.
 - Alleviates issues of distributive fairness between countries.
 - Alleviates issues of procedural fairness as it discourages illegal border crossings to get into the preferred host country.
 - Alleviates issues of distributive justice between refugees with more or fewer funds to pay smugglers.
 - Reduces incentives for false claims to being a refugee.
- Putting the emphasis on resettlement is possible already *within* the given legal framework without renegotiation.

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The debate about admittance

- Shacknove & Lister debate who should count as a refugee.
- The focus of the debate is *who has a claim to be admitted* in order to gain refuge.
- This debate, and insisting that countries discharge their duty to admit, is essential.
 - cf. Calais camp child refugees and the UK Home Office.
- But admitting people onto a safer territory is not enough.

Why we cannot stop at the ethics of admittance

- We (i.e. states that can offer refuge) ought to admit refugees for a reason – to prevent harms that would befall them in their home countries.
- But then we need to make sure that our admittance actually saves people from these harms.
 - Extreme example: We do not discharge our duty of admittance properly if we accept a religious refugee and then subject them to religious persecution.
- So we need to know what the harms of being a refugee are if we are to determine our duties to refugees.

“[O]nce we were somebodies about whom people cared, we were loved by friends, and even known by landlords as paying our rent regularly. Once we could buy our food and ride in the subway without being told we were undesirable. We have become a little hysterical since newspapermen started detecting us and telling us publicly to stop being disagreeable when shopping for milk and bread. We wonder how it can be done; we already are so damnably careful in every moment of our daily lives to avoid anybody guessing who we are, what kind of passport we have, where our birth certificates were filled out and that Hitler didn't like us.”
Hannah Arendt, “We Refugees”, 1943.

A note on reading Serena Parekh using Hannah Arendt's ideas I



- Note that Arendt and Parekh define terms in ways different from the other literature on the syllabus.
- Be careful to remember what they mean by given terms and do not confuse them with other, more conventional meanings!

A note on reading Serena Parekh using Hannah Arendt's ideas II

- Parekh's methodology differs from what we have read so far: Apply another author's theoretical framework to current affairs, and defend the resulting claims.
- One way to think about it: Arendt gives us a lens through which to look at the current situation of refugees, and it helps us see important things we otherwise would not see.

Scope of Arendt's concern

- Arendt is concerned with *de facto* stateless people.
 - These people have no *effective* citizenship (effective for the end that citizenship is there for).
 - This includes all forcibly displaced persons.

Political harm: Rightlessness

- Arendt's key concern is that *de facto* stateless people are rightless.
 - They have no political community that legally protects them.
 - They are thrown back to the rights they have just in virtue of being humans: human rights.
 - But these are not legally enforced (at Arendt's time of writing).

Political harm today

- Human rights are now enshrined in international and national legal documents.
- But being in a position in which you can *only* refer to your human rights for protection is still precarious.
 - e.g. treating humanitarian assistance, humanitarian intervention, and admitting refugees as acts of positive and optional charity.

Ontological harm 1: Loss of identity I

- By becoming *de facto* stateless, a person loses her officially recognized and specific identity.
- They are then nothing over and above being a human being, they are a *general* or *abstract* human being.
- Problem: In practice, people who are only human and nothing else do not, in fact, command respect, but are no longer treated as equals.
 - Explanation: Persons who are abstract, non-political, human beings and nothing else appear not fully human.

Ontological harm 1: Loss of identity II

- *De facto* stateless people then exist only as biologically human beings, but not as political agents and subjects.
- The humanitarian aid regime is targeted precisely at general human beings irrespective of specific identity, and thus presupposes and enshrines this deprivation: These people are treated as objects, not subjects, of aid.

Ontological harm 2: Expulsion from common humanity I

- *De facto* stateless people are (often)
 - geographically excluded from society.
 - economically excluded, being reduced to mere recipients of charitable aid.
 - politically and socially excluded: denial of political and social rights that citizens have.
- These people are excluded from the “common world”, a common public space of shared meaning, distinct identity, and meaningful agency that is recognized by others (and not just others close to them).

Ontological harm 2: Expulsion from common humanity II

- *De facto* stateless people are uprooted: having no specific place in the world.
- They are further superfluous: they cease to matter to the world and cease to be able to impact the world.
 - Note: *En masse*, they may matter (cf. the refugee crises, Turkey's recent threats to "unleash" refugees onto Europe"), but *individually*, they do not.
- Their exclusion is part of their identity and condition for receiving aid for biological subsistence.

Ontological harm 3: Limitation of meaningful speech and agency

- Becoming *de facto* stateless diminishes a person's agency, their ability to act and speak in *socially meaningful ways*.
 - They are able to speak and act meaningfully wherever several people come together.
 - But they lack a reliable and politically guaranteed public space in which to act.
- When one's actions and words cease to reliably matter, the right to free action and speech becomes useless.
- Words and actions cease to matter because the person is not judged by them.
 - They are treated as a mere biological human body in need of protection.
 - Through this treatment, they cease to be politically and socially distinct from other *de facto* stateless persons.

Loss of identity in practice

- Claim: A person who is only human, but has no political identity, does not fit into society: They do not exist except as part of a multitude of refugees.
- What does this abstract claim mean in practice?
 - Abstract human beings cannot sign any documents, because they have no established legal identity.
 - So they cannot rent or enter work agreements.
 - They cannot enter legal disputes, defend rights in court, make criminal charges, or be subject to criminal charges.
 - In a political society of citizens and identity-bearing non-citizens, abstract human beings do not fit in, cannot be made sense of.
 - In a sense, they are “intruders” into the *body politic*, unidentified non-citizens on the territory.
- So until someone has received a new political identity, they cannot live in normal political society, and are managed like a bare human body.

Loss of meaningful agency in practice

- Claim: *De facto* stateless people experience a reduction of their agency. What does this mean in practice?
- Refugees' often have difficulties proving facts about their identity, e.g. their nationality or age.
- They are often mistrusted, suspected of lying to bend rules to their favour: e.g. by claiming to be underage.
- So they are reduced not to speaking agents, but to mere bodies: e.g. physical examinations about age, or for signs of torture.
- It seems that in practice, we require a politically guaranteed individual identity before we take someone's speech seriously: "The person might deceive me, but at least I know who they are."

Overcoming ontological harm: Some ideas

- In normal conditions, citizens are *given* a basic political identity on which to build through their agency.
 - You've got a birth certificate that identifies you and determines your legal status.
 - Your family, guardians, and others flesh out that identity by bequeathing social context, relationships, education, and possessions to you.
 - You yourself build on that through your actions, become "someone" specific.
- It seems that everyone needs to have their social identity be jump-started: We cannot make it ourselves, but it is given through recognition by others.
- Is there a feasible way of giving large numbers of refugees a determinate and meaningful new political identity?
- Can this new identity be later on merged with the old identity, restoring the integrity of the person's biography?

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Does it matter whether someone is a “genuine” refugee? |

- Cf. wide-scope conjunctive oughts in week 8.
- Our duties to people in extreme poverty is a wide-scope *disjunctive* duty.
- We ought to: (render assistance in their home countries or offer refuge).

Does it matter whether someone is a “genuine” refugee? II

- Let's do some first-year logic with “or”: “p or q” is equivalent to “if not p, then q”.
- So our obligation can be re-phrased: We ought to (if we do not render assistance, offer refuge).
- A simple obligation to offer refuge is not *logically* detachable from these obligations.
- But while we are not offering sufficient assistance, the only way to discharge our duty is to offer refuge. So in this situation, a refugee fleeing violence and a person fleeing extreme poverty are relevantly similar in our obligations to them.

Does it matter whether someone is a “genuine” refugee? III

- One may want to argue that we have in fact discharged our obligations of assistance, e.g. through official development assistance.
- Cf. the current debates about “making sure we get our money’s worth” in development assistance.
- Cf. ethical duties with regard to global poverty, e.g. PH212 Applied Ethics slides from last year (on Moodle).

The refugee as the “other”

- “Otherisation”: Depicting a person as “other”, in opposition to “us”.
- Otherisation can be used to evade the demands of our common humanity to help.
- At worst, otherisation makes us see the other as a threat to ourselves.
- Otherisation can happen deliberately for political purposes: Farage’s “flood of refugees” poster.
- But be aware: It can also happen e.g. in a political or ethical debate, or a lecture like this one.
- One way in which ethical debate can “otherize” is through treating refugees as mere “patients”, i.e. people upon whom others act, as opposed to agents (cf. ontological harm above).

Otherisation in practice

- Compare
 - The slowness of the Home Office response to the disbanding of the Calais refugee camp & hosting under-age refugees.
 - Dutch and Belgian refugees in the UK in the two World Wars.
 - One estimate: about 200,000 Belgian refugees in the UK in World War I.
 - These refugees were admitted to the UK without the pressure of a UN Convention.
- Compare the following depictions of refugees:



Photograph: Mark Thomas/Rex/Shutterstock. Nigel Farage in front of the UKIP "Breaking Point" poster June 2016.



Photograph: Davey & Hackney. View of the huge dormitory and dining hall set up in the Empress Hall at Earl's Court in London during the First World War. 1915. Imperial War Museum.



The War Refugees' Camp, Earl's Court 1918, Henry Rushbury, 1918. Imperial War Museum.



Unknown. A home for Belgian refugee children in England. 1914-18. Imperial War Museum.

Seminar question

- Should we consider people who are fleeing from long-term structural poverty as refugees?