

***The Syrian Refugee Crisis:  
Making a Case for State Obligation and Humanity  
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Syria presents a grave human rights crisis. UNHCR estimates that since 2011, 5.6 million people have fled Syria, and millions more are displaced within Syria as the war continues. The humanitarian crisis in Syria demands nation states to rise to the moral and ethical responsibility to act and protect those trapped or fleeing the civil war in Syria. Yet, developed western states have been restrained in their action, which has undermined the international commitment to protection of the rights of refugees. Through an analysis of the convention of refugee rights and state response to the refugee crisis, my essay argues for greater responsibility to protect human rights of refugees through inclusive economic policies.

**The Context**

While the civil war in Syria has roots in the colonial context, ethnic tensions, and the war in Iraq, the catalyst for the ongoing civil war can be traced to Bashar al- Assad's election in 2000 and the rise of ISIS (Polk, 2013). Assad though democratically elected, systemically denied rights to people. The persecutions carried under the Assad regime, caused pro democracy uprisings in 2011, which turned into a violent and bloody civil war in Syria (Rodgers, Gritten, Offer & Asare, 2016). By 2012, a civil war engulfed Syria, with rebel groups and Assad's forces battling over cities, villages, and countryside, killing thousands of civilians along the way, and denying civilians access to basic necessities. As of August 2015, 250 thousand people have lost their lives from the Syrian Civil War (Rodgers, Gritten, Offer & Asare, 2016).

UN commission of inquiry on Syria has reported that both the government and rebel forces war have used "civilian suffering- such as blocking access to food, water and health services through sieges- as a method of war" (Rodgers et al., 2016, para. 8). Rebel forces, which include ISIS, have waged a campaign of terror

inflicted severe punishments on those who transgress or refuse to accept its rules, including hundreds of public executions and amputations. Its fighters have also carried out mass killings of rival armed groups, members of the security forces and religious minorities, and beheaded hostages, including several Westerners. (Rodgers, Gritten, Offer & Asare, 2016, para. 10)

In August 2013, Assad's forces allegedly inflicted chemical warfare on their own people. Hundreds of civilians were killed when rockets filled with sarin, a nerve

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agent, were fired on suburbs surrounding Damascus, Syria's capital city. Although Assad denied responsibility for the chemical warfare, Western powers do not believe that the rebel forces have enough resources to obtain chemical weapons (Rodgers et al., 2016).

The ongoing civil war has forced more than 4.5 million to flee. Syrians have fled to neighboring countries like Lebanon, Jordan, Turkey, and about 10% of Syrians have made the dangerous trek to Europe as well (Rodgers et al., 2016). The journey to Europe up the Mediterranean is acknowledged to be "the world's most dangerous migration routes...the International Organization for Migration estimates that 22,400 migrants and asylum seekers have died since 2000 in attempts to reach the European Union, many of them at sea" (Sunderland, 2015, para. 2). Although millions have fled, thousands of citizens remain in Syria, and continue to suffer. The UN reported, "about 70% of the population is without access to adequate drinking water, one in three people are unable to meet their basic food needs, and more than 2 million children are out of school, and four out of five people live in poverty" (Rodgers et al., 2016, para. 17). Further, due to blockades by ISIS, rebel and Assad's forces humanitarian agencies have been unable to enter into areas where people are in desperate need of "life-saving aid" (Rodgers et al., 2016, para. 18).

Despite the plight of Syrians, the response in Europe to the Syrian refugees has been hostile. The massive influx of refugees has caused many countries like Turkey and Hungary to fence off and close their borders (Park, 2015). Refugees who have made it into these countries have suffered further abuse. For instance, a Human Rights Watch report noted that in Hungary, police harassed, beat and even threw tear gas at refugees to try and "control" them (Human Rights Watch, 2016). Hungary refused to allow refugees to board trains and busses traveling to Austria and Germany, further hindering refugees on their already difficult journey to freedom (Hartocollis, 2015).

In Turkey, authorities have detained refugees without access to lawyers. Turkish authorities have even forced refugees to return to their war torn home countries, completely violating international laws of non-refoulement (Amnesty International, 2015). A refugee who was at first welcomed in Turkey, after fleeing Syria, commented "They treated me like a refugee, someone who needed protection and had fled from the war. Now they treat me as if I am a terrorist or a security threat" (Sunderland, 2015, para. 22).

According to an *Amnesty International* (2015) study, "Refugees Endangered and Dying Due to EU Reliance on Fences and Gatekeepers", countries have built fences to protect their borders and have blatantly denied them access to asylum. John Dalhuisen, Amnesty International's Director for Europe and Central Asia, noted "The expanding fences along Europe's borders have only entrenched rights violations and exacerbating the challenges of managing refugee flows in a humane and orderly manner" (Amnesty International, 2015, para. 4).

"Where there are fences, there are human rights abuses. Illegal push-backs of asylum-seekers have become an intrinsic feature of any EU

external border located on major migration routes and no one is doing much to stop them” (Amnesty International, 2015, para. 16).

The report also notes *that* the building of fences and gates have not stopped refugees from coming, but have just forced them to take more dangerous routes. The most vulnerable group of refugees is children. Many have drowned at sea, died of hypothermia, starvation and illness (Human Rights Watch, 2015). A video documentary by *Human Rights Watch’s* (2015) titled “Desperate Journey: Europe’s Refugee Crisis”, notes the journey of a mother who was compelled to resort to using smugglers to get her daughters from Syria to Turkey. The video also portrays detention camps where refugees were fenced in like cattle, unable to leave or have any freedom of movement.

The dire conditions caused by the civil war in Syria and treatment of refugees who have fled their homes, demands states to fulfill their responsibility to protect refugees. However, this is challenged by protectionist claims by nation states, and stereotyping of refugees as threats to national security. The tension between claims of national interest and protection of human rights brings to light the need for inclusive policy.

### **Human Rights Law and Protection of Rights of Refugees**

The atrocities committed by Hitler’s Nazi Germany during the Holocaust, the violence against, and the persecution of Jews gave rise to an international regime committed to the protection of human rights of refugees. The international community drafted the Universal Declaration of Human Rights (1948) and the Convention Concerning the Rights of Refugees (1951); they include the ethical and legal framework for the protection of human rights of refugees and obligates state parties to provide shelter and guarantee the right to non-refoulement, to those who seek refuge in their country for fear of persecution (Boswell, 2000).

The Universal Declaration of Human Rights is the foundation of human rights law; it provides the normative framework to protecting dignity of all human beings regardless of their citizenship, race, religion, ethnicity, sex, or gender. The recognition of the inherent dignity of every human being and non-discrimination are its most important tenets. Article 1 of the Universal Declaration of Human Rights says, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (The United Nations General Assembly, 1948, para. 10). There is an emphasis on the idea of dignity as essential to the concept of human rights. Article 2 goes further to show that human rights are universal and is based on the principle of non discrimination.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent,

trust, non-self-governing or under any other limitation of sovereignty (United Nations General Assembly, 1948, para. 11)

UDHR universalizes the notion of well-being and respect for all human beings. The Convention on Refugees focuses on the human rights of refugees; attends to the specific needs of refugees such as the right to asylum, non refoulement, and determines obligations of state parties. So far, 137 countries have signed the Convention of Refugee Rights document. The convention has been key to developing the definition of the term refugee, and outlining both international and state parties responsibility. This is considered to be one of its main contribution as it highlights the unique needs of refugees.

Refugee, as stated in the convention, is “someone who has a well-founded fear of persecution for their gender, race, religion, or political beliefs, and must flee to another country” (Gallagher, 1989, p. 14). They are unable to return to their own home country due to fear of persecution. Gallagher (1989) notes

The signatories made an effort to be specific as to those conditions that could cause one to be seen as a refugee. The reasons the terms ‘race’, ‘religion’, ‘nationality’, and ‘membership of a particular social group or political opinion’ were included in the definition have been obvious antecedents of the period during and between the two World Wars....The provisions concerning the right to seek asylum and non-refoulement were efforts to avoid the forcible repatriations of individuals who did have a ‘well-founded fear of persecution’ that occurred following World War II (p. 580-581).

This suggests that only certain people may qualify for refugee status, and this emphasizes the uniqueness and importance of the term refugee. The unwilling movement from their homes distinguishes refugees from migrants (Worster, 2014). The U.N.’s definition of a refugee underscores that this person is out of his or her country of origin; this differentiates refugees from internally displaced persons (Newman & Van Selm, 2003). The definition underscores that fear of persecution for refugees has forced them to involuntarily move from their home countries to seek aid, refuge and safety in a foreign country. Fear of persecution may include asylum seekers as well.

The UNHCR assimilates the rights of refugee status to the grant of asylum. It often refers to refugees as ‘asylum-seekers’. In addition, and very importantly, in an Annex to the Final Act of the Refugee Convention, the delegates to the convention that drafting the convention itself specifically observed that the receipt of refugees by states was an act of granting asylum (Worster, 2014, p. 489).

### **Limitation of the Convention of Refugees**

It is important to note here that this categorization also highlights the restrictive nature of the Convention. Human rights scholars argue that the definition of refugee coined by the U.N. is too strict, leaving millions of people

who may not specifically fit into their guidelines unprotected by international or human rights law. Worster (2012) argues that, “the Refugee Convention is one of the cornerstones of the larger human rights system for protecting vulnerable persons and yet it is also a very narrow instrument, protecting a very specific group of persons” (p. 94). It does not include stateless persons, internally displaced persons etc. It also excludes individuals and people who receive aid from United Nations program, like the United Nations Relief and Works Agency, even so they may be living in a conflict zone and suffering from persecution (Worster, 2012, p. 100-101). Susan Akram (1999) states that the number of people who do not fall under the U.N. Convention's strict definition of refugee has been increasing in number, as victims of ethnic cleansing and genocide are not technically included.

Convention refugees, of course, comprise only one category of uprooted people; the category does not encompass causes of refugee status such as genocide in Rwanda; the use of rape as a weapon of war or ethnic cleansing in the former provinces of Yugoslavia; the deployment of child soldiers in Sierra Leone or Sudan; private wars among warlords in Liberia and Somalia; or massive bombings of civilians for political, ethnic or nationalistic reasons such as the Israeli bombings of villages in South Lebanon or the Russian bombings of villages in Chechnya. (p. 214-215)

Additionally, even though non-refoulement, protection from forced returning of a refugee to their home country because of a well-founded fear of violence and persecution on return, is guaranteed under the refugee convention, it does not apply to all people seeking refuge or asylum. In the 1951 Convention Relating to the Status of Refugees, there are two different classes of refugees listed who are not protected by the non-refoulement clause. 1) The first class includes individuals who have “committed a crime against peace, a war crime or a crime against humanity, committed a serious nonpolitical crime outside the country of refuge prior to admission as a refugee, or have been guilty of acts contrary to the purposes and principles of the United Nations” (United Nations General Assembly, 1951, p. 16). 2). The second class includes individuals who may have once been recognized as refugees, but are now considered threats to the national security of their country of refuge. These individuals may “pose a compelling threat to national security or public order, present a danger to the security of the country of refuge, or have been convicted by a final judgment of a particularly serious crime and constitute a danger to the community of the country of refuge” (Worster, 2012, p. 103). This suggest that the criteria developed in the convention of refugee rights excludes many vulnerable groups such as stateless persons, internally displaced persons etc, and does not take into account the historical, political and social context.

A further important challenge of the Convention of Refugee rights is the absence of clear determination of obligations of states. This question brings into tension the rights of sovereign states versus the ethical responsibility to protect. Proponents of state sovereignty believe that the state, as a sovereign entity, has the right and the power to resolve its obligations written in the Refugee

Convention. Wellman and Cole (2011), in their book, “Debating the Ethics of Immigration: Is There a Right to Exclude?”, argue that the state does have a right to exclude. Wellman believes that as a sovereign nation, immigration and political policies are part of that country’s sense of self, with no other institution being able to influence that. Wellman argues that each nation has a sense of self, as do their people as part of that nation, therefore they are responsible for deciding who may enter their borders. Wellman claims that this sense of self for nation states is crucial for forming national identity and rights to freedom for their citizens as a whole. He argues that competent nations should be respected for their competency and not be forced to allow foreigners into their country if they do not wish to have them. “An essential part of group self-determination is exercising control over what the ‘self’ is” (Wellman & Cole, 2011, p. 41). As sovereign nations, each state has the right to define what their sense of “self” is; a right that cannot be infringed upon even by the United Nations.

However, this emphasis on state sovereignty and the national self has meant that states have rights to deny asylum. Worster (2014) claims that documents protecting or granting asylum to refugees have been specifically worded to prioritize state sovereignty in order to show that it is the state’s right to grant asylum; no one else’s. He argues that the right to asylum is not recognized as an individual’s right to asylum, but as a right of the state, within its sovereignty, to grant asylum to an individual. “The way in which the right to asylum is articulated in those instruments suggests that it is not meant to be a right of the individual to receive asylum, but rather a right of the state to grant it, that must be respected by other states” (Worster, 2014, p. 478). Akram (1999) shows that many states have used their sovereignty to interpret their Refugee Convention obligations in extremely restrictive ways, including blatantly denying refuge to people in need

In Europe, but primarily in the United States, recent legislation has instituted a host of new procedural barriers to asylum applications, as well as measures such as prolonged detention of asylum seekers, expedited removal proceedings, denial of access to judicial review of refugee claims, restrictions on the ability of refugees or asylum seekers to obtain authorization to work, and restrictions on basic benefits necessary for refugees to survive(p. 216).

The restrictive interpretation of asylum granting by states and subsequent, criminalization of refugees has led to mass detention of refugees and denial of freedom of movement.

Freedom of movement, as guaranteed and recognized by the Universal Declaration of Human Rights as a human right, essential to human dignity. Goodwin-Gill argue that “next to life itself, liberty of the person and freedom of movement are among the most precious of human rights, intimately linked to the general notion of liberty as autonomy or self-government” (Goodwin-Gill, 1986, p. 60). However, state practice and the Syrian refugee movements shows that it is not being upheld by states, in the pretext of national security.

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The debates about state sovereignty and the denial of responsibility is one of the critical challenges of the refugee crisis in Europe following the war in Syria. For example, on the Macedonian-Greek border, thousands of Syrian refugees have been forced into makeshift camps where they have been detained until further notice (Park, 2015). The illegality of crossing borders makes everything a refugee does in that country illegal; their very existence becomes illegal. Guy S. Goodwin-Gill (1986) explains how the detainment of refugees became essential in strengthening the sovereign state's power over the rights of individual people

Situations of mass influx and politically sensitive individual cases neatly juxtapose sovereign self-interest and international legal principles relating to refugees and fundamental human rights. Detention cannot be isolated from (it is sometimes conditioned by) actual or perceived abuse of the asylum process, or by like threats to the security of the state and the welfare of the community. It is frequently symptomatic of restrictive tendencies toward refugees which themselves reflect elements of xenophobia and self-reservation(p. 194).

The limitation of the convention in addressing the needs of refugees, the claim to national self by states, and the exclusion of refugees from society needs to be addressed. While sovereignty is important, it restricts our ability to protect human well-being, and hence a framework to protect rights of refugees needs to look beyond sovereignty.

### **A Prescriptive Solution Of State Obligation:**

Philosopher Hannah Arendt argues that human beings inherently have an obligation to treat one another with dignity, which is the foundational basis of human rights law (Cioflec, 2012). Eveline Cioflec's (2012) in "On Hannah Arendt: the Worldly In Between of Human Beings and its Ethical Consequences" illustrates Arendt's belief in common responsibility that is within all human beings, and the importance of compassion and understanding for all of humanity. Arendt believed that policies on human interaction, like immigration, refugees and human rights, must be created to benefit all of humanity as we owe such respect to one another. Thus, the protection of human dignity is a paramount responsibility, and this as other scholars have argued, cannot be possible without the freedom of movement and open borders.

Political theorists, Wellman and Cole (2011) argue that open borders are essential to the equality of human beings. Cole views people as autonomous rulers of their own life who should be free to move and exercise agency. They should be "free and equal choosers, doers, and participators in their local, national, and global communities" (Wellman & Cole, 2011, p. 297). Cole claims that there are no moral distinctions between citizens and outsiders, and therefore "the exclusion of 'outsiders from the distribution of goods within our political community stands in need of moral justification" (Wellman & Cole, 2011, p. 178). Mark Gibney (1988) in "Open Borders? Closed Societies? The Ethical and Political Issues" argues that protection of freedom of movement is integral to social justice. He uses Rawls theory of justice to demonstrate that freedom of

movement can be beneficial to all of society. Advancing on Rawl's Difference Principle, the idea that public policy must be used to benefit the least advantaged of society, he argues that higher taxes on the rich should be used to fund aid and welfare programs for refugees entering the country. He argues that while in the short term, it may require reallocation of resources, in the long term the inclusive economy to support refugee programs will be beneficial to society. Gibney (1998) argues that by applying the Difference Principle globally, the immigration of people from poorer countries to richer countries would just be another part of creating initial inequality to the countries that receive immigration, but can overall benefit the global community by spreading the wealth.

The ethical claim to human dignity, inclusive economics, and social justice should be central to public policy as well. Nobel laureate Amartya Sen (1987) in his book *On Ethics and Economics* argues for a greater centrality to ethics in public policy. He claims "that the nature of modern economics has been substantially impoverished by the distance that has grown between economics and ethics" (Sen, 1987, p. 7). Sen argues for greater attention to welfarism. He notes

once that straitjacket of self-interested motivation is removed, it becomes possible to give recognition to the indisputable fact that the person's agency can well be geared to considerations not covered-or at least not *fully* covered- by his or her own well-being. (Sen, 1987, p. 41)

Countering Utilitarian welfare economics, Sen (1987) argues that agency and well being need to be understood separately in order for welfare economics to truly work. "Insofar as utility-based welfarist calculus concentrates only on the well-being of the person, ignoring the agency aspect, or actually fails to distinguish between the agency aspect and the well-being aspect altogether, something of real importance is lost" (Sen, 1987, p. 45). Further, economists argue that agency or self-interest is what motivates people and the economy to be successful. This is based off of rational behavior, which includes internal consistency of choice and maximization of self-interest, which is the correspondence between the choices that person makes and their self-interest. Sen (1987) points that rational behavior cannot be measured because it varies depending on one's relationship with society, including class, race, gender, etc. Therefore, the self-interest of one person will not be the same as another's, as everyone has different experiences within society.

Borrowing from Sen (1987), it can be claimed that the rational behavior, agency, and well-being of Syrian refugees will not be the same as people who live in stable environments. The rational behavior of a refugee is more of survival and restarting their life than personal gain. Through welfare economics, both agency and well-being must be seen as interdependent. Bringing ethics back into economics could enable protection of right of refugees: first, it will establish the moral obligation to help refugees. Second, the application of ethics into the modern economy will allow for more participation and inclusion in the economy giving opportunities to refugees. One of the biggest struggles of refugees is to make a decent living once arriving in a host country. The provision of support



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structures and opportunities is important for them to be able to contribute to the economy. By allowing refugees to earn a wage once entering their country of refuge, the welfare of the state will not suffer. The welfare of the state may actually improve by allowing more people to contribute to the economy and pay taxes towards welfare programs. This will mitigate the economic and social concerns of Western nations aiding refugees. The influx of refugees will increase the number of workers, create businesses and provide services to consumers. The social issues of cultural adaptation can be dealt with by providing support programs to refugees, and this in turn will lead towards greater understanding and respect for cultures.

The answer to the Syrian Refugee Crisis is not to exclude refugees, but to welcome them, aid them, and give them a livelihood, school for their children, and an opportunity at a new life in their country of refuge through inclusive public policies. Arendt's belief in human dignity and equality and Sen's inclusive economics can be used to understand how the developed states could better deal with the Syrian Refugee Crisis, and ensure freedom of movement to those fleeing the war. Instead of trying to shove off refugees on neighboring countries, there must be solidarity and unity amongst nations to recognize that the only thing that matters is restoring dignity to Syrian refugees, and instead of excluding them from society, should develop integrative policies that are all-inclusive, burden sharing, aimed to resettle Syrian refugees.

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