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The Limits of Liberal Humanitarianism in Europe: The ‘Responsibility to Protect’ and Forced Migration

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Abstract

This article explores the response of Europe to the refugee ‘crisis’ since 2015 and considers if this is a reasonable test of the region’s commitment to international humanitarianism and the ‘Responsibility to Protect’ principle (R2P). This response is explored both in terms of policy decisions and the political discourse used to frame the nature of the challenge, which weighs humanitarian obligations against the needs of ‘security’, ‘societal cohesion’ and ‘burden sharing’. The article argues that the European response to the refugee crisis exposes internal contradictions and limitations in liberal humanitarianism more broadly, as well as fundamental problems with R2P even amongst those countries which champion the principle. Theoretically, the paper draws upon debates about securitization, humanitarian norms, and liberal politics. Empirically, the paper analyses elite discourse and policy decisions within Europe, as well as UN statistical data on forced migration.

Keywords: Forced migration; ‘Responsibility to Protect’; securitization; Europe

Introduction

Does a commitment to the international ‘Responsibility to Protect’ principle (R2P) entail a commitment to protect individuals fleeing persecution, including atrocities? What limits to the grant of asylum by liberal states are morally consistent with their humanitarian commitments? For some years following the establishment of the R2P principle in 2005, forced migration – and obligations towards those seeking asylum – has been approached essentially separately to R2P in policy and academic circles. However, the refugee ‘crisis’ of 2014-15 brought two related themes to the top of the R2P debate in Europe – with global implications – and these will be explored in this paper. Firstly, the paper will consider if a credible commitment to R2P implies a responsibility to assist and protect civilians fleeing situations of war crimes, genocide, crimes against humanity or ethnic cleansing. Secondly, it will explore if the response of West European states to forced migration from war-torn societies exposes a limitation in – or conditions upon – their commitment to international protection and the R2P. The paper does not seek to establish whether the European response has been objectively ‘wrong’, but rather – in the tradition of internal critique – it assesses this response in light of Europe’s own moral logic.

The paper argues that the European responses to the refugee crisis in 2014-15 are a reasonable test of the credibility of European states as champions of R2P and humanitarianism more broadly. From this perspective the response exposed the limitations and internal inconsistencies of liberal humanitarianism, both in terms of

policy decisions and in terms of the political discourse which framed the nature of the issue. By prioritizing constructions of ‘security’, ‘societal cohesion’ and ‘burden sharing’ over humanitarian obligations, most European states are therefore arguably failing to live up to their own demanding cosmopolitan commitments. In turn, this demonstrates that R2P has limitations even amongst those countries which most rigorously champion the principle. These limitations are particularly acute when extending protection to vulnerable people brings political costs ‘at home’ and when the public debate about whether to accept refugees – and how many – is ‘securitized’. The crisis thus demonstrated that the liberal vision of R2P is – despite the cosmopolitan rhetoric that often accompanies it – in practice largely confined to addressing humanitarian challenges externally, at a distance. This suggests that the traction of R2P will continue to have severe limitations when it is most needed.

The empirical basis of this argument will demonstrate how the liberal response to the refugee ‘crisis’ reflects a process of securitization, a seemingly prevalent phenomenon in contemporary liberal societies. According to this logic, refugee movements are framed and treated as a security challenge, rather than as a humanitarian issue. This is underpinned by a discourse of existential threat, risk, emergency, zero-sum politics, and governance through fear and exclusion. The “politics of security”¹ is reflected most conspicuously in the association between refugees and terrorism and crime but it also points to societal anxieties around values and identities which have been amplified in recent years. In this way, the political climate of liberal ‘security societies’ demonstrates how the ethics of security are contested since different – and sometimes equally legitimate – claims to security are framed as being incompatible. The paper builds upon existing work on the securitization of migration by considering its implications for the humanitarian responsibilities of liberal states globally. In turn, it goes beyond this existing work by drawing out links between securitization debates and political theory, underpinned by empirical evidence drawn from elite discourse and practice.

R2P and responsibilities to populations fleeing persecution

The R2P principle was established in 2005 as an agreement amongst all UN member states to prevent atrocities, and to respond to the perpetration of atrocities when states are unwilling or unable to do so.² The origins of the R2P principle are closely linked to forced displacement and human protection. The concept of ‘sovereignty as responsibility’ – the theoretical foundation of R2P – emerged in the 1990s as a response to the protection gap suffered by internally displaced populations.³ Clearly, the four situations covered by R2P – genocide, war crimes, crimes against humanity and ethnic cleansing – invariably force people into flight; with ethnic cleansing, this is the primary objective. Forced displacement is also often an indicator of the potential or actual perpetration of these atrocities. The Guiding Principles on Internal Displacement which seek to frame state action in this area are, therefore, related to the principle that states have a responsibility to protect populations; if they are unwilling

or unable to do so, that responsibility passes to the international community.⁴ Moreover, even before R2P was developed as a principle, UNHCR had responded to conflict and forced migration challenges – notably in the 1990s – under the theme of protection, expanding its mandate to protect people fleeing violent conflict.

Some scholars have suggested that a commitment to R2P brings with it a general responsibility to protect those fleeing from atrocities.⁵ Souter argues that this is also a *special* moral responsibility for some countries if they contributed to the situation – such as armed conflict – which caused forced migrants to flee.⁶ From these perspectives, the protection of those fleeing from atrocities is one of the most direct ways of serving the R2P principle by countries which are capable of doing so. In turn, a denial of some form of protection – including forcible return to an unsafe region – would appear to be a failure to uphold the R2P commitment. There is also arguably a special liberal commitment to offer some degree of protection to forcibly displaced populations which is relevant to Europe’s response to the 2014-15 refugee crisis, because these countries have tended to be champions of the R2P principle and thus explicitly commit themselves to a higher standard of humanitarianism. Therefore, this article begins with the claim that the international commitment to R2P is relevant to forced displacement and that, in acute circumstances, it implies a responsibility to protect those fleeing atrocities when other forms of atrocity prevention are not effective. Furthermore, the record of countries – both individually and collectively – in fulfilling this aspect of R2P is a reasonable test of their humanitarian credentials more broadly. The R2P principle is relevant to this framework because it pertains to acute situations – which the 2015 refugee crisis was – and because European countries were so active in the establishment of the principle.

However, in practice the conceptual link between R2P and forced migration has not substantively developed. This is partly a consequence of a sensitivity in the humanitarian community towards R2P due to the controversy that surrounds the principle,⁷ but also because of the narrow interpretation of R2P that has evolved.⁸ There have often been doubts about whether forced migration meets the threshold of R2P atrocities, whether R2P brings any added value to the challenge of forced displacement, and if R2P should be reserved for only the most egregious violations of human rights (rather than people who are fleeing from such violations).

In fact, a review of the landmark R2P texts and agreements illustrates a growing gap between R2P and forced displacement in policy terms. The report of the International Commission on Intervention and State Sovereignty indicated that forced expulsion and ethnic cleansing should form one of the just cause thresholds for military intervention for human protection purposes, and this was supported by the report of the High Level Panel on Threats, Challenges and Change, as well as the UN Secretary-General’s report, *In Larger Freedom*.⁹ ‘Ethnic cleansing’ – as a form of forced displacement – is also specified as one of the atrocity crimes relevant to R2P in the World Summit outcome document, alongside genocide, war crimes and crimes

against humanity.¹⁰

However, the obvious link between R2P and forced migration has not been at the heart of developments following the 2005 world summit. The UN Secretary-General's follow-up report, 'Implementing the Responsibility to Protect', observed that "grants of asylum and protecting refugees has served numerous potential victims of crimes and violations relating to the responsibility to protect" (para. 35), and it indicated that "goals relating to the responsibility to protect" include the protection of refugees and the internally displaced (para. 68).¹¹ However, there is no explicit statement that the granting of asylum is a part of the protection responsibilities of states by way of their commitment to R2P.

The second major report of the UN Secretary-General, 'Responsibility to Protect – Timely and Decisive Response', simply observed that "States contribute to the prevention of these crimes and violations by ensuring the granting of asylum and refraining from *refoulement* of persons fleeing violence...when appropriate."¹² Similarly, the Secretary-General's report on State Responsibility and Prevention observed that "The responsibility to protect is consistent with existing obligations under international human rights, humanitarian and refugee law, which are binding on all States".¹³ The report on international assistance and R2P observed that UNHCR, in collaboration with others, "can offer concrete forms of protection by supporting requests for asylum or protecting refugees in safe facilities" but nothing explicitly about the responsibility of individual states.¹⁴

In the Secretary-General's 2015 report, once again, the link between R2P and state responsibilities to protect people fleeing danger is tenuous.¹⁵ Moreover, the UN's 'Framework of Analysis for Atrocity Crimes: A tool for prevention' makes no mention of asylum, *non-refoulement*, or the settlement of refugees; its only allusion to refugees is in a passage in which it indicates that a range of UN agencies may be relevant to R2P, including UNHCR.¹⁶

Thus, the links between the R2P and forced displacement have generally not been explicitly interpreted in UN circles as a responsibility to offer protection – including asylum – to those fleeing persecution or atrocities. Of course, all signatories to relevant international legal instruments – notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol – have responsibilities to people fleeing persecution, and this is not changed by their commitment to the R2P principle in 2005. Nevertheless, the scarcity of references to asylum, refugee protection and *non-refoulement* in the key international R2P texts seems to be a conspicuous omission – and quite possibly a conscious decoupling to allay political sensitivities. Given that the global normative realm has been slow to develop a concrete link between R2P and commitments to forcibly displaced persons – but also not precluded this development – it is left to national and regional actors to interpret or contest the linkage.

In the European context it is interesting that a keynote report of the European Parliament on R2P does not refer to asylum or forcible displacement, and only once makes a reference to refugees in connection with broader commitments to international law.¹⁷ In turn, a key European Commission position paper on ‘A European Agenda on Migration’, produced in response to the refugee crisis, made no mention of R2P in framing the EU response to the millions of forcibly displaced persons.¹⁸ What this section demonstrates, before exploring the European response to the refugee ‘crisis’, is that the intergovernmental apparatus which frames humanitarian response obstructs linkages between asylum and protection responsibilities.

The liberal state response to forced displacement

An analysis of Europe’s humanitarian practices begins with a consideration of the region’s collective humanitarian identity, and part of the background to this is found in the controversial ‘normative power’ concept. According to this, on the basis of the European Union’s constitutive principles, certain values are internalized within European society and projected externally.¹⁹ In particular, peace, freedom, democracy, the rule of law and respect for human rights have become foundational and indivisible to the collective European identity, and in turn provide a normative worldview which has an impact externally through European external policy and through various forms of diffusion.²⁰ These values not only constitute the European identity, but in theory they contribute to a worldview that guides Europe’s interaction with external partners – for example, in promoting and supporting democracy, human rights, and good governance – and represent a standard of practice for those who wish to do business with Europe. From this perspective Europe’s role as a global actor – in theory – takes into account not only the interests of Europe and European states, but a cosmopolitan commitment to certain standards of human welfare globally.

The idea of the normative power of Europe has been challenged on many fronts.²¹ The internal diversity of the European Union, after waves of enlargement, reflects a wide range of values and interests which defies the idea of a fixed, coherent value system. Many scholars have also raised concerns about the legitimacy of the concept, if it assumes the superiority of European values over ‘other’ systems of justice and politics which it seeks to ‘civilize’.²² In turn, other scholars have raised concerns about the lack of consistency between the EU’s normative principles and its external policies.²³ In practice, there have been major internal tensions and constraints attached to the EU’s normative worldview, especially when dealing with great powers and when key interests such as energy and security are at stake. A key critique is that norms are more likely to play a role in EU external action when they do not conflict with other more conventional and self-interested policy goals and when the EU is dealing with relatively weak countries and regions.

As this debate has evolved it has generated more reflective, sometimes self-critical,

viewpoints on Europe's normative contribution to international order, which has acknowledged the limitations and constraints of the EU's foreign policy more broadly. This has been underscored in policy terms by the experience of the EU as it has become engaged in sensitive foreign policy challenges – in Libya, Iraq, Syria and Ukraine, amongst other cases. Nevertheless, the credibility of the EU's global role is still projected on the basis of its moral leadership and humanitarian credentials by European foreign policy elites, including its commitment to principles such as R2P.²⁴

Against this background, an examination of Europe's collective response to the refugee 'crisis' provides an instructive case for evaluating whether these states view their commitment towards the R2P principle as entailing obligations to people fleeing grave human rights abuse. It also arguably tests the humanitarian commitments of liberal states more broadly, especially when challenges and responses are politically controversial at home. The analysis will approach this by exploring elite discourse – in particular, how states frame the refugee 'challenge' and their role in it – and policy responses. This approach is not meant to capture the range of national policy responses across Europe, which is beyond the scope of this paper, but instead presents the essential features and tone of the collective response.

Some sensitivity is required when discussing the extent of the refugee challenge in Europe in 2014-15, because the political narrative about this issue is defined by assumptions about the scale of the refugee numbers. The general assumption is that these numbers are objectively very large, on a scale not seen since during and immediately after the Second World War. This narrative of absolute scale – as an 'unprecedented' challenge, an 'emergency' and a 'crisis' for Europe – frames the political debate about the issue and justifies certain policy responses, but the narrative should not be accepted uncritically. In fact, this framing is in some ways a subjective construction, and some observers have argued that while the issue may be a political crisis, it is not unmanageable in terms of refugee numbers, given the capacity of European states.²⁵ Nevertheless, the numbers are impressive. In 2015, over one million people arrived by sea across the Mediterranean, with the majority landing into Greece (797,500) and Italy (149,000). Over 3600 died during their journey. Approximately 50% of arrivals were from Syria, 20% from Afghanistan, and 7% from Iraq. 90% of arrivals came from the world's top 10 refugee-producing countries.²⁶ Sea arrivals in 2014 and in particular 2015 reflected a dramatic increase, after remaining fairly stable between 2008 and 2013.²⁷ Numbers of asylum applications received in 2015 across Europe broke the previous record high, set in 1992 following the break-up of Yugoslavia. The increase in numbers of land and sea arrivals was a result primarily of the intensity of conflict in Syria, Afghanistan and Iraq, and the successful efforts of West European states to reduce arrivals by asylum seekers by air and regular land transit. Pull factors – such as Germany's well-publicized open policy towards refugees – may have also played a role.

The European ‘crisis’ has occurred in the context of unprecedented levels of forced displacement globally, with 65.3 million individuals in this position by the end of 2015, including 21.3 million refugees and 40.8 million internally displaced persons.²⁸ 2015 also saw historically low levels of refugee returns.²⁹ Guterres, the former UN High Commissioner for Refugees, stated that “We are witnessing a paradigm change, an unchecked slide into an era in which the scale of global forced displacement as well as the response required is now clearly dwarfing anything seen before”.³⁰ Globally, in addition to the unprecedented absolute numbers of forcibly displaced persons, the rate of increase has also been remarkable. As Betts has observed, “the refugee regime is at a crossroads” and state commitment to asylum seems to be increasingly conditional.³¹

Characterising the European response

Political conflict over collective action

There has been significant political conflict across Europe with respect to managing the arrival and transit of refugees, the determination of their status, and their (re)settlement or return. From this perspective, the crisis is a political one related to European cooperation and collective action rather than a crisis of human insecurity. A number of countries erected legal and sometimes physical boundaries at their borders with other European countries, constituting a breakdown – at least on a temporary basis – of the Schengen Agreement and a return to ‘national’ approaches, laid bare by the Schengen Review Summit in November 2015.³² By the end of 2015 six members of the Schengen agreement had re-introduced border checks and serious questions were being raised as to whether the agreement would be viable for the future. This also represented a breakdown of the Common European Asylum System – covering reception procedures and agreements on who qualifies for international protection – and the Dublin Convention on first country of arrival. In 2014, five EU member countries dealt with 72% of all asylum applications across the EU.³³ As the Commission noted, some EU members were failing to make a contribution to global resettlement efforts in terms of receiving and accepting refugees or helping to fund the efforts of others.³⁴ This “fragmentation of the asylum system” has, according to the Commission, exposed a lack of trust amongst European countries.³⁵ Nevertheless, the scale of irregular movement was apparently something that existing collective provisions could not accommodate. For example, given the route of arrival for most refugees, the Dublin Convention placed an unfair burden upon Greece and Italy due to their geographic location and this has formed part of the argument in favour of a European wide quota system.

National responses to incoming refugees in 2014-15 also reflected a lack of cooperation within Europe in terms of easing pressure on – and providing resources to – those countries which were seeing the biggest influx. In a number of cases states unilaterally erected physical boundaries and closed borders despite this displacing migrant flows elsewhere. The key themes of this political conflict concerned whether

countries of first arrival should allow onward transit, the question of who would meet the costs of those frontier countries which were receiving the influx of refugees, and the longer term solution for distributing asylum seekers in the region. The existing basis for managing such challenges – the 2008 European Pact on Migration, negotiated around the concept of burden sharing – proved to be inadequate in the face of the political crisis. Yet the idea of compulsory EU quotas of refugees under a ‘permanent mechanism’ was equally controversial due to disagreements over burden sharing. The principal issues within this debate have concerned the sharing of costs and political risks, and the need for stricter policing of the EU’s external borders in the interests of salvaging internal freedom of movement.

Political framing of ‘crisis’

The conflict over collective action is underpinned by a political discourse of crisis, emergency, and even existential threat, both by supporters and opponents of more open policies towards refugees. Policy debates in response to refugees have reflected a collective action mentality geared towards sharing the ‘burden’ of this crisis, rather than moral commitments to people fleeing danger. This political framing has conditioned political debate within many European countries, in which forced displacement and asylum issues are often conflated with broader debates about migration, even though asylum seekers make up a small proportion of migrants, and refugees make up far less than 1% of Europe’s population. A number of nationalist political parties – such as the Swedish Democrat Party, the French Front National, and the UK Independence Party – have benefitted from and promoted this narrative and have in turn risen in popularity. Despite the efforts of some to claim a ‘special responsibility’ towards refugees,³⁶ there has been little or no acknowledgement amongst policy elites that the Western role in conflict and instability in countries of origin has resulted in large refugee flows, and that this generates a responsibility towards them. This political framing is a key aspect of the process of securitization which has defined the liberal response (see below).

Exclusion

Efforts to exclude the physical arrival of all forms of irregular migrants – including those potentially fleeing grave danger – has characterized the European approach and this has been reinforced as a policy response to mass influx. A key European Commission position paper – ‘A European Agenda on Migration’ – indicated that “The immediate imperative is the duty to protect those in need...Europe should continue to be a safe haven for those fleeing persecution.”³⁷ However, the agenda is underpinned by an exclusionary strategy, and it reflects a movement away from settlement solutions – compared, for example, to the 1990s with refugees from the Balkans. The strengthening of frontier defence, processing asylum seekers offshore, returning refugees when their country of origin is regarded as safe through ‘safe return reviews’, immediate return under the Safe Country of Origin provisions, and giving temporary/minimum stays of protection, are all well established mechanisms within Europe which are being strengthened.

In response to the 2014-15 crisis, these measures were complemented by agreements with third countries to take in or prevent the onward journey of large numbers of refugees as a way of diverting them from Europe. A key aspect of this was a settlement with Turkey in March 2016 to accommodate approximately 2 million Syrians who were currently there – and thus block onward transit – in return for financial and political incentives. The renewed emphasis upon ‘solutions in the region’ is similarly an effort to prevent asylum seekers from reaching Europe. Part of this interdiction effort, from the perspective of European and national authorities, is aimed at preventing the abuse of the asylum system – in 2014, 55% of asylum requests in Europe resulted in a negative decision³⁸ – but it seems clearly aimed at preventing the arrival of migrants, including potential refugees, in general. As some have observed, these measures are often counterproductive as well as ethically questionable.³⁹ Border controls create the market for smuggling, and increase the reliance of migrants upon smugglers, exposing them to danger and abuse. They also redirect migration pressure to elsewhere, which was a key factor in the 2015 refugee crisis.

The European experience of 2014-15 has arguably reflected a continuation, or escalation, of a historical pattern of behavior of many liberal states, which is to contain refugees within unstable regions of the world and prevent them from traveling to the West whenever possible.⁴⁰ It is also instructive that the European Commission linked migration to the EU’s Common Security and Defence Policy missions at work in some African countries, thus underlining the exclusionary mindset.⁴¹

The European Union has already had, for some time, mechanisms to prevent or interdict irregular migrants. The EU Border Agency, Frontex, has agreements with third countries which may be the origin or transit point of ‘irregular’ migrants, including refugees. Interdiction operations to tackle irregular sea arrivals have also been an integral part of border management. European countries have bilateral arrangements with third countries – in particular on the African coast – to allow patrols aimed at stopping sea-borne migration.⁴² The broader context for this is the Global Approach to Migration and Mobility (GAMM) and Regional Development and Protection Programmes which link together EU and relevant third countries in an attempt to manage and regulate migration. Human Rights Watch describes this as the European “default position”: preventing or discouraging people from attempting to travel to EU territory, combatting smuggling networks, and deporting individuals who do not have a right to remain in the EU.⁴³

The European solution reached in September 2015 aimed to relocate 160,000 refugees from the most affected states (such as Italy and Greece) to elsewhere in Europe over two years. By the end of 2015 just 0.17% of the asylum seekers (272 Syrians and Eritreans) had been formally relocated from these frontline countries to countries elsewhere in the continent.⁴⁴ Representatives of the largest body of independent

experts in the United Nations human rights system issued a damning statement on the response of Europe to the refugee crisis. It expressed concern about the primary focus upon external border protection and increasing return rates of migrants; violations of migrants' human rights including violence against asylum-seekers; arbitrary detention; denial of access to food, housing, sanitation and healthcare; and the use of racist, xenophobic and dehumanizing language against asylum-seekers and migrants by political leaders. According to the human rights body, this constituted a "complete disregard for human dignity".⁴⁵

The United Nations Special Rapporteur on the human rights of migrants, François Crépeau, similarly raised the alarm about European authorities "[b]uilding fences, using tear gas and other forms of violence against migrants and asylum seekers, detention, withholding access to basics such as shelter, food or water and using threatening language."⁴⁶ Zeid Ra'ad Al Hussein, the UN High Commissioner for Human Rights, suggested that the language surrounding the issue had descended into "xenophobia and in some cases outright racism", and was reminiscent of the 1938 Evian conference, when countries refused to take in substantial numbers of Jewish refugees fleeing Germany's annexation of Austria.⁴⁷ Civil society groups were equally critical. Human Rights Watch argued that the EU deal with Turkey, announced in March 2016, contradicted EU principles guaranteeing the right to seek asylum and against collective expulsions.⁴⁸ Médecins Sans Frontières suspended operations in a major transit camp in Greece, claiming that "We will not allow our assistance to be instrumentalized for a mass expulsion operation, and we refuse to be part of a system that has no regard for the humanitarian or protection needs of asylum seekers and migrants."⁴⁹ UNHCR also refused to be involved in "returns or detention", and the Norwegian Refugee Council also suspended operations at a Greek site as a result of similar objections.⁵⁰ Rights groups argued that the Syrian crisis has "highlighted the retreat of responsibility for refugee protection" in the interests of 'border protection' and 'migration management'.⁵¹

There were different practices across liberal states, and in particular a comparison between Germany and other European countries is important in this respect. Germany received approximately 1 million refugees in 2015 and, for a time, had a very open policy on migration. This was framed by the German government as a liberal humanitarian obligation, in an attempt to provide moral leadership within Europe and to generate and mobilize consensus within the EU to respond to the forced migration issue. Nevertheless, the collective European response to the refugee crisis of 2014-15 appears to confirm Jennifer Welsh's observation that "RtoP for the European Union is framed still very much as a foreign policy issue: i.e., as something we do 'outside' our borders".⁵²

Explaining, framing and justifying limits

It is not the purpose of this article to argue that the European response to the arrival of large numbers of refugees in 2015 was objectively ‘wrong’ from a moral point of view. Rather, the purpose is to explore that response – both in terms of policy action and the narrative used by elites to justify policy – in order to consider its implications for their standing as self-professed humanitarian actors. In turn, this is presented as indicative of wider constraints upon humanitarianism in liberal states. The section above has demonstrated that the European response was in important ways not – apart from some exceptions – characterized by a moral commitment to vulnerable populations. Moreover, little or no attempt has been made at the policy level to link European states’ responsibility to refugees with their commitment to the R2P principle. Indeed, the overriding narrative has been one of collective action around ‘burden sharing’ and managing political risk. This section will consider this response in the context of debates about the legitimate limits that might exist to national obligations to offer asylum to those in peril, in order to consider if the restrictions explored in the previous section can be reconciled with Europe’s normative self-image.

Integrative capacity is one of the most widely explored explanations for legitimate limits to accepting refugees.⁵³ Receiving countries need to have the ability to absorb refugees without undue costs for citizens. From this perspective, analysts and state actors often refer to the capacity of public services, land space, overall population size, economic strength, availability of housing, and employment opportunities as legitimate factors which must limit numbers of incoming refugees. If asylum seekers are accepted in excess of capacity to manage them, it can cause local grievances and potentially undermine the rights to services enjoyed by citizens of the host state. Even theorists associated with ‘open borders’ accept that the capacity of a state to absorb refugees should be taken into account.⁵⁴ Capacity to integrate might also involve a judgment about whether a particular community of refugees would be able to integrate, based upon religious and cultural factors, and the past experience of the host country in terms of settling refugees. From this perspective, there is an explicit assumption that the needs and rights of citizens trump those of all migrants, including refugees, and also therefore that there is an inherent tension between the admission of refugees and the needs of citizens.

Assuming that integrative capacity is a legitimate basis for limiting refugees, the current distribution of refugees globally can be regarded as unfair, and this raises questions as to whether it is a credible justification for limits in Europe. Developing countries, including those in conflict-affected regions, host the vast majority of refugees despite an apparent disadvantage in integrative capacity compared to more developed countries. According to UNHCR’s Global Trends survey for 2015, developing regions hosted 86% of the world’s refugees (13.9 million people), and the Least Developed Countries hosted 26% (4.2 million).⁵⁵ The top hosts in 2015 were

Turkey (2.5 million), Pakistan (1.6 million), Lebanon (1.1 million), Iran (979,400), Ethiopia (736,100), and Jordan (664,100). The highest ratio of refugees per 1,000 host-country inhabitants in 2014 were Lebanon (232), Jordan (87), Nauru (39), Chad (34), Djibouti (23), South Sudan (21), Turkey (21), Mauritania (19), Sweden (15), and Malta (14) (UNHCR 2016b: 3). In terms of numbers of refugees in relation to economic performance, the 30 countries with the largest number of refugees per capita were all members of developing regions, and included 18 Least Developed Countries. 42% of the world's refugees were hosted in countries whose GDP per capita was below USD 5,000.⁵⁶ The overall pattern is that those countries which have the highest capacity to integrate refugees host a lower proportion. Despite the dominance of media coverage on refugees in Western societies, numbers of refugees are comparatively low as a proportion of population. On this basis, the current distribution of refugees appears to be based upon geographic proximity rather than capacity.⁵⁷ Arguments in favour of exclusion based upon capacity and the protection of economic interests in Europe are therefore questionable, in light of numbers accepted by countries in developing regions.

A further problem with integrative capacity as a limit is the manner in which this is politically framed as a competitive or zero-sum equation, in which refugees – and migration more generally – are assumed to have a negative impact upon society. From this perspective, economic stability trumps humanitarian obligation. Yet this assumption of competition is far from objective or unproblematic; a number of authoritative studies have questioned the assumption of a negative economic impact, or found a positive impact of immigration in advanced economies.⁵⁸ EU economists concluded that “if managed properly, the inflow of refugees will have a small favourable effect on growth in the short and medium term”,⁵⁹ yet this is the opposite message to that reflected in mainstream political discourse.

This competitive framing dominates public discussion of refugee and asylum politics in liberal societies, creating electoral pressures which make political leaders – even those who might be sympathetic to protection – risk averse and cautious. This generally reinforces an exclusionary response to refugees – even in times of humanitarian crisis – and in some countries it results in outright hostile policies towards those fleeing danger.

A further consequence of political framing in liberal societies relating to integrative capacity concerns whether asylum seekers would ‘fit’ in to the community to which they seek to migrate, or whether they might represent a threat to societal cohesion and identity. Here the gap between mainstream liberalism and cosmopolitanism becomes evident. Where cosmopolitans might question the moral legitimacy of borders in the interests of human solidarity and safety, liberals would generally wish to uphold the values of society as an essential public good, even if this means excluding people who have a claim to assistance. Given that many forcibly displaced people are from political, cultural and religious backgrounds which are different to those of liberal

Western societies, the challenge of assimilation and the need to preserve the values which define liberal societies form a key brake upon open borders. Some political leaders have openly resisted refugees on the basis of their cultural and religious background. Czech president Milos Zeman claimed that it is “practically impossible” to integrate Muslim communities into European society,⁶⁰ and Viktor Orban, the prime minister of Hungary, claimed that “the survival of our civilization and our culture is at stake”.⁶¹ This sentiment is widespread in more subtle forms in the context of broader concerns about migration; according to the UK home secretary, in a keynote 2015 address, “when immigration is too high, when the pace of change is too fast, it’s impossible to build a cohesive society”.⁶² It is notable that this discourse actively conflates refugees into migrations more broadly.

Securitization

All of these explanations point to an overarching theme which defines the liberal state response to the refugee crisis in 2014-15, and that is the securitization both of the political framing of the issue and the policies which follow. In this way securitizing actors – such as state agencies – frame or construct an issue as a security challenge in a way that does not reflect an objective judgment of threat, but rather as a subjective political process geared towards various ends.⁶³ When something is defined as a security challenge – underpinned by the language of threat, danger and conflicting values – this acts as a pretext for exceptional measures, even if these measures are in tension with other public goods. In the case of migration, this is a common political device for strengthening borders and enhancing exclusionary policies.⁶⁴ In the 2014-15 context, public and political discourse around the refugee ‘crisis’ was highly securitized. In the most obvious manifestation, political leaders and media outlets in some liberal societies drew a link between Syrian asylum seekers and the threat of terrorism, in particular following terrorist atrocities in Europe. Refugees were also associated – sometimes erroneously – with increased levels of crime, including sexual assault. The focus on illicit human smugglers – rather than the rights and needs of vulnerable migrants – is a part of this narrative, which also implicitly places complicity upon forcibly displaced people as irregular migrants.

The process and effects of securitization extend far beyond the perceived threat of political violence and crime, however. Economic competition around livelihoods, access to social services and healthcare, and scarce employment opportunities are highly securitized around a binary of incompatible indigenous and migrant interests. Societal cohesion – in the interests of maintaining liberal values – are also framed within a securitized narrative, despite the absence of systematic evidence that refugees pose a threat. According to this framing, irrespective of the size of the incoming refugee population in comparison to general population size, the cultural and religious backgrounds of those migrants represents a threat to the values of the host society. Human Rights Watch suggested that “Blatant Islamophobia and shameless demonizing of refugees have become the currency of an increasingly

assertive politics of intolerance”.⁶⁵ Yet this politics, even if it may be out of proportion to the numbers of refugees, points to societal anxiety in liberal and quasi-liberal countries about perceived challenges to values and identity at a time of social dislocation.

Political elites and the media have deployed this narrative as a framing device and it has found some traction within liberal societies. There is also evidence of public antipathy towards refugees in opinion surveys,⁶⁶ although it is difficult to know if this is truly bottom-up or a consequence of elite and media framing – or indeed, a circular process. Thus, even in the face of quite exceptional humanitarian catastrophe, in practice economic, societal and border security provide a powerful narrative which trump moral obligations towards people fleeing extreme danger.

Whilst the controversies related to refugee influx can be explained with reference to political factors within and between European states, it is more difficult to make a judgment about the legitimacy of imposing limits and whether these limits have consequences for the moral credibility of liberal states as humanitarian actors. Political theorists have been grappling with the ethics of immigration in relation to questions of global justice for many years and some of their debates are relevant to the more narrow topic of refugees.⁶⁷ It is interesting to draw upon this scholarship to frame some of the ethical questions relevant to this topic, in particular in terms of the limits that liberal states can legitimately impose upon the admission of refugees fleeing grave danger, and whether these limits are consistent with their commitment to humanitarian values. At the radical end of the spectrum theorists of open borders challenge the morality of any controls, and some argue that the refugee convention is too narrow and should be revised to allow greater mobility.⁶⁸ Carens concedes that there are limits to our obligations to refugees – for example, if the admission of refugees is in tension with public order. However, his conclusion is that liberal states “almost never” have a legitimate moral reason to impose a limit: “If one takes the moral claims of refugees seriously...it is not clear why their claims to an admission which is necessary to protect their most basic rights should be subordinated to much less vital interests of members of the receiving state.”⁶⁹ In other words, it is not reasonable for a state which has the capacity to admit refugees to deny them asylum even if it causes political controversy or economic burdens – such as those seen in European states in 2014-15 – because these can be managed. To deny asylum, then, would raise questions about their credibility as humanitarian actors.

In contrast, Miller is representative of political theorists who emphasize the legitimate responsibilities and rights of states to regulate transit across their borders and to decide upon the immigration policy that is appropriate for them, in line with duties under international law.⁷⁰ This provides a more restrictive view of what entitlements should be extended to refugees who are given asylum, and the options available to them in terms of *where* they enjoy protection. From this perspective, refugees do not automatically have equal rights as citizens, or a right to permanent settlement if their

country of origin returns to a state of safety. As Miller notes, “Ideally, then, refugee flows would be managed by an international body applying burden-sharing principles and assigning refugees to particular receiving states on that basis”.⁷¹ This may involve richer states paying poorer states to host refugees, and asylum seekers would not necessarily have a right to seek asylum in their preferred country. However, the final judgment as to when a host has reached its limit of refugees rests with the host state itself and is therefore not subject to general moral rules or judgment.⁷²

State practice and public discourse generally reflect this more restrictive framing: the response to refugees is not debated with reference to responsibilities based upon principles of justice, but rather a kind of charity and always mediated by the higher values of security, societal cohesion and integrative capacity. In turn, political elites – in the UK, for example – seem to be in line with Miller’s suggestions that “asylum should be regarded in principle as a short-term measure that lasts until human rights conditions have improved in the refugee’s country of origin”.⁷³

Political theory debates, whilst identifying the moral parameters, do not point to definitive answers as to the legitimacy of liberal state responses to the refugee crisis. Clearly, states have responsibilities to their own citizens as well as to those seeking protection. This reflects a tension between moral obligation and practice. It is a widely accepted principle within political theory and practice – and one that is reflected in international human rights law – that states have moral obligations to provide protection to refugees. At the same time, liberal states have undertaken great efforts to prevent the arrival of asylum seekers (because of the obligations this creates) through visa controls, carrier sanctions aimed at preventing irregular travel, and interdiction and diversion measures at sea and elsewhere.⁷⁴ But whilst this may be decried by many, this response can claim a measure of democratic legitimacy. If the legitimacy of a political response in liberal societies is a function of public support, then the move towards exclusion is arguably legitimate since it reflects public opinion to varying degrees.

Political theory raises ample questions regarding the ethics of how states should respond to refugee flows, but no consensus on an ethical response. Nevertheless, there is a basic requirement of consistency between commitments to humanitarian principles – including R2P – and action in response to refugees, even when there are costs to states. This, surely, raises implications about the limits of humanitarianism that are relevant to the liberal commitment to R2P. The securitization of the debates means that the interests of citizens and those seeking protection are framed as incompatible or in conflict.

Conclusion

Barbour and Gorlick argue that “the grant of asylum is, or would be, in many cases the most practical, realistic and least controversial response to assisting victims of

mass atrocities”.⁷⁵ However, the European experience in 2014-15 – which has implications broadly for liberal polities – suggests that granting any form of asylum is *not* the least controversial response, at least in terms of domestic politics; indeed, using armed force has generally been less controversial for some countries than accepting significant numbers of refugees. The public political discourse that defined the refugee ‘crisis’ has also raised the question of whether Europe can react ‘ethically’ to such challenges. Liberal societies are assumed to reflect and embrace certain values and commitments, but as democratic societies they can also generate illiberalism or sometimes extremism. Some European countries have framed their policy on Syria – including the use of armed force – around a narrative that has emphasized humanitarian imperatives and the abuses undertaken by the Syrian government and parts of the opposition. Yet they apparently refuse to accept that this entails a moral commitment to innocent civilians who are fleeing from those situations of persecution – or they impose severe limitations on the exercise of this commitment.

Some analysts have argued that complete consistency in international political behavior is not necessary – and certainly not realistic – in order to have a positive humanitarian impact.⁷⁶ According to this, we cannot expect states – even those which profess to be committed to humanitarian values – to always act in a way which demonstrates humanitarian commitment. Is it therefore right to judge the humanitarian credentials of liberal states and their commitment to the R2P on the basis of an exceptional emergency as happened in 2014-15? For a number of reasons, it is reasonable to make such a judgment. Liberal states claim to be at the forefront of the R2P principle and the international humanitarian movement, and so their behavior establishes certain standards regarding the extent and limits of humanitarian norms and policy. A case can be made that a commitment to R2P – in addition to other international instruments dealing with refugees – entails a responsibility to protect people fleeing from mortal danger, despite the failure of the UN to effectively make such a link. And the scale of the challenge in 2014-15 was such that it constituted a reasonable test of Europe’s commitment to humanitarian action – all the more so *because* of the political costs associated with granting asylum. A ‘de-securitized’ approach could make a constructive contribution at the political level, but this depends upon political leadership. Unfortunately, the implication of the argument in this paper is that securitization and the limits to humanitarianism are inherent in liberal societies. Indeed, even where there have been more ‘progressive’ and ‘open’ approaches to refugees in Europe, the limits to humanitarianism in liberal societies are still visible.

The implications of this for the development of the R2P principle and for the humanitarian commitment of liberal states more broadly are not encouraging. There are limitations to the humanitarian commitment of liberal states when the exercise of this commitment comes at a cost in terms of resources, political controversy, or societal values. The political process of securitization exacerbates sensitivities about the perceived costs of humanitarianism, with the result that the needs of local citizens

are seen as incompatible with – and take precedence over – the needs of those who are outside the polity. This points to an exclusionary tendency within liberal societies, based upon values and identity as well as more material concerns. As Carens observes, there is “a deep conflict between what morality requires of democratic states with respect to the admission of refugees and what democratic states and their existing populations see as their interests”.⁷⁷ The European response to the refugee crisis of 2014-15 was characterized by a securitized, exclusionary narrative, which suggests that the security and well-being of host countries trumps the needs and rights of asylum seekers. Whilst this is not necessarily problematic in principle, given states’ primary duty is to their citizens, the manner in which many European states have approached their humanitarian responsibilities raises troubling questions. Despite a plausible case in support of linking the R2P principle with a responsibility to protect individuals fleeing danger, European elites have resisted such a responsibility.

The limits to liberal humanitarianism have implications for the evolution of the R2P principle since they suggest that even champions of R2P will weigh their responsibility to human protection against political expediency, electoral pressures, and perceptions of their own societal security and integrity. This does not necessarily undermine R2P as a political principle from a pragmatic ethical or political perspective, since absolute consistency is not essential for humanitarian action to have value. However, if ethical consistency is a foundation, this has troubling implications for the credibility of liberal states as ethical actors in a changing international order, and for the evolution of R2P as a norm.

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