

Ethical Reflections on the Institution of Asylum

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Abstract

This article explores the rationale for protecting and assisting refugees, from an ethical perspective. It also examines the relationship between a country's obligation to provide asylum and that country's affluence. The field of tension between statist and cosmopolitan ethics is analyzed. After showing that the former establishes weak and limited asylum obligations and after offering a brief argument for cosmopolitanism, the article explores cosmopolitan forms of utilitarianism, libertarianism, and egalitarianism. A reasonable synthesis of the last three perspectives is proposed: it includes a strong duty to provide asylum, a broad definition of the kinds of displacement that create entitlements to international protection and assistance, and international burden-sharing based on relative affluence.

Résumé

Cet article exploratoire se penche sur la raison d'être fondamentale — du point de vue de l'éthique — de l'aide et de la protection offertes aux réfugiés. Il examine ensuite la relation qui existe entre le devoir d'asile d'un pays et son niveau de richesse. Cette exploration se fait à l'intérieur de l'espace de tension qui existe entre l'éthique étatiste et l'éthique cosmopolite. L'article démontre que l'éthique étatiste ne propose, dans le meilleur des cas, que des devoirs faibles et limités. Il continue avec une brève plaidoirie pour le cosmopolitisme, avant d'examiner les formes cosmopolites de l'utilitarisme et des doctrines libertaires et égalitaires. Une synthèse équitable est proposée, qui inclut le devoir ferme d'offrir l'asile, une définition générale des types de déracinements donnant droit à la protection et à l'assistance internationales, et un système de partage des charges au niveau international basé sur les niveaux relatifs de richesse.

Introduction: Two Ethical Questions

What is the ethical basis for protecting and assisting refugees from other countries? Does a country's affluence affect its moral obligations? These are the questions to be addressed in this article. The focus is on the institution of asylum, not the current debates about asylum policies and procedures. (The approach sketched out here could be applied usefully to the latter, but that would require a much longer treatment.)

The questions are ethical and require an ethical approach to answer them. Such an approach must be distinguished from a socio-scientific or legal approach. A socio-scientific analysis describes and explains, e.g., how asylum is viewed in particular countries or cultures and the reasons for this attitude, such as the fact that a religion's founding prophet sought asylum at a crucial point in his messianic career. Such an analysis is different from an evaluative and prescriptive approach, which is shared by both ethics and the law. The strictly legal approach, represented by legal positivism, is still, in one sense, descriptive: it articulates what the law says and then applies it to a case in an evaluative or prescriptive manner. Certain schools of ethics, such as the school of natural law, do that, too, although what it initially describes is not law made by people, but divine law. However, regardless of whether ethical schools take a "realist" approach (which involves *discovering* ethical principles or the ethical order) or a "constructivist" approach (which recognizes that we human beings and our societies *construct* ideas of the good and the right), the ethical approach requires that laws and social practices be submitted to evaluative scrutiny. This is the approach I will use in this essay when exploring refugee protection and assistance. In other words, I will not ask, Do certain refugee policies and practices accord with legally established rights and obligations? Rather, my question will be, What form must refugee laws, policies, and practices take in order to be ethical?

I will evaluate competing ethical perspectives, especially perspectives that differ on the ethical significance of national borders. And I will evaluate ideal types of ethical perspectives. Most functioning systems are mixtures of ethical principles, and these ethical principles can often be traced to different ideal types of coherent ethical perspectives. So ideal types of ethical perspectives are seldom good representations of functioning ethical systems. Furthermore, they seldom provide the most satisfactory prescriptions. Nevertheless, to understand the rationales, it makes sense to initially analyze such ideal types and then treat particular instances of real-world prescriptions as hybrids of such ideal types.

I have not yet defined the word *refugee*. In fact, I will leave this definition open, because the implications of each ethical perspective lead to different definitions, just as with the term *asylum*. These implications need to be explored, rather than defined away. What we can accept for the moment is that *refugees* are persons who have been forced to leave their home area.

A further question arises about alternatives to asylum and whether they should be pursued. Asylum is necessary when people are forced to move. Are there ways of preventing or minimizing such displacement? Should they be pursued as alternatives to asylum or merely to minimize the need for it? One option is humanitarian intervention and the creation of safe havens for threatened populations. Temporary asylum in neighbouring countries may also be a way of minimizing displacement and the requirements of asylum. Each ethical perspective has a different view on such approaches.

Finally, before proceeding to the actual analysis, it may be important to acknowledge that the following treatment of asylum is Eurocentric. Not Eurocentric in the way that the Geneva Convention of 1951 and the establishment of the office of the UN High Commissioner for Refugees was, when it limited itself to refugees in Europe and ignored mass refugee problems elsewhere. Asylum needs and rights in the whole world are addressed here. Rather, an allegation of Eurocentrism could be made because the range of ideas employed, including those of cosmopolitanism, are drawn from thinking in the North Atlantic sphere and its intellectual culture. That, no doubt, is true. However, there is no single Western value system. Rather, the North Atlantic cultural sphere has been a terrain for struggle among competing value principles and systems. The analysis presented here certainly cannot be taken to represent a mainstream position, especially its cosmopolitan dimension explained below. Similarly, there is no one system of Asian

or African values. In fact, even national cultures typically are arenas in which competing values are in contention. It is not unreasonable to suppose that the range of values in contention in the West or the North is not unlike the range of values in the East or the South. What is offered here as an ethical analysis is intended as a contribution to a global dialogue about the ethics of asylum. It is to engage, not to pronounce. It would be very enlightening to place this analysis in a dialectic with, for example, Islamic, neo-Confucian or African perspectives on asylum.

Sovereignist Ethics and Refugees

The most conventional ethical perspective holds that the relevant community for ethical considerations is the national community within which ethical obligations hold, but that certain limited ethical requirements also apply to relations with outsiders. It involves three levels of obligations: (1) It recognizes strong moral obligations, such as duties of mutual aid, only to co-citizens. (2) It normally requires that as long as aliens enter a country legally and respect the laws and customs of that society in other ways, they should be treated with civility. (3) Obligations towards other countries and citizens in those countries are limited to those of non-intervention, and merely require that their sovereignty be respected. I will therefore refer to this form of international ethics as *sovereignism*.¹

Focusing on duties to refugees, what is crucial is that international obligations under sovereignism are limited to non-intervention. That means first of all that victims of persecution, repression, or general violence cannot be protected or helped on the territory of their home country. They have to flee across their country's border in order for help to be permissible. However, even then, under strict sovereignism, protection and assistance are not required. Since they are not citizens of the country they flee to, they have, under sovereignism, no moral claim to help, although as a matter of charity or hospitality such help may be extended.

When international intervention is necessary in order to avert the need for flight, sovereignism allows it only in a non-coercive form. So it can take the form of diplomacy and perhaps even economic inducements, but it cannot involve invasions of the kind undertaken in the 1970s by India into East Pakistan, Tanzania into Uganda, or Vietnam into Cambodia, all of which were initiated at least partly to prevent further atrocities by states against their own people. All these actions involved violations of sovereignty. (Whether economic sanctions violate sovereignty is a matter of contention; according to international law, apparently they do not.)

Asylum, Internationalism, and Communitarianism

Although there are certain sections in state elites that still adhere to unqualified sovereigntism, international law since World War II has moved beyond it in several ways. International human rights, incorporated in international treaties, are qualifications to sovereigntism. One such right is a right to asylum, in the form of a prohibition of the forced return of those who have reached foreign territory and can claim individual persecution (*non-refoulement*). It is a limited right, because it does not include a clear right to entry and does not apply to other forms of victimization, such as by general rather than specifically targeted violence. It is true that many states assure such entry and accept broader criteria, but such criteria are not part of formal international law. Another non-sovereigntist aspect of international law finds that foreign intervention is both permissible and required when victimization takes the form of genocide. Unfortunately, international law is only “soft law,” in that it is not backed by an agency with clear responsibility and capacity to enforce it, and, given that intervention is costly and hazardous, the prevention of genocide is not assured, as the 1994 genocide in Rwanda made evident. That international law is merely soft law places it between normal law and ethics. Like normal law, it has been formally codified, but, like ethics, it is backed by conscience and moral pressure rather than authoritative enforcement.

The right to asylum represents a deviation from the ideal type of sovereigntist ethics. The sovereign-state system is one solution to the problem of international or inter-state relations or, more broadly, relations between peoples. The problem at issue is the potential for conflict to become war. The sovereign-state system, which Europe adopted in the 1600s, as an alternative to the Habsburgs’ defeated imperial approach to maintaining international order, vests supreme authority in states, and foregoes any supervening authority that might restrain the exercise of that supreme authority of states. There are internal arrangements that impose such restraints, such as the institutions of representative democracy, of checks and balances between the different branches of government, and of federalism. However, the sovereign-state system, which emerged in Europe when states were mostly authoritarian, imposed no such restraints on states. For a state elite to be internationally recognized as legitimate, it was necessary only to demonstrate that it exercised its authority effectively. That it exercised its authority responsibly was not a requirement. Repression, exploitation, and even genocide are not violations of sovereignty when interpreted as autonomy among states.

There is, however, one argument that accepts the prin-

ciple of sovereignty, but that nevertheless provides for a limited extension of international obligations beyond non-intervention. The sovereigntist system does produce certain benefits, such as preventing or limiting war—a highly dubious proposition in light of the system’s historical performance—but it also has widely recognized disadvantages. In particular, it fails to protect citizens against rapacious behaviour by their own governors, other than through whatever internal institutions that the citizenry has won or been granted. With the institution of asylum, and more specifically by establishing a *right* to asylum, the system minimizes this disadvantage. It means that, as long as victims of repressive states can reach foreign territory, they can escape victimization. While this argument for an obligation to grant asylum emerges from a particular understanding of the sovereign-state system, it goes beyond strict sovereigntism. It means that there are international obligations other than merely that of non-intervention. To acknowledge this difference, I will refer to the ethics that recognizes the rights and duties of asylum as *internationalism*, to distinguish it from sovereigntism.²

Another perspective—one that is closely related to sovereigntism and may also provide a moral basis for asylum—is communitarianism. The point of departure for moral thinking has sometimes been to equate the moral community with the state-nation (a term used here in recognition of the fact that nations are typically created by states, rather than the reverse). But the point of departure is the ethno-cultural community as the moral community. The ethno-cultural community is the generator of values. It defines the community that naturally recognizes these values. And most important, it is morally fundamental because it is entitled to be protected against destruction, erosion, and intrusion. According to communitarianism, states are entitled to sovereignty to the extent that they represent such communities. (Ideal nation-states involve a coincidence of the state-nation and the ethno-cultural community. In reality, even countries that come close to this situation—Japan or Bangladesh—contain ethno-cultural minorities.) When states victimize certain communities or fundamentally violate their values, they no longer represent such communities. Thus, while communitarianism leads to a presumption of the primacy of sovereignty, such a presumption is conditional and can lead to the right to call on international assistance in a struggle to protect communities against victimization or violation by the state. A minimal form of such assistance is to receive and protect refugees that come from such communities. Furthermore, communities often have the moral

obligation of hospitality as part of their inherited values. However, this value varies with cultures and can be quite closely circumscribed, as when it applies to ethnic kin only. It may not guarantee refuge to all asylum-seekers. Communitarianism can thus provide for asylum either on the basis of the value of hospitality (which is variable and unreliable) or on the basis of the universal value of the primacy of communities.³

Nevertheless, under either internationalism or communitarianism, traditional conceptions of asylum do not require states to treat refugees in the same way they treat their own citizens. There are citizen rights and there are refugee rights, and the two are not the same. This is a reflection of a two-level ethic: one applies within the society that refugees are not part of, and the second applies across the boundaries of society to strangers, including refugees. In other words, first, there is national ethics, with extensive specific rights and duties, as well as the more general right to have one's interests included in the public interest, which it is the duty of the state to advance. Then there is international ethics with much more limited entitlements and obligations.

The second question posed in this essay is, Does a country's affluence or poverty make a difference to its international obligations? This question is important in two respects: the amount of assistance that the host country owes to refugees who have taken asylum within its borders, and the amount of assistance that non-host countries owe to host countries. Clearly, given that asylum is granted at least to save lives, assistance to refugees must be sufficient to ensure their survival. The general orientations of internationalism and communitarianism in themselves, however, provide no guidelines for the living conditions to be assured to refugees; there is no requirement that these living conditions be in some way comparable to the living conditions in the host country. Nor do these ethical perspectives imply the need for other countries to share the burden. Of course, on both these issues it is possible to add to the general ethical perspectives certain particular ethical judgments that answer the question, but such judgments would be simply ad hoc supplements rather than integral parts of the ethical perspectives. This suggests the need to look at an ethical perspective, or framework, that does generate answers to these questions from within itself.

Cosmopolitanism and Asylum Obligations

That perspective is cosmopolitanism. It is the major alternative to both sovereigntism and communitarianism. Internationalism is a position between sovereigntism and

cosmopolitanism. Cosmopolitanism treats all of humanity as part of one moral community, without distinguishing between compatriots and foreigners. Whatever moral obligations we have to other persons, we have to *all* other persons, regardless of nationality. States have institutional significance, but they do not define moral communities. Borders do not represent the limits to general moral concerns. States are, of course, important in that they are the collective and authoritative agents of their citizens. This means that they assume moral obligations that citizens can meet only collectively or that are best met collectively.⁴

This applies both to granting asylum and to meeting long-distance obligations to refugee protection and assistance. It is true that asylum can be granted individually, to the extent that the law allows individual refugees to enter if they have been invited to do so by individual citizens, as in the case of refugee sponsorship. However, that is unlikely to fulfill the full range of obligations to refugees, given that the *need* for asylum does not derive from prior cross-border personal relations and given further that such need may not be adequately met by the charitable behaviour of host-country citizens. Presently, the burden of asylum typically falls on poor countries, and an equitable sharing of the burden of providing for the migration, settlement, and establishment costs of refugees is best assured through state action, either through the resettlement of refugees from countries with a disproportionate share of refugees or through international assistance.

There are arguments that support a cosmopolitan approach. Without attempting to be comprehensive, two of these arguments briefly are as follows. (1) Global integration of economies, cultures, and politics has proceeded to such an extent that mutual vulnerability is now worldwide. As a result of this integration, the relevant moral community has thus become humanity as a whole. (2) The earth and its resources cannot justifiably be appropriated merely by occupying a piece of land and claiming either ownership or sovereignty over it. Even if the original occupancy of land that is not used by other people warrants occupancy rights that can be bequeathed and traded in perpetuity, regardless of the scarcity that this creates for others, in this or in subsequent generations, there is another objection. It is that the history of the acquisition of land and territory is filled with conquest, violence, fraud, and exploitation—including that through colonialism—so that the moral basis of land titles and territorial boundaries is very much in question. This is not to say that land ownership or territorial state authority cannot be justified, but merely that they cannot be treated as absolute and that other

moral obligations may impinge on them or constrain them. Under cosmopolitanism such moral obligations can arise from considerations that cut across borders.⁵

In international politics the most obvious expression of cosmopolitanism has been the quite remarkable development and codification of international human rights in the last half-century. The right to asylum is part of this set of human rights. The following discussion, however, will not focus on human rights for two reasons. One is that many international human rights are not actually cross-border rights, but merely internationally recognized rights of citizens in relation to their respective states. In that form, they are not cosmopolitan in the full sense. By contrast, the asylum right, which consists of a right of foreigners in relation to host states, is fully cosmopolitan. But there is a second reason. It is that there is a great variety of human rights, and they derive from different ethical perspectives that provide their rationale.⁶ It is upon these underlying ethical perspectives that I will focus instead. These are all accommodated within the cosmopolitan approach, which provides only a particular ethical frame by requiring that people outside one's borders be entitled to the same moral consideration as people within those borders. What this moral consideration amounts to depends on the ethical perspective that applies within this cosmopolitan frame. Just as within the nationalist or sovereigntist frame different ethical perspectives compete and vary in their implications for the nature of moral obligations towards compatriots, so different ethical or social-justice perspectives are compatible with the cosmopolitan frame. In fact, the perspectives that compete within the former frame are applicable within the latter.

My approach will be to identify three such different perspectives, to show their implications for refugee protection and assistance in a cosmopolitan frame and to explore whether a synthesis of the three is plausible. The three perspectives are (1) libertarianism, (2) utilitarianism, and (3) egalitarianism. An international human-rights regime can derive from any one of these three, as long as whatever is to be maximized—liberty, utility, or equality—is not pursued simply from one policy to the next but is institutionalized as a set of rights that accomplishes that aim. Alternatively, and more commonly, it is pursued as a policy goal that is constrained by a set of rights in order to prevent abuses or mistakes that negate the long-term maximization of the particular goal. The actual international human-rights regime of today is very much a mixture of the three ethical perspectives.⁷ The approach here will be to articulate the

three positions, briefly explore their respective strengths and weaknesses, and develop a reasonable synthesis.⁸

First, I will sketch the main ideas of the three ethical perspectives.⁹

Libertarianism holds that it is the individual who is sovereign, that her freedom, interpreted as freedom from interference by others, including in particular the use and enjoyment of her property, is to be maximally advanced by protecting certain rights, and that the greatest threat to such freedom comes from the agent of the collectivity, the state.

Utilitarianism consists of the simple position that human well-being (or the well-being of all sentient beings) should be maximized.

Egalitarianism advocates the minimization of inequalities. There is, however, a fair amount of disagreement within egalitarianism about which good or dimension is to be equalized. For our purposes, I will take it to be first survival chances, then life prospects. Sometimes the principle of equality and the principle of need are taken to be at odds with each other, because different people have different needs, and the needs principle therefore requires the differential treatment of people. But to present this as an opposition or divergence between the two principles is mistaken. Needs can reasonably be taken to be whatever people require in order not to be disadvantaged, relative to others. To provide a paraplegic person with a wheelchair—to which a normally mobile person is not entitled—is simply to reduce the inequality in mobility between the two. So differential need fulfillment serves equality. I will therefore deal with needs under egalitarianism.

One difficulty in any discussion of cosmopolitan ethics is that, unless the prescription is for a revolution to create a cosmopolitan world with appropriate institutions, it has to provide prescriptions for a world with essentially sovereigntist institutions. This is very much reflected in the upcoming discussion of asylum. Presumably cosmopolitanism would prescribe open borders, so the function of borders would be confined to delineating political jurisdictions with their legal, regulatory, and service systems, where these systems cannot be used to exclude individuals. Open borders would, of course, make asylum in its strict sense redundant, although refugees might still need protection in the form of assistance. The discussion that follows will explore the implications of cosmopolitan perspectives on asylum when the cosmopolitan prescription of open borders has not been accepted. In other words, the cosmopolitan prescription of asylum obligations is, from its own perspective, very much a second-best prescription.¹⁰

Cosmopolitan Libertarianism

Libertarianism is analogous to sovereigntism: the central focus is on non-intervention. In sovereigntism, non-intervention is applied to relations between states, in libertarianism to relations between individuals, and to relations between institutions (such as the state) and individuals. There are obligations not to interfere in the private sphere of others, but no obligations to assist. Providing assistance to the needy may be morally admirable, but it is not required, because such a requirement would interfere with the liberty of the providers. Under strict libertarianism, the need to avoid interfering would appear to apply to asylum as well. Libertarians do not argue, for example, that individuals are morally required to assist those who have been repressed by a national government. However, libertarianism does recognize authoritarianism as an evil. Moreover, it allows that, when freedoms conflict, some freedoms are sacrificed to others, e.g., judicial coercion is accepted and found necessary in order to protect individuals against force and fraud. When cosmopolitan libertarianism recognizes that victimization by foreign authoritarianism requires the same moral attention as domestic authoritarianism, such recognition can lead to an obligation to provide asylum. In this way, an argument for asylum on the basis of the violation of one's civil rights *can* flow from cosmopolitan libertarianism, although it does not inevitably follow. Entitlement can be taken to represent a variant of cosmopolitan libertarianism. Does this mean that, under this variant, rich countries have greater obligations than poor countries? There seems to be nothing in libertarianism, even of the cosmopolitan kind, to indicate that they do, nor that rich countries have obligations to poor countries that carry the bulk of the asylum burden.¹¹

Cosmopolitanism Utilitarianism

Cosmopolitan utilitarianism requires that the well-being of humanity be maximized. Is it advanced by the right to asylum? The most plausible position is that it is. The sacrifices (losses of well-being) made by those who must provide asylum will normally be considerably outweighed by the gains in well-being of those who thus find refuge from repression. In fact, under cosmopolitan utilitarianism this conclusion applies to quite a wide definition of refugee. The well-being of humanity will be advanced by establishing the right to asylum for those whose survival is threatened by general violence (without being specific targets of persecution), famine, or other forms of environmental disaster, i.e., those who are forced to leave because of a well-founded fear for their lives as a result of state failures.¹² This

means that, from the perspective of cosmopolitan utilitarianism, the restriction of asylum rights by the 1951 Geneva Convention to victims of persecution is much too narrow. It does not mean, however, that the obligation to provide asylum is unlimited. The limit is reached when the effort to provide asylum costs more, in terms of human lives, than the lives saved by the provision of asylum. Such a limit, however, would be reached only in exceptional circumstances, such as when famine refugees flee into a country that is also experiencing food shortages. (Even then, the obligation, rather than ending, shifts to other countries.) In general, cosmopolitan utilitarianism prescribes asylum obligations that are much more generous than those that are currently prevalent.

This raises the question of burden-sharing and the relevance of affluence and poverty. On the one hand, the limit to the obligation to assist refugees is more quickly reached in poor countries than in rich ones. So rich countries should, from this ethical perspective, be the ones to be called upon to respond to the asylum rights of refugees in the first instance. On the other hand, an implication of maximizing well-being is that costs should be minimized at the same time. Costs represent losses in well-being in that they reflect the use of resources that could have been used to pursue other opportunities to enhance well-being, e.g., providing for agricultural irrigation for peasants in the host society. This means that, when several options accomplish the same gains in well-being for refugees, the least-cost option should be chosen. These two considerations open the door to a complex set of issues that is beyond the scope of this paper to fully pursue. I will confine myself to some brief points about the implications of cosmopolitan utilitarianism.

(1) Refugee protection that maximizes well-being, i.e., asylum provision that does the most for refugee protection and assistance at minimum cost, is usually provided in neighbouring countries. Refugees benefit because their transportation costs are limited, and they are more likely to find ecological, cultural, and economic environments with which they are relatively familiar. And the required assistance is seldom expensive. Refugees are also relatively close for their eventual return, which then remains relatively inexpensive. In other words, the proximity of asylum to the home of the refugees is typically an advantage when applying the utilitarian criterion.

(2) If the need for asylum is temporary, the provision of asylum may not need to be permanent. In other words, refugees may be required to return when the reasons for the displacement have been removed.¹³ If and when war-

ranted, the return may be accomplished by the withdrawal of assistance rather than direct coercion. In contrast to the libertarian, for whom coercion is to be minimized, the utilitarian is concerned about only the effects of coercion upon well-being. But the utilitarian will generally value a minimally coercive approach to return. It is not that the withdrawal of assistance is not coercive, but it is less coercive than outright expulsion. At the same time, if the refugees have been away from home for a long time, it may no longer be home to them, other than in a nostalgic sense, and a mandated return could involve extensive suffering, while the host society may not benefit from their departure because the activities of the refugees have over time become tightly integrated into the host economy. This, too, would need to be taken into account in a utilitarian perspective.

(3) Preventing displacement will often be a more effective strategy for maximizing well-being than merely accommodating the refugees. Prevention can include a wide range of measures that are open to a cosmopolitan, including those that violate state sovereignty, such as mounting an invasion to prevent atrocities, to end a civil war, or to create safe havens. (An invasion might even be necessary to allow people who are trapped to become refugees.) Utilitarianism is a consequentialist ethic, which is to say that the justification of actions depends on the outcomes, including unintended ones. Side effects are therefore important and have to be considered. Whether preventive intervention is justified will therefore depend on the whole complex range of consequences. This also applies to non-coercive prevention of displacement. If flight is due to famine and the lack of assistance within the home country, and could be averted by the provision of international assistance, then assistance rather than asylum will be cost-effective. In other words, emergency assistance can be an alternative to asylum and will typically be preferable from a utilitarian perspective. It, as well as safe havens, can also assist those who have not been able to cross borders—the internally displaced.

(4) Actually, the element that utilitarianism wishes to maximize is overall well-being, not its distribution. At this very simple level, then, there are no obligations for rich countries to share the burden of poor countries that provide asylum. However, one form of utilitarianism is based on the assumption that a certain amount of money (or, more generally, control of resources for living) in the hands of someone who already has much will produce less well-being than the same amount of money for someone who has little. Thus, transferring \$1000 from a rich person to a poor person will increase the well-being of the poor per-

son by more than it will reduce the well-being of the rich person. There is thus a utilitarian (maximization of well-being) argument for redistribution from the rich to the poor, including across borders and to refugees. This version of utilitarianism slides substantially into egalitarianism and I will turn to that ethical perspective now.¹⁴

Cosmopolitan Egalitarianism

Cosmopolitan egalitarianism is concerned with distribution worldwide. Global inequalities are to be minimized. While different formulations are concerned with different dimensions of people's lives that are to be fully equalized (well-being, purchasing power, opportunities, etc.), in the case of asylum it can be taken to be personal security and the means of survival. Moreover, in the area of distribution between countries, the relevant dimension will be something like gross domestic product (GDP) and the availability of land and other accessible natural resources. The first implication of cosmopolitan egalitarianism is that people who lack the security of survival are one of the most deprived groups. Providing such security, including that achieved through asylum, is then a top priority for cosmopolitan egalitarians, and practically all other concerns take second place to it.

Of course, for cosmopolitan egalitarianism the agenda goes much further and involves the elimination of all significant inequalities. Without pursuing this radical vision here, there is one other implication of this perspective that is relevant to the issue of asylum and that is that of burden-sharing. The most obvious form of burden-sharing is the distribution of refugee admissions equally among countries. However, such a prescription is neither clear nor necessarily best, even from an egalitarian perspective. First, what does it mean to distribute refugee admissions equally? Strict equality, regardless of the size of the country certainly does not make sense. If it means some kind of proportionality, is this in relation to the existing population or to the geographic size of the country? And surely the affluence or poverty of countries is relevant as well. Even if a suitable formula could be worked out, it is not clear that the burden of asylum is best distributed through the distribution of refugee admissions. Given the earlier discussion under utilitarianism, it might well make most sense to ask the neighbouring countries to accommodate the refugees, to the extent that they can, but to have the relatively rich countries pay for the resources, provisions, and services required by the refugees. Egalitarianism requires the minimization of inequalities. Financial burden-sharing is promoted by the venerable public-finance principle of *ability to pay*. The

poor don't pay, and contributions are levied according to the level of affluence. This requires a more progressive criterion than, for example, the development assistance target of 0.7 per cent of GDP, which is analogous to a flat tax rate. Like progressive taxation, it requires progressive levies for assistance to refugees. The ideal cosmopolitan approach would be the taxation of individuals according to their income and wealth. In the absence of appropriate cosmopolitan institutions, the next best approach is a system of progressive levies on countries. The fundamental point here is that, under cosmopolitan egalitarianism, affluence and poverty are highly relevant to the matter of sharing the burden of asylum duties.

It might be objected that sending money rather than accepting refugees is not an acceptable form of burden-sharing. However, unless refugees are accepted in the rich countries in the large numbers in which they appear—an implausible prospect in light of the problems of cultural and economic integration—a policy of selecting a small proportion of refugees for resettlement in the rich countries simply introduces a serious element of inequality into the refugee community, between those who are resettled and those who are left behind, often in conditions of serious deprivation. Resettlement tends to be much more an immigration policy than a refugee protection and assistance policy. This point applies even more to those who have the means to reach the territory of rich countries in order to claim asylum there, supported by the territorial laws that may then apply to them. For a cosmopolitan egalitarian, the refugees entitled to protection and assistance are those confined in miserable refugee camps. They tend to be out of the sight of pressure groups and are easily forgotten. As for the right to claim asylum by entering a rich country, that must be protected, but more on grounds such as that of hospitality, a value held particularly by communitarians, and on grounds that it is a step towards open borders, which is a long-term aim of cosmopolitans.¹⁵ But there should be no illusion that it does much to advance global distributive justice.

Constructing a Cosmopolitan Position on Asylum

Instead of engaging in a careful critique of each of these perspectives, I will treat them all as being ethically illuminating and as offering potential building blocks for a more complex cosmopolitan position. Libertarianism focuses on self-determination, utilitarianism on the public interest, and egalitarianism on distributive justice. How should this cosmopolitan position now be constructed? The need for asylum reflects the lack of cosmopolitan institutions, such

as global protection of human rights and open borders. If such institutions were in place, their fallibility might still make asylum necessary. A cosmopolitan case for asylum is thus paradoxical: it is a prescription for a non-cosmopolitan, pre-cosmopolitan, or inadequately cosmopolitan world. As such, the argument and prescription must consider the dangers and the limits of the existing world. The dangers are repression, violence, and the failure of states to protect their citizens. The limits, from a cosmopolitan perspective, are the lack or insufficiency of international constraints on the exercise of state authority, the existence of border controls, and the lack of reliable mechanisms of international redistribution and of other international supports for states to protect and assist their citizens. This lack of institutions and hard law across state borders means that cosmopolitanism is, at least for the time being, confined to the observance of ethical norms in state policy and their progressive incorporation in the soft law of international treaties. As such, it still faces an uphill struggle against the incumbency of the old sovereigntist ethic.

Just as in national politics we treat the public interest as a—in fact *the*—central criterion for public policy, it is equally warranted to do so in a cosmopolitan perspective. That makes utilitarianism the starting point. At the same time, egalitarianism comes in as a distributive criterion, and libertarianism typically provides certain constraints in the form of rights. In this discussion of asylum rights and duties, however, libertarianism turns out to largely reinforce what is already prescribed by the other perspectives.

This then makes the utilitarian argument central. The crucial parts of this argument are the following: (1) Asylum is important to the global public interest and is to be instituted in a strong form, not merely as a right not to be returned to the country of origin, but also as a right of entry to other countries in the first place. (2) Refugees—those entitled to asylum—should be defined in much broader terms than those who have been persecuted and should include those victimized by violence, famine, and disasters. (3) Asylum is to be provided with adequate assistance, but also at least cost. The balance is to be struck globally rather than in relation to local conditions, given the cosmopolitan frame at work. (4) The least-cost approach can mean that asylum is provided largely in neighbouring countries. (5) The least-cost approach may mean no more than temporary asylum in many cases. (6) The least-cost approach also requires that measures to prevent or minimize displacement, including humanitarian or preventive intervention, need to be considered first and that can also minimize the need for asylum.

Furthermore, egalitarianism generates two further propositions: (7) The dangers and deprivations of refugees are so important that their protection comes before practically all other concerns. (8) Progressive levies to distribute the burden of providing asylum on the basis of international ability to pay are essential. They are not only required by international social justice, but are also crucial to prevent the institution of asylum from being eroded by the financial self-defence of poor countries excessively burdened by asylum demands. Overburdened poor countries may be pushed to contain costs by restricting entry, forcing refugees out of the country, and leaving refugee camps poorly provided for.

Finally, on grounds that can be supported by all three perspectives, including cosmopolitan libertarianism in particular, there is one other ethical requirement related to asylum, which, like emergency assistance, can be a conceivable alternative to it. (9) In cases of genocide or other forms of life-threatening state repression, such as deliberate famine, the “community of states”—namely the United Nations, which is all that we now have to institutionally represent humanity as a whole—is required to undertake coercive intervention, including military invasion by a multilaterally authorized force. Of course, this does presuppose that alternative preventive efforts are ineffective or too harmful (e.g., long-term economic sanctions, which weigh most heavily on the innocent or even the victims) and that the negative consequences of such intervention are not likely to be worse than its gains.

Conclusion

Strict sovereigntism does not provide for asylum obligations. Communitarianism and internationalism can provide a basis for asylum obligations, but the basis for the quality of asylum as well as for burden-sharing is uncertain and typically grafted on ad hoc. Cosmopolitanism, at least in the form of the mix of ethical perspectives articulated here—based primarily on cosmopolitan utilitarianism, qualified by egalitarianism, and reinforced by cosmopolitan libertarianism—provides for a strong obligation to provide asylum. Cosmopolitan utilitarianism includes admission in the first place, is quite broad in its interpretation in that the qualification for asylum includes a well-founded fear for one’s life due to general violence, famine, and disasters, and requires countries to share the burden of asylum, based on the respective national ability to pay.

Endnotes

1. This perspective is referred to as “morality of states” in Charles R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979) and in Rachel McCleary, *Seeking Justice: Ethics and International Affairs* (Boulder: Westview, 1992): 1–20. (McCleary also provides a useful and short introduction to international ethics.) A more conventional term is *realism*. See, for example, two chapters in *Traditions of International Ethics*, eds. Terry Nardin and Donald R. Mapel (Cambridge: Cambridge University Press, 1992): Steven Forde, “Classical Realism,” 62–84, and Jack Donnelly, “Twentieth-century Realism,” 85–111. However, realism covers everything from the moral skepticism in international relations—which holds that the anarchy of those relations drive out all moral considerations and make them irrelevant—to the protection of the status quo in order to prevent war and, finally, the kind of position described here. *Sovereigntism* is a more illuminating label for the last.
2. I have also referred to this perspective as *statist internationalism*. See Penz, “The Ethics of Development Assistance and Human Security: From Realism and Sovereigntism to Cosmopolitanism.” In *Ethics and Security in Canadian Foreign Policy*, ed. Rosalind Irwin (Vancouver: UBC Press, forthcoming), ch. 3. For a fuller development of this line of argument on asylum, see Joseph H. Carens, “Aliens and Citizens: The Case for Open Borders,” *The Review of Politics* 49 (1987): 251–73. Hendrickson has presented asylum rights as part of “realism,” i.e., sovereigntism as used here, rather than as going beyond it. “This principle is sufficiently valuable and so closely tied to the justification for a system of independent states that it is unlikely that realists would reject it save under exceptional circumstances.” See David C. Hendrickson, “Political Realism and Migration in Law and Ethics,” in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992), 221. However, what he has presented goes beyond *strict* sovereigntism and contains elements of internationalism.
3. For an example of a communitarian position see Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), especially ch. 2. For a more internationalist form of communitarianism, see Howard Adelman, “Justice, Immigration and Refugees,” in *Immigration and Refugee Policy: Australia and Canada Compared*, eds. H. Adelman, A. Borowski, M. Burstein, and L. Foster (Melbourne: Melbourne University Press, 1994), 63–91.
4. For representatives of cosmopolitanism, see Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979) and Thomas Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1989).
5. For a somewhat more extensive argument see Penz, “Sovereignty, Distributive Justice, and Federalism: A Cosmopolitan Perspective,” in *Globalism and the Obsolescence of the State*, ed. Y. Hudson (Lewiston, NY: Edwin Mellen Press, 1999), 121–46.
6. It is true that some theorists use human rights as the starting point for their ethical reasoning, e.g., natural-law theorists, but

- the more widely held view is that human rights, as well as other rights, such as those of states, derive from more basic ethical perspectives. (Cf. R. J. Vincent, "The Idea of Rights in International Ethics," in *Traditions of International Ethics*, eds. Terry Nardin and Donald R. Mapel [Cambridge: Cambridge University Press, 1992], 250–2.) International human rights codified in international law are merely those on which treaty-making parties have been able to agree.
7. It should also be noted that Rawlsian social-contract theory, too, can be interpreted as a particular synthesis of the three ethical perspectives. (John Rawls, *A Theory of Justice* [London: Oxford University Press, 1971.]) John Rawls's own version, however, is strictly sovereigntist, i.e., it applies only within particular political jurisdictions. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979) and Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1989) represent the cosmopolitan approach to Rawlsian social-contract theory.
 8. For a similar approach taken to two other issues, development-induced displacement and development assistance, see Penz, "The Ethics of Development-Induced Displacement," *Refuge* 16 no. 3 (1997): 37–41, and Penz, "The Ethics of Development Assistance and Human Security: From Realism and Sovereigntism to Cosmopolitanism," in *Ethics and Security in Canadian Foreign Policy*, ed. Rosalind Irwin (Vancouver: UBC Press, forthcoming), ch. 3.
 9. Fuller explanations than those provided below can be found in David M. Smith, *Geography and Social Justice* (Oxford: Blackwell, 1994), 52–73.
 10. In the distinction made by Anthony H. Richmond, *Global Apartheid: Refugees, Racism, and the New World Order* (Toronto: Oxford University Press, 1994), 218–33, between "alternative visions," cosmopolitanism would be "utopian," in the sense that it looks to a new future, communitarianism "nostalgic," in that it tends to be backward-looking, and sovereigntism "pragmatic," in that it works within the current rules of the game.
 11. However, for a certain egalitarian version of libertarianism, one that asserts equal entitlement to pure rent from all of the earth's land and natural resources, see Hillel Steiner Steiner, "Libertarianism and the Transnational Migration of People," in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992), 89–90.
 12. For a useful list of potential categories of refugees, see Howard Adelman, "Justice, Immigration and Refugees," in *Immigration and Refugee Policy: Australia and Canada Compared*, eds. H. Adelman, A. Borowski, M. Burstein, and L. Foster (Melbourne: Melbourne University Press, 1994), 82.
 13. This has been proposed, for example, by Castillo and Hathaway, with many safeguards, with the intent not so much to minimize costs as to maximize refugee protection, in terms of numbers, in the face of asylum fatigue by host countries. See Manuel Angel Castillo and James C. Hathaway, "Temporary Protection," in *Reconceiving International Refugee Law*, ed. Hathaway (The Hague: Kluwer Law International, 1997), 1–34.
 14. The most notable representative of this form of utilitarianism is Peter Singer. See his *Practical Ethics*, 2nd ed. (Cambridge: Cambridge University Press, 1993), especially ch. 8, and Peter and Renata Singer, "The Ethics of Refugee Policy," in *Open Borders? Closed Societies? The Ethical and Political Issues*, ed. M. Gibney (New York: Greenwood Press, 1988).
 15. For further reasons see W. Gunther Plaut, *Asylum: A Moral Dilemma* (Toronto: York Lanes Press, 1995), 55.
 16. This by no means denies tensions between the perspectives. To the extent that libertarianism places property and contract rights in moral bedrock, then precludes crucial egalitarian and utilitarian considerations, I set it aside. Instead I treat such rights as derivative from an indirect form of utilitarianism and as being to some extent contingent. Furthermore, egalitarianism and libertarianism come much more into their own as one pursues moral issues to greater depth than the level at which they are explored in this article. Thus, libertarian considerations within a cosmopolitan framework can lead to the principle of subsidiarity, according to which decisions should be made as close to the community level as is consistent with effective solutions to the type of problem to be addressed. For a discussion of how a possibly libertarian bias in the 1950 Geneva Convention on Refugees not only made it geopolitically partisan, but also excluded most Third World refugees from its mandate, see Plaut, *ibid.*, 57–8.

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