YASEMIN SARI & ISAAC TAYLOR | Diagnosing the Refugee Crisis

In 1948, with the shadows of the holocaust and World War 2 still looming large, the Declaration of Human Rights was adopted by the UN. Among its guarantees, it grants individuals the right to 'life liberty and security of person.'[1] Yet it was clear that, in order to fully institutionalize these protections, the border policy of states could not remain untouched. This is because disadvantaged individuals may be unable to be secure unless they are allowed to cross borders. As much as international aid and humanitarian interventions may be important for protecting human rights in some circumstances, helping people where they are might sometimes simply not be a feasible option. Thus, in 1951 the Declaration was supplemented by The Convention Relating to the Status of Refugees, which picks out a particular group of individuals whose human rights are threatened and designates them as refugees. A refugee, according to this Convention, is defined as:

> A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[2]

The Convention concurrently places obligations on states to not return refugees to a place where they will be persecuted ('the duty of non-refoulement')[3] and to assist in finding 'durable solutions' to their plight.[4] In this way, the international community has sought to reconcile the wide-ranging discretionary control that international law grants to states over their borders with a concern for basic human rights of individuals irrespective of their nationality.

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1   United Nations, *The Declaration of Human Rights*, article 3 (1948), <http://www.un.org/en/universal-declaration-human-rights/> (Accessed: 3 October 2018).

2   UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, article 1(2) (1951), <http://www.refworld.org/docid/3be01b964.html> (Accessed: 3 October 2018).

3   *Ibid.*, article 33(1).

4   *Ibid.*, articles 30, 34.

Events in recent years have brought into question whether the current global order can really live up to its promise of guaranteeing the security of people the world over. Events such as the civil wars in Syria and Libya have led to many individuals fleeing their homes and seeking safety elsewhere – often toward Europe. According to figures from the UN Refugee Agency, there are currently 68.5 million forcibly displaced people worldwide, 25.4 million of whom are classed as refugees.[5] Yet just when the tools of international law for guaranteeing the security of displaced persons were needed the most, they proved to be a failure. Many of those who flee their homes never arrive at a safe haven – they are killed before they can exit conflict-ridden zones, or drown after taking unsafe vessels to cross bodies of water. Those who complete the journey are often put into encampments indefinitely, where disease and threats of violence are common.[6]

For many people, then, the security promised by the Universal Declaration of Human Rights may seem like nothing more than an empty aspiration. Clearly more needs to be done in order to meet the human rights of those who are displaced. But what concrete reforms are needed here? The four papers in this special issue all offer different diagnoses of what has gone wrong, and consequently differing proposals for how to improve on existing practice. The different perspectives offered here should not be understood as mutually exclusive: all of them may capture part of the problem and the plausibility of each solution suggests the complexity of the predicament we face, and the pluralistic response that is needed going forward. While discussions of refugees in political philosophy has largely proceeded as an offshoot of broader immigration questions about what permissible limits states may place on the numbers of into their territory, this issue, taken as a whole, considers additional policy areas which may also have a bearing on displaced individuals' security, including naturalization, international divisons of responsibility, and warfare.

Stephen Mathis locates one source of the problem in currently-prominent normative theories of immigration. The 'statist' approach to immigration, exemplified in the work of theorists such as David Miller, Michael Walzer and Christopher Heath Wellman, and implicit in much international law and practice, holds that the state is the proper locus of immigration decisions and, consequently, whatever states owe as a matter of justice to their own citizens, their duties to non-citizens are significantly more limited. In his paper,

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5   United Nations High Commission for Refugees, 'Figures at a Glance', <http://www.unhcr.org/uk/figures-at-a-glance.html> (Accessed: 3 October 2018).

6   For a detailed study on the conditions in the now-defunct refugee camp at Calais, see Surindar Dhesi, Arshad Isakjee & Thom Davies, *An Environmental Health Assessment of the New Migrant Camp in Calais* (ERSC, 2015), <https://www.birmingham.ac.uk/Documents/college-les/gees/research/calais-report-oct-2015.pdf> (Accessed: 3 October 2018).

'The Statist Approach to the Philosophy of Immigration and the Problem of Statelessness', Mathis argues approaches such as this have difficulty offering a morally acceptable response to statelessness, which he characterises as an '*acute and peculiar harm*', owing to the precarious and dangerous situation that stateless individuals live in. He defends a human right not to be rendered stateless to remedy this problem, and contends that recognizing such a right would involve significant modifications to statist approaches – modifications so radical that they would seem to leave little left of it as a distinct approach to the ethics of immigration.

David Owen's paper, 'Refugees and Responsibilities of Justice', also suggests a problem in the (under-)specification of what states owe to refugees. While Mathis' focus is in what states owe to vulnerable non-citizens in general, Owen instead concerns himself with how responsibilities to refugees should be distributed among states. Coming to an enforceable divison of responsibilities will be crucial, Owen notes, to guarantee refugees security; in its absence we risk inaction because of disagreement and the lack of consequences of failing to meet responsibilities. But as Owen shows, the two questions cannot be separated so neatly: our answer to what we owe to refugees will have a bearing on who should do what in responding to refugees' insecurity. He helpfully suggests that the responsibilities of states here can be separated into two main categories – responsibilities to provide immediate refuge and responsibilities to provide longer-term asylum – and how these responsibilities should be shared will vary according to which category we are talking about. Owen also considers how refugees themselves can be given greater agency, and offers a number of suggestions for incorporating refugee preferences and voice into the international institutions. His paper thus calls for a shift in thinking about the problems of the refugee regime from one of 'burden-sharing' to one of 'responsibility-sharing', where the refugees themselves are understood as moral agents and not simply passive victims.

If we were able to institutionalize a way of assigning responsibilities to refugees to states, a further question arises, namely should states be permitted to 'trade' refugee quotas? Increasingly, markets in which states offer money to others in order for those others to take in refugees are arising in international settings, and such markets are obviously controversial. Mollie Gerver's paper, 'Moral Refugee Markets', considers whether these practices are permissible, and argues that limits need to be put on these practices in order for them to ensure that the refugee market as a whole will promote the security of vulnerable individuals.While accepting that 'refugee markets', as she calls them, may come with moral costs in terms of the disrespect to, and lack of respect for

the preferences of, refugees that they bring about, she suggests that they can be all-things-considered permissible if they increase the security of refugees. However, noting that in many cases there are no effective constraints in place requiring states that receive money to take in refugees to continue to protect them, she claims that we should often be wary of the moral value of refugee markets. In practice, her arguments suggest that refugee markets involving non-EU countries may be especially problematic in this respect, owing to the lack of constraints on these countries' actions once they have taken in refugees in exchange for money.

In a change of gear, Jovana Davidovic's paper, 'Displacement as a Significant Collateral Harm in War', focuses not on the insecurity of those who have left their homes and are seeking refuge elsewhere, but rather on what causes them to leave their homes in the first place, which in many cases is armed conflict. She finds another source of insecurity here: the failure of dominant normative theories of armed conflict (as well as existing military guidelines) to take the harms associated with displacement into account. This is despite the fact that displacement can be understood as a 'foreseeable near-proximate form of lethal harm', even setting aside additional non-lethal harms that displaced people ultimately experience in refugee camps and elsewhere. Her paper calls for the harm of displacement to be included, for example, in calculations of proportionality and necessity when military practitioners decide on a strategy, and thus to be minimised in the same way as our existing frameworks call for the minimization of more 'direct' physical harms and the destruction of civilian property.

The papers, together, suggest that the formal granting of rights – in documents such as the Universal Declaration – is not enough to bring about a global order in which individuals' life, liberty and security are protected. This was previously recognized by Hannah Arendt in her work *The Origins of Totalitarianism*.[7] Writing about the plight of stateless people in the inter-war period, Arendt argued that statelessness amounted in practice to rightlessness because those who were rendered stateless lack any effective protective institutions. The Declaration of the Rights of Man and of the Citizen – which proclaimed the universal equality of human beings and demanded the institutionalization of their human rights – turned out to be unenforceable when individuals lost such protection and needed their human rights most.

What Arendt claimed was that a prior right – the 'right to have rights' – needed to be in place in order for the exercise of these other rights to be effective. In

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7   Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1968).

Arendt's words, '[w]e became aware of the existence of a right to have rights (and this means to live in a framework where one is judged by one's actions and opinions), as well as the right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation.'[8] The ongoing refugee crisis suggests that the right to have rights has still not been realized for a significant proportion of the earth's population. It brings into focus not only the lack of protection of individuals' rights to life, liberty, and security but also the absence of an order where one can meaningfully lay claim to a right to belong to the sort of community necessary to effectively claim these rights.

If the core of our democratic practices lies in realizing a principle of universal equality along with the right to self-determination that would ensure the recognition of human rights on a global scale, then further work is needed in order to develop the necessary forms of legal, social and political recognition that would be necessary for a minimally decent global order. The papers in this issue can be read as different proposals for bringing about this recognition.

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8   Arendt (1968), pp. 296-297, emphasis added.