



The Ethics of Refugee Aid

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ABSTRACT

This paper examines the ethics of refugee aid, attempting to answer “Why do States engage in refugee aid?” Moving beyond the simplistic answer based on the notion of charity, which demonstrably fits ill with the essentially positivist methodology of conducting refugee aid, an ethical model is construed based on the Weberian concept of action as an instrument of rationality. This is supported with critical readings from Hannah Arendt, amongst others, and also my own experiences as a former UNHCR aid worker. However, although this model better captures ground realities, it negates the individuality and humanity of refugees. Thus refugee aid as a form of global, transnational justice will be presented, based on readings from Amartya Sen.

Keywords: refugee aid, ethical framework, refugee aid as global justice, refugee aid as instrument of rationality

RÉSUMÉ

Cet article examine l'éthique de l'aide aux réfugiés. Il tente de répondre à la question « Pourquoi les Etats s'engage dans l'aide aux réfugiés ? ». Dépassant la réponse simpliste basée sur la notion de charité qui cadre mal avec la méthodologie positiviste dans la conduite de l'aide aux réfugiés, un modèle éthique est proposé, fondé sur le concept weberien d'action comme instrument de la rationalité. Un tel point de vue est appuyé par une lecture de Hannah Arendt, parmi d'autres, et aussi ma propre expérience en tant que travailleur dans l'aide aux réfugiés au UNHCR. Cependant, si ce modèle capte mieux les réalités de terrain, il nie l'individualité et l'humanité des réfugiés. Aussi, l'aide aux réfugiés comme forme globale, transnationale de justice est présentée, sur la base d'une lecture des travaux d'Amartya Sen.

Mots clés: Aide aux réfugiés, cadre éthique, aide aux réfugiés comme justice globale, aide aux réfugiés comme instrument de rationalité

RESUMEN

Este artículo reflexiona sobre la ética de la ayuda al refugiado y trata de responder a la pregunta de ¿por qué los estados se comprometen en prestar este tipo de ayuda? Para contestar a esta cuestión hay que ir más allá de una respuesta simplista fundada en la noción de caridad, pues es fácilmente demostrable que ésta no encaja con la metodología esencialmente positivista por la que se rige la ayuda al refugiado, un modelo ético que se desarrolla tomando como base el concepto weberiano de acción como instrumento de racionalidad. Éste se ha desarrollado a partir de interpretaciones críticas de Hannah Arendt, entre otros y también a partir de mis propias experiencias como trabajadora en ayuda al refugiado en UNHCR. Sin embargo, aun cuando este modelo capta bien las realidades del terreno, niega la individualidad y la humanidad de los refugiados. Por lo tanto, la ayuda al refugiado en tanto forma de la justicia global y transnacional, será presentada tomando como base la perspectiva de Amartya Sen.

Palabras clave: ayuda al refugiado, marco ético, ayuda al refugiado como justicia global, ayuda al refugiado como instrumento de racionalidad.

JEL Classification: F59, J61

INTRODUCTION

Politicians shake their fists at bogus queue-jumping asylum-seekers. States vie with each other to tighten borders. The process of accessing international protection is being made more and more difficult. Yet over two thirds of the countries in the world (144 to date) have ratified the 1951 Convention on the Status of Refugees and the 1967 Protocol, thus publicly and bindingly committing themselves to the protection and provision of aid to refugees.

Why do states provide budgets for refugee aid to people (foreigners, no less) harmed by events taking place outside their borders? Given the political climate of the day, why not renounce refugee aid altogether? Yet States refrain from taking this ultimate step, and UNHCR continues to operate as “the largest and arguably most powerful designated humanitarian agency in the world” (Hyndman, 2000, 243). In this paper, I consider the theoretical framework of state-sponsored refugee aid and propose an alternative ethical modelling of this particular form of humanitarian assistance.

The question of “why aid?” seems easy at first glance. Refugees should be helped because without help, they could die. As Fridtjof Nansen, the first director of the Refugee Organization said: “we cannot let this people (refugees) to starve, that is obvious” (Lauren, 1998, 385). In other words, refugee aid is a moral necessity, based on a charitable impulse to assist those in trouble. Official and public promotions of refugee aid all appeal to this instinct of charity, and aid is generally presented as a

kindly act of mercy. It is simply one more humanitarian action in the broad spectrum of actions by rich countries assisting those who are less well-off than themselves.

However, a closer look at the ground implementation of refugee aid shows that the methodology and mechanics of refugee aid are conducted in a positivist, or rather, pseudo-positivist theoretical framework, which effectively makes mockery of the notion that refugee aid is conducted for simplistically charitable purposes.

THE FAILURE OF MORALITY; OR TRYING TO BE A GOOD POSITIVIST OFFICER

It is easy enough for scholars to declare “the official demise of positivism for close to half a century”, gently berating those who would make a “philosophical bogeyman” out of positivism. (Freidman, 1999, 1) The fact remains that policy-makers and non-academic social institutions continue to hold a positivist view on the public role of social science, as shown by the huge reliance on statistics and the assumption of their value-neutrality (Benton *et al*, 2001). And UNHCR is no exception.

Consider the process of Refugee Status Determination (RSD), the core procedure through which UNHCR and States recognize refugees which “has potentially profound implications for the life and security of the individuals concerned” (UNHCR, 1992, 1-1). RSD supposes that an impartial and objective decision can be made regarding the well-founded nature of fear of persecution in the country of origin of an asylum-seeker. The “well-foundedness” is to be established based on the answers elicited in response to certain questions made by the RSD officer of the refugee in highly structured RSD interviews, and further corroborated through rigorously researched and objective country-of-origin information. RSD should be conducted “pursuant to transparent and fair procedures”; the applications should be processed on a “non-discriminatory manner” and there should be “organization-wide consistency” in conducting these procedures (Ibid, 1-2).

The RSD procedure perfectly matches Augustus Comte’s description of the “final, positivist state”, a state where “Reasoning and observation, duly combined, are the means of ...knowledge. What is now understood when we speak of an explanation of facts is simply the establishment of a connection between single phenomena and some general facts” (Comte, 1975, 40). The knowledge acquired here is the recognition of refugee status, based on a series of facts elicited from the refugee and his country of origin. In an ideal situation, any two RSD officers presented with the same case would arrive at the same conclusion regarding the refugee status of an asylum-seeker. In practice, apart from in exceptionally clear-cut cases or in group determinations, this almost never happens.

My personal experience shows that factors such as the context of the decision-making procedure, for example, the number of times the officer has considered

similar claims and her experience of the “validity” of similar claims, her personal sympathies and convictions, the general socio-political climate of the country, and even more mundane concerns such as quotas and capacities will affect the integrity of the RSD procedure to no small extent. As one scholar put it:

As these [RSD] judgments are made by a particular person - the decision-maker - there is an immediate and inevitable subjective component to this activity.

Different people may well disagree as to which facts are salient or which parts of the testimony are more likely to be true... this regulatory framework is *made up of understandings and expectations that arise out of the particular legal and bureaucratic setting*. (Glass, 2008, 213- italics mine)

The enormous tension arising from the attempt to reconcile a perfectly abstract, ideal process to the nitty-gritty on-ground human realities has prompted scholars to “question the dominance of the positivist paradigm in refugee law” (Harvey, 1999, 102):

References to 'knowledge production', 'refugee voices' and 'deconstruction' all evoke critical debates in legal studies which have now, at last, spilled over into critical work on refugee law...it is possible to use 'positivism' as a barely disguised term of abuse these days. (Ibid, 117)

REFUGEE AID AS A STATE INSTRUMENT OF RATIONALITY

I will now turn to the Weberian concept of social action as an instrument of rationality as a more accurate model for refugee aid, lying in better harmony with ground practices and procedures. According to Weber’s well-known taxonomy, social action may be:

- Instrumentally rational, that is, determined by expectations as to the behaviour of objects in the environment and of other human beings; these expectations are used as “conditions” and “means” for the attainment of the actor’s own rationally pursued and calculated ends;
- Value-rational, that is, determined by a conscious belief in the value for its own sake of some ethical, aesthetic, religious or other form of behaviour, independently of its prospect of success.(Weber, 1978, 24)

The other two types, affectual and traditional, are beyond the scope of this paper; the point here is that while refugee aid is ostensibly branded as some sort of value-rational action, it is indeed simply instrumentally rational- for States, that is. Weber further describes instrumentally rational action as “not determined by orientation to any sort of norm which is held to be valid, nor do they rest on custom, but entirely on the fact that the corresponding social action is in the nature of the case best adapted to the normal interests of the actors as they themselves are aware of them” (Ibid, 29).

As regards the “normal interests” of states when it comes to refugee aid, the very sad observation of James Hathaway is apposite: “To date, and despite rhetoric to the contrary, states have simply not been willing comprehensively to limit their sovereignty in favour of the essential dignity of the human person” (Hathaway, 2005, 16).

States thus fund refugee aid to achieve their own interests, what is called the “strategic use of refugee aid” (Hyndman, 2000). The classic example of this lies in the origins of modern state-sponsored refugee aid after World War II, when during the Cold War, “refugees were perceived as the strongest evidence to demonstrate the ideological superiority of the liberal democracies of the West in comparison to the communist countries...By receiving political refugees, a state could demonstrate its political and moral superiority” (Nathwani, 2004, 14).

But as Hannah Arendt elaborates on the strategic significance of refugees, she makes it clear that it is not simply a matter of vaunting one’s superiority. She considers the presence of refugees in a country as “national splinter groups” who “can easily fall prey, also, to other ideologies if appealed to international terms” (Arendt, 1994, 149). Thus, states may rationally choose to aid refugees in the hope of quelling possible dissent which would come from having this group of disposed, discontent and displaced persons within their borders, who do not share the national values of the rest of their citizenry.

During a visit to Afghan NGOs operating in Qom in November 2007, I witnessed a vivid demonstration of a budding “national splinter group”. “Informal” Afghan schools proliferated in Iran following the withdrawal of UNHCR funding for Afghan children to attend Iranian state schools in 2002. Registered Afghan children could attend state schools, upon payment of tuition fees. However, the large community of unregistered Afghan families, including families who move between cities and areas in search of seasonal jobs, thus losing their state registration (which limits their movements to their district of registration) are denied formal education. Informal schools are usually closed if the authorities were alerted- and crop up again in different locations. A government member of the Iranian state department dealing with “aliens and immigrants” expressed his discontent with Afghan informal schools thus: “These schools teach ultra-nationalistic items which are completely contrary to known historic facts and the interests of our nation. No wonder so many Afghans grow up to commit crimes against the Iranian population who has hosted them so generously for the past thirty years. Their informal curricula are completely against the law, and this is why, in our opinion, all informal schools should be banned.” (personal experience of author- November 2007). This is a clear instance where short-term government crackdowns on refugees and refugee education, together with the withdrawal of UNHCR aid for schooling, is perceived to harm a state’s long-term ideological national interest.

Another interesting example was the heavy public promotion of the Voluntary Repatriation programme for Afghan refugees after the fall of the Taliban. The necessity of promoting Afghanistan as a secure and desirable living area for the states involved in the downfall of the Taliban hardly needs questioning. UNHCR obediently touted figures of returnees and generally hailed the programme as a success during the years 2002-2007. It was only after the Afghan refugees began `voting with their feet` and repatriation figures dropped that reports of the actual living conditions in Afghanistan began to emerge. Even now, reports and figures of those suffered hardship or persecution upon return remain few and far between.

Peter Nyers argues that refugees “represent a conceptual, empirical, and physical breach in the relationship between “humans” and “citizens.” Consequently, conventional humanitarian responses to refugee crises focus on returning to refugees statist identities so as to restore the conditions under which they may once again enjoy a properly “human” life as citizens.” (Nyers, 1999) States provide for refugees not for any concern for their welfare or human rights, but in an attempt to rein them into the “statist” identity, to put an end to their undesirable instability and lack of identity, which may somehow spill over to their own citizenry and create social disorder, disrupting “the constitutive principles and categories of modern political life (i.e., sovereignty and citizenship)” (Ibid, 23).

Refugees...must therefore be conceived as objects of the practices of statecraft — that is, of practices which are “oriented not so much to care for the needy, the displaced, the one in crisis, the refugee, as to produce and privilege the practical /representational sources of the state’s claim to territorial sovereignty, namely the citizen to which the state owes its *raison d’être*.” (Navzet Soguk, quoted in Nyers, 24)

LOOKING BEYOND LABELS: REFUGEE AID AS AN EXPRESSION OF GLOBAL JUSTICE

I have moved from how refugee aid is publicized and presented, to a more accurate portrayal of the theoretical framework of aid as it is practiced. It cannot avoid notice that the latter view presents a bleak, dehumanized landscape, where refugees, or rather, stories about refugees are manipulated, financed, controlled, dominated by impersonal institutions. Series of statistics of refugees are used for practical purposes, while emotional pictures of them are taken for publicity. Where are the human sufferers in this system? I now turn to concepts which could help yield a more

humane ethics for refugee aid, while remaining aware of the strong political realist and positivist arguments for refugee aid, which prioritize the role and will of states.¹

Amartya Sen discusses the concepts of fairness and justice in his article “Justice across Borders”, applying a transnational perspective which could be applied to the discourse and practice of refugee aid with interesting implications.

Sen initially defines a just society, where the basic structure is “fairness”. The essential point here about fairness is that it is precisely the *opposite* of the instrument of rationality: “people are not guided by their vested interests” (Sen, 2002, 14), and thus the rules chosen by this hypothetical society are just. Such a society will not prioritize one facet of individual identity (nationality) to the exclusion of all other identities (such as professional, gender, religious) that an individual may have (Ibid).

How will a refugee fare in a society which is guided by fairness, rather than vested interest? Can we conceptualize refugee aid, not simply as an instrument for furthering or maintaining states’ interests, but (merely) as an expression of justice or of the basic fairness that we owe each other, as human beings, regardless of our nationality?

In the present state of affairs, refugee discourse is all about nationality. Although nationality is only one of the five Convention grounds for recognizing refugee status, it remains the principle reason which gives significance to other grounds. For example, an openly gay man who is Canadian would not face persecution whereas an openly gay person who happens to be Afghan most likely would. To be Shi’ite in a Sunni zone (and vice-versa) is dangerous for an Iraqi person- for a European, it has no significance. And of course, becoming a refugee effectively annuls all the other identities a person may have. Once you are a refugee, that is your primary identity- all your subsequent dealings within the society in which you happen to find yourself flow from that identity. An individual may be a teacher, a student, a mother, a feminist, a peace activist, but the fact of being a refugee, and a refugee of a particular nationality, is what is first and foremost reacted against by States. But why this almost arbitrary prioritizing of nationality as our major identifier? When one thinks of oneself, is it really the fact of one’s nationality which first springs to mind? Of course, the interest of states lies in this prioritization of nationality- that has been discussed at length above. But in at least democratic societies, one cannot realistically negate the strong link between society and state, and indeed the individual and state. Gil Merom argues convincingly that precisely this link contributes strongly to prevent democratic states from committing heinous acts of barbarity and cruelty (Merom, 2003). Thus, the individual tacitly (or indeed not-so-

¹ James Hathaway provides a convincing argument for rendering refugee law on positivist grounds, in *The rights of refugees under international law*, (Cambridge University Press, 2005).

tacitly) agrees to the prioritization of nationality by States when it comes to refugee affairs (2)².

Sen argues that individuals can reach each other across borders and nationalities by virtue of their multiple identities, and the commitments and obligations these shared identities entail. “The political conception of a person as a citizen of a nation - important as it is- cannot override all other conceptions and the behavioural consequences of other forms of group association” (Sen, 2002, 43). As Nyers says, reading Arendt and Giorgio Agamben, it appears that a “bare” or “naked human” is not recognizable, no State will tolerate him or her; they are excluded from the political and social sphere (Nyers, 2006, 37-40). And neither is it enough for us to extend our sense of fairness. A “bare human” is nothing. But then nobody is a bare human. We all have other conceptions and multiple identities of ourselves, and Sen argues for strengthening these commonalities across borders. He points to a variety of institutions which effectively reach out to these group commonalities and function across borders and without the restraint of nationalities: transnational firms, *Medicine sans Frontieres*, Oxfam etc. In the context of the present discussion, I would point to Canada’s private sponsorship of refugees as an example whereby individuals try to reach across borders to assist each other, brought together by their commonalities and shared identities.

This program allows for five (or more) Canadian citizens or landed immigrants to sponsor a refugee, by referring him or her Canadian authorities and pledging to cover their financial needs for a year. Although churches have traditionally made strong use of the private sponsorship program, now there are a variety of functioning groups engaging in this program. For example, World University Service of Canada (WUSC) routinely sponsors students refugees and succeeds in gaining their entry to Canada.

The program is far from perfect, and it is notable that frustration has been expressed in particular about the lengthy delays and challenges it faces by the federal government, with whom rests the final decision to allow entry to a sponsored refugee (Goulet, 2010). Moreover, it is a random, sporadic attempt to assist refugees, too far from a systematic and comprehensive refugee aid policy. Yet it is an example of a functioning refugee programme in which state interest and positivist methodology are not the primary or driving features, and where there is a vivid and tangible, albeit limited effort by concerned individuals to connect with others across borders and regardless of nationality; a willingness to look beyond the generic refugee label and

² A recent manifestation of this phenomenon are the polls conducted in Canada just prior to passing the recent law requiring visas for visiting Mexicans and Czechs, in an effort to stem to increasing number of asylum seekers from those countries. According to media, two-thirds of polled Canadians showed themselves favourable to visa restrictions, and the Canadian Minister was relying strongly on these figures. (Fong, P. (18 July 2009), “Majority of Canadians back visa rules, poll finds”, *TheStar.com*)

respond to the needs of fellow human-beings by connecting through similarities rather than highlighting differences. Aid is provided freely and spontaneously as a willing response to basic need, rather than wrenched out as a grudging, resentful, externally-imposed set of obligations, of which only the bare minimum must be met to quell unwanted publicity and dissent, which seems to be the face of modern refugee aid as provided by states.

In gaining public support for this type of interest-driven aid, states peddle the powerful and evocative Kristevian image of the stranger who has been driven from or has fled his home, has travelled across seas and arrived at our border seeking help (Kristeva, 1988). This image ultimately harms the individual behind it. It prevents societies from seeing refugees clearly and reaching out to them in the same way we would if they were recognized as ordinary people, with interests, family members, a profession, moral beliefs and religious convictions, much the same as everybody else in that society. Kristeva says that we look upon foreigners with “the hatred of otherness” (Kristeva, 1988, 21)– but it doesn’t have to like this. “Thus when I say I have chosen cosmopolitanism, this mean that I have, against origins and starting from them, chosen a transnational or international position situated at the crossing of boundaries” (Kristeva, 1993, 16).

More should make this choice, so that our sense of fairness will not be paralysed by the strangeness and fear evoked by the refugee situation. If the members of society adopt a fair transnational perspective, states will no longer have licence to manipulate human suffering for their own ends, and refugee aid will become an expression of justice operating across borders.

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