

**ETHICS  
AND GLOBAL  
POLITICS**



# The Ethics of Refugee Policy

Christina Boswell

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# Preface

This book brings together two deep interests of mine: political philosophy and refugee policy. The two interests were nurtured in rather different settings. My engagement with political philosophy began as an undergraduate in the early 1990s, and had much to do with the stimulating teaching of Adam Swift and Alan Montefiore at Balliol College, Oxford. Later at the London School of Economics and Political Science (LSE) John Charvet, Erika Benner, Chris Brown, and members of the International Political Theory seminar provided an excellent environment for developing and refining my ideas on liberalism and international relations. I also benefited from feedback from my undergraduate students at LSE, especially in the courses on human rights and international political theory.

The interest in refugee issues emerged during the three intervening years between Oxford and LSE, when I worked on the refugee 'policy scene'. I was very lucky to have the opportunity to work with Denis De Jong at the European Commission, and Maria Siemens, Jeff Crisp, Rachel Reilly, Elizabeth Tan, Asmita Naik and Eric Morris in Geneva. Particularly formative was my year as consultant at the Policy Research Unit at the United Nations High Commission for Refugees (UNHCR), where we had many a lively debate on refugee protection. Indeed, it was the ongoing debate between the 'orthodox' guardians of refugee law and the more 'pragmatist' supporters of the direction espoused by the then High Commissioner, Sadako Ogata, that provided the backdrop for the issues discussed in this book. Probably the deepest impression, though, was left by my eight months working with Rwandan refugees for the UNHCR in Burundi – in many ways an unsettling experience, and one that deeply influenced my thinking on a range of political and ethical issues.

The book itself is based on research carried out at LSE between 1997-2000, in the International Relations Department. Over this period, James Mayall was very supportive of my work, indeed he initially encouraged me to move back from policy research to academia, a step I certainly do not regret making. I owe a special debt to John Charvet, who was a constant source of constructive criticism and ideas – indeed the content of the book should attest to his influence. Chris Brown and Andrew Linklater raised some important questions about the line of argument, which I have sought to address in this book. Other important input came from the late Myron Weiner, B.S. Chimni, Gil Loescher and Brian Barry who offered advice and encouragement in the initial stages of the project; and Maria Lensù, Christian Heine, Alex Colàs, Erika Benner, Jacob Nell, Raj Patel and Jill Boswell, all of whom commented on individual chapters.

Some of the themes dealt with have been rewritten or supplemented, based on research I have subsequently carried out for the Royal Institute of International Affairs, and at the Migration Research Group in Hamburg. For this, I would like to thank the Le Poer Trust and the European Union Sixth Framework Programme

Excellent Grant which helped fund this work. I also owe a debt of gratitude to Thomas Straubhaar, whose institute in Hamburg has provided me with an excellent environment for research. Thanks also to the series editor Tom Lansford, to the anonymous reviewer, and to the editorial team at Ashgate, who did a very professional job.

Finally, both of my parents influenced many of the ideas in this book, albeit in very different and often indirect ways. And Tilman Plehn finally shook me into action to get the work published.

Needless to say, the usual caveat about responsibility for mistakes applies.

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# Introduction

Since the revival of liberal political philosophy in the 1970s, liberalism has been the target of attack from a range of critics. Communitarians, post-modernists and critical theorists have all taken a swipe at liberalism's assumptions about the self, society and ethics, as well as its supposed 'neutrality' between different conceptions of the good. Many liberal theorists have responded astutely to this critique, acknowledging the historical contingency of liberalism, and re-grounding liberal theory on a 'non-metaphysical' basis.<sup>1</sup>

Yet one set of problems in liberal theory has remained relatively neglected: the question of the practical feasibility of liberal theories of ethics. The problem can be simply stated as follows. If we were to apply the demands of most liberal political theories consistently, they would generate extensive ethical obligations to others. Liberal theories of rights, justice or humanitarianism tend to call for quite far-reaching duties with often radically redistributive implications. And, since liberalism typically has little to say about the ethical relevance of communities or nation-states, it has difficulties justifying the restriction of such obligations to particular groups of people. Liberal theory is in a weak position when it comes to delimiting the scope of justice, rights or humanitarian duties to the national sphere. But once such rights or concepts of justice are applied to international questions of human rights, distributive justice or humanitarian assistance, then liberal theory faces a serious problem of feasibility.

The problem of feasibility appears to take its most acute form in the case of refugee rights. No other issue so sharply crystallises the problem of how to motivate consistent application of liberal ethics, in a context in which the performance of liberal duties appears to enter into direct conflict with individual or collective interests. The refugee issue therefore provides an excellent lens through which to explore the plausibility of liberalism's assumptions about the scope of justice. Indeed, a closer examination of the implications of liberal theory for refugee policy unearths more fundamental problems in liberal assumptions about the nature of ethical agency. A central goal of this book is to explore the nature and implications of this tension in liberal thought.

However, the book is also concerned with a second, more practical, question. When applied to the problem of refugee policy, liberal theories run the risk of over-reaching themselves. They set up expectations about individual and collective ethical agency that cannot be redeemed, at least not under the economic and political conditions prevailing in liberal democratic societies. In this way, liberal

thought runs the risk of marginalising itself in policy debates about asylum and refugee protection. By setting up unrealistic and uncompromising expectations about ethical behaviour, it risks relegating itself to the margins of public debate in liberal democratic states. Indeed, the contention of this book is that we need a radical rethink of liberal ethics in order to construct a more ethically feasibly, and descriptively plausible, account of duties to refugees. In this sense, the book can be seen as both a critique of liberal political thought; and an attempt to develop an alternative ethical underpinning of duties to refugees.

The main part of the book is devoted to a detailed examination of different strands in liberal thought, especially right-based theories and the social contract tradition. While the starting-point of the discussion is the question of refugee protection, this critique of liberal universalism has wider resonance for liberal ethics, and especially for a range of issues of international justice: not just the ethics of asylum and refugee policy, but also questions of human rights, international distributive justice, humanitarian assistance and international intervention. It also has implications more generally for liberal theory's conception of moral agency and motivation.

However, the prescriptive focus of the book remains the question of what duties liberal democracies and their citizens owe to refugees who seek protection on their territory. This is for two reasons. First, as already suggested, the issue of refugee protection reveals the tensions of liberal theory in a particularly stark way. Evaluating liberal theories according to their ability to address the problem of refugee protection therefore focuses the discussion in a useful way. Second, the focus on refugee rights is also interesting from a more practical perspective. Debates on asylum and refugee protection have been prominent in European countries for more than a decade, and the political importance of the issue shows no signs of receding. It is therefore timely to analyse some of the sources of confusion in the debate on refugee policy, through the lens of political theory conceptions of refugee rights.

## **The Crisis in International Refugee Policy**

Commitment to refugee protection in Europe has been severely put to the test over the past two decades. Large numbers of people continue to seek protection in western Europe, but these countries have displayed an increasing reluctance to host asylum seekers and refugees. Since 1990, the annual number of asylum applicants to the fifteen European Union states has averaged at around 300,000–400,000.<sup>2</sup> Many more are assumed to be residing illegally in European states, without lodging an application for asylum. And this is just a fraction of the roughly 17 million people displaced worldwide. Indeed, the only reason the number of people seeking protection in Europe is not substantially higher is because European countries have made it increasingly difficult for refugees to reach their territory and lodge an application. Since the late 1980s, European governments and their

populations have pushed for more stringent measures to restrict numbers of asylum seekers and refugees, measures which have kept down the number of refugees entering and staying in Europe.

Most commentators characterise the crisis as a conflict between refugee rights and national interests, especially in cases of largescale refugee influx. Assisting large numbers of refugees and asylum seekers is considered to impose a financial, social and political burden on receiving states, running directly counter to their national interest. Financial costs include the administrative expense of processing claims, and the costs of social and welfare assistance for non-economically active asylum seekers or refugees and their families. The presence of large numbers of refugees in host countries is also frequently perceived as imposing social costs, through over-burdening accommodation, schooling or health facilities, or generating tensions between newcomers and resident host populations. Since 11<sup>th</sup> September 2001, there have also been growing concerns about the possible security impact of immigration and refugee flows.

These problems are compounded by concerns about the state's incapacity to control unwanted flows. The rise in irregular migration and labour, and especially more nefarious forms of migrant smuggling and trafficking, have exacerbated fears about a loss of state control over the entry and stay of asylum seekers and immigrants. Moreover, fears that 'non-genuine' asylum seekers are abusing generous refugee and welfare systems have done much to erode public sympathy for refugees. Under these conditions, where governments or political parties are perceived to be lax in their efforts to restrict asylum, they are likely to pay an electoral penalty. Taking these points together, it becomes less surprising that states have adopted what the United Nations Refugee Agency (UNHCR) has coined an 'exclusionary attitude' towards refugees.<sup>3</sup>

Concerns about the costs of asylum in host countries have led a number of states and commentators to cast doubt on the continued relevance of international legal provisions for protecting the rights of refugees. These provisions oblige states to respect a range of rights and standards for asylum seekers and those with refugee status. The centre-piece of these provisions is the 1951 Geneva Convention on the Status of Refugees. Article 33 of the Convention obliges states not to expel or 'refouler' a refugee 'where his life or freedom would be threatened'. Article 1A defines a refugee as a person who has left his or her country of origin 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'. The Convention was initially intended to cover European refugees, but in 1967 a special Protocol extended its geographical scope to cover refugees from all over the world.<sup>4</sup> Most liberal states have incorporated these or similar provisions into their constitutions or legislation.<sup>5</sup>

Yet these standards have been steadily eroded since the late 1970s. While most liberal democratic states have retained nominal support for the principles of refugee protection, they have introduced a range of measures to limit the substance and scope of these commitments. These restrictive measures have typically taken

three main forms. The first is to limit access to their territory, through imposing visa requirements on the nationals of certain countries, and introducing sanctions for companies or individuals found to be transporting people without the required travel documents. Another practice to limit access to asylum systems has been to send asylum seekers back to what are defined as the 'safe' countries through which they travelled, or from where they originate. A second set of measures has involved deterring potential asylum seekers from travelling to European countries or from applying for asylum, through rendering conditions of stay less attractive. Such measures include cutting welfare benefits, replacing financial support with assistance in kind, or dispersing asylum seekers to different locations. Third, host countries have made it more difficult for asylum seekers to qualify as refugees. One way in of doing this has been to introduce streamlined or accelerated procedures, which tend to be less thorough, or imply limited access to legal assistance or rights of appeal. A second way has been to introduce alternative protection statuses which accord less generous rights, such as 'temporary protection', which encourages subsequent return to the country of origin, rather than integration into the host country. European countries have also narrowed down the criteria qualifying applicants to be recognised as refugees. These measures all have serious implications for refugees seeking protection in Europe: even where they can get access to the territory of these countries and file an application for asylum, refugees are likely to have to put up with harsh living conditions, and – more seriously – very slim prospects for having their case recognised.

Most of those defending refugees and asylum seekers against these restrictionist policies invoke liberal universalist arguments to defend refugee rights. Liberal universalist theories are those that give equal moral weight to the welfare of all individuals, regardless of nationality. Liberal universalism provides an accessible and cogent grounding for theories of duties to non-nationals, and its assumptions about the moral equality of human beings deeply pervade moral and political discourse in liberal democratic societies. It is not surprising, then, that liberal universalist theories have a virtual monopoly on arguments for admitting greater numbers of refugees, and more generally for recognising moral duties beyond borders. Yet despite this apparent facility for justifying refugee rights, this book argues that these theories are ill-equipped to provide an account of the relationship between duties to refugees and duties to fellow nationals. Liberal universalist theories have problems accounting for the significance of membership in particular states or communities. Starting from a premise of the moral equality of all individuals, pure liberal universalism denies the moral relevance of nationality and other characteristics that are not universally shared. And unless liberal theorists can find practical or instrumental arguments for diluting this universal commitment (which many of them attempt to do), they proceed to derive theories of duties to refugees that seem hopelessly unfeasible. Consistent liberal universalist theories produce normative prescriptions that are at best utopian, at worst counter-productive to their own ends. The liberal universalist claim about the

moral equality of refugees and nationals of receiving states produces practical norms that seem increasingly out of touch with the current debate on asylum policies in liberal democracies.

The patent unfeasibility of these theories generates a risk that liberal universalist arguments will come to be seen as irrelevant to the refugee policy debate. By advancing such stringent conceptions of duties, liberal universalism may be effectively relegating itself to the margins of political discussion. Such accounts can be too readily dismissed as naive or utopian. And this lack of a robust conceptual basis makes liberal universalist theories more vulnerable to attack from crude forms of nationalism, realism, communitarianism or moral relativism. To be sure, this is not the main reason for the demise of more liberal approaches. Yet the conceptual poverty and unfeasibility of liberal universalism appears to be contributing to the marginalisation of more liberal positions in debates on refugee policy.

The dangers inherent in this tendency are clear: if liberal universalism is seen as irrelevant, there is no alternative political theory that could provide anything like a substitute in terms of the breadth and persistence of its appeal. The marginalisation of liberal universalist arguments would leave the field clear for the defenders of 'national interest', or crude forms of communitarianism. Indeed, this tendency is already discernible in political theory discussions. One response to the inadequacies of liberal universalist theory has been to retreat from any commitment to the moral equality of all human beings, limiting the scope of ethical duties to separate communities or states. Crude forms of communitarian or particularist theories reject both the universalist premises of liberal theories, and their substantive prescriptions about duties to non-nationals.

The aim of the book is not, however, to reject the liberal approach. Rather, it recognises the ethical force of arguments about duties to protect refugees. Thus while I am deeply critical of the liberal universalist failure to recognise the importance of community, it is not my intention to abandon notions of refugee rights. I am broadly sympathetic to the liberal universalist normative agenda of promoting refugee protection in liberal democracies. And I assume that most of those socialised in liberal democratic societies will share some affinity with the liberal universalist inspired grounding of refugee protection (even if they simultaneously acknowledge the ethical significance of community ties or the importance of national interests). Indeed, it is precisely because of this acknowledgement of the ethical force of the commitment to refugee protection that I am keen to salvage liberal universalist prescriptions from their more extreme nationalist and communitarian critics. But I believe that the best hope for rescuing liberal universalism is to significantly modify a number of its underlying assumptions.

The main thrust of the argument is that the short-comings of liberal universalism can be traced to its assumptions about moral agency and motivation. Liberal universalist theories are unable coherently to combine a commitment to the rights of refugees with a recognition of the special importance of ties to local

communities. They impose seemingly inordinate ethical demands, claims which are patently unfeasible in the current international context. Moreover, their notion of moral agency as requiring abstraction from self-interest creates a theory of motivation that offers limited practical potential for mobilising commitment to universal rights. Thus rather than targeting the liberal universalist commitment to the concept of universal duties, the book challenges its assumptions about the role of particular ties, interests and values in moral agency. In other words, it does not aim to reject the substance of what these theories prescribe, but rather the grounds on which they prescribe them. The task is to reground liberal norms in a more plausible account of moral agency and motivation.

The critique of liberal concepts of moral motivation and agency is not new. Many theorists have challenged liberal assumptions about the self as somehow able to detach herself from her social context and autonomously choose her own interests and goals; or the moral agent as rationally deliberating on practical action, abstracted from her particular ties and values.<sup>6</sup> Indeed, this was a major strand of the communitarian critique of liberalism that emerged from the late 1970s onwards, largely in response to the popularity of John Rawls' liberal theory of justice. However, few accounts have spelled out how the alternative communitarian account of the self can be combined with a commitment to liberal values. This is a central goal of the book: to fundamentally revise liberal universalist assumptions about moral agency, whilst promoting the normative goal of recognising duties to refugees.

### **Why a Critique of Liberal Theory?**

On first consideration, it may seem somewhat counter-intuitive to attack liberal universalist theories as being in some sense responsible for the current crisis in refugee protection. A more obvious way of defining the problem would be to see it as a conflict between a set of ethical principles and the self-interest of states. Why should we begin to cast doubt on universalist ethical values, just because governments and their electorates appear to be too selfish to respect commitments to refugee protection?

Here it is useful to take a look at the state of the policy debate on refugee issues. The debate on refugee protection has become polarised around two apparently incompatible perspectives. On the one hand, advocates of human rights and refugee protection berate states for restrictive measures and a failure to respect the standards for refugee protection defined in international law. These critics of state practice invoke international refugee law as the ethical standard for evaluating refugee policy, basing their normative prescriptions on universalist theories of individual rights.<sup>7</sup> On the other hand, states tend to draw on notions of national interest to justify restriction. They claim that national economic, strategic and social goals take precedence over duties to refugees. Defence of the national prerogative to restrict refugee influx may be couched in pragmatic, *realpolitik* language, or be defended in terms of the ethical relevance of national ties.

The apparent incompatibility of these two perspectives – the nationalist and the universalist – would suggest that there is a conflict or trade-off between these two sets of interests. Indeed, most academics, human rights lobbyists, government and United Nations (UN) officials share a similar characterisation of the basic problem: a conflict between the rights of refugees and national interests in situations of mass influx.<sup>8</sup> This notion of a conflict assumes that the two sets of considerations are shaped independently of one another. National interests reflect exclusively self-interested domestic concerns, and are shaped by interests and beliefs quite separate from those that define ethical duties. On this account, any coincidence between ethical duty and national interest is contingent on economic and political circumstances. The two sets of considerations may converge in certain periods, as indeed they did in the post-war decades, when the need for additional labour encouraged a more generous stance towards both refugees and economic immigrants. But the current configuration of socio-economic conditions in most industrialised states, so it is argued, has generated a clear conflict between national interests and refugee rights.

It should not be any great surprise that the trade-off characterisation is favoured by those keen to restrict refugee influx. Defence of the national interest is a highly effective strategy for mobilising political support. By extension, those who seek to prioritise refugee rights over the nationalist interest can be labelled as politically naïve, unpatriotic or idealistic. The combination of *realpolitik* and patriotic loyalty is politically extremely effective – so that even where there is no vital political or economic interest at stake, the term can be invoked to cover a broad set of moral and pragmatic arguments. It is partly its lack of clear definition that makes it an effective political tool. Where duties to non-nationals are characterised as in conflict with the national interest, there is a cluster of ill-defined but intuitively persuasive arguments to limit the number of refugees recognised.

Given the political uses of this term, it is all the more surprising that many proponents of universal rights have tended to embrace a similar conception of the relationship between universal duties and national interests. They too share the notion that the ‘ethical’ stance is in conflict with national interests, but they castigate the national interest as selfish and unethical. Any deviation from the requirements of universal rights reflects the self-serving and power-seeking nature of states. On many universal rights accounts, there is an implicit suspicion about the motives of states, and an idea that political objectives are somehow impure and constraining of humanitarian and human rights goals.<sup>9</sup> But while rejecting the legitimacy of pursuing the national interest over ethical duty, they nonetheless accept the assumed dichotomy between the two.

Now it is certainly not my intention to undermine the aspiration of refugee rights activists to encourage a more generous refugee policy. Indeed, as I have already noted, one of the central aims of the thesis is to find a framework that can do justice to commonly held notions about the ethical force of refugee rights. Nor do I want to question here whether there is a moral case to be made for prioritising

the 'national interest' over duties to non-nationals in any given situation. My aim is rather to question whether it is both descriptively accurate, and politically expedient, for proponents of refugee rights to accept a sharp distinction between ethical concerns and national interests. In other words, is it an adequate characterisation of the relationship between the interests of compatriots, and duties to non-nationals? And, if not, is there an alternative way of conceptualising this relationship, that avoids the descriptive and practical shortcomings of this trade-off characterisation?

A large body of literature in international relations has cast doubt on simplistic notions of national interest. Many theorists have rejected the claim that there is a set of 'real' interests that can be derived from a rational assessment of national economic and political considerations. Rather, notions of national interest are shaped by a range of values, beliefs and interests that are not directly determined by rational calculations of narrow domestic interests.<sup>10</sup> One subset of this critique involves a rejection of the assumption of nation-states as separate, bounded units of interest, instead stressing the role of transnational or sub-national interests and ties in shaping political action.<sup>11</sup> While this discussion is of general interest to the question of refugee policy, I am more concerned with a second type of critique that stresses the role of shared values in defining interests. The concern here is not so much linked to the empirical claim that political decisions are shaped by sub- or transnational interests. Rather, the point is that it is misguided to conceive of interests – whether individual, national, sub-national or transnational – as independent of ethical values. Just as it is simplistic to assume that an individual's interests are independent of her values and beliefs, so too is it misleading to conceive of a national interest that is independent of broader ethical considerations. Commitment to ethical values will create implicit norms and expectations about what constitutes acceptable or desirable behaviour. I do not want to exaggerate the role of such ethical norms in shaping refugee policy. But it would be equally wrong to overlook it, especially on an issue as normatively laden as that of duties to refugees. In short, the notion of a dichotomy or trade-off between refugee rights and national interests seems descriptively simplistic.

Quite apart from the descriptive problems with the trade-off conception, there are also considerable practical risks in embracing this account. I shall mention two of these. First, drawing a distinction between national interests and ethical duty is not a particularly effective strategy for motivating support for a generous refugee policy. If adopting an ethical stance is characterised as in opposition to one's interests – as self-abnegating rather than personally fulfilling – then it is not evident how advocates of refugee rights could motivate support for their cause. Castigating the defenders of national interest as self-centred and calling for a more purist moral approach is likely to be counter-productive, especially in a climate where the claims of liberal universalism appear to be so unfeasible. Again, as we shall see in the thesis, there are parallels here with the moral philosophical distinction between the personal disposition and the requirements of morality. The traditional Kantian distinction between will and moral duty seems to have

pervaded the discourse on national interest and universal ethics, bringing with it the associated problems with generating moral motivation.

In addition to this practical problem of encouraging motivation, the trade-off characterisation has a second prescriptive weakness: it limits the scope for defining and evaluating possible alternative solutions to refugee problems. Couching the relationship in terms of refugee rights versus national interests precludes the possibility of defining approaches which could meet the concerns of both nationals and refugees. For want of a better term, the trade-off conception constrains the development of 'positive sum' approaches to refugee problems. The requirements of ethical duty are defined in rigid terms, with any incorporation of national concerns representing a deviation from universalist ethics. Yet recent developments in refugee policy seem to have transcended this trade-off conception. A number of innovative policy approaches have been debated and implemented over the past decade, which do seek to address the concerns of states whilst meeting the needs of refugees. For example, the temporary protection regime for Bosnian refugees established a form of short term asylum which was designed to ensure the safety of refugees for the duration of the conflict, whilst minimising the burden on receiving countries. An increased emphasis on protecting those displaced inside their country of origin and monitoring of refugees after they have repatriated also aims to ensure the human rights of refugees through alternatives to asylum. However, these innovations have been *ad hoc* and for the most part lacking a coherent rationale. Debate on and evaluation of these policies has also suffered from a marked lack of consensus on how to define their success. Trapped in the trade-off characterisation, refugee rights activists often criticise them as a compromise of refugee rights under pressure from states.

These descriptive and practical shortcomings of the trade-off account – the simplistic definition of national interest, the problem of motivation and the lack of framework for designing and evaluating new policies – would imply that the current *impasse* in the policy debate is partly a conceptual problem. While it would be a mistake to underplay the conflicts of interest between states and refugees, the main concern being addressed here is that the current characterisation may be inadequate, and even counterproductive to the normative goals of liberal universalism.

### *Sources of the Dichotomy Characterisation in Liberal Theory*

In this book I will argue that this problem of feasibility can be traced to a fundamental flaw in liberal universalist theories. In a nutshell, this flaw is liberalism's notion of a dichotomy between two sets of considerations: national or community interests on the one hand, and the requirements of universal ethics on the other. I shall argue that this dichotomy surfaces at different levels: in the debate on refugee policy, where it is depicted as a conflict between national interest and refugee rights; and in liberal theory, where it is manifested as a conflict between