

2005

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Recommended Citation

Dagger, Richard. "Politics, Rights, and the Refugee Problem." In *War and Border Crossings: Ethics When Cultures Clash*, edited by Peter A. French and Jason A. Short, 185-97. Lanham: Rowman & Littlefield Publishers, 2005.

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Politics, Rights, and the Refugee Problem

RICHARD DAGGER

In *The Origins of Totalitarianism*, the political philosopher Hannah Arendt pointed to the years between World War I and World War II as the time when the plight of refugees became a pressing political problem.¹ If Arendt were still alive (she died in 1975), she would no doubt agree that the problem is at least as pressing in the early twenty-first century as it was sixty or more years ago, when she herself was a refugee from Nazi Germany. Who would not agree? According to a report of the U.N. Population Division, 16 million people were refugees at the end of 2000, most of them to be found in Asia (9 million) and Africa (4 million).² Obviously the plight of refugees is a pressing problem today. But is it a pressing *political* problem?

Someone might hold, for instance, that coping with refugees is a logistical nightmare or a matter of grave humanitarian concern but *not* a political problem. What I hope to show in this chapter is that the refugee problem remains as it was in the years between the world wars, a problem for political thinkers and actors. More than a single problem, it is a set of interrelated problems, three of which I shall focus on here: the conceptual problem, the balancing problem, and the human rights problem.

THE CONCEPTUAL PROBLEM

It may seem unduly abstract—even inhuman—to say that refugees present a *conceptual* problem. Refugees, after all, are people, not concepts, who may

have lost family, friends, home, and possessions as they fled from danger. Nevertheless, part of the refugee problem must be conceptual, for we cannot address the problems of refugees without determining who is a refugee or who ought to count as one. Reaching this determination is often a difficult, contentious, and unavoidably political matter. This is because the conceptual problem has two sides. First, like many other concepts, the concept of refugee is open-ended enough to leave room for interpretation, judgment, and dispute. This problem could be overcome if we could fix on an exact, indisputable definition of “refugee.” But such a definition cannot be found because—and this is the second side of the problem—the concept has a political dimension.

It may be helpful to begin by comparing the concept of refugee to another common but imprecise concept—criminal. In both cases the concept contains standards for determining who does and who does not fall under it. The *Oxford English Dictionary*, for instance, defines criminal as a “person guilty or convicted of a crime.” Someone who is guilty or convicted of a crime thus falls under the concept of criminal, and anyone who is neither guilty nor convicted does not. In similar fashion, a refugee is, according to the *OED*’s leading definition, “One who, owing to religious persecution or political troubles, seeks refuge in a foreign country; orig[inally] applied to the French Huguenots who came to England after the revocation of the Edict of Nantes in 1685.” The Huguenots were refugees, then, but French Protestants seeking entry into England in the early twenty-first century would be hard put to establish that religious persecution in France had made refugees of them.

Both criminal and refugee concepts carry implications for how the people who fall under them are to be treated. Thus it is important to have standards for deciding who counts as a criminal or a refugee. Criminals are to be apprehended and punished, or at least admonished, because they are guilty of wrongdoing. Refugees are to be protected, granted asylum, and ultimately repatriated, relocated, or permanently settled in the host country, for they are the victims of wrongdoing. Other immigrants should be treated with respect or even hospitality, but their claims for consideration and assistance are not as strong as those of the refugee.

Here, however, is where the difficulties arise. With refugee, as with criminal, there are problems involved in determining whether the concept fits particular people. Before we call someone a criminal, we want to know—we

should want to know—whether that person really did commit a crime, and certainty is often hard to achieve in these cases. By the same token, we want to know whether people had genuine reason to fear persecution or “political troubles” when leaving their country, and the evidence that distinguishes the true refugee from the mere immigrant may be as hard to come by as the evidence that convicts the guilty criminal and sets the innocent person free. In both cases, moreover, questions of severity or seriousness may be troublesome. Strictly speaking, people who commit a traffic offense have broken the law, but we typically call these people “offenders” because their offense does not seem serious enough to warrant branding them as “criminals.” In much the same way we may admit that someone did indeed face “political troubles” or persecution of some sort in her country, yet doubt or even deny that these troubles were severe enough to justify granting her refugee status. I will have grounds for complaint, for example, if the people I work with mock me, shun me, or pass me over for promotion because of my religious or political views; such shabby treatment may even give me reason enough to move to another, more congenial country. But it will not give that country (or any other) sufficient grounds to accept me as a refugee.

It is instructive, in light of this comparison of the concepts of refugee and criminal, to consider the definition of refugee established by the United Nations in the Geneva Convention of 1951—the same year in which Arendt first published *The Origins of Totalitarianism*. According to this definition, a refugee is 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 to or, owing to such fear, is unwilling to avail himself of the protection of that country.”³ This definition is more expansive than the *OED*’s, but it is no less susceptible to the problems involved in determining who does and who does not count as a refugee. To begin with, there is the difficulty of deciding whether someone’s fear of persecution is truly “well-founded.” There is also the problem of distinguishing refugees from those whom the United Nations and others define as “economic migrants,” that is, people who voluntarily leave their country in hopes of a better life elsewhere. This is a necessary distinction, but its analytical value does not free it from practical problems, especially when it appears that people are leaving their homeland *because* their governments somehow prevent them from making a decent

living. This was one of the issues in the dispute between the Reagan administration and the leaders of the sanctuary movement in the 1980s. The administration resisted the attempts of people from Central America to enter the United States on the grounds that they were “illegal immigrants” seeking to move here for economic reasons, to which the sanctuary activists responded that the “refugees” from Guatemala, El Salvador, and elsewhere were victims of political oppression—including oppression that made it all but impossible to support themselves.

Adding to these conceptual difficulties are complications that arise when people claim refugee status as victims of forms of oppression that do not fit obviously into the U.N. definition of refugee. Female genital mutilation and homosexuality provide pertinent examples. Should we regard a family that flees from a country in which their infant daughter would be expected to undergo female circumcision as a family of refugees? Is a homosexual who lives in a country that proscribes homosexual acts persecuted as a member “of a particular social group” and thus eligible for refugee status according to the United Nations? If we answer yes to these questions, as the United States and some other countries have done in the case of female genital mutilation, then we are stretching the concept of refugee. We also stretch it when we say that female circumcision and hostility toward homosexuals are relevant forms of persecution when they are widely accepted cultural practices *even though* they lack the force of law.

And perhaps we should. That is the attractive quality of imprecise, open-ended concepts: Their flexibility allows us to adapt them to changing circumstances and attitudes. But there is no denying that they also entangle us in conceptual disputes, as I have been trying to show.

These disputes are further complicated by the second side of this conceptual problem: Our attempts to define “refugee” necessarily involve moral and political judgments. To see how, we need only consider the difference between *refugees* and *fugitives*. Both words derive from the Latin *fugere*, to flee, but “fugitive” is a broader term than “refugee,” and it typically implies a condemnation of the person who is called a fugitive. An escaped convict is a “fugitive from justice,” for example, not a “refugee.” To call someone a refugee, however, is to cast aspersions not on that person but on those who drove her to seek refuge. Refugees are by definition the innocent victims of people who have mistreated them or who threaten to do so.

The concept of refugee entails a *political* as well as a *moral* judgment because it implies a failing on the part of the refugee's state or government. To return to the U.N. definition, a refugee is "unable to or . . . unwilling to avail himself of the protection" of the country of his nationality. The government of the refugee's country is guilty of injustice, incompetence, or negligence. Why else would the refugee be unable or unwilling to avail himself of the government's protection? If the refugee is *unable* to count on the government's protection, it must be for one of two reasons: either the government itself is trying to oppress or persecute him or the government lacks the desire or the ability to protect him from oppression or persecution by others. If the refugee is unwilling to count on the government's protection, it must be owing to his lack of faith in the government's ability or willingness to protect him. Whenever we say that someone is a genuine refugee, in short, we are judging her government as in some way unjust, incompetent, or negligent.

The refugee problem, then, is necessarily a political problem because the conceptual difficulties of deciding who does and who does not count as a refugee are also political difficulties. Political leaders and functionaries do not enjoy being told that they are either actively engaged in injustice or derelict in their duty, but that is what we tell them when we declare that people who have left their countries are refugees. No wonder, then, that the concept of refugee is so sensitive—and so likely to give rise to controversy.

THE BALANCING PROBLEM

Let us suppose that we solve the conceptual problem and put an end to disputes about who is or ought to be considered a refugee. There are 16 million people who call themselves refugees, let us say, and each and every one of them is universally taken to be a genuine refugee. In these circumstances, would the plight of refugees continue to be a *political* problem?

Yes, it would, and the balancing problem explains why. By "balancing problem" I mean simply that the government of any country that takes in substantial numbers of refugees will have to find some way to balance the interests of the refugees against those of its own people. This balancing act would not be necessary if the interests of current citizens were identical to those of the refugees, to be sure, but even a utopian would be unlikely to believe that a complete identity of interests is possible in these circumstances. Some conflict of interests is inevitable and significant conflicts are likely. Governments will have

to try to resolve these conflicts, and that means that refugees will present a political problem to the governments of host countries.

Conflict is inevitable because refugees are typically highly dependent people, at least for some time after their arrival in the host country. Even those who manage to escape their persecutors with plenty of money are likely to find themselves strangers in a strange land, and therefore in need of assistance in adapting to their new circumstances. Typical refugees, unfortunately, escape with little more than the clothes on their backs. Someone else must pay the costs of meeting their needs. To the extent that these costs fall on the people of the host country, there will be a conflict of interests between the refugees and the citizenry.

This conflict is most obvious in economic terms. Providing for the basic needs of refugees—food, shelter, clothing, health care, security, and so on—is a costly enterprise, and money and other resources spent on their behalf cannot be used for other projects or purposes. In time, of course, costs should dwindle as the refugees either leave the country or support themselves. If neither repatriation nor relocation to another country is possible, however, another kind of economic conflict could easily appear as refugees begin to compete for jobs. The more anxious people are about their economic security, the more the government will have to strain to balance the interests of refugees with those of citizens.

Less obvious, perhaps, but not necessarily less troublesome are conflicts that are social or cultural in nature. Refugees are people whose lives have been drastically disrupted, but they may also prove, through no fault of their own, to be disruptive influences in the host country. Racial, tribal, linguistic, religious, and other differences often produce social tensions or open hostility between the refugees and the people of the host country. In some cases, the clash of cultures may even lead to conflict among different groups of refugees. In either case, the government of the host country will have to find some way to ease the tensions and resolve the conflicts. We may wish that people would rise above their petty, narrow-minded, or parochial concerns to welcome and even embrace refugees; some people do just that. But we cannot count on such altruistic behavior, and consequently the plight of refugees will continue to pose a political problem for the governments that try to help them.

This problem will persist even on the utterly unrealistic assumption that the conceptual problem has been solved. Dropping that assumption will show how

deeply political the refugee problem really is. When country A accepts people from country B as refugees, as we have seen, the government of A is implicitly accusing the government of B of injustice, incompetence, or negligence—an accusation that is not likely to make for happy relations between the two countries. Those relations will almost certainly worsen if some of the refugees take steps to bring down the government of B. If this happens, as it often does, the refugees may embroil the host country in a conflict that threatens its stability or even its survival. Inasmuch as the first duty of a government is to protect and defend its people, the government of A will have another reason for balancing the interests of refugees against the interests of its citizens. With the balancing problem, in sum, as with the conceptual problem, there is every reason to think that the plight of refugees does indeed pose a pressing political problem.

THE PROBLEM OF HUMAN RIGHTS

It may be tempting to hold that the best way to deal with refugees is to let them fend for themselves. But it is neither possible nor right to do this. It is not possible because governments cannot ignore or turn their backs on refugees; at the least they will have to take measures to keep refugees out of their countries. Some governments will find these measures less burdensome than others—governments of countries that are distant from the places that the refugees are fleeing, in particular—but no government in this age of globalization will be able to count on geography to keep it free from people seeking asylum.

Nor would it be right, if it were possible, to leave refugees to fend for themselves. A genuine refugee is like a drowning person. If we can rescue that person without endangering our own lives, it would be wrong to leave him to drown; if we can provide shelter and succor to refugees without endangering ourselves, it would be wrong to turn them away. Indeed, some would say that we should be actively searching for refugees and other persons in distress whom we may help, and not merely waiting until they call themselves to our attention. Whether such active assistance is morally required or beyond the call of duty, however, is a question that I shall not pursue here. It is enough to say that morality requires us not to turn away the refugees at our door if we can take them in without threatening serious harm to ourselves.

That qualification—without threatening serious harm to ourselves—is important. There are cases in which refugees, again like drowning swimmers, are

likely to take their would-be rescuers down with them. Who, for example, would consider a government blameworthy for turning away a refugee infected with a deadly, highly contagious disease? Other cases will prove more troubling. Suppose that the tyrannical acts of my powerful government send a stream of refugees to the border between your country and mine, where they are beseeching your militarily weak government to provide them a place of refuge. Suppose further that these people pose no danger in themselves to your country, but the government of my country has made it plain that it will regard any aid given to these “fugitives” to be a hostile act and an invitation to invade your country. Would your government deserve praise if it nevertheless took in the refugees? Would it deserve blame if it did not? In such circumstances, it seems that the best your government can do is to try to find some way of escaping the horns of the dilemma. As refugees themselves too often find, however, escape routes are not always available.

So the qualification is an important one. We must do what we can to help refugees as long as we can do so without threatening serious harm to ourselves. But in acting with this qualification in mind, we must be sure to take “serious harm” quite seriously. It is all too easy to conclude that inconvenience or slight risk is excuse enough to refuse entry or aid to refugees.

This may seem to be merely a way of restating the balancing problem. Governments must do what they can to aid refugees so long as they do not threaten serious harm to their own countries, but the harm in question must be serious enough to outweigh the harm that the refugees will be likely to suffer if they are turned away. But there is more than balancing involved here, at least for the governments of those countries that profess to believe in human rights. In these cases, treatment of refugees is also a matter of integrity—of acting on one’s principles and living up to one’s commitments. In a country such as the United States, with its endorsement of the U.N. Universal Declaration of Human Rights and its historic evocation of an inalienable right to life, liberty, and the pursuit of happiness, consideration for the *rights* of refugees must be more than a matter of balancing their *interests* with those of U.S. citizens.

The plight of refugees is not the only challenge to those of us who profess to believe in human rights, but it puts this challenge in particularly striking form. According to the Universal Declaration of Human Rights, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”⁴

That statement is not only universal—everyone has the right—but uncompromising—to seek and enjoy asylum. It seems to entail that we have a duty to provide safe haven to any genuine refugee who asks us for it, with no balancing of interests allowed. Where human rights are at stake, in short, the only question integrity seems to allow us to ask is whether we can admit refugees without threatening truly serious harm to ourselves.

There is one other question that the language of the Universal Declaration allows. When it states that “everyone has the right to seek and enjoy in other countries asylum from persecution,” it does not impose the duty of asylum on any particular country. *Some* government has a duty to afford asylum to this particular group of refugees, in other words, but it does not have to be *our* government. The problem, of course, is that the lack of specificity in Article 14 gives governments an excuse to turn away refugees. The government of Country X can maintain that the duty to provide asylum falls not on it but on Country Y, which is in a better position to aid them, or Country Z, which has not been bearing its fair share of the burden where refugees are concerned, or on other unspecified countries in general. The result is a kind of passing the buck—or sometimes quite literally passing the refugees—that makes a mockery out of the claim that there is a human right “to seek and enjoy in other countries asylum from persecution.”

That is why the plight of refugees poses a special problem for those who believe in human rights. We might try to avoid the problem by saying that there is a difference between having a right and being able to exercise it, as we do when we say that someone who is bound and gagged has the right to freedom of expression even when she is not able to express herself. That distinction will not help in this case, however, for Article 14 states that everyone has the right to “enjoy” asylum. We might then proceed to amend Article 14 so that it recognizes a right to seek but not to enjoy asylum. But the effect of this amendment would be to take pressure off those countries that could provide refuge and make the condition of refugees even more desperate—hardly a desirable outcome if our aim is to secure human rights. Or, finally, we might try to make Article 14 more effective by taking steps to identify the country or countries that have the duty to provide asylum. We could not identify them by name, but we could say that the duty falls on the “nearest” safe country, or the “most culturally similar” country, or the “economically strongest” country, for example. But such an attempt at specificity would only lead to disputes as to

which country is really nearest or most similar or economically strongest, and then to further disputes as to whether being nearest counts more than cultural affinity and less than economic strength, and so on.

We cannot escape the problem refugees pose for human rights simply by reformulating a principle. Refugees have claims on those of us who are fortunate enough not to be refugees ourselves, and we must find some way to uphold those claims. If we do not, we put the belief in human rights itself in jeopardy. This was Hannah Arendt's point when she declared that the period between the world wars of the twentieth century was the time when refugees first became a pressing political problem. "Once they had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were rightless, the scum of the earth."⁵ When neither the state from which they were fleeing nor the state to which they fled would afford them safety or recognition, the refugees found themselves to be, for all practical purposes, deprived of their rights. In such a situation, it becomes difficult to sustain the belief that human rights is anything more than a phrase.

This is the sense in which refugees pose a fundamental problem for human rights. If we really believe in human rights, we must find some way to meet the needs of refugees. If we fail to do so—and especially if we make no real effort to help them—we call into question both our commitment to human rights and their very existence. Refugees in our time may not as often be the product of totalitarian regimes as they were in Arendt's time, but the challenge they present to human rights remains the same:

the incredible plight of an ever-growing group of innocent people was like a practical demonstration of the totalitarian movements' cynical claims that no such thing as inalienable human rights existed. . . . The very phrase "human rights" became for all concerned—victims, persecutors, and onlookers alike—the evidence of hopeless idealism or fumbling feeble-minded hypocrisy.⁶

CONCLUSION

How are we to avoid "hopeless idealism" or "feeble-minded hypocrisy" today, when there are 16 million or more refugees in the world? The answer, in my view, is to adopt a stance of chastened yet hopeful idealism. Our idealism must be chastened because the refugee problem—the three refugee problems that I

have distinguished in this chapter—is not something that admits of a complete, once-and-for-all solution. There is no reason to think that we can hit on a definition of refugee that will settle all disputes about who is and who is not a genuine refugee, nor is there any reason to believe that we will discover a formula that tells us exactly how to balance the interests of the current citizens with those of refuge-seekers. In these respects the refugee problem will remain a *political* problem. But it is a problem that we will be better able to handle, if not solve, once we understand why it is so troublesome.

That is why there are grounds for an idealism that is hopeful as well as chastened. In fact, there is reason to believe that progress has been made since 1951, when Arendt's *Origins of Totalitarianism* appeared and the Geneva Convention established a definition of refugee for international law. International cooperation in general and the United Nations in particular have put us in a better position than were the people between the world wars to deal with the refugee problem. Through the U.N. High Commission on Refugees (UNHCR), it is now possible to do more for those people who have been rendered stateless—to provide them not only with food, shelter, and medical care but also with assistance in regaining their rights—than was possible in the 1930s and 1940s. Beyond this direct aid to the refugees, moreover, the United Nations has been able to put pressure on governments to be clear about how they distinguish refugees from other would-be immigrants and to carry something like a fair share of the load of refugee relief. This pressure has not been fully effective—far from it—but it does indicate how international cooperation can establish norms that help countries do what they can to respect the human rights of refugees.

As I have tried to show, governments will often have good reason to ignore or neglect the claims of refugees. The first responsibility of a government is to its own people, and governments may well think that providing aid and comfort to refugees will necessarily come at the expense of the people the government is supposed to serve. They may thus have a tendency to exaggerate the threat that refugees present to the safety and welfare of their own citizens. By establishing international norms, however, and by funding agencies to enforce and carry out those norms, governments can tie their own hands in ways that make it easier for them to act on behalf of the rights of refugees. Instead of making a case to their citizens for greater aid to refugees, in other words, governments may say that the existing commitment to the Universal

Declaration and the policies of the UNHCR *require* the government to take in more refugees, or to contribute in some other way to their relief. Equally important, and perhaps more so, is the way in which governments can use these international norms and agencies to put pressure on one another. We are doing our part, they may say, so why aren't you—especially when you profess your steadfast devotion to human rights? In this way governments may engage in what Garrett Hardin has called, in another context, “mutual coercion, mutually agreed upon” to increase efforts to alleviate the suffering of refugees.⁷ Finally, and perhaps most important, these same international norms and agencies offer the best hope we have of taking effective measures to halt the persecution and oppression that turn peaceful people into refugees in the first place.

Is this too sanguine or idealistic a view of what international cooperation can do? It is certainly not an accurate statement of what international cooperation has accomplished. When the refugee population is at 16 million or more, we can hardly claim that the U.N. work in this regard has been a great success. Nor do memories of recent events in Rwanda, Bosnia, Indonesia, and elsewhere inspire confidence in the benefits of international cooperation. Still, it seems clear that more is being done in an organized fashion on behalf of refugees today than in the decades before World War II—and before the creation of the United Nations. It also seems clear that much more can be done if the states that have pledged themselves to the Universal Declaration of Human Rights and to the Geneva Convention will provide the United Nations the support it needs to carry out its mission. Some will worry, of course, that their state would be surrendering its sovereignty to the United Nations if it provided this support. To enter into an arrangement of “mutual coercion, mutually agreed upon,” however, is not to surrender sovereignty. It is, instead, to strengthen the hands of those who would protect human rights by confronting the refugee problem—the position of anyone who is a chastened yet hopeful idealist with regard to the refugee problem.

NOTES

1. Hannah Arendt, *The Origins of Totalitarianism* (1951; Cleveland: Meridian, 1969), chap. 9.

2. For these figures, see www.un.org/News/Press/docs/2002/pop844.doc.htm (July 9, 2003).

3. This and other pertinent information is available through the website of the U. N. High Commission on Refugees: www.unhcr/ch.
4. Article 14.1, as reprinted in A. I. Melden, ed., *Human Rights* (Belmont, Calif.: Wadsworth, 1970), 145.
5. Arendt, *Origins of Totalitarianism*, 267.
6. Arendt, *Origins of Totalitarianism*, 269.
7. Garrett Hardin, "The Tragedy of the Commons," *Science*, December 1968, 1243–48.