



**T**RANSFORMATION, **I**NTEGRATION and **G**LOBALIZATION **E**CONOMIC **R**ESearch  
CENTRUM BADAWCZE TRANSFORMACJI, INTEGRACJI I GLOBALIZACJI

## **TIGER Working Paper Series**

**No. 80**

### **Asylum, Immigration and Statehood – A Philosophical Perspective**

**Matthias Oschinski**

Warsaw, September 2005

**Matthias Oschinski**

**Asylum, Immigration and Statehood – A Philosophical Perspective**

**Summary**

According to UNHCR, the number of refugees and people of the UNHCR's concern exceeds 20 million. This number, though very large, is still understated as it accounts only for those individuals who actually fulfil UNHCR's definition of a refugee. The true number of people in adversity, in need of another state's help, in search for a better life, is much higher than this officially announced figure. Next to legal and political implications, this poses a moral problem to the rest of the world population – how are we to treat refugees, asylum seekers and migrants in general; what possible duties or obligations do foreign states have towards this group of outsiders? This paper undertakes to explore the moral claims outsiders might have towards a foreign nation-state. Accordingly, the following questions will be addressed: First, is a state obliged to assist and help refugees and on what grounds can these obligations be based? Second, do migrants possess any rights towards a given nation-state and, if so, from what reasoning might those rights be derived? By analyzing these questions applying competing moral theories, the paper arrives at the conclusion that there cause for a thorough rethinking of the concepts of statehood and citizenship.

## 1. Introduction

The division of the world into sovereign nation-states has at its heart a distinction between insiders, i.e. members of a certain state, and outsiders. As long as the group of outsiders is comprised only of members of other nation-states, moral and humanitarian considerations as to the relationship of insiders and outsiders might not seem too urgent. The existence of uprooted people in the form of refugees and (forced) migrants, however, brings about questions regarding both the duties of a nation-state towards outsiders and the rights of outsiders towards a foreign nation-state. According to UNHCR, the number of refugees and people of the UNHCR's concern exceeds 20 million.\* This number, though very large, is still understated as it accounts only for those individuals who actually fulfil UNHCR's definition of a refugee. The true number of people in adversity, in need of another state's help, in search for a better life, is much higher than this officially announced figure. Next to legal and political implications, this poses a moral problem to the rest of the world population – how are we to treat refugees, asylum seekers and migrants in general; what possible duties or obligations do foreign states have towards this group of outsiders?

This chapter undertakes to explore the moral claims outsiders might have towards a foreign nation-state. Accordingly, we will address the following questions: First, is a state obliged to assist and help refugees and on what grounds can these obligations be based? Second, do migrants possess any rights towards a given nation-state and, if so, from what reasoning can those rights be derived?

In exploring these issues we will proceed in the following manner. First, the character of the modern state will be explored and the meaning of the term 'nation-state' defined. Second, the distinction of the two groups of outsiders, refugees and (forced) migrants, will be discussed and the nature of their relationship with a foreign nation-state established. Having done so, we can proceed to examine the different philosophical views regarding possible obligations a foreign nation-state might have in dealing with refugees and migrants and the moral rights these outsiders might possess towards a foreign state respectively. In concluding this chapter we will bring the discussion to an end and outline possible implications arising from our considerations.

## 2. Of States and Nations

The modern concept of the nation has its roots in the philosophical discourse of the eighteenth century. One of the most influential figures in that debate, the German sociologist Ferdinand Tönnies, came up with a distinction between the concepts of *Gemeinschaft* and *Gesellschaft*. According to Tönnies the *Gemeinschaft*, what we would call a community, is a form of a social group that is not purposely organized and thus based on the 'natural will'. In contrast to a community, the organization of a *Gesellschaft*, a society or an association, is based on the 'rational will' as its organization involves deliberate planning. Possible examples of Tönnies' concept of a *Gemeinschaft* are families, tribes, villages, and nations. A nation, then, is based on the natural will as it is not a social organization formed to fulfil a set of certain aims. Consider the status of naturalized citizens in, say, Canada. A Pole, an Indian or an Ethiopian living in Canada holding a Canadian passport is, on legal terms, a Canadian. In terms of personal identity or personal nationality, however, this person may well feel Polish, Indian or Ethiopian. Thus, a nation can be defined as a group of people sharing a sense of

---

\* See <<http://www.unhcr.ch/cgi-bin/texis/vtx/statistics>>

'belonging', living together (or once having lived together) in a geographical region, sharing the same historical experience and a high level of cultural and linguistic unity. † In most instances a people's national identity is formed in a protracted procedure in which historical events, personalities and places establish some kind of 'national iconography' (Mellor 1989). The most obvious candidates serving as elements in the formation of a nation are common language, religion and historical experience. Others, less overt, include certain customs and a general sense of togetherness.

Regarding the process of the formation of a nation in a historical perspective we can distinguish three possible themes. First, there is the fear or threat from an outside power that can initiate the development. Second, the aspiration of a people to rid itself of an existing foreign domination might play the motivating part. Finally, a people's need for a separate identity due to the perception of being (culturally) different from other groups could be at the centre of the formation of a nation. The common thread in these themes is that a group of people defines its own identity by discerning itself from 'the other'. Consequently, the creation of 'us' and 'them' lies at the centre of the process of 'nation-building'.

In contrast to the nation, the state is, in Tönnies' terms, built on the 'rational will'. Thus, it is a highly organized association deliberately designed to serve a certain purpose. With regard to philosophy, we can distinguish two different sets of theories to explain why people would subordinate themselves under the rule of a state. Contract theories explain the emergence of a state out of a 'state of nature' with the people's desire for safety, security and justice. Thomas Hobbes, probably the first in a line of contract theorists, saw the creation of a strong state as the only alternative to the anarchic 'state of nature' where life is 'solitary, poor, nasty, brutish, and short' (Hobbes 1968). Thus, by granting the power to rule to a sovereign, people receive security in return. This ends the anarchic state of nature where everyone fears everyone else and enables all individuals to live in peace. Succeeding contract theorists such as Locke, Rousseau and Kant argued along the line of Thomas Hobbes but granted more rights to the individual citizen. For Locke and the other social contract theorists the state is only justified if every individual has consented to the social contract, i. e. to the creation of the state. Thus, philosophers in the tradition of Locke and Kant put a high value on personal autonomy. Since man is born free into the state of nature political power over him can only be exerted by his consent - this holds true even if the creation of the state is to the advantage of the individual. Consequently, in contract theory the mere fact that the state would produce better results than the state of nature does not justify its formation. The justification can only be brought about through the individual's consent. How can we picture this 'state of nature'? Now, contract theorists do not claim that the state of nature has actually ever existed in human history nor do they hold that states came into existence by people in effect consenting to their formation. Rather, the idea is one of hypothetical consent. In short it could be expressed like this: a rational individual finding itself in the state of nature would – since acting rationally – freely agree to join into a contract which brings about the state.

A second set of theories dealing with the justification of the state is utilitarianism. In contrast to contract theory, utilitarianism places emphasis on the result of a certain action. Thus, the basic idea of utilitarianism is that an action is morally justified if it results in the highest possible amount of utility, whereby utility translates as happiness, pleasure, or preferences. According to utilitarians, then, individuals should subordinate themselves under the rule of a state if the benefits of doing so are higher than the costs. In other words, the state

---

† Nationality is not to be confused with race. While nationality refers to cultural characteristics, race applies merely to physical anthropological characteristics (i.e. skin colour).

is justified if and only if its contributions to human happiness are greater than those of any other feasible societal arrangements.

According to Held (1995), we can describe the distinctive features of a state – as opposed to any other association – as follows:

- **Territoriality:** With the creation of the modern state exact borders have been fixed dividing the world's population into sovereign territories.
- **Monopoly of coercive power:** Everyone residing within the territory of a sovereign state is subject to its rules. According to theory, individuals freely grant the power to rule to the sovereign state so as to receive safety in return. And it is only in states where rivalries over power and authority do not exist that this safety is guaranteed.
- **Impersonality:** An impersonal structure of power has to ensure that rights and duties are not linked to an individual's religion, race or belonging to a certain community within the state. It is only then that the monopoly of power will be recognized by all people residing in the territory of the state.
- **Legitimacy:** Internally a state gains legitimacy if it reflects the views and interests of its citizens. Externally it has to get recognition as a sovereign state by the rest of the world community.

While nation and state do not necessarily coincide, in the past states made their most common appearance as nation-states. That is, in many cases the geographical boundary of a state's territory used to coincide with the boundary of the nation it came to represent. In most recent decades, however, national boundaries became increasingly blurred and the residence of different nationalities within the boundary of one sovereign state seems to develop as a common feature of most modern states. One reason for this development is that people left their original state as refugees and fled to another. Others went as migrants to settle in another part of the world.

### *2.1 On the Run*

People leaving the territory they are living in do so for various reasons and under very different circumstances. Some flee terror and war, others move because environmental disasters have devastated their homes and fields, others, in turn, leave in search of jobs and food or, more generally, to improve their living conditions.

Although the personal distress these people experience may not differ to a very large degree, international law grants refugee status only to one particular group of migrants. In defining what a refugee is, most states follow the accordant UN passage which holds that a refugee is a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in 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' (UNHCR 1951).

Individuals falling under this category can, in some sense, be called the lucky ones as they are, according to international law, entitled to protection by the international community. Migrants who do not fit this definition, however, cannot claim similar rights for themselves.

Since we try to explore which rights migrants might have towards foreign states and which obligations foreign states might have towards migrants it is appropriate to have a closer look at the question of what constitutes a refugee and how refugees might differ from other

sorts of migrants. This may help us to establish whether states are justified in granting some sort of protection to one group while ignoring another.

## *2.2 On Refugees*

As we have seen above, in philosophical terms people agree to join in to the formation of a state as they expect to receive security in return or rather because the benefits of doing so are higher than the costs. Whichever theory you choose to follow, contractarian or utilitarian, the common feature is that, on the basis of these theories, the individuals rightly expect the state to grant them, among other things, the benefit of holding up law and order, which in turn reduces the vulnerability of each individual. The UN definition of a refugee apparently follows this train of thought. It implies that each state and its citizens established a bond through a sort of social contract which, *inter alia*, constitutes a state's obligation to protect each citizen. Further, the definition recognizes that in the case of refugees this bond has been severed and that persecution and residence outside the country of nationality are the guise in which this severance appears. This raises the question, though, whether persecution and residence outside the country of nationality truly are the necessary and sufficient conditions to establish the status of a refugee. What about other cases? For instance, if people of a certain country are being persecuted for reasons of, say, race but can not manage to flee across the border to another country. Should we not grant them the same protection we grant those who are lucky enough to manage to get out of their country of nationality? Questions like these make obvious the need to re-assess the problem of what constitutes a refugee and to establish the necessary and sufficient conditions for refugeehood.

## *2.3 Of Bonds and Severance*

The choice of any rational individual to willingly join into the formation of a state lies, as we have stated before, in the 'return' he/she receives in the form of protection from the state. This sort of insurance, then, should work to reduce each individual's vulnerability. This vulnerability can be increased through persecution and violent acts perpetrated by others, the occurrence of natural disasters and, finally, the scarcity of resources that endanger a person's very existence.

The most obvious case with respect to refugees is, of course, that of persecution. A state which abuses its own citizens for reasons of race, religion etc. is in breach of the very social contract that constituted statehood in the first place. Thus, in doing so the state undermines its own justification.

Acts of violence, in form of foreign invasion, civil war, genocide, terrorism, torture and kidnapping do place additional risks to each individual's life. In cases where the state is not able or willing to protect its citizens from those acts we can regard the social contract as non-existent as no rational individual would avail himself to the protection of such a state.

The third case concerns natural disasters. Here, it could be argued that the occurrence of natural disasters cannot be prevented by the state – and so we must not regard vulnerability towards natural disasters as a legitimate case for refugeehood. Studies show, however, that the likelihood and the consequences of natural disasters can either be increased or decreased by political agents (Lofchie 1975: 551-567; Sen 1981). It becomes clear, then, that in cases where natural disasters harm the lives of individuals because a state neglects its duties resulting from the social contract – either by not preventing the disaster or by not minimizing

the risks resulting from the disaster – the state is in breach of the social contract and the bond between state and citizen is severed.

Finally, we can regard the case of resource scarcity. Here, as in the cases above, we can declare the social contract violated if a state is unwilling or unable to provide for the subsistence of its citizens as far as it is the state's power. As Shacknove notes, naturally not all conditions for the subsistence of its citizens can be controlled by the state. Those the state can control, however, be it technology, infrastructure and means of distribution, it is obliged to by the social contract. In cases where the neglect of one or more of these leads to threats to an individual's subsistence, a case for refugeehood is constituted (Shacknove 1985: 28).

The cases discussed above show that the social bond between state and citizen can be severed not only through persecution but through the violation of a person's basic needs in general. The question, then, remains whether all violations of basic needs characterize refugeehood. This can be answered by a second look at the UN definition, which states that, an individual can claim refugee status only in cases where he or she is unable or, owing to fear, unwilling to avail himself or herself of the protection of his or her country of origin. This implicitly makes sense as in all other cases an individual can seek recourse by the use of other (legal) measures. Thus, we can conclude that the current UN definition is not sufficient to characterize refugeehood. The necessary condition is not only met by persecution but by a deprivation of basic needs and thus by a breach of the social contract in general. The sufficient condition is met if an individual is unable or, owing to a well-founded fear, is unwilling to resort to his own government. As a result, we can re-define the status of a refugee as a person who requires a new state of residence either temporarily or permanently because if forced to return home he would – as a result of the inadequacy or brutality of his state – be persecuted or seriously put in danger his physical or vital subsistence needs.

#### *2.4 On Migrants*

The above stated definition of a refugee, then, helps us to distinguish refugees from (other) migrants. While refugees do not have any other recourse than to seek the assistance of the international community, migrants in general are able to return to their country of origin or – in case they should do so – do not have to fear the inadequacy or brutality of the state. In other words, migrants might partly fulfil the necessary condition for refugeehood, namely a certain deprivation of basic needs. What they do lack, however, is the fulfilment of the sufficient (second) condition that would make them a refugee. This leads us to the question whether migrants and refugees should be treated equally as far as the responsibilities of a non-home state is concerned.

It could be argued that migrants are to be treated differently from refugees because they are able to resort to their state of origin to have their basic needs and rights guaranteed. In other words, the social contract between citizen and the state is still intact in this case. Some philosophers, however, challenge this view and do not merely focus on the victims of a breached social contract but on the group of migrants as a whole.

Before we explore on which philosophical base the various reasonings are based the following section will explore the relevant ethical theories.

### 3. Ethical Points of View

When thinking about possible responsibilities of foreign states towards refugees and migrants from a philosophical point of view, we mainly deal with two philosophical spheres. The first sphere concerns political philosophy. As we mentioned above one of the problems it deals with is the one concerning the relationship between individual and the state. With regards to refugees and migrants, then, this part of philosophical theory describes what we shall call the internal relationship, i.e. the rights and obligations of the individual resulting from the social contract with their respective nation-states. These rights and obligations can be defined, as we stated earlier, by two principal philosophical theories: contract theory and utilitarianism.

In order to evaluate the external relationship between foreign states and migrants or refugees we need to refer to a second area of philosophy – ethics. Since the relationship between foreign states and migrants or refugees is not ‘formally’ established by any sort of hypothetical, contract ethical considerations can help us to derive the obligations a foreign state might have towards these groups of ‘strangers’ or ‘outsiders’. There are mainly three types of ethical theories which can facilitate us with the tools to discuss these obligations. These are consequentialism, deontology, and virtue theory. We will introduce each of them in turn before we discuss their respective implications with regard to refugees and migrants.<sup>‡</sup>

#### 3.1 *Virtue Theory*

From a historical perspective virtue theory is the oldest normative ethical theory in the tradition of Western philosophy. Its first systematic presentation appeared in Aristotle’s famous *Nicomachean Ethics* where he sets out to explain that since human beings are able of reason they always aim to create some ‘good’ – be it physical or mental – which will leave them better off than in their present state. The ultimate end – or good – everyone is looking for, Aristotle goes on, is happiness. Happiness, though, is only achieved by living a virtuous life. The virtues will lead us to happiness because they help regulate our desires. For instance, in response to the natural emotion of fear, we should develop the virtuous character trait of courage. But if we curb fear too much we will become rash – which is another vice. Thus, the virtues help us to lead a balanced life – in other words: they will lead us to happiness.

But how do we develop these essential virtues? Here, Aristotle emphasizes the role of the respective community a human being lives in. While we develop a good character by exercising the virtues, it is the community that passes on the virtues, so to speak, by imparting its traditional values. The role of politics, then, is to shape virtuous citizens within the community. Following this theory, we can only fully live up to our human potential within a social community which shapes our virtues.

Modern proponents of virtue ethics, such as Alasdair MacIntyre and Philippa Foot, continue the Aristotelian tradition by emphasizing the importance of virtues for ethics but hold that a person’s needs and interests are internal to the virtues. In other words: the virtues help us to establish a concept of the good life from which can be derived the rational pursuit of certain goals and values.

The role of the community, though, still plays a central part in MacIntyre’s ethical theory. In his work *After Virtue* he maintains that the disintegration of moral thinking in

---

<sup>‡</sup> For a detailed overview of the following theories see Norman 1998; Williams 1993; Bond 1996.

modern societies has its roots in their pluralistic orientation. Since shared traditions and values are not to be found in these societies, disagreements on moral issues, such as war or social justice, have become irresolvable. Since the concept of happiness is not a unitary one it has different meanings for different cultures. Hence, in multicultural societies virtues and morality are bound to get into scrape.

### 3.2 Deontology

In the Middle Ages Christian philosophers embraced the ethics of Virtue Theory and extended the list of virtues with some theological aspects. Scientific progress and Enlightenment, however, broke its supremacy when philosophers like Hugo Grotius and John Locke established a new way of thinking on moral issues in the 17th century. For the next two centuries deontological<sup>§</sup> theories dominated the philosophical discourse on normative ethics. Deontological ethical theories hold that the individual needs to adhere to moral laws or duties in order to lead a moral life.

The first set of duty theories goes back to the scripts of Hugo Grotius and Samuel Pufendorf. They devised a list of moral duties from a set of virtues a ‘good person’ was claimed to possess and distinguished three different classes of duties: duties to God, duties to others and duties to oneself.

A second set of deontological theories originates from the writings of the German philosopher Immanuel Kant. His theory itself was influenced by Grotius and Pufendorf but Kant claims that there exists a general principle with which we can determine the morality of all actions. This principle he calls the categorical imperative. Kant himself offers different versions of the categorical imperative but one is rather explicit: ‘Man, and in general every rational being, exists as an end in himself, not merely as a means to be arbitrarily used by this or that will. In all his actions, whether they are directed toward himself or toward other rational beings, he must always be regarded at the same time as an end. [...] Rational beings [...] are called persons because their nature indicates that they are ends in themselves [...] The practical imperative, therefore, is the following: act so that you treat humanity, whether in your own person or in that of another always as an end and never as a means only’ (Kant 1997: 45ff).

For Kant, then, we act morally whenever we treat others and ourselves with respect and dignity, whereas we act wrong when we use any person as a tool to achieve something else. Kant claims that the morality of all actions can be derived from this general principle of duty.

A third set of deontological theories came about through the philosophical work of John Locke and can be called a theory of rights. Locke argues that the law of nature interdicts that we harm anyone’s life, health, liberty or possession. These natural (and God-given) rights found their way into the American Declaration of Independence where Jefferson states three foundational rights: life, liberty and the pursuit of happiness. From these, the fathers of the Declaration maintain, more specific rights can be deduced. These include: the rights of property, movement, free speech, and religious expression.

Moral rights share four distinctive features. First, they are natural, i.e. they are not invented or granted by governments or other institutions. Second, they are universal, i.e. they do not change from country to country or from culture to culture. Third, they are equal, i.e.

---

<sup>§</sup> From the Greek word *deon* (duty).

they exist for all people regardless of gender, race, religion etc. Fourth, moral rights are inalienable, i.e. they cannot be taken away, treated or sold.

As became clear, there exist different versions of deontological theories. Common to all of them, however, is the claim that there are some things we ought not to do regardless of the consequences of our actions. In our actions, then, we are bound by the moral law. Especially in this last assertion, deontology fundamentally differs from consequentialist theories.

### *3.3 Consequentialism*

In sharp contrast to deontological theories, consequentialism put its emphasis solely on the outcome of an action or a policy. Jeremy Bentham is commonly named as the founding father of a very successful consequentialist theory – utilitarianism. He holds that the ultimate aim for human beings has to be to maximize pleasure and to minimize pain. Thus, an action which fulfils this principle is morally right. Bentham proposes that in order to find the right action we just need to evaluate case by case whether a certain action increases pleasure or, in turn, decreases pain. This (early) version of utilitarianism was hence called act-utilitarianism.

A second, more refined, version goes back to the writings of John Stuart Mill who was not too happy with Bentham's hedonistic approach of a mere measurement of the quantities of pain and pleasure and consequently tried to establish more general rules in order to get away from a case-by-case approach of utilitarianism. According to Mill, then, it is morally right to adopt a certain behavioural rule (for instance that we should not lie) if the consequences of adopting this rule are more favourable than unfavourable to everyone. Mill's approach was therefore called rule-utilitarianism.

According to utilitarianism, then, the moral worth of an action depends on its consequences. By judging the value of a set of rules in terms of whether they increase or decrease utility (happiness, etc.) we are easily able to evaluate if an action is morally justified or not.

Utilitarianism soon became quite popular as it does not ask to specify 'happiness' or 'utility'. Thus, everyone can define for himself what 'happiness' means to him. Moreover, utilitarianism can claim to be egalitarian. As it holds that policies and actions are morally justified only if they increase overall happiness (or utility) each is counted for one and not more than one.

The obvious problems of this theory, such as the difficulties to predict all the consequences of an action, the problems of ranking people's preferences and to calculate the amount of happiness still result in lively academic debates.

### *3.4 The Sum of It All*

Comparing the three different theories, then, we can extract the following. Deontological theories and consequentialism differ mainly in one point, i.e. whether the morality of a certain act or policy is determined by adhering to a set of (moral) rules or rather by whether the result increases happiness or decreases pain, respectively. Common to both, though, are three major themes. First, both theories establish a set of moral rules which is to guide ethical behaviour. Second, this set of rules leads to an impartial ethical theory as it does

not distinguish between cultures, countries etc. Finally, the individual agent is the centre of attention and the environment in which the individual lives is not accounted for.

In contrast to these themes, virtue theory emphasizes the role of the community as the starting point for virtues – and, hence, for any moral behaviour. While deontology and consequentialism are rules-based, virtue theory's focus lies on character. Thus, an ethical education is required which has its centre in the respective community. With this central role of the particular social context it is clear, then, that virtue theory cannot be impartial. Due to varying degrees of attachment towards those who are living in our community and towards those who do not, the degrees of moral obligations differ.

#### **4. Ethical Implications**

As should have become clear from the considerations in the previous paragraphs, taking different ethical angles will result in different conclusions with regard to refugee and asylum policy. Thus, we will start our discussion of this question with a justification of a rather small obligation of foreign states to aid strangers and will then proceed to illustrate some alternative approaches.

##### *4.1 Thinking in Spheres*

One possibility of how to approach the question of which potential obligations we can obtain regarding the relationship between a foreign state and strangers or outsiders is to grant the state the absolute right to deny entry to any sort of migrant, including refugees. As we have seen, virtue theory puts greatest emphasis on the social context for an ethical education. From the point of view of a virtue theorist, then, we could argue strongly against any form of immigration so the implicit traditional values of the community would not get distorted. This is part of the line of argument used by Michael Walzer in his well-known book 'Spheres of Justice'.

Mixing deontological considerations with parts of virtue theory Walzer holds that a state should be free to operate entrance policies on its own criteria. Since the members of a state share a unique way of living they do have a right to sustain it as this determines their sense of identity, their sense of who they are. Respect towards human beings, obviously an innuendo to Kant, is to respect their specific culture. As a result, the right of self-determination cannot challenge the right of the community to preserve its culture. For Walzer it is natural, then, that we are partial in the treatment of fellow citizens and in the way we behave towards outsiders. While elsewhere he demonstrates his liberal attitudes with respect to freedom of social and physical movement within a society his communitarian approach in 'Spheres of Justice' leads him to rule out this freedom on an inter-national level.\*\*

The right of a society to its (unique) culture does not excuse it, however, from not helping outsiders in adverse situations. Walzer argues that states do indeed have a moral obligation to help refugees and grounds this obligation in the principle of 'mutual aid'. According to this principle refugees ought to be granted asylum if its denial would require the use of force against helpless people and if the numbers of asylum claimants are likely to be small. And since there is no fair system of distribution this clear rule of 'responsibility based

---

\*\* See Walzer, M. (1990) The Communitarian Critique of Liberalism, in: *Political Theory*, Vol. 18, No. 1.

on proximity' would also help to resolve the question of how to distribute refugees and migrants.

One way to challenge Walzer's line of thought is to examine whether there exists indeed a special relationship between the citizens of a specific country which would justify partiality in moral behaviour towards outsiders.

Goodin, for instance, also distinguishes between special duties which we have towards family members, friends, pupils, patients etc. and general duties which we have towards all human beings. He states that general duties are 'multiplied and magnified in special relationships and so become special duties' (Goodin 1988: 673). While he accepts that special duties towards our compatriots exist, Goodin also maintains that our general duties towards strangers go way further than in Walzer allows for. General duties exist towards every human being. From this follows that if there is an individual in need of protection then the responsibility to protect this individual is assigned to the set of states. In concluding Goodin states that 'boundaries matter, [...] but it is the boundaries around people, not the boundaries around territories that really matter morally. Territorial boundaries are merely useful devices for 'matching' one person to one protector. Citizenship is merely a device for fixing special responsibility in some agent for discharging our general duties vis-à-vis each particular person. At root, however, it is the person and the general duty that we all have toward him that matters morally' (Goodin 1988: 686). Thus, while Walzer seems to reject the universal account of deontology, Goodin accepts it in a somewhat weaker form and recognizes the general duty to help (at least) those outsiders whose social bond with their own state has been severed.

Can we go any further? Is it possible to create a rights-based argument which not only makes a case for a more generous refugee policy but also for a more generous immigration policy? If we contest Walzer's intrinsic assumption that a *Gemeinschaft* (nation, community) necessarily equals a *Gesellschaft* (the state) then we can question the right of this *Gemeinschaft* to preserve its own culture by excluding outsiders from the *Gesellschaft* as a whole. In a multi-cultural society the ties that bind the citizens of the state is far thinner than in a tribe or a nation where we can justly assume shared traditional values. Thus, we can accept that nations or communities have a right to their own culture. This right, though, does not trump the rights of strangers in search for a better life if we allow for a liberal state where different cultural groups can live within the territorial boundaries of a state. Arguing on the basis of rights, then, both refugees and migrants are freely able to choose where they want to live. There is, however, a limit to this approach which is best expressed in Appiah's words: 'If the loss of (some of) the comforts of home made the liberal state unsustainable – and this would be an empirical socio-psychological claim – then allowing submergence of those comforts would undermine the very framework that sustains all our rights. It would therefore threaten the satisfaction of many of our basic needs. If that were so then, plainly, we would have the basis of a rights-grounding argument for immigration restriction' (Appiah 2002: 13). It is possible, of course, to challenge Walzer's account from a whole different perspective.

#### *4.2 Utilitarianism Strikes Back*

If we reject the deontological view, we can analyse the problem of migration and refugeehood from a different philosophical angle by applying utilitarian thinking. In doing so, we neglect questions of rights and duties and merely focus on consequences, utilities and interests. As we have noted earlier, in utilitarian terms individuals are mainly interested in experiencing pleasure or in the avoidance of pain, respectively. In addition, utilitarianism

takes a universal view, i.e. it takes the interests of every individual as equal. With regard to our topic, then, we first need to clarify whose interests are affected. In principle we will find the following relevant parties:

- The refugees
- The residents of the recipient nation
- Future generations
- The environment

Next, we can compare the consequences of, say, the status quo in refugee policy (i.e. a rather restrictive policy with respect to Western countries) with the consequences of a more liberal regime. Thus, we need to weigh up whether a more restrictive or a more liberal regime will lead to an overall higher amount of pleasure or a smaller amount of pain, respectively. This, of course, is the tough part. Singer and Singer hold that if every country in the Western world would at least double their refugee intake overall happiness would increase – as a larger amount of refugees is way better off which in turn would more than offset any adverse consequences with regard to the interests of the residents of the recipient nations and the environment (Singer and Singer 1998: 128).

In general, then, a utilitarian approach would call for a more liberal migration regime. The specific problem of this theory is, however, that serious calculations with regard to the increase in overall happiness or decrease in overall pain is quite impossible. We will not be able to calculate the ‘right’ amount of refugee- and migrant-intake for a specific country. The Achilles’ heel of the utilitarian approach, then, is that it leaves open the question of just how liberal a refugee-regime ought to be.

#### 4.3 *Universalism vs. Neo-Feudalism*

The current division of the world into sovereign nation-states as the standard international political order is not too old a phenomenon. The process started around the nineteenth century and continued during the political restructuring of the world in the aftermath of the Second World War. With regard to refugeehood and migration it becomes clear, then, that the distinction between citizens and outsiders is only possible in a world divided along these lines. Consequently, some academics have begun to question this status quo and approach the question of the moral implications of immigration and asylum from a radical liberal angle.

Joseph Carens, for instance, draws a comparison between today’s world order and the feudal states of the Middle Ages. ‘Citizenship in Western liberal democracies is the modern equivalent of feudal privilege – an inherited status that greatly enhances one’s life chances. Like feudal birthright privilege, restrictive citizenship is hard to justify when one thinks about it closely’ (Carens 1987: 252). Back then, those born as children of peasants could never change into any other profession – bound to the soil and their father’s profession this was, according to the medieval world view, their place in the universe. The same went for craftspeople and all other kinds of professions. People had to stay put in the very place they were born into and no form of social mobility could get them out of this. The same is true, as Carens points out, for those holding a passport of a certain country. The mere fact that they were accidentally born in some, say African, state limits their mobility to move around in the world in order to try to live up to their potential. With the creation of the sovereign nation state we, again, erected borders that prevent actual and social mobility and so people’s chances in life are determined by the mere coincidence of where they are born.

Carens, then, argues from a rights-based angle and challenges the current system of state sovereignty. In taking a global liberal view, he wonders why the right to move within a certain state should be accorded to people while the right to move between states is severely restricted and largely depends on the place we were accidentally born. These restrictions lead to increased economic and social inequalities and have a huge impact on people's life chances. But if we regard all people as equal and grant them the (human) rights to 'life, liberty and the pursuit of happiness' then it is unjustified and morally arbitrary to limit people's life chances on the grounds of birthplace and parentage (Carens 1987: 261).

Are there any possible exceptions to free movement from this liberal point of view? Carens accepts that there might be instances when states are justified to restrict entry and reject immigration claims. If further immigration were to seriously threaten national security and/or undermine liberal institutions then (and only then) are restrictions to free movement between states justified from a global liberal view as otherwise the very liberal order we try to uphold would collapse. For Carens, and other global liberals, then, the possible cases where restrictions to free migration are warranted are reduced to those which guarantee the survival of a liberal order.

## **5. Conclusion**

Our discussion showed that the current world order with its division into sovereign nation-states inevitably results in the distinction of the world's population as insiders and outsiders. With respect to philosophy this distinction leads to questions of the moral obligations and duties insiders might have towards outsiders.

A minimalist view, such as Michael Walzer's, would hold that we are only to help those whose own social contract has been severed and base this duty on the rather narrow principle of mutual aid, which holds that we are only obligated to assist in cases where the costs of doing so are (likely to be) small.

In contrast to this rather restrictive communitarian position both deontological and utilitarian theorists argue for a more liberal migration and refugee regime. Utilitarians derive their result from the consequentialist claim that a more liberal treatment of refugees and migrants would lead to an overall increase in happiness or, in turn, to an overall decrease in pain. Utilitarianism's main problem, however, is that it is not able to state just how liberal a regime we need to create. Global liberalism, based on deontological thinking, tries to overcome this problem by arguing from the point of rights. Granting every individual the rights to free movement and the pursuit of his own happiness radically challenges our current arrangement of the world where the sovereign state decides to whom it should grant entry, residence and citizenship. Global liberalism, then, forces us to think beyond the current world order on the grounds that every human being has a set of natural and inalienable (human) rights.

From the point of view of a global liberalist Veit Bader (1995) identifies four main paradoxes of state sovereignty (Bader 1995: 212ff). First, while the world is globalising quickly on very different levels we also witness 'ethnic revivals' which sometimes even lead to the implosion of states. Second, the principle of state sovereignty is challenged by political developments where certain decisions are delegated to a regional, provincial and supra-state level. Third, through this development the unitary sovereignty of a state with regard to taxation, currency, legislation and jurisdiction is called into question. Finally, in recent times the absolute sovereignty of a state was undermined by (humanitarian) interventions of other states and alliances. According to Bader, these developments call for a thorough rethinking of

the concepts of statehood and citizenship. From a moral point of view, the global liberal approach is the most convincing. 'If communitarianism, for all its versions, pretends to be an identifiable position in practical philosophy, then it must mean that in all hard cases the particularist requirements of community must trump the universalist ones of justice. This priority rule clearly contradicts the strong moral intuitions that are elaborated in modern universalist moral theories and international and constitutional law: universalist principles and rights should not only trump prudentialist utility but also the ethics of particular communities. Otherwise, morality would be no more than a thin ideological mask of ethical or utilitarian welfare chauvinism' (Bader 1995: 216).

## References

- APPIAH, K.A. (2002) Immigrants and Refugees: Individualism and the Moral Status of Strangers, Paper presented at the Program in Ethics and Public Affairs, Princeton, <<http://www.princeton.edu/values/pepa/appiah.pdf>> (Accessed March 2003).
- BOND, E.J. (1996) *Ethics and Human Well Being: An Introduction to Moral Philosophy*, Oxford.
- CARENS, J.H. (1987) Aliens and Citizens: The Case for Open Borders, 252-273 in *Review of Politics*, Vol. 49.
- GOODIN, R.E. (1988) What is So Special about Our Fellow Countrymen?, 663-686 in *Ethics*, Vol. 98 (4).
- HELD, D. (1995) *Democracy and the Global Order*, Stanford.
- HOBBS, T. (1651) *Leviathan*, London. (first published in 1651)
- KANT, I. (1997) *Foundations of the Metaphysics of Morals*, (trans. Beck), London.
- LOFCHIE, M.F. (1975) Political and Economic Origins of African Hunger, 551-567 in *Journal of Modern African Studies*, Vol. 13.
- MacINTYRE, A. (1997) *After Virtue: A Study in Moral Theory*, Paris.
- MELLOR, R.E. (1989) *Nation, State and Territory*, New York.
- NORMAN, R. (1998) *The Moral Philosophers – An Introduction to Ethics*, Oxford.
- BADER, V. (1995) Citizenship and Exclusion: Radical Democracy, Community, and Justice. Or, What is Wrong With Communitarianism?, 211-246 in: *Political Theory*, Vol. 23, Issue 2.
- SEN, A. (1981) *Poverty and Famines*, Oxford.
- SHACKNOVE, A.E. (1985) Who Is a Refugee?, 274-284 in: *Ethics*, Volume 95, Issue 2.
- SINGER, P. and SINGER, R. (1988) The Ethics of Refugee Policy, 111-130 in Gibney, M. (ed.), *Open Borders? – Closed Societies? The Ethical and Political Issues*, Westport.
- United Nations Convention on the Status of Refugees (1951), Art. IA(2).
- WALZER, M. (1983) *Spheres of Justice*, New York.
- WALZER, M. (1990) The Communitarian Critique of Liberalism, 6-23 in *Political Theory*, Vol. 18, No. 1.
- WILLIAMS, B. (1993) *Morality: An Introduction to Ethics*, Cambridge.