

# Refugee aid is not supererogatory: A cosmopolitan Rawlsian framework for thinking about human rights, health and our obligations to refugees

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Few issues in world affairs kindle as much argument as the normative question of the just way to handle refugees. The question of how far our obligations to refugees extend evokes fundamental questions about the nature and purpose of citizenship, borders and the nation-state. In this essay an ethical framework will be outlined for thinking about human rights, health and our obligations to refugees.

Michael Walzer, the liberal communitarian philosopher, discussed obligations to refugees in *Spheres of Justice* (Walzer, 1983). His argument is the conventional nationalist argument favouring restrictive immigration policies. Walzer argues in favour of Westphalian sovereignty, with each country having the ultimate right to exclude whomever it wants. A similar viewpoint holds that helping refugees is a supererogatory act. Supererogation is a technical term covering the class of actions that are morally good but not strictly necessary. Many people view admitting refugees as a charity act – it goes “beyond the call of duty,” as there are no moral obligations that compel a state to aid non-citizens.

This view was criticized by the utilitarian philosopher Peter Singer, who argued that wealthy nations should admit many more refugees than they currently do (Singer, 1988). Given the short nature of this essay

there will be no digression on the utilitarian challenge to today's refugee policy. This essay advocates for a cosmopolitan extension of the framework for national distributive justice outlined by John Rawls in *A Theory of Justice*. This framework naturally leads to questions about human rights, health and our obligations to refugees.

Rawls's theory of distributive justice followed Rousseau, Hobbes, Locke and Kant by resting its foundations on a social contract. Rawls's theory concentrated on the ideal organization of a nation-state and its institutions. Rawls asked us to imagine ourselves in a so-called “original position” – a hypothetical “state of nature” (Rawls, 1971). Members of the original position are behind a “veil of ignorance,” preventing them from knowing certain details about themselves, such as their race, sex, intelligence, strength, and social class. According to Rawls, ignorance of these details leads to principles that are fair to everyone. If an individual is unaware of how she will end up in her own conceived society, she is unlikely to privilege any one class of people, and would instead develop a scheme of justice that treats all fairly.

Rawls argued that people in the original position would choose two specific principles. Rawls's first principle states that “each person is to have an equal right to

the most extensive basic liberty compatible with a similar liberty for others". These basic liberties of citizens include the liberty to vote, to run for office, freedom of speech, liberty of conscience, and freedom of personal property. Rawls's second principle of justice states that social and economic inequalities must be arranged so that (a) "they are to be of the greatest benefit to the least-advantaged members of society" (the difference or "minimax" principle) and (b) "offices and positions must be open to everyone under conditions of fair equality and of opportunity." Rawls viewed (b) as being lexically prior to (a), however it is the difference principle which Rawls is most famous for. He asserted that inequalities in the distribution of primary social goods are permissible only if they benefit the least well-off members of society.

Rawls rejected the idea of moral desert and rejected basing distributive shares on morally arbitrary contingencies. He maintained that success-determining factors are often the result of a natural lottery (for example, the family one is born into). While Rawls opposed the idea of moral desert he allowed for socially legitimate expectations. For example, a doctor or a business owner may be entitled to a high salary, so long as this incentive benefits society, specifically those who are worst off. (Sandel, 2009)

If we wish to develop the notion of a human right, we must expand Rawls's theory. In *A Theory of Justice*, Rawls was solely concerned with the organization of the nation-state. It was not until decades later in *The Law of Peoples* that Rawls attempted to address international justice

(Rawls, 1993). Rawls's extension of his own theory to the international sphere was heavily criticized by his own supporters, including German philosopher Thomas Pogge, as having "no egalitarian principle" (Pogge, 1994). This essay advocates a cosmopolitan extension of Rawls's theory, with each human a citizen of humanity in a global original position (GOP) with members behind a veil of ignorance. Any rights agreed upon in the GOP would be universal.

There are two ways members in the GOP might argue for including reasonable healthcare as a universal right. One argument suggests that healthcare is a primary social good, which would make its distribution subject to the difference principle. Any distributive scheme would be arranged to maximize the share of the least well-off. Another Rawlsian approach to healthcare has been advocated by Norman Daniels; "The most promising strategy for extending Rawls's theory simply includes health-care institutions and practices among the basic institutions involved in providing for fair equality of opportunity" (Daniels, 1985). He argues that there is a special connection between normal human functioning and the range of opportunities open to an individual. It has long been shown that there are social determinants of health (Marmot, 2005). It is thus reasonable that members of the GOP would enshrine fair access to reasonable healthcare as a right. Any rational agent would want guaranteed access to healthcare when the veil of ignorance is lifted.

The question remains of what special refugee rights members of the GOP would

agree on. University of Toronto Professor Joseph Carens made a strong philosophical argument that a Rawlsian society would have open borders (Carens, 1987). However, even without this politically controversial assumption, there are strong arguments in favour of an egalitarian way of handling refugees. At the very least, members of the global original position would rationally agree to certain refugee rights such as non-refoulement and would provide for a global institution which would safeguard the rights of refugees.

A potential criticism of the global extension of the original position is that it would undermine the sovereignty of the nation-state. To an extent this is true, however if we accept the legitimacy of the human rights movement, we accept the possibility of universal human rights which no nation-state may violate. These rights create positive and negative duties that citizens and states must abide by. The rules that would be envisaged in the GOP would act as a basic set of principles – within a state additional principles may be formed, however they must not conflict with the universal set. Similarly, being part of a nation state may give extra entitlements to a citizen – one could view a state as a mutual benefits social club. However, the fact that a citizen has special duties to other citizens in the same nation-state does not abrogate her general duty to uphold human rights in a global setting. The argument that one cannot attempt to help refugees “because we must help our own first” is an example of this fallacy.

What prescriptive conclusions can be gained from the Rawlsian approach? First,

an institution such as the UN can act as one of the cosmopolitan institutions that would be set up in the global original position. To a certain extent it already plays this role, having managed to convince the majority of countries in the world to sign up to The Universal Declaration of Human Rights. The Rawlsian framework can make sense of the role of the UN, the WHO and the UNHCR in international justice and can guide decision-making. International practices may be examined through the veil of ignorance to determine their legitimacy. There is much evidence that human rights of refugees are systematically overlooked. The nationalistic idea that citizens have no duty to help outsiders is a modern equivalent of feudal privilege and has left refugees with no safeguard when their own country fails to protect rights. When people speak of the “European refugee crisis”, they mean a crisis for Europe, as opposed to for refugees themselves. International policy in general is aimed at curtailing the spontaneous arrival of legitimate asylum seekers and refugees. Lebanon, which has a population of less than 6 million, has over 1 million registered (and an estimated .5 million unregistered) Syrian refugees. The US, which has a population of 320 million, has pledged to take in a mere 10,000 Syrian refugees. The EU, which has a population of 742.5 million, has had close to 800,000 asylum applications from Syrian refugees since April 2011 (UNHCR, 2016). Wealthy nations are neglecting their responsibility to contribute their fair share – instead, the burden falls on countries like Lebanon and Jordan, which are less wealthy than the US and EU. The refugee crisis is a problem which knows no borders. As such, an egalitarian solution to the problem must

rely on a cosmopolitan formulation of justice, where a nation-state's distance from refugees in need does not negate the duty to protect the human rights of refugees.

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