ABSTRACT

Duties of Virtue and Justice: Rethinking Responsibility in the Global Refugee Regime

A thesis presented to the Global Studies Program

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This paper offers a new perspective on the current refugee crisis, using Kant’s moral philosophy to understand accountability towards refugees. Kant contrasts the duty of justice with his duty of virtue; the latter defined as an imperfect duty, the former as a perfect one. Imperfect duties are general prescriptions that allow some flexibility in how the obligation is fulfilled, whereas perfect duties are specific prescriptions that break moral codes when violated. The current refugee crisis, the largest since World War II, is creating new challenges for international institutions responsible for protecting refugees. Particularly challenging is the ambiguity of assigning and fulfilling the agreed upon responsibilities of protection. Humanitarianism, the guiding principle behind refugee protection, conceptualizes protection in terms of an imperfect duty that is both impossible to enforce and left to the discretion of the states responsible. Consequently, the humanitarian approach has resulted in failure to meaningfully act because states consider protection a voluntary duty of virtue. Refugee protection would be most effective if operating within a functioning international system that assigns duty of protection to specific state actors. Thus, states would conceive of refugee protection as a duty of justice: a duty that is perfect, obligatory, and enforceable.
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If helping the needy of the world is a matter of virtue, then duty-bearers themselves get to decide whether or not they wish to act in any particular instance, and how and to what extent they wish to act, and global assistance becomes more a matter of charity than of moral obligation.

*Kok-Chor Tan*¹

INTRODUCTION

Today, the world faces the largest refugee crisis since the establishment of global refugee regime after the Second World War.² The number of people currently seeking protection in Europe is challenging the regime, which is furthered exacerbated by the absence of solidarity among states.

International cooperation is the foundation of the current refugee regime. The contemporary global refugee regime is comprised of the United Nations High Commissioner for Refugees (UNHCR) and the Refugee Convention. The UNHCR is the United Nations agency that has been charged with supervising the implementation of the Convention. The Refugee Convention, composed of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, defines who qualifies for refugee status and outlines states’ responsibilities to

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² I use the term ‘regime’ as defined by Laura Barnett in “Global governance and the evolution of the international refugee regime.” Barnett’s discussion: “The term ‘regime’ is subject to varying interpretations, however this paper relies on an understanding found in international relations and political theory. Regimes may be defined as explicit rules or implicit norms guiding the actions of states and individuals, together with institutions and organizations expressing these rules or norms. Friedrich Kratochwil and John Gerard Ruggie (“International Organization: A State of the Art on an Art of the State” (1986), International Organization, 40(4), 759) define a regime broadly as ‘governing arrangements constructed by states to coordinate their expectations and organize aspects of international behaviour in various issue areas. They thus comprise a normative element, state practice, and organizational roles.’” Laura Barnett, “Global Governance and the Evolution of the International Refugee Regime.” UNHCR, 2002. http://www.unhcr.org/3c7529495.html.
refugees. Today, this system is being threatened by the ambiguity in assigning and fulfilling these agreed upon responsibilities.

This paper will focus on the question of a state’s responsibility for those outside of its territory who are in need of protection and will specifically look at how this applies to refugee protection. Since it is generally recognized that there is a responsibility to protect refugees, the next step is to discuss what these responsibilities look like and how they are to be met. This paper will aim to answer the question: How can we explain states’ failure to meaningfully respond to the current refugee crisis? Furthermore, do nations fail to act because the responsibility for refugee protection is considered voluntary by those states?

This work is divided into two parts. The first part will consider Kant’s theory and how it can help us understand refugee protection. Further, it will employ Kant’s moral philosophy to examine two methods of assigning responsibility in the global refugee regime – the first being a causal responsibility approach and the second a humanitarian approach. It will outline the underlying assumptions in both theories and assess how they conceptualize responsibility for refugee protection in terms of Kant’s duties of virtue and duties of justice.

The second part will analyze two proposal that were put forth to address the refugee crisis facing Europe, one by a group of Scholars at Oxford’s Refugee Studies Centre and the other from the UNHCR. It will conclude by looking at the policies adopted by the European Council in March 2016. The goal of this paper is to shed light on some of the larger issues of assigning responsibility within the global refugee regime and encourage a discussion on how to more affectively assign responsibility.
PART I:

ANALYZING RESPONSIBILITY IN THE GLOBAL REFUGEE REGIME

Before delving into the many elements relevant to the collective responsibility to engage in the global refugee regime, we must first address the responsibility to engage. Peter Singer and David Miller have foundational theories on the obligation to engage, and how the duty to engage changes when the multiple actors are present.

Peter Singer’s utilitarian analogy in his 1972 classic “Famine, Affluence, and Morality,” describes a situation in which an innocent passerby walks past a drowning child in a nearby pond. The passerby is confronted with the decision of not ruining her clothes (or not running late, etc.), or saving the child’s life. The decision seems clear, saving the drowning child is more pressing than the minor inconveniences she may face in doing so. Singer’s argument is simple: when the cost is relatively low, we have a moral obligation to save a life. Singer argues that if the passerby decides not to save the child, then the child’s death is a direct result of her inaction. The analogy shows the reader that a natural response is to save the child. Singer extends this logic to demonstrate the moral obligation to save a dying individual anywhere else in the world. He pushes against the reasoning that there is more of an obligation to those in poverty within a state’s territory than to those outside.³ For Singer, proximity does not change our moral

obligation to save lives when the costs are relatively low. Thus, he argues that we have as much of an obligation to those inside our territory as we do to those outside.

Furthermore, the obligation to act is not lessened by the presence of other agents who can potentially perform the same actions. He notes, “should I consider that I am less obliged to pull the drowning child out of a pond, if on looking around I see other people, not further away than I am, who have also noticed the child but are doing nothing?” He believes that it easy to ignore the child if there are others around because, “one feels less guilty about doing nothing if one can point to others, similarly placed, who have done nothing.” Singer’s analogy of the drowning child demonstrates the duplicitous nature of states’ responses to global suffering, specifically recognizing that moral obligations are not mitigated simply because other agents are equally unengaged.

How do we decide when to engage versus when not to engage? Singer controversially argues that we should be engaging (i.e. preventing the death of those in poverty around the world) to the point of marginal utility. He defines marginal utility as individuals engaging to the point at which it causes more harm to give than to not give, which is not as low as his original logic suggested. Consequently, Singer’s drowning child analogy is not without critics; several scholars have pushed back on the methodology of the analogy as well as its implications.

One such scholar is David Miller, who critiques Peter Singer’s analogy in his book National Responsibility and Global Justice. In it, Miller makes several critiques of the analogy. Miller’s first critique focuses on the interaction between two individuals (one drowning child and one passerby), which he believes is not adaptable to the global context. Miller argues that global poverty is a question of collective responsibility, and should not be reduced to an interaction

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4 Ibid., 233.
5 Ibid., 232-233.
6 Ibid., 234.
between individuals. Secondly, in the analogy, once the child is saved the responsibility to engage is resolved. Again, Miller believes this does not translate to the complex challenges surrounding global poverty. His third critique is the use of a child (an innocent victim) in his analogy, which symbolically excuses those in poverty of all responsibility. He argues that instead the response to humans suffering needs to be from from two perspectives, “…both as agents capable of taking responsibility for the outcomes of their actions and as vulnerable and needy creatures who may not be able to lead decent lives without the help of others.” Miller believes Singer’s personification of the globally impoverished as an innocent child is problematic and that his analogy is an oversimplification of global circumstances.

In another piece, David Miller suggests that the presence of multiple agents does in fact change the nature of the responsibility, contrary to Singer’s assertion that it does not. He describes a hypothetical Good Samaritan situation, in which a person collapses on the street and another individual offers to help. Referencing several empirical studies, Miller argues that the person on the street is much more likely to receive help if there is only one person around, as opposed to six people. Thus, when there are several agents that can discharge the responsibility any choosing to help the collapsed person can be labeled a ‘Good Samaritan.’ Miller labels this a “diffused responsibility.” While Miller and Singer are responding to a general obligation to alleviate global poverty, their reasoning for assigning duty can help us understand the problems present in assigning responsibility for refugee protection and engaging in refugee crises.

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This section will provide a brief introduction to state responsibilities to extraterritorial peoples, and establish how refugee protection fits into the larger discourse of immigration within political theory. This debate, which continues to evolve among political theorists, is usually framed in terms of states’ responsibilities to those outside of its territory.

Politics and Forced Migration scholar Matthew Gibney has identified the two main parties in this debate: those coming from an impartial perspective, and those coming from a partial perspective. Impartialists emphasize the “universal moral claims of human beings to equal consideration by states” and are represented by liberal and utilitarian theorists. Further, impartialists argue that all human beings deserve basic human rights and that no national interest claim can justify the denial of these rights. They argue for rights-based immigration policies and view the restrictive policies currently used by liberal democracies as violating the democratic values they claim to uphold.

Gibney contrasts the impartialists with the partialists, represented by communitarian and conservative theorists. Partialists emphasize the moral claims of communities and the right to exclude nonmembers in the pursuit of national interests. The impartialist and partialist perspectives outlined by Gibney also generally correspond with the closed border (partialist) and open border (impartialist) debate.

A leading advocate for open borders who fits within the impartialist framework, Joseph Carens, argues that open borders are more compatible with liberal principles of liberty and equality than closed borders – “The broad claim is that the idea of open borders fits better with our most basic values – liberty and equality – and with our most deeply rooted institutions about

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10 Ibid., 171-173.
justice than the idea that the state should be able to restrict immigration at will.”

Moreover, Carens believes that freedom of movement is a basic human right, and should be treated as such. Further, as with most freedoms, he recognizes that there are permissible limits and restrictions to freedom of movement. However, he argues that placing restrictions on these freedoms requires a moral justification. Carens, acknowledging current policy restrictions, also considers ways in which the immigration policies employed by liberal democratic states can uphold their principles by providing justification for restricting access to its territory. Open border theorists emphasize the importance of human rights over collective rights, and the rights of nonmembers, such as refugees, are a fundamental part of their argument.

Arash Abizadeh makes a similar argument but instead of focusing on freedom of movement as a basic human right he specifically looks at the nature of coercion and the type of justification it requires. He claims that the unilateral control of coercive borders by the state contradicts the liberal and democratic principles upheld by most states today. Abizadeh argues that in order to maintain its democratic principles, states must provide moral justification to those who are internally and externally coerced by its border. While he recognizes that open borders or shared control of borders between citizens and foreigners would address the issue of justification, he makes an additional suggestion. He suggests a citizen controlled “cosmopolitan democratic institutions,” which would give “articulation to a ‘global demos,’ to differentiated policies on the basis of arguments addressed at all.” Abizadeh emphasizes that any exercise of coercive power must be justified to those who it is exercised over. He pushes this premise further, identifying the partialists’ claims for exclusion that is grounded in the right to self-determination as invalid. This is because it is impossible to establish initial group membership through a democratic process.

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12 Ibid., 226.
He believes to do so one would need to have an established group prior to voting, which is not possible.  

On the other hand partialist, David Miller, counters the idea that freedom of movement across international borders is a basic human right. Miller argues that states have the right to exclude so that they can self-determine effectively. To do so, a state must have authority over a determined territory, including the right to define its own membership. However, he believes that those living in wealthy countries have a responsibility to the world’s poor, which may involve “letting in needy migrants.” In short, Miller argues that citizens’ right to self-determine takes precedence over a general right to freedom of movement, except in the most extraordinary circumstances.

Michael Walzer, like Miller, sees national interests as often taking precedence over the claims of nonmembers except in exceptional cases. While both Miller and Walzer advocate for a state’s right to control its borders, they also recognize the general obligation of states to those outside of its territory. This is especially true of a responsibility to provide for those who have not had their rights adequately protected by their state. However, Walzer and Miller take different approaches to the responsibility for ‘needy’ outsiders, particularly the rights of refugees. Walzer believes that refugees are one of the few groups deserving of membership. Miller on the hand believes that refugees only deserve membership if the need to remain outside of their country of origin is semi-permanent.

14 ibid., 48-49.
15 Miller, _National Responsibility and Global Justice_, 230
17 This could broadly be defined as a refugee, although this definition remains contentious. A discussion of this debate follows will follow.
There is a general consensus among theorists that there is a duty to protect refugees. While this consensus exists, there is disagreement around what that responsibility looks like and how it is assigned. Here, the impartialist and partialist distinction is helpful in explaining where the divisions lay, in terms of the different approaches to responsibility for refugee protection as well as the conception of moral claims of refugees. The partialist believes a refugee’s claims stems from the right that all people have to be a member of a state. The impartialist believes a refugee’s these moral claim stems from the lack of protection for the basic human rights that are owed to all human beings. Looking at this divide allows us to identify a major issue when applying these types of ideal theory to a non-ideal world. Gibney illustrates this point well,

To demand that a state show equal concern and respect to those beyond the state may be to ask it to pursue policies that would undermine those practices and institutions, which make for a semblance of equality and social justice within the state and would erode the meaningfulness of any claim to democratic autonomy. Yet, to vindicate the partiality of the modern state is to tolerate a world in which differences in citizenship correspond to egregious difference in life quality and lifespan.\footnote{Gibney “Liberal Democratic States and Responsibilities to Refugees,” 173.}

The tension that exists between the moral claims of refugees and moral claims of citizens has led to a general inability by theorists and also the international community to assign specific responsibility to refugees.

\textit{Refugee Definition}

Before moving forward this section will consider the discourse surrounding the definition of a refugee and define how the term will be used in this paper. As stated in Article 1(A)(2) of the 1951 Convention on the Status of Refugees, the convention defines a refugee as an individual who,
Owing to 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 or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.\textsuperscript{20}

Additionally, the UN has defined an international long-term migrant as “a person who moves to a country other than that of his or her usual residence for a period of at least a year (12 months), so that the country of destination effectively becomes his or her new country of usual residence.”\textsuperscript{21} Thus, while a refugee is an immigrant, not all immigrants are refugees and, therefore, not all immigrants receive the same rights and protections as refugees. The migrant crisis currently gripping the European Union calls into question the definition of refugee that was originally established by the 1951 Convention.

Given the current atmosphere in the EU, the definition of who is a refugee and who is not has become politicized in problematic ways. European states, particularly those on the borders of the EU, have categorized most those pouring over the border as ‘economic migrants’ rather than refugees. Victor Orbán, Hungary’s prime minister, has said that an “overwhelming majority” of migrants seeking to enter the EU are “economic migrants.” Slovakia’s prime minister, Robert Fico, was quoted saying that “up to 95% are economic migrants.”\textsuperscript{22} All European states have signed the 1951 Convention and 1967 Protocol and are obligated to observe the policies. Classifying the majority as ‘economic migrants’ leaves the EU with little to no responsibility for the migrants.

\textsuperscript{21} United Nations, Department of Economic and Social Affairs Statistics Division. 1998. “Recommendations on Statistics of International Migration Revision 1.”
\textsuperscript{22} “How Many Migrants to Europe Are Refugees?” The Economist, 07 Sept. 2015.
Thus, the definition of a refugee is important because it specifies to whom a state has a responsibility – “Normative theorist see states as having responsibilities to refugees, including duties to grant them entrance (or even membership) which may clash with (what they adjudge to be) the legitimate expectations or rights of citizens.”²³ Therefore, the definition has the ability to limit or expand the responsibilities that states have. Predictably, the debate among political theorists remains divided. Many theorists have called for an expanded definition of refugee to include any who are not having their basic human rights provided for by the state.

One of the first to make this argument was Andrew Shacknove in his seminal piece, “Who is a refugee?” In this piece Shacknove argues that the definition upheld by the UNHCR makes several assumptions: (1) “a bond of trust, loyalty, protection and assistance” exists between citizens and the state (2) “in the case of the refugee, this bond has been severed” (3) “persecution and alienage are always the physical manifestations of this severed bond” and (4) “these manifestations are the necessary and sufficient conditions for determining refugeehood.”²⁴ He believes that the moral and empirical claims in this definition are not morally defensible and should be questioned.

Shacknove disputes the claim that persecution is the only qualification one needs for refugee status. While an individual who has suffered persecution and alienage is deserving of refugee status, he believes that persecution is but one manifestation of “the absence of state protection of the citizen’s basic needs.”²⁵ Therefore, the definition of refugee should recognize when a state is unwilling or unable to provide these basic needs. Many theorists have argued for similar expansions of the definition of refugee that broadly recognizes those “basic needs” as

²⁵ Ibid., 277.
human rights. Thus, they believe that an individual who has not had these basic human rights provided for by their state has a claim to international protection. Those advocates of open borders, of course, have little need to call for an expanded definition of refugee because freedom of movement would essentially solve this problem, in terms of access to territory.

There are a handful of scholars who have pushed against calls for an expanded definition of a refugee. James Hathaway has argued that those who face persecution are the most deserving because they are the least likely to receive protection from their state. Alternatively, Matthew Price has argued that what gives refugees a justified claim to enter another state is their need for an alternative political membership or citizenship. Max Cherem has specifically argued against those who call for an expanded definition based on humanitarian grounds. He believes this type of approach grounds a refugee’s right to membership in their ‘need,’ which does not create enough of a justification over that of economic migrants – “The humanitarian account seems to hold that refugees and similar outsiders have a claim to a new membership grounded in sheer need, and that it is often ineffectually asserted against the ‘international community,’ states, or no one in particular.” Cherem suggests that states cannot provide membership to all those whose basic needs haven’t been met and like Price, he argues that refugees are the only group whose suffering deserves membership to a new state.

For the purposes of this project, this paper will specifically look at a state’s duty to protect those who are currently defined by the refugee convention. This is because the paper focuses on assigning the duty for refugee protection after they have been determined as refugees.

28 Cherem cites Michael Walzer, David Miller, and Thomas Pogge.
30 Ibid., 7.
This is done in recognition of the fact that many of those who already qualify for protection under the convention’s definition remain in protracted situations and have yet to have their most basic needs met.\(^{31}\) While the expansion of the definition of a refugee is beyond the scope of this paper, I am sympathetic to those who argue for expanding the definition of refugees based on the protection of basic human rights.

*Responsibility in the Global Refugee Regime*

As mentioned in the introduction the Refugee Convention defines who qualifies for refugee status and outlines the responsibility of states for refugees. Scholar Catherine Phuong has argued that while the Convention has provided a “tremendous contribution to defining states’ responsibilities towards refugees, important gaps in the protection regime still remain.”\(^{32}\)

A major gap, as Phuong identifies, is the establishment of the right to asylum and the lacking corresponding duty to grant asylum. The 1948 Universal Declaration of Human Rights provided everyone with the right to seek asylum, however Phuong points out that this was never included in a legally binding document. Most notably this was excluded from the Refugee Convention, which she argues was due to the efforts of the states present during the drafting of the Refugee Convention. Subsequently, the duty to grant asylum was not mentioned in the Refugee Convention nor has it been codified in international law. Further, Phuong claims, “it is generally argued that states have a right, rather than a duty, to grant asylum, which follows from

\(^{31}\) According to the UNHCR a protracted refugee situation is “one in which refugees find themselves in a long-standing and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years of exile.” UNHCR, ‘Protracted Refugee Situations’, Executive Committee of the High Commissioner’s Programme, Standing Committee, 30th Meeting, UN Doc. EC/54/SC/CRP.14, 10 June 2004, p. 2. http://www.unhcr.org/40c982172.pdf

their sovereign right to control admission into their territory." Thus, sovereignty of the state has been established as a norm within the global refugee regime as having precedence over the duty to provide asylum.

Additionally, the Refugee Convention has several core principles, the most important being: non-discrimination, non-penalization, and non-refoulement. The last principle, non-refoulement, has the greatest effect on responsibility in the current regime. Non-refoulement is the universally accepted norm that a state cannot return an individual who has fled persecution back to a place of harm. In the most recent crisis the principle of non-refoulement has been focused on more than the responsibility to equally share the burden of refugee protection, though both were established in the Refugee Convention. Alexander Betts describes this process – “The existing regime has a strongly institutionalized norm of asylum that is widely accepted; however, the norms related to burden-sharing are weak and largely discretionary.”

The focus on non-refoulement has led many states to provide disproportionately for those who able to reach its borders. This practice favors refugees who have the resources to get to another state, moreover a wealthy state and not a border country where they will most likely be living in a refugee camp. Further, it has led states to actively make efforts to stop those likely to seek asylum from reaching their borders. One way of doing this is using visa requirements to stop those individuals who are likely to seek asylum from reaching their territory. Another is using carrier sanctions, which fine international airlines that transport individuals without visas into a territory. Gibney has named this inequitable distribution between states the “location

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32 Ibid., 1-2.
principle,” which he believes “mock[s] the idea of refugee protection as a common responsibility.”

Several theorists have suggested that inequality in refugee distribution be addressed by allocating responsibility according to GDP, population size, ability to integrate etc. Gibney questions the justness of this type of refugee distribution as “reducing them to mere commodities.” Alternatively, is it just for states to financially compensate developing countries with large refugee populations? Or are they “buying themselves out of asylum?” These are questions that have yet to be answered by the international community. This inability to distribute refugees equitably stems from the ambiguity that surrounds states’ responsibility for refugee protection, which will be discussed in the following sections.

*Kant’s Moral Philosophy: Duties Of Virtue & Justice*

This section will discuss Kant’s moral philosophy, particularly looking at his conception of duties of justice and duties of virtue. This will be accomplished by using Kok-Chor Tan’s analysis of Kant’s moral philosophy in his piece, “Kantian Ethics and Global Justice.” It will specifically look at Tan’s discussion of Kant’s conception of duties of justice and duties of virtue and how they correspond with negative and positive duties as well as perfect and imperfect duties. The section will end by examining Jaakko Kuosmanen’s comprehensive discussion of Kant’s imperfect and perfect duties and how they apply to the global refugee regime.

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36 Gibney, “Political Theory, Ethics, and Forced Migration,” 51.
38 Ibid., 52.
39 Ibid., 52.
In his piece on Kantian ethics, Tan sets out to determine if Kant’s moral philosophy can provide the foundation for a “comprehensive theory of global justice.” He defines a comprehensive theory of justice as, “one that is able to take into account not just negative duties (for example those of noninterference, nonaggression, and noncoercion) but also positive duties (to provide relief, to provide development aid, to redistribute resources and wealth, and so forth) between different communities and countries of the world.”\(^{40}\) Further, as a comprehensive theory it must (1) “call for certain positive duties” and (2) “recognize that claimants have a justified and hence an enforceable (within limits) demand that these duties be performed.”\(^{41}\) Thus, a comprehensive theory of global justice would establish both positive and negative duties as perfect and enforceable duties of justice.

Tan defines duties of virtue and justice in terms of both negative and positive duties as well as imperfect and perfect duties. A “negative duty of forbearance,” or duty of justice, is a perfect duty. While a “positive duty of beneficence,” or duty of virtue, is an imperfect duty.\(^{42}\) Tan maintains that it is generally accepted that Kant’s moral philosophy emphasizes negative duties of justice over positive duties of virtue. Subsequently, it is generally accepted that positive duties to provide for the wellbeing of others are imperfect duties of virtue. This is what Tan seeks to refute in his effort to establish that Kant’s moral philosophy can support a comprehensive theory of global justice. Like Tan’s conception of a comprehensive theory of global justice, a comprehensive approach to refugee protection is one that would establish responsibility both in terms of negative and positive duties. Tan’s discussion of Kant’s moral theory as a comprehensive theory of global justice can also be used to frame a comprehensive approach to refugee responsibility that establishes refugee protection as a perfect duty of justice.

\(^{40}\) Tan, “Kantian Ethics and Global Justice,” 53.
\(^{41}\) Ibid., 53-54.
\(^{42}\) Ibid., 54.
Tan defines Kant’s imperfect duties as (a) “duties that do not specify what actions ought to be done” (b) “duties that cannot be enforced externally, for example, by legal or social sanctions” and (c) “duties that are not directed at any specific claimant.”

A duty of virtue is imperfect because “there is no specific act that an agent is required to do in order to achieve this end. The agent has the final decision on how or to what extent she wants to bring it about.” It is the “self-legislating” nature of an imperfect duty that makes it unenforceable. Furthermore, trying to enforce an imperfect duty of virtue is a violation of justice because it infringes on an individual’s moral autonomy. Therefore, duties of virtue are always imperfect and unenforceable. Unlike duties of virtue, duties of justice are perfect, obligatory, and enforceable.

It is the unenforceable nature of a duty of virtue that makes it unfit to uphold a comprehensive theory of global justice. Conversely, Tan argues that a duty of justice can uphold a comprehensive theory of global justice. Therefore, if Kant’s moral philosophy is to provide the groundwork for a comprehensive theory of global justice, it must be established that the duty to protect, provide, and promote the wellbeing of others is a duty of justice (and not virtue), and is therefore perfect and enforceable. Consequently, Tan argues that protecting, providing, and promoting the wellbeing of others is a duty of justice. Tan strengthens this argument by establishing that Kant himself believed that most human suffering is caused by institutional injustices and therefore creates a positive and perfect duty to assist, which is a duty of justice. This aspect of Tan’s theory will be discussed in the next section.

Another scholar, Jaakko Kuosmanen, discusses the characteristics of Kant’s imperfect and perfect duties in more depth in his piece, “Perfecting Imperfect Duties: The

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43 Ibid., 55.
44 Ibid., 55.
46 Ibid., 59.
Institutionalization of a Universal Right to Asylum.” In this piece he identifies two factors that make up a perfect duty (1) “a specified performance and (2) “identification of the recipient(s).”\footnote{Jaakko Kuosmanen. “Perfecting Imperfect Duties: The Institutionalisation of a Universal Right to Asylum.” Journal of Political Philosophy, 26.} Further, he describes two types of perfect duties, universal and special. Universal perfect duties are the duties that we have to everyone all the time – Kuosmanen uses the example of “the duty not to interfere with others’ physical integrity.”\footnote{Ibid., 26.} A special duty is a duty where a “specified performance is required to discharge the duty, and apart from specifying the performance, the content of the duty also specifies when and where the performance is required” – he uses the example of a promise as a special perfect duty.\footnote{Ibid.} Thus, a perfect duty can be both positive (special) and negative (universal) but must have both a specified agent and recipient.

For Kuosmanen, an imperfect duty is more complicated than a perfect duty. He identifies three components that differentiate a perfect duty from an imperfect duty, an imperfect duty having: “(1) indeterminate action, (2) indeterminate occasion, and (3) indeterminate recipient.”\footnote{Ibid., 27.} It is the ambiguous nature of an imperfect duty that makes it less binding than a perfect duty – “Discharging imperfect duties is constrained by limited capacities of positive action and the physical reality of being in one place at a time, and there is nothing in the structure of the imperfect duty that identifies a special relationship between a particular duty-bearer and a particular recipient.”\footnote{Ibid., 28.} However, he distinguishes imperfect duties from supererogatory acts because unlike supererogatory acts, failing to act on an imperfect duty is morally defenseless.\footnote{Ibid., 28.} Nonetheless, the imperfect duty of assisting others is “generic” and “suggests that duty-bearers ought to discharge their duties in accordance with the following maxim: assist some needy,
If refugee protection is conceptualized in terms of an imperfect duty then it is impossible to enforce and is left to the discretion of the agent who is responsible for discharging the responsibility.

Kuosmanen applies this logic to the global refugee regime and argues that the institutions that assist refugees (such as the UNHCR and NGOs) “do not set any binding positive obligations of protection.” He points out that these organizations do not have the ability to grant asylum, which is a task that is left to individual states. Similarly to Catherine Phuong, Kuosmanen argues that in international law a state’s right to exclude and not grant asylum has priority over the right of receive asylum. It is only the principle of non-refoulement that is binding to states. He believes that the non-refoulement requirement is “founded on the moral imperative ‘one should not actively cause harm to others’, and it recognizes minimum standards of justice in the expulsion of non-citizens from the territory of a state.” Kuosmanen demonstrates that, unlike the non-refoulement requirement, other responsibilities for refugee protection are currently imperfect duties and remain unenforceable. This concept will be further explored in the next sections by focusing on different ways that responsibilities can be established within the regime.

Like Tan’s comprehensive global theory, a comprehensive approach to refugee protection can address both negative and positive responsibilities. Following Tan’s conception of Kant’s moral philosophy as a comprehensive theory of global justice, this paper will argue that the responsibility for refugee protection can be conceived both in terms of negative and positive perfect duties. What is most important is that they are conceptualized as enforceable duties of justice. In the following sections two ways of addressing state responsibility for refugees will be examined. Further, this paper will look to identify if these approaches establish duties of justice.

53 Ibid., 28.
54 Ibid., 30.
55 Ibid., 30.
or duties of virtue and how effectively they can be enforced. First refugee protection will be looked at as a causal responsibility, where an agent or a group of agents’ actions are directly or indirectly linked to the creation of a certain group of refugees or multiple groups of refugees. Second, a humanitarian approach will be examined that conceptualizes refugee protection in terms of reconciling the tension between the moral claims of citizens and refugees by making the responsibility for refugee protection an imperfect duty left to the discretion of the state.

Causal Responsibility

In his book *National Responsibility and Global Justice*, David Miller states, “I have defended the idea of a global minimum that is due to every human being as a matter of justice, a minimum best understood as a set of basic human rights. Since many societies are presently unable to guarantee these rights to their members, it appears that the responsibility to protect them may fall on outsiders.”56 Here, Miller discusses a state’s general responsibility to those outside of its territory and how these global injustices can be addressed.

Miller further identifies two types of responsibility that we owe to those whose rights aren’t being protected. The first is an “outcome responsibility,” which he defines as “the responsibility we have for gains and losses resulting from our actions.” The second is a “remedial responsibility,” defined as “the responsibility we have to relieve harm and suffering when we are able to do so.”57 Refugees (particularly those included in an expanded definition) fit his description as a group of people whose basic rights are not being provided for by their country of origin. David Miller’s discussion can be used to show a way that responsibility for refugee protection can be framed, as remedial or outcome responsibility. This section will

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57 Ibid, 231.
discuss two ways to assign outcome responsibility or what will be called causal responsibility. In the next section, I will discuss a humanitarian approach to refugee protection, which assigns refugee protection as a remedial responsibility.

One method of establishing a causal responsibility for refugees is by examining the economic and institutional injustices that have led to refugee situations. Thomas Pogge employs this method when making his argument for the responsibility for global poverty in his book, *World Poverty and Human Rights*. Pogge argues that global institutions, like domestic institutions, create inequality and poverty – “the rules structuring the world economy have a profound impact on the global economic distribution just as the economic order of a national society has a profound impact on its domestic economic distribution.”

58 The issue being that wealthy states have been able to justify and avoid responsibility for these inequalities, which he calls explanatory nationalism – “It is convenient for us citizens of wealthy countries, and therefore common, to ignore such interdependencies – to explain the severe under fulfillment of human rights in so many countries by reference to local factors domestic to the country in which it occurs.”

59 He claims it is the moral duty of the wealthy states that control the global system to reform it to be more equitable. His solution to this problem is to address global inequality from a human rights based approach and by recognizing that western-dominated global institutions are violating the basic human rights of those being impoverished by the system. Further, to counter the particularistic nature of nationalism Pogge believes a universal understanding of human rights should form the basis of the international system.

Pogge refutes the statist claim that one generally owes more to a compatriot than a foreigner. He argues that this morally flawed reasoning is used by wealthy states to justify the

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59 Ibid., 55.
enforcement of an unjust global structure that systematically perpetuates global poverty. He sees the statistists’ emphasis on the morality of common nationalism as inconsistent. To demonstrate this point he uses the example of a state official favoring her child’s firm in the “application of regulations or in the awarding of over government contracts,” which he believes would be morally (as well as legally) condemned by western countries. He argues that this same logic, which is condemned on the domestic level, is used to justify a state seeking to promote its own success (to the detriment of other less powerful states) on the international level – “How can we despise those who seek to slant the national playing field in favor of themselves and their relatives and yet applaud those who seek to slant the international playing field in favor of themselves and their compatriots?” Pogge maintains that nationalism or common membership cannot be used to justify an unjust global institutional framework.

The strength of Pogge’s argument comes from his assertion that the international community has a negative duty for global poverty. He defines a negative duty as “any duty to ensure that others are not unduly harmed (or wronged) through one’s own conduct.” Thus, we have a negative duty not to harm people with our actions and by being a participant in a global institutional system that creates injustices we are complicit in the injustices that are a result of it. Consequently, Pogge argues that the international community has perfect negative duty to address the injustices in the international system.

In his piece, “Kantian Ethics and Global Justice,” Kok-Chor Tan similarly argues that international institutions create injustices, for which there is a duty (of justice) to address. Further, he claims that Kant was well aware that most human suffering is caused by institutional injustices. Tan quotes Kant, “…if none of us ever did any act of love and charity, but only kept

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60 Ibid., 126.
61 Ibid., 130.
62 Ibid., 136.
inviolate the rights of every man, there would be no misery in the world except sickness and misfortune and other such sufferings as do not spring from the violation of rights. The most frequent and fertile source of human misery is not misfortune, but the injustice of man…"63 Thus, Kant would recognize that most human suffering creates a duty of justice. Tan emphasizes this point,

Many of the underprivileged and deprived of the world today are so because of past or prevailing violations of justice on the part of others. Even apparently natural disasters like famine or drought are often exacerbated or even instigated by domestic or international politics, warfare, ill-planned policies, lack of proper relief assistance, or unjust economic conditions, just to mention a few possible man-made causes.64

Tan argues that most injustices are man-made and are a result of both domestic and international politics. It is unlikely that one could confine the consequence of states’ actions to domestic injustices. As active participants in the international system, we must take responsibility for the injustices it creates.

Additionally, Tan draws attention to the fact that causal responsibility can exist outside of interactions between states and extends to the individual members of a state. Further, he argues that Kant would also recognize that injustices extend beyond states and as participants in international institutions we are responsible for justifying or remedying present injustices – “Kant would hold ordinary citizens causally responsible for injustices not because of their specific actions or actions at the personal level, but because of their membership and participation in unjust social arrangements.”65 Thus, institutional injustices are not just the responsibility of states but also its members.

63 Tan, “Kantian Ethics and Global Justice,” 60.
64 Ibid., 60.
65 Ibid., 64.
Furthermore, Tan argues that several perfect duties exist to correct the injustices that are a result of the interconnectedness of the global system and international institutions,

Given the range of our failures in justice, our belated duties of justice to protect, promote, and provide for the well-being of others may include any of the following perfect duties: (a) the duty to mitigate a situation that has resulted from one's violation of duties of justice (b) the duty to establish (just) institutions if creating these institutions is necessary to mitigate or ameliorate the effects of one's violations of justice and (c) the duty to abolish or at least reform unjust institutions insofar as violations of justice are institutionalized.66

He stresses the positive and negative duties of justice that arise out of the interconnectedness of the global system. Tan addresses potential counter arguments that these are imperfect duties because they do not create a specific agent and or claimant. However, he argues that they are not an imperfect duty because it is not “possible to determine agency and claimant, and to delimit and determine the extent of duty” from an imperfect duty.67 In principle, we know the agent and claimant in a duty of justice – “Those who have violated their duties of justice owe those whose rights are violated, and the amount owed is the amount those violated lost as a result of this violation.”68 Therefore, even if we are unable to immediately recognize an agent or claimant, this does not mean it is a duty of virtue and not a duty of justice.

The notable difference between Tan and Pogge’s argument is their approach to causal responsibility. Pogge identifies causal responsibility as having stemmed exclusively from a negative duty not to harm, which results in a duty to reform the institutions that create these injustices. Tan, on the other hand, argues that causal responsibility can go beyond negative duties and also create positive duties of assistance. While both Tan and Pogge have not made

66 Ibid., 68.
67 Ibid., 69.
68 Ibid., 69.
arguments specifically looking at the creation of refugees, one can easily see how refugees would fit into this larger framework of institutional injustices.

Thus, a way to establish the responsibility for refugee protection as a perfect duty of justice is to look at the injustices produced within the international system. Another way of determining a causal responsibility is by identifying a specific state as being responsible for a certain group of refugees. This could look like a state whose actions have directly caused one if not all of the factors that have forced a group of people to leave their country of origin. One scholar, James Souter, has approached refugee protection in his way. In his piece, “Towards a Theory of Asylum as Reparation for Past Injustice”, he claims that asylum can be the means for a state to make amends for past wrongs – “Asylum should be conceived not only as playing a ‘palliative’ humanitarian role or as expressing condemnation, but also as potentially providing a means by which states can rectify the harm they caused to individuals by turning them into refugees.” While Souter argues that Asylum can act as ‘reparation for past injustice,’ he does not suggest that this would replace all other responsibility for refugee protection but should work along with humanitarian forms of asylum.

Souter believes that the current approach to refugee protection doesn’t address asylum as reparation because it is synchronic in nature. This means that only the current condition of refugees is addressed and not the different factors that may have caused the forced relocation. Further, he claims that most political theorists approach the subject of refugee protection in a synchronic manner as well. Including utilitarians who argue for “weighing up the current interests of those affected by asylum policy” (Singer & Singer), liberals who examine policy to see if it recognizes all people as having equal moral worth (Carens), or humanitarians who

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approach it in terms of a “right of hospitality” (Kant) or “principle of mutual aid” (Walzer). Souter believes a diachronic approach is more appropriate because it “recognises not only the current fact of displacement but also its provenance.” In short, the reason that refugee protection is not currently being approached as reparations is the general focus on the condition of refugees after they have been forced to migrate.

Souter makes a useful point about the psychology of refugee responsibility noting, “As a matter of moral psychology, reparative arguments often exert a more powerful influence than humanitarian considerations, such that concern for refugees is more easily generated when individuals feel somehow connected to their plight.” The international community has not approached refugee protection by looking at either an individual state’s responsibility or a global institutional responsibility. Instead, the global refugee regime functions much more closely to the principles of humanitarian principles, which will be discussed next.

**Humanitarianism**

This section will examine Matthew Gibney’s description of humanitarianism as well as B. S. Chimni’s critique of humanitarianism in the global refugee regime. While Gibney describes an approach that he believes we should hope to attain, it can be argued that his approach is closer to the current refugee protection scheme then he suggests. Gibney defends a humanitarian based refugee protection scheme because he believes it is the most effective way to reconcile the tension between the moral claims of citizens and foreigners. Further, He argues humanitarianism finds the middle ground between an impartialists and partialists approach. He sees both as failing

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70 Ibid., 327.
71 Ibid., 328.
to offer viable options on their own – “accepting the full logic of impartialism might lead to policies which would undermine the conditions necessary for communal self-determination and the provision of public goods, adhering to partialism risks sacralising entrance policies that attach little weight to the claims of refugees.”

Gibney’s conception of humanitarianism calls for a state “to accept as many refugees as they can without undermining the civil, political and, importantly, the social rights associated with the liberal democratic state.” For Gibney, the responsibility for refugee protection stems from the recognition that we are all members of a “single human community.” He cites the Biblical parable of the Good Samaritan as the foundation for these humanitarian principles. This parable describes a scene in which a man is injured on the side of the road and many people have passed him without offering him help. It is the Good Samaritan who stops and helps him, not because he has to but because he feels it is right and not overly burdensome. This analogy suggests that we have a humanitarian responsibility to strangers based on our common humanity, as long as it is relatively low cost.

Gibney sees the Good Samaritan as analogous to states’ responsibilities to refugees. He also compares his principle of humanitarianism to Michael Walzer’s mutual aid principle. Walzer’s mutual aid principle recognizes that a group’s responsibility to outsiders exists as long as long as it doesn’t harm the group. Gibney recognizes that this is further reflected in Walzer’s approach to refugees. Walzer argues that in general states have the right to create policies that exclude outsiders but this right to exclude has limitations, specifically when it comes to

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74 Ibid., 230.
75 Ibid., 231.
76 Ibid., 231-232.
77 Ibid., 232.
responsibilities to refugees. Walzer believes that states have a duty to take in as many refugees as they can “without disturbing the cultural life…that their citizens share.”\textsuperscript{78} Here, Gibney appears more closely aligned to a partialist approach, like that of Walzer, than an impartialist approach.

Gibney believes humanitarianism is more realistic because it is not as burdensome as the basic right of freedom of movement called for by impartialists but is more demanding than the partialist theorists who believe that the state has absolute discretion over who enters its territory. Humanitarianism curbs the responsibilities of states by limiting the “positive duties of assistance to outsiders… exclusively to those in great need.”\textsuperscript{79} This approach is problematic because it closely resembles the current system by allowing state discretion to govern the responsibility for refugee protection. He argues that humanitarianism reconciles refugee protection with the nature of “modern state agency” by recognizing that states’ responsibility to the individuals in their own territory is morally significant. This makes it more likely to be adopted because it is “flexible” and “cautious” in the demands it makes of states.\textsuperscript{80} Conversely, it is the ‘flexibility’ of humanitarianism that upholds the current conception of refugee protection.

He addresses several criticisms of a humanitarian approach. The first is that humanitarianism too closely aligns itself with communitarian or partialist principles that emphasize the importance of making a distinction between members and nonmembers. Gibney argues that his conception of humanitarianism is not based on the right to preserve one’s culture but focuses on a state’s right to adopt policies that recognize the importance of those under its jurisdiction, including the refugees it has or will accept.\textsuperscript{81} Second he addresses a causal responsibilities approach, believing that it is impossible to identify every refugee situation as

\textsuperscript{78} Ibid., 233.
\textsuperscript{79} Ibid., 233.
\textsuperscript{80} Ibid., 234.
\textsuperscript{81} Ibid., 234-235.
caused by the specific actions of another state. Further, He doesn’t think that it answer the question of what responsibilities states’ have for the refugees that they have not helped create. While Gibney’s humanitarian approach resolves several issues facing refugee protection in the international system but it fails to meaningfully distinguish itself from the system already in place.

Legal scholar B.S. Chimni in his piece, "Globalisation, humanitarianism and the erosion of refugee protection," has argued that there is a general acceptance of humanitarianism in international refugee law. He sees this as problematic, first, because of its widespread use, which covers a wide range of actions. Second, humanitarianism is problematic because it is not concretely defined in the international law. He argues that humanitarianism was adopted as the ideology of western states during the period of globalization at the end of the Cold War during which there was a growing North-South divide. This is because humanitarianism “mobilises a range of meanings and practices to establish and sustain global relations of domination." He claims that this development has been particularly detrimental to the “fundamental principles of refugee protection” because the “inclusive and indeterminate character of so-called humanitarian practices has led to the blurring of legal categories, principles, and institutional roles.”

Further, Chimni identifies the specific ways in which humanitarianism has adversely affected the global refugee regime, “The ideology of humanitarianism has used the vocabulary of human rights to legitimise the language of security in refugee discourse, blur legal categories and

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83 Ibid., 3.
84 Ibid., 3.
institutional roles, turn repatriation into the only solution, and promote a neo-liberal agenda in post-conflict societies leading to the systematic erosion of the principles of protection and the rights of refugees.”  

Humanitarianism gives states too much recognition and fails to acknowledge that they are inherently self-interested. Further, humanitarianism normalizes the self-interests of states and gives them the discretion to exclude based on a many different factors. Thus, humanitarian principles cater to the status quo and continue to legitimize instead of limit the self-interest of states. In theory, Gibney’s logic is sound but his conception of humanitarianism is already the prominent principle supporting the global refugee regime.

Conclusion

States’ failure to act meaningfully in the current refugee crisis is a result of refugee protection being conceptualized as a voluntary and unenforceable duty of virtue. Kant’s moral philosophy shows that humanitarian principles assign no specific responsibility, and in turn create an imperfect duty of virtue that cannot be demanded or enforced.

Just as a duty of virtue is unfit to support a comprehensive theory of global justice, it is the unenforceability of humanitarianism that makes it unfit to guide the global refugee regime, especially the norms and policies surrounding states’ responsibility towards refugee protection. Establishing a causal responsibility – either by individual states or through institutional injustices – is one way of making refugee protection a perfect duty of justice, and therefore enforceable. This is one of many pathways to create a perfect duty. Nonetheless, it is clear that the way to make refugee protection an enforceable duty of justice is through assigning specific responsibilities to specific actors, making it a perfect duty.

This section has argued using Kant’s moral philosophy, that humanitarianism creates an imperfect duty of virtue that cannot be enforced and creates no claims to justice. Further, it has

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85 Ibid., 10.
argued that humanitarianism is the guiding principle in the global refugee regime. The next section will explore this argument further by examining the underlying assumptions present in two proposals put forth to address the current refugee crisis in Europe and the subsequent agreement made by the European Council in March, 2016.
PART II:
RESPONSE TO THE CURRENT REFUGEE CRISIS

Part I examined what the global refugee regime ought to look like – a perfect and enforceable duty of justice. Kant’s moral philosophy has shown that humanitarianism creates an imperfect duty of virtue that cannot be enforced and creates no claims to justice. Further, it can be argued that humanitarianism is the guiding principle in the global refugee regime. Part II will explore this argument and consider what the global refugee regime does look like, by examining the response to the current refugee crisis facing Europe. This will be accomplished by looking at two proposals put forth to address the crisis as well as the policies adopted by the European Council. It will begin by briefly defining the crisis and examining some of the factors that led to it and conclude by examining the proposals and policies in light of the discussion on Kant’s moral philosophy.

Global Displacements and the Current Migration Crisis

Global displacement is one of the largest issues facing the international community today. The UNHCR, in its 2014 Global Trends Report entitled “Worlds at War,” highlighted that worldwide displacement was at an all time high. Further, it emphasized that it will only continue to increase if the root causes of war and persecution remain unaddressed. The report stated that at
the end of 2014 the number of displaced individuals was 59.5 million, the highest recorded figure at that time. At the end of 2013, the number had been 51.2 million – this 8.3 million jump represented the largest increase of displaced persons in a single year. They maintained, “globally, one in every 122 humans is now either a refugee, internally displaced, or seeking asylum. If this were the population of a country, it would be the world’s 24th biggest.”

This number has only continued to grow since this report was published was published in 2014.

Furthermore, the 2014 Global Trends Report demonstrated that refugee-creating conflicts are failing to be resolved while more continue to develop. The report stated that in the last two decades there have been eight conflicts in Africa, three in the Middle East, one in Europe, and three in Asia. The report also indicated that “few of these crises have been resolved and most still generate new displacement.” Thus, many of those displaced have been unable to return to their homes. In 2014, only 126,800 refugees were repatriated, which was the lowest amount in 31 years. With the number of globally displaced at an all time high, the UNHCR has the need for an unprecedented amount of aid to uphold their mandate; they are calling for a “renewed global commitment to tolerance and protection for people fleeing conflict and persecution.”

Since 2014, the number of displaced persons has rapidly increased, yet the international community has not significantly altered its commitments, even in the midst of a growing crisis.

The conflict in Syria has been established as one of the main generators of refugees in the current migration crisis – “Since early 2011, the main reason for the acceleration has been the war in Syria, now the world's single-largest driver of displacement.” In 2014, nine million Syrians had fled Syria since the outbreak of civil war in 2011. Some remained in Syria and many

87 Ibid.
88 Ibid.
89 Ibid.
more crossed the border into Turkey, Lebanon, Jordan and Iraq.\textsuperscript{90} In Turkey, the number of Syrian refugees in December 2014 was 1,060,279, by September 2015 that number had almost reached 2 million at 1,938,999, and it has now surpassed two million.\textsuperscript{91} The high number of refugees in neighboring countries has in turn created instabilities in those areas, as they do not have the capacity to handle the flood of refugees. Further, in 2014 6.5 million of those displaced from the Syrian civil war remained internally displaced in Syria and only 150,000 had received asylum in the European Union. In the same year, EU members had pledged to resettle 33,000 Syrian refugees, 28,500 (85 percent) were pledged by Germany.\textsuperscript{92} The number of Syrian refugees has continued to grow throughout 2015 and 2016 and the additional aid and resettlement numbers being pledged by the EU and international community has remained insufficient.

While the 2015 Global Trends Report has not yet been published, there are some current figures regarding the Syrian refugee crisis, which will be outlined. Since the beginning of the Syrian Civil War the Europe Union has resettled around ten percent of the total number refugees created by the conflict – from April 2011 to February 2016 the EU resettled 653,442 Syrian refugees.\textsuperscript{93} As of April 2016, there are 4,835,909 registered Syrian refugees and many more remain unregistered. Most of the Syrian refugees remain in neighboring countries bordering Syria, including more than a million Syrian refugees in Lebanon and over two million in Turkey.\textsuperscript{94} The EU has employed a policy of containment (keeping Syrian refugees in the region)
during for most of the Syrian Civil War. As a result of this policy, Most of those displaced by this conflict have remained in the region surrounding Syria. However, this strategy was untenable due to the high numbers of displaced individuals along with the EU’s inability to prevent displaced people from reaching Europe. Yet, even as refugees continue to arrive at the borders of Europe the EU has not been able to implement an effective strategy for resettling those seeking asylum.

Although, Europe has accepted very few Syrian refugees, people fleeing the Syrian crisis continue to pour into countries bordering the conflict. This has put tremendous strain on neighboring countries such as Lebanon. Most refugees living in Lebanon live in extreme poverty and lack the resources to maintain a healthy or comfortable living environment. Further, in Lebanon the number of Syrian children has surpassed the capacity of the state’s educational system. This strain on resources in the region not only affects the refugees themselves but also has a tremendous influence on the host population, specifically public opinion.\textsuperscript{95} If they are not in camps they are in the urban centers and in both situations there is little hope of being resettled in a third country in the near future. These conditions in the region surrounding Syria have led an ever-increasing amount of Syrians to attempt to make the perilous journey to Europe. This has led to increased border security at the external borders of the EU and more recently at the internal borders, which will discuss in the next section.

\textit{The Schengen Zone Crisis}

One reason why comparatively few Syrian refugees have been able to receive protection in Europe is because of its extensive external border security operation. The territory that this

external border protects is known as the Schengen Area. The Schengen Area is comprised of twenty-two of the twenty-eight members of the European Union as well as four non-EU members: Iceland, Norway, Switzerland, and Liechtenstein. It was instituted in the 1985 Schengen Agreement and officially implemented in 1995. The agreement dissolved internal borders between its members and established freedom of movement among the states. This meant that EU citizens, as well as any other individual inside the Schengen Area, could move freely across the international borders of the area without border checkpoints. The Schengen Area, defined as an “internal area without borders where persons and goods can circulate freely,” was established to allow citizens of EU member states to work and live in other EU states. The creation of the Schengen Area meant that external border protection was significantly increased and a new focus was placed on stopping irregular immigration.

The refugee crisis, and the number of individuals trying to enter Europe, is threatening the survival of the Schengen Area. As a result of this crisis, many member states have reestablished border checks or reinstated internal borders to prevent unwanted migrants (refugees or not) from reaching their territory, including: Austria, Denmark, France, Belgium, Germany, Norway, Sweden, Hungary, and Slovakia. Furthermore, the Dublin Regulation is facing a similar set of challenges. The Dublin Regulation is the law that governs asylum in Europe and determines which state is responsible for processing an asylum application. It established that an asylum application must be processed in the first state that it is received. The law was created to ensure that all asylum seekers entering the EU are attached to a specific member, which

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identifies who has the responsibility to provide for a refugee. Additionally, it was meant to prevent “asylum shopping,” or having multiple asylum applications open with multiple states. This policy has received a great deal of criticism and is not always been strictly enforced because it does not allow for equitable distribution of asylum seekers and unfairly burdens certain the border states.99 This has been particularly true during the current crisis, which has led to a less than functional system.

A report put out by the UNHCR entitled, “The Sea Route to Europe: The Mediterranean Passage in the Age of Refugees,” discusses one of the ways that refugees are seeking to enter Europe. This is the perilous phenomenon of refugees trying to enter the EU by crossing the Mediterranean on unsafe inflatable boats. The report maintains that within the first six months of 2015, 137,000 refugees and migrants crossed the Mediterranean Sea on unsafe boats and rafts hoping to land on the islands off the coast of Greece and Italy. It further found that the majority of those making the journey were refugees – “most people arriving by sea are fleeing from war, conflict or persecution at home, as well as deteriorating conditions in many refugee-hosting countries.”100 Most are escaping from the conflict areas of Syria, Afghanistan, Iraq and Somalia and many have been abused by smugglers and other gang-related criminals. As refugees reach the points of reception on the coast of the Mediterranean, countries such as Greece and Italy do not have the capacity to process and provide for the increasing numbers of refugees arriving on their shores.

The UNHCR concludes the report by calling for the international community, working along with the countries of origin, to work more intently to avert and resolve these conflicts. In

addition they need to strengthen the “reception arrangements and identification processes” in destination countries.\textsuperscript{101} However, the response by Europe to this progressively harmful situation in the Mediterranean has been to increase patrolling in the Mediterranean. In February 2016, NATO deployed several warships to the Aegean Sea to try and reduce the amount of people crossing from Turkey into Greece.\textsuperscript{102} Many who claim that the EU is not fulfilling its duty to protect those seeking asylum have criticized the general increase in border security, including the use of NATO warships.

The lack of an effective response to the Syrian conflict and the subsequent refugee crisis in the surrounding region has led many to try and seek refuge in Europe. The flood of people arriving in Europe coupled with a general lack of solidarity has left the Schengen Area and European Asylum law in question. This situation is representative of the greater inability of Europe and the international community to effectively address the refugee crisis. Following this discussion on the context surrounding the current refugee crisis, the next section will look at the response to the crisis, in terms of proposed and accepted policy initiatives.

\textit{Proposals & Policy Analysis}


The first proposal was the product of a workshop entitled “Refuge from Syria” that was held at Oxford’s Refugee Studies Center in December 2015. The Refugee Studies Center at Oxford University is one of the leading institutions in Forced Migration Studies. The scholars there are publishing some of the most relevant and up-to-date scholarship on the global refugee

\textsuperscript{101} Ibid.

regime, forced migration, and displacement. This workshop, which engaged with both practitioners and scholars, made specific policy recommendations in light of the recent scholarship on the “perceptions, aspirations and behavior of refugees from Syria, host community members, and practitioners in Turkey, Lebanon and Jordan.”103 The objective of the workshop was to respond to the current Syrian refugee crisis in light of the “the unique socio-historical context of the Syrian humanitarian disaster in each of the regional hosting countries by addressing specifically changing perceptions and aspirations.”104

The goal of this proposal was to focus on the communities in those states neighboring Syria who are hosting the majority of the Syrian refugees as well as the plight of the refugees in the host communities. It aims to demonstrate how a lack of resources along with an inability to integrate large numbers of refugees have led to tensions in these communities. All of these factors have led many Syrians to leave the region surrounding Syria hoping for a better future in Europe. Having reached the borders of Central Europe and the Northern Mediterranean many of those seeking refuge have not been met with compassion but barbed wire. This policy proposal put out by the Refugee Studies Centre at Oxford seeks to address some of the causes that have led to the general tensions between Syrians seeking asylum and those communities where they are trying to find that refuge.

The proposal begins by addressing some of the actors that are involved in armed conflict in Syria including “violence which is being conducted by their own [Syrian] government, by Iranian, Russian and Allied Coalition state actors as well as armed non-state actors.”105

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104 Ibid.

Furthermore, the proposal brings attention to the fact that it is Syrian civilians who are the target of this violence and that Syrian refugees are not the “violent extremists of Europe,” who they argue are “home-grown” in Europe. Additionally, they recognize the adverse affects on the displaced children in this crisis. First, they draw attention to the fact that the children being born to displaced parents are not receiving birth certificates from Syria or their host community and are stateless. Second, many host communities lack sufficient educational opportunities, which plays a major role in encouraging Syrian refugees to try and reach Europe. By addressing the plight of those escaping violence in Syria, the proposal hopes to alter the perceptions of those Syrians now seeking asylum in Europe.

The proposal highlights several other facts including: (1) that approximately 11 million Syrians (around 50 percent of its population) are displaced externally as well as internally, (2) that the aid that has been pledged by the international community to assist in the emergency crisis in the Syrian region has not been met – only 58 percent of the $4.320 billion pledged has been received, (3) that the aid has been mainly directed at refugee camps and has failed to reach those living in the urban centers of their host state, (4) that the EU policy of containment keeping those displaced within the region is unsustainable, and (5) that people will continue to seek refuge in Europe until the conflict and crisis is solved in the Syrian region and will not be slowed by strengthened border security.

The proposal calls for several changes to the current approach to refugee protection: (1) those displaced need to have access to employment and education and special attention should be paid to integrating the youth, (2) there needs to be a more integration of the “local municipalities, local NGOs, national and international IGOs” and local practitioners should be given preference

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106 Ibid.
107 Ibid.
108 Ibid.
in hiring, (3) the international community needs a “Comprehensive Plan of Action” that offers a resettlement plan for Syrian refugees or temporary protected status, as was done for Bosnians in the 1990s and the Vietnamese boat people in the 1980s, and finally (4) the EU needs to address the affect of counter-terrorism policies on humanitarian assistance.¹⁰⁹

This proposal intends to address some of the factors that have led to the crisis and that have remained unaddressed. Further, it explicitly accuses the EU of not properly addressing these factors. However, at the opening of the proposal they note that it is the Syrian government and non-governmental actors as well as they Iranian, Russian, and other Allied Coalition agents are those who are directly involved in the violence. They do not suggest that any European state is directly involved in the creation of the mass displacement of Syrians.

Thus, it appears that the moral obligations of the EU and the international community arises out of their previous commitments to provide ‘humanitarian assistance’ and from the general responsibility states have to alleviate the suffering caused by denying people access to the EU. In short, the proposal’s underlying principle is humanitarianism, which provides the main source of obligation to refugees in this crisis. While previously promised aid does appear to create a perfect duty, the norms created by a general adherence to humanitarian principles recognizes the sovereignty of the state and gives states a way to justify not meeting their previous promises. It is clear that the proposal is trying to establish a non-voluntary obligation but the obligations presented in the proposal are indirect and therefore, unenforceable.

B. UNHCR, Stabilizing the Situation of Refugees and Migrants in Europe: Proposals to the Meeting of EU Heads of State or Government and Turkey (March 7, 2016)

¹⁰⁹ Ibid.
The second proposal was put forth by the UNHCR and is addressed primarily at the EU but also references the responsibilities of the other member states of the Refugee Convention. The proposal opens by addressing the fact that the majority of those displaced remain in the developing world, and the Syrian refugee crisis is no exception. They emphasize that policies of containment and disengagement are unsustainable. Furthermore, due to the insufficient resources in many host communities, many of those currently displaced are now attempting to make the perilous journey to Europe. In its proposal the UNHCR calls on the developed world to provide more support to those developing countries hosting the largest refugee populations. The proposal reminds the EU and the international community of the pledge of 11 billion dollars made at the international conference on Supporting Syria and the Region in February 2016. Further, it maintains that the UNHCR is available to guide and distribute the funds appropriately.\(^{110}\) The proposal stresses the insufficiencies in the current response to the crisis in light of the pledges that have been made.

While the proposal was specifically put together to address the refugee crisis facing Europe, it is framed in the larger crisis facing the global refugee regime. It emphasizes the need for solidarity among the states party to the Refugee Convention as well as within the European Union. Further, it asserts that while most in Europe have not been affected by the current crisis, this shouldn’t reduce the need (or popularity) for solidarity. Regarding the current refugee crisis, the UNHCR in its proposal reiterates the need for Europe to work together to solve the crisis. They maintain that this is not an unmanageable task and to effectively address the issue it must be done as a collective group and not as individual agents.\(^{111}\)


\(^{111}\) Ibid., 1.
The proposal includes several suggestions, the first two address the number of people attempting to claim asylum in Greece. The first suggestion is the “hotspot approach and relocation scheme,” which includes an initial processing to determine if a person is eligible for international protection. If an individual is eligible for relocation then he or she would be relocated to one of the countries that had pledged to take refugees – the proposal specifically cites the 66,000 pledged by the EU. To accomplish this hotspot relocation scheme there needs to be proper registration, which works with national authorities as well as EU authorities such as the European Asylum Support Office and FRONTEX. Further, they state that it is necessary to have sufficient cooperation between states to be able to process those arriving in Greece as quickly and efficiently as possible. This would include providing Greece with financial and technical support. Additionally, in returning those who are not eligible for international protection it must be done in a way that maintains “public confidence in the asylum system.”\textsuperscript{112} The UNHCR recognizes that the proper handling of refugees in this crisis is crucial in maintaining the legitimacy of the refugee regime.

The second suggestion is supporting the emergency response in Greece, which includes providing the funds necessary for a processing system that allows for effective and efficient relocation of refugees. Recognizing that there will likely be many who will remain in Greece awaiting processing, there will also need to be sufficient reception facilities for those awaiting processing. Thus, they recognize the first step in solving the crisis as addressing those who have arrived in Europe and assisting Greece in processing them in a manner that adheres to the principles of the Refugee Convention.\textsuperscript{113} The next several suggestions address the larger structural and institutional issues present in refugee protection in the EU.

\textsuperscript{112} Ibid., 2-3.  
\textsuperscript{113} Ibid., 3-4.
The first of these suggestions is the development of “mechanisms capable of ensuring that minimum standards for asylum systems are maintained in all Member States.”\(^{114}\) By regulating and expanding upon the existing framework, the EU can guarantee humane and equitable treatment of those seeking asylum. They suggest expanding the roles and responsibilities of the European Commission and European Asylum Support Office to do this. Additionally, they suggest that the EU increase its admission of Syrian refugees including: “(1) resettlement, (2) humanitarian admission, (3) private sponsorships, (4) effective and refugee-friendly family reunion, (5) student scholarships, and (6) labor mobility schemes.”\(^{115}\) They affirm the importance of curbing the use of smugglers and other dangerous paths to irregularly entering the EU.

The next suggestion focuses on protecting “individuals at risk” by enhancing search and rescue operations on the Mediterranean and encouraging cooperation between the multiple security agencies.\(^{116}\) Protecting the ‘individuals at risk’ includes establishing a specific system for protecting and processing unaccompanied minors. It also proposes giving special attention to those who have suffered gender or sexual based-violence, including placing these victims in appropriate facilities. Furthermore, they call for increased efforts to impede smuggling networks and organized crime, which can be accomplished through more efficient information sharing and increasing prosecution and conviction of smugglers and traffickers.\(^{117}\)

Moreover, they emphasize that it is important to protect these individuals and all refugees arriving in Europe from facing exclusion, racism, xenophobia, and Islamophobia. The proposal argues that these factors are present in most societies however, “clear national strategies to

\(^{114}\) Ibid., 4.  
\(^{115}\) Ibid., 4.  
\(^{116}\) Ibid., 5.  
\(^{117}\) Ibid., 5-6.
counter them are often lacking or remain unimplemented.”\textsuperscript{118} This deficiency can lead to serious issues such as “institutionalized discrimination, incitement to hatred, verbal and physical abuse, and hate crimes.”\textsuperscript{119} They argue that EU members need to take active steps to prevent any discrimination that would hinder the acceptance of refugees or their integration upon acceptance. They suggest that the establishment of “a clear framework of obligations, as well as rights, of asylum-seekers and refugees,” which extends across the EU, can accomplish this.\textsuperscript{120}

The last suggestion is for creating an overall system that effectively allocates responsibility for asylum seekers in Europe, which will require “binding commitments” by EU member states.\textsuperscript{121} They claim that this is the only way to effectively control refugee and migrant flows in a way that adheres to the policies of the Refugee Convention. Furthermore, they call for “European systems for the registration and distribution of asylum-seekers” that (1) establishes “European Registration Centers” in the primary countries of arrival and also in each member state, (2) distributes based on percentages and not quotas and takes into account other factors such as family reunification, job networks, language, etc., (3) allows refugees to move to other EU member states after an initial six month period, (4) strengthens and establishes efforts to encourage integration at the national and local level, and (5) helps those who don’t qualify for international protection to return.\textsuperscript{122}

The UNHCR’s proposal underlines the responsibility of the EU in providing proper treatment to refugees in a way that fulfills their commitment to the Refugee Convention. While it emphasizes responsibility, like the previous proposal this responsibility comes from a humanitarian commitment to provide protection for refugees. This is because the Refugee

\textsuperscript{118} Ibid., 5-6.
\textsuperscript{119} Ibid., 6.
\textsuperscript{120} Ibid., 6.
\textsuperscript{121} Ibid., 7.
\textsuperscript{122} Ibid., 7.
Convention does not establish how the responsibility is supposed to be discharged or distributed to those parties to the convention. What is interesting is that it is never framed in terms of international law or a legally binding commitment but as a general commitment that cannot be enforced. As has been mentioned, this is because neither the right to asylum nor the duty to grant asylum has been codified in international law. This was the result of the conception of the Refugee Convention, which required the approval of the states and thus needed to recognize state discretion and sovereignty.

State discretion is one norm guiding the global refugee regime and this is reflected in the UNHCR’s proposal. Thus, they must frame the responsibility to protect refugees in terms of a humanitarian duty of virtue. The UNHCR can emphasize responsibility but always as a humanitarian responsibility because they do not have the ability to enforce it. To get states to act on these responsibilities they emphasize preexisting pledges and general commitments to aid in the plight of those displaced. What is noteworthy is the fact that the proposal encourages them to codify this responsibility in EU law, recognizing that this is what is lacking in their own structure.

C. European Council, EU-Turkey Statement (March 18, 2016)

To complete this analysis the policies adopted to address the refugee crisis by the European Council on March 18, 2016 must also be considered. The policies adopted are meant to address the need to stop migration from Turkey across the Aegean Sea into Greece. Thus, they are comprised of a series of agreements made with the Turkish government.

The discussion that led to these agreements was one in a series of discussions held by the EU and the Turkish government. Previous discussions had led to (1) the opening of labor markets to Syrians who are in Turkey under temporary protected status, (2) new visa
requirements for Syrians (and other nationalities), (3) heightened security along the Turkish coast, and (4) increased information sharing between the coast guard and the police. Furthermore, the EU had already started distributing the previously agreed upon three billion euros that was pledged to help Turkey cope with the number of Syrian refugees. The EU has also continued talks with Turkey about lessening visa requirements and eventually accession into the EU.\footnote{European Council, “EU-Turkey Statement,” March 18, 2016. http://dsms.consilium.europa.eu/952/Actions/Newsletter.aspx?messageid=4261&customerid=9612&password=enc_3832323931454546_enc}

The agreement is based on a return policy, stating that Turkey will accept any migrant that initially came from Turkey that was found not to qualify for international protection. Additionally, Turkey has agreed to take back any irregular migrants intercepted in Turkish waters. The EU has claimed that the policy is meant to specifically address the smuggling problem and to “break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk.”\footnote{Ibid.} By increasing security they hope to decrease the incentive for smugglers, refugees, and migrants.

Several agreements were made to accomplish this. The first, as mentioned above, is the return of all new irregular migrants who are crossing from Turkey to Greece, which took affect March 20, 2016. The European Council affirms that this policy is in agreement with EU and international law as well as respects the principles of non-refoulement, although many are skeptical of this point. Further, they claim these are temporary measures that are only being put in place to address the emergency crisis in the Aegean Sea. Any migrant that makes it to Greece will be processed and considered for refugee status before determining if they should be returned.

\footnote{Ibid.}
to Turkey.\textsuperscript{125} In addition, Turkey will prevent any new land or sea routes from opening and will cooperate with neighboring states.

Additionally, for every migrant (refugee or not) returned to Turkey another refugee will be resettled from Turkey to the EU, which they believe respects the UN Vulnerability Criteria. They assert that a mechanism will be established to enforce this policy with help from the European Commission, EU agencies, other Member States, and the UNHCR. Further, priority for resettlement from Turkey will be given to those who have not previously tried to enter the EU irregularly. Those resettled through this agreement will be part of the EU’s 33,000 pledged resettlements, which they maintain has 18,000 spots left. They agree that this number can be increased but shall not pass an additional 54,000. The EU affirms that if this policy does not stop irregular migration into Greece it can be reviewed and if necessary discontinued.\textsuperscript{126}

The policy ends with several agreements regarding Turkey’s relationship to the EU. First, regarding an accelerated timeline for the visa liberalization process that will allow Turkish citizens to enter the EU without a visa. Further, the distribution of the three billion dollars in aid with be accelerated as well – to guarantee they have the resources to provide for the “health, education, infrastructure, food and other living costs” for the refugees residing there.\textsuperscript{127} If they use the three billion euro and require further funds to provide for those displaced in their territory, they can receive up to an additional three billion by the end of 2018. The EU and Turkey have also reconfirmed their commitment to the accession process for Turkey at an accelerated rate.\textsuperscript{128}
It concludes with a joint commitment by the EU and Turkey to improve “humanitarian conditions” in Syria, particularly “in certain areas near the Turkish border which would allow for the local population and refugees to live in areas which will be more safe.” As well as the EU’s commitment to create a “Voluntary Humanitarian Admission Scheme” once “irregular crossings between Turkey and the EU are ending or at least have been substantially and sustainably reduced.” This scheme, as suggested in the name, would be contributed by EU member states on a voluntary basis.

The policies adopted by the EU do not resemble either proposal, and in fact the term responsibility is never used. Further, it is plainly framed in a way that maximizes benefits to the EU. Providing for refugees is a secondary consideration that is only addressed to demonstrate that they are not breaking any international laws or norms. The UNHCR was very skeptical of the agreement and released a statement on the same day. In this statement they state that the implementation of this plan is crucial in properly executing the policies and must be done in accordance to the principles of the Refugee Convention. However, the UNHCR believes that the most important principle to remember is that “Refugees need protection, not rejection.” The policies are not framed in terms of humanitarian principles. The only time a humanitarian commitment is discussed is when a joint commitment is made to help those living in Syria on the Turkish border, which is to stop more people from crossing into Turkey.

Furthermore, the agreement also benefits Turkey because it provides them with the leverage needed to reopen a discussion about accession as well as three million euro in aid with the possibility for additional funding. The EU is openly self-interested and does not have to

129 Ibid.
130 Ibid.
conceal its intention as having fulfilled a moral obligation. They only feel the need to clarify that they are not breaking international law or the well-established norm of non-refoulement. The EU did not write this agreement in terms of its responsibility to protect refugees. The only time an obligation is suggested is in its commitment to the already pledged number of refugees or to help those on the Syrian border to stop more of them from crossing into Turkey. The EU-Turkey agreement is an obvious indicator of the lack of enforcement capacities on part of the UNHCR and the refugee regime and the corresponding response by states.

**Conclusion**

Part II has examined the response to the current refugee crisis in the form of two proposals offered to address the current refugee crisis and the ensuing policies adopted by the European Council. This part specifically looked at how responsibility has been assigned in these responses to the crisis. The two proposals had varying degrees of reference to humanitarian obligations and responsibilities. The first proposal from the Refugee Studies Centre framed these obligations by recognizing the current conditions of those fleeing the conflict in Syria. It particularly looked at the adverse affects on those who remain in the region surrounding Syria as well as the affect it has had on the youth and their education. In this proposal, responsibility was conceptualized in terms of an obligation to help those in desperate need.

The UNHCR’s proposal emphasized the responsibility of Europe and the international community to respond appropriately to the refugee crisis. While humanitarianism is the foundation of the refugee regime, the UNHCR focused less on refugee protection and asylum as a humanitarian obligation, but as an agreed upon responsibility that must be addressed to fulfill prior commitments. However, the UNHCR still must work within the humanitarian framework of the global refugee regime, which is reflected in their proposal.
The European Council takes a very different approach than what was is suggested in the two proposals. The policies adopted by the EU, in the form of an agreement with Turkey, are framed in terms of closing the sea route of refugees crossing the Aegean Sea from Turkey to enter the EU. Further, these policies do not reference the refugee situation in terms of a moral responsibility. In fact, it was hardly addressed in terms of a humanitarian obligation. So while the proposals attempted to frame the responsibility to the current refugee crisis as an obligation to protect and provide for refugees, the EU did not take this approach to the crisis. The proposals and policies demonstrate the unenforceable nature of the current conception of refugee protection.
CONCLUSION

For Europe, the refugee crisis is coming during a challenging time: struggling national economies, the instability of the Eurozone, possible Brexit, the rise of the far right, and disagreements with Russia are only a few of the difficulties the continent is facing. The end of the refugee crisis is not yet in sight, and given European reticence to act, will not come soon. While there is an active debate among political theorists about states’ responsibilities for refugee protection, this has not yet been translated into policy. What is needed is a policy that is informed by a deep understanding of the repercussions of duties of virtue and justice. Kant contrasts the duty of justice with his duty of virtue; the latter defined as an imperfect duty, the former as a perfect one. Imperfect duties are general prescriptions that allow some flexibility in how the obligation is fulfilled, whereas perfect duties are specific prescriptions that break moral codes when violated. States are inherently self-interested and if the duty to promote, provide, and protect the wellbeing of those outside a territory is left to the discretion of states, they will not act. After adopting policies that recognize states’ responsibility of refugee protection as an enforceable duty of justice, the next step will be to create a mechanism to enforce state responsibilities.

The current refugee crisis is exacerbated by the international community’s failure to assign responsibility to act. This paper has looked at the different pathways to assigning responsibility and how they can be applied to the global refugee regime. Part I of this paper examined how responsibility for refugee protection can be framed in terms of Kant’s imperfect
and perfect duties. The reason states fail to meaningfully act in the current crisis is because refugee protection is conceptualized in terms of a voluntary duty of virtue, which cannot be enforced. Different relationships emerge when conceptualizing refugee protection. The first is a causal relationship that assigns responsibility to specific state actors who have contributed to the underlying causes creating refugees. Causal responsibility can also be assigned by injustice stemming from the structural relationship of states, whether from colonial legacies, systemic poverty, or failures to act in man-made or natural crises. The other mechanism for assigning responsibility is a humanitarian approach that does not assign explicit responsibility to specific actors, but is based on the principle that reflects the Good Samaritan ethic—that we should help those in need when the cost is low to us. This part established that humanitarianism is the guiding principle of the global refugee regime and that refugee protection is conceptualized as an imperfect duty of virtue that is voluntary and unenforceable.

Part II investigated this argument by looking at Europe’s response to the current refugee regime and examining the implicit or explicit responsibilities in two proposals and the subsequent policy adopted by the European Council. This part looked at the factors that have led to the crisis and further established that the EU’s policy of containment is unsustainable and has put enormous strain on the region surrounding Syria. In response to this situation a group of scholars at Oxford’s Refugee Studies Centre presented a proposal that recognized many of the variables impacting the crisis, highlighting the responsibility of the European Union to address the plight of refugees both in the region of Syria and on the borders of Europe. The proposal made by the UNHCR focuses less on the plight of the refugees but the responsibility of the EU based on its previous commitments to the Refugee Convention.
The subsequent policies adopted by the EU are self-serving and do no reflect the proposals. It is evident that the EU felt no obligation to address the crisis in terms of a duty of justice. They are acting out of necessity – in response to the flood of refugees entering the Schengen zone. It is important to note that the EU is not breaking international law or norms in the policies adopted in the agreement with Turkey. Many of these laws and norms on refugee protection are not based on duties of justice, but rather duties of virtue. They are founded in the humanitarian commitment to the refugee regime, which is not enforceable because it was conceived in terms of a voluntary duty.

The EU’s policies do address previous commitments made by member states to accept various refugee quotas, commitments that remain unfulfilled. Addressing their lack of action creates a perfect duty because it identifies a specific agent and claimant. However, because these policies are still functioning within the general refugee regime, they remain unenforceable. This need not be the case; they could be enforced if responsibility was consistently applied as a duty of justice. There is a possibility for perfect and enforceable duties of justice within the global refugee regime. However, this would require a mechanism that could effectively enforce those commitments. While the global refugee regime is currently able to gain support based on its humanitarian principles, under these principles it remains incapable of enforcing these commitments.

Refugee protection is currently conceptualized in terms of an imperfect duty of virtue because the responsibility has not been assigned to specific agents. However, this does not mean that refugee protection is inherently a duty of virtue that cannot have an assigned agent and claimant. A duty of virtue can never be enforced and to do so would be a violation of justice. Thus, refugee protection is not a duty of virtue but a duty of justice, for which it is necessary to
facilitate the steps to assign responsibility. Therefore, the argument can be made that there is a duty to construct a functioning international system that is able to assign duties to specific agents. This is a formidable task, given the self-interested nature of state discretion, but the challenge of the task does not negate the duty.

The current refugee crisis, the largest since World War II, is creating new challenges for international institutions responsible for protecting refugees. Particularly challenging is the ambiguity of assigning and fulfilling the agreed upon responsibilities of protection. Humanitarianism, the guiding principle behind refugee protection, conceptualizes protection in terms of an imperfect duty that is both impossible to enforce and left to the discretion of the states responsible. Consequently, the humanitarian approach has resulted in failure to meaningfully act because states consider protection a voluntary duty of virtue. Refugee protection would be most effective if operating within a functioning international system that assigns the duty of protection to specific state actors. Thus, states would conceive of refugee protection as a duty of justice: a duty that is perfect, obligatory, and enforceable.
Works Cited


