The Refugee as Invasive Other

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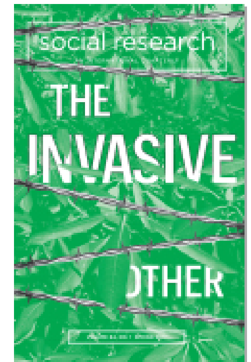

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AFTER THE MASS DISPLACEMENTS OF POPULATIONS FOLLOWING WORLD War II, refugees earned a legal and moral status as persons with a justified claim on the protection of a state if they could demonstrate a well-founded fear of persecution. Thanks to the Refugee Convention of 1951, refugees acquired a newfound moral identity sanctioned in international law.

Sixty years later, the structure of international law remains intact, but new metaphors have entered the democratic body politic, categorizing the refugee not as an individual with rights and a moral claim, but as the invasive other. A few examples from Eastern Europe will make this evident. In September 2015, Czech and Slovak politicians and medical professionals supported closure of the Czech and Slovak borders on the grounds that refugees would bring in disease. The claim had no substance, of course, but it was not an empirical claim at all. It was a pure exercise in malicious political metaphor, a not-so-subtle trope intended to construe refugees as a collective threat to the nation. As a result, neither the Czech Republic nor the Slovak Republic was prepared to grant the refugees any of the rights sanctioned by the 1951 convention.

In the same period, the autumn of 2015, the Hungarian prime minister, Viktor Orbán, justified the closing of his country's border on the grounds that the refugees were a threat to "Christian civilization." This metaphorical terrain was already available before the refugees arrived; Hungary as a "Christian guardian" of Europe was a trope of Hungarian nationalism throughout the twentieth century.

Mr. Orbán is a master of this metaphorical terrain: he has built political power on an adept use of such tropes, in which history is reconfigured as biology and Islamic faith is re-envisaged as disease. Islam, a faith that has been present in Europe and part of its history since the eighth century, is recategorized as the invasive other.

When politics enters this metaphorical zone, the results are always perilous for vulnerable human beings. Through malign use of these metaphors, populist politicians in Europe, primarily of the right, have managed an extraordinarily ingenious inversion of reality. Refugees in flight from chaos, bombardment, and fear are described as an invading force. People fleeing ISIS terrorists in Iraq and Syria are viewed as terrorist threats. When victims are forced into this metaphorical terrain, the legal and humanitarian duties that states and their citizens once took for granted are reinvented as burdens to be sloughed off. Victims' claims are regarded either as moral blackmail or as duplicitous exploitation of our generous impulses.

The political consequences of treating refugees as the invasive other are immediate. Encampment, detention, forced repatriation, razor wire, searchlights, guard patrols, and dogs all quickly follow. Populist politicians of the right—and some on the left—construct these metaphors for a purpose: to collapse the political space for public consent to the generous and humane treatment of the desperate. The collapse of this space is evident everywhere. The United States had prided itself on responding generously to surges in refugees and forced migrants. During the Syrian civil war, which has displaced nearly 10 million people, this tradition lost its power to inspire public support and guide policy. Since 2012, the United States has taken in no more than fifteen thousand Syrian refugees, and the newly elected president wants to bar the door to any refugees from countries that have a majority of Muslim citizens.

While populist politicians and ideologues bear the responsibility for the collapse of the space for generosity and compassion, they claim that they are giving voice to the voiceless majority, whose fears were ignored or condescended to by liberal elites. Populism's moral

claim is always that it gives democratic utterance to preferences ignored by the privileged few.

This democratic claim acquires a certain plausibility in a time of fear. Terrorist attacks—such as those that occurred in San Bernardino, Orlando, Brussels, Paris, and Istanbul—create a background condition of anxiety that makes it easy for populist politics to "other" the stranger. Fear, in turn, then makes people indifferent to facts. The facts do not support the elision between refugees and terrorists. The Paris and Brussels attacks were not committed by refugees, but by citizens, by young men and women born in Europe. The attack in Orlando was committed by a native-born American. Frightened populations, however, are not discriminating: whether the threat comes from the native-born or the refugee, both are deemed to be alien presences, professing a religion easy to demonize and representing a danger best handled with exclusion, banishment, or violence. Such is the dire power of political metaphor.

What, if anything, can be done to reverse this trend? How does a liberal and progressive politics recover the image of the refugee as a victim entitled to protection and respect? How is the battle for opinion to be won?

A liberal politics is, in moral principle at least, a universalist politics. By moral universalist, I mean a politics that assumes that there is no "other." In the liberal conception, there is only "us," agents like ourselves entitled to respect and equal treatment. The moral force of liberalism—and its chief historical achievement—has been to discredit all forms of exclusion, whether justified by race, religion, sexual orientation, or gender. Liberalism's core moral premise has been to claim that difference itself is morally irrelevant. The chief subject of politics is the human agent, the universal individual. Liberalism's most hopeful insight is that human beings are tied to others by a primal human bond, and when we accord rights to refugees we are recognizing our common humanity.

The elaborate structure of post-1945 international law—in the Universal Declaration of Human Rights and the Refugee Con-

vention—gave legal form to liberal universalism's vision of human solidarity. Liberal professions—human rights lawyers and professors, international experts mandated by UN bodies or salaried by NGOs and philanthropies—work to spread the universalist doctrine. The struggle to promote and enforce universal values has been difficult. States resist, abuses persist, but the pursuit of the utopia goes on. The utopian goal—of a world of states respecting universal values—has been enduring because it makes a heartfelt claim about human nature: that human beings everywhere recognize each other's human identity and have the potential, if not always the capacity, to act on that understanding, to recognize the stranger as themselves.

The ongoing refugee crisis, culminating as it did during the brutal civil war in Syria, whose suffering the world watches from the sidelines, has not been the only challenge to the universalist faith that inspired the human rights revolution and the expansion of refugee protection, but it has been among the most troubling. Initial responses of generosity and compassion have been followed, across Europe, by a politics of exclusion that commands majoritarian support in most countries. Even in Germany, where refugees continued to arrive and to be integrated, majority opinion is turning against a politics of generosity that only a year before seemed to be holding its ground.

While the populist politics of fear—and the manipulation of metaphors of otherness—must explain some of this turn in public opinion, it doesn't seem to be the whole story. The more difficult question is why public attitudes are so susceptible to manipulation, why the metaphors catch on, why exclusion has won such an easy victory over generosity.

The success of the populist counter-reaction is explained, by populists themselves, as a popular uprising against a suffocating political correctness that liberals enforced on public opinion in the era of liberal hegemony. Liberals, for their part, play into this analysis by dismissing some of the support for walls, barriers, and exclusion in terms of populist pandering to racist or religious hostility toward refugees.

There is racism aplenty in Europe and elsewhere, and it's hard not to see racism at work in the miasma of fear and revulsion that has led to the populist revolt against refugees. The problem is how to explain not the racism but the generosity of many Europeans who brought blankets and water to the railway stations in September 2015 and sought to help desperate people. They not only overcame their fear and suspicion, but also supported Angela Merkel's politics of inclusion. They did not fear refugees and they did not succumb to racism, but after a year they have concluded, often reluctantly, that a policy of unlimited admission has to stop. How do we explain this change of heart?

In Germany, the problem was that the German constitution, the *Grundgesetz,* enshrined the state's obligations under the Refugee Convention as part of German domestic law. These obligations require the state to grant asylum to all persons who can demonstrate a well-founded fear of persecution. While Germany does have the right to determine whether the claim is well founded and to reject or send away those whose claims are fraudulent, the government also has an obligation to admit all those with well-founded claims. Meeting asylum claims that come by the dozens or even by the hundreds may be sustainable. Meeting claims in the hundreds of thousands in a single year raises issues more fundamental than administrative capacity. The real problem is that a universal obligation, like the right of asylum, does not provide the state with a reliable principle of triage, much less a principle to limit or moderate the flow of claims. If a million people show up at a country's borders, each with a well-founded fear of persecution, the universal obligation of asylum law, if ratified in domestic law, presents a state like Germany with a burden that quickly consumes political consent.

What Germans—and I mean here the generous ones, inclined for reasons of history and conscience to take their asylum obligations seriously—began to realize was that universal human rights obligations were on a collision course with the German state's primary duty to police its borders. At the level of law, therefore, there was a con-

tradiction between state sovereignty and universal obligation. Even generous Germans came to the reluctant conclusion—as did their chancellor—that the contradiction could only be resolved in favor of state sovereignty. Germany continues to take asylum seekers, but is exercising triage to bring the numbers down and increase the number of repatriations.

The refugee crisis not only brought state sovereignty and universal asylum obligations into conflict. It also addressed a fundamental question to the moral presuppositions of liberal universalism. This question was raised by ordinary people, by which I mean regular voters of all classes and income levels, in Germany first of all, but also elsewhere in Europe, people who are not politically active or ideologically committed, people who are not professionally involved in human rights work, civil liberties litigation, and civil society politics. For such groups there was something implausible to begin with, in the very idea that human beings recognize the stranger as themselves, that human beings see through difference to the shared identity within and respond positively when a liberal politics seeks to build a politics of inclusion upon that recognition.

What if these assumptions fall apart upon examination? What if human beings, faced with the stranger, see difference first, not identity? What if the primary recognition is "us versus them," citizen versus stranger? Then a liberal politics of asylum that does not reckon with difference, with the primary distinction between a citizen and a stranger, is condemning itself to failure.

In other words, the problem with sustaining a politics of generosity lies deeper than countering the politics of fear and the pandering to racism. It lies in the very claim at the heart of human rights and international law itself. A liberal politics of generosity starts from the assumption that voters in a democracy accept a universal obligation to strangers. But what if ordinary voters actually privilege citizens over strangers? A politics that does not appear to privilege citizens over strangers or that abridges the state's discretion to determine who is accorded the privilege of citizenship is unlikely to succeed in countering the populist politics of fear and division.

So what language of political appeal is likely to be more resonant with a democratic public with anxieties aplenty of its own? How can instincts of generosity and compassion be mobilized?

It is worth pausing here and noticing that generosity belongs to the language of the gift, while duty and obligation belong to the language of rights. Marcel Mauss and Richard Titmuss have made us familiar with the sociology and anthropology of the gift, and I am suggesting that their language of the gift may have more purchase with electorates than the language of rights. Let us try to understand why.

Rights universalize, gift-giving particularizes. A gift given to everyone is no longer a gift. Rights equalize. Gift-giving discriminates. Rights are compulsory. Gifts are discretionary. In what I would call the "ordinary virtue perspective," the value system of most ordinary people, obligations to strangers come under the category of gifts. Intuitively speaking, to grant a stranger asylum is an act of hospitality, conferring on them a scarce good. Asylum is understood as a gift relationship between a citizen who gives and a stranger who receives. It is a particular, individualized relationship, person to person, even when mediated or transacted by the state.

This popular understanding, I believe, is what remains of popular, electoral consent for asylum. What remains is not a universal obligation to desperate strangers as such, mandated by law and held as a right, but instead an individualized and discretionary feeling of responsibility to accord limited goods to particular strangers in need. In this understanding, the gift, like hospitality, is a scarce good. When it runs out, there is no more, the house being full. Under international law, by contrast, there is, at least in principle, no ceiling, no upward limit to the obligation.

The unlimited character of universal obligations offends the ordinary virtue perspective because it is unrealistic—states must determine how much asylum is enough—but more critically, because the rights obligation fails to privilege the citizen as the giver of the gift. In asylum conceived of as a gift relationship, the sovereignty of citizens is acknowledged, together with their moral priority to the

privileges and entitlements of civic membership. When asylum seekers claim admission as a right, citizens resent being placed on an equal footing with refugees in the allocation of the privileges and entitlements of membership.

In the ordinary virtue perspective then, the stranger should acknowledge the gift with gratitude and should recognize the privileged status of the citizen who accords it. The gift is a conditional transaction that takes the form: I, the citizen, say Yes to you, but on condition that you say Yes to me. Asylum implies integration, in other words, but on terms defined by the citizen.

What the Yes should comprise, when a stranger integrates into the new society, is, of course, a subject of heated debate. It should be, precisely because what the citizen feels obliged to say Yes to in their own society is also a contested matter. Loyalty codes do not sit well with a free society. Still, when strangers are given the gift of asylum, citizens expect, at a minimum, that their new guests obey the law, learn the language, get a job, and begin to contribute to their host society. When strangers fail to integrate on these terms, citizens easily feel that their generosity has been abused.

Those who wish to defend generous and humane refugee and asylum policies may not like this "ordinary virtue perspective," but it is essential to engage with it if democratic consent for asylum is to survive the populist onslaught. Talk of rights is less likely to mobilize public instincts of generosity and compassion toward strangers than talk of gifts. Rights talk—the rule that asylum seekers are rights-bearing subjects—can't be abandoned. It functions as a counter-majoritarian pressure, in law and opinion, against the discretionary bias inherent when asylum is conceived as a gift. But citizens are unlikely to maintain consent for asylum unless they can ration the gift—according it to some and withholding it from others—and insist that those to whom they give the gift say Yes to the society and the citizens who have taken them in.

If you teach human rights, and you defend human rights, as I have done, you cannot fail to be aware that Western societies are

living through a crisis of confidence in the status, validity, and applicability of moral universals. When you talk with human rights advocates and defenders, they construe this to be a crisis of enforcement and compliance. The crisis goes deeper than that. Under the impact of terrorism and the pressure of migratory flows, the consent necessary to sustain state compliance and enforcement of universals is under attack in democracies themselves. So if we are to resecure consent for asylum, we need to engage our citizens honestly, instead of dismissing as racists those who assent to populist politics. There is a constituency in our society who are not racist, who will support a politics of asylum that rations the gift of citizenship to the most deserving strangers, turns back those whose claims presume upon citizens' generosity or credulity, and combines fairness with effective border control. While this may be heresy to most in the human rights community, they should reflect that the absence of such a credible policy has fractured consent for asylum and delivered public opinion over to the politics of fear and exclusion.

Getting this right is a crucial test. Mass migration, and in particular forced migration, seems writ large in our future. In an unequal world, migration will remain the individual solution of choice to the problem of poverty and opportunity in every country within reach of the developed world. Enforcing the border between citizen and stranger, while sustaining a generous and inclusive gift of citizenship to strangers, will be a decisive challenge for liberal democracy itself. We need to preserve rights-based individual determination of refugee claims, but we also need international agreements on survival migration streams, so we can begin to respond to these pressures. We need to rebuild citizens' consent for regularized, decent, fair migration control, and if we can get the balance right—fairness combined with that control—we can reclaim borders, sovereignty, and generosity toward refugees.