

## *PART I: Religious Traditions and Migration*

### *Movement, Asylum, Borders: Christian Perspectives*

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This paper addresses from the point of view of Catholic social teaching and moral theology the questions posed by the intersection of universal human rights, especially the rights of movement, and the assertion of national sovereignty. It begins with a brief note on the theological foundations of Catholic understanding of exile and refuge, then examines the moral problems involved in the clash between rights of movement and the sovereign control of national borders.

This paper presents some Christian perspectives on the interrelated issues of movement, asylum and borders. In other words, it addresses, from the point of view of Roman Catholic social teaching and moral theology, the questions posed by the intersection of universal human rights, especially rights of movement, and the assertion of national sovereignty. The presentation consists of two parts. First, I offer a brief note on the theological foundations of a Catholic understanding of exile and refuge. Second, since movement, asylum and borders define a single problem, I examine the set of moral problems cast in the contemporary political climate by the clash between rights of movement and the sovereign control of national borders. These are: 1) the need of a global authority to safeguard human rights, particularly those of refugees; 2) the inadequacy of the asylum system to meet the challenge of today's immense refugee flows and the need for a political or institutional remedies to this challenge; 3) the priority of refugee claims over those of other migrants; and 4) the changing moral relevance of borders for both sending and receiving nations.

As the refugee/migrant problem becomes more dire and as workable solutions seem more and more out of reach in a climate of antiforeigner feeling in historic host countries, consideration of practical remedies to the ethical issues of movement grow in importance. From the moral point of view, any broad restriction against the movement of refugees – fleeing for their lives, in pursuit of liberty, or even from economic oppression and destitution – can only be justified by the provision of alternative structures for their protection and integration into a decent and dignified way of life.

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## THEOLOGICAL FOUNDATIONS

Behind the Christian option for the poor and the church's defense in the public square of human dignity of migrants and refugees lies profound attitudes and dispositions about God's identification with the outcast and exile. Before dealing directly with the problems of international policy toward refugees, I would like to explore what one philosopher describes as "the deep structure" of Catholic responsiveness to refugees and exile, namely, the memory of exile that is at the heart of the historic memory of Christian tradition.

### *The Memory of Exile*

To begin with, we must recall how deep the memory of exile is in the Christian tradition. The Catholic commitment to the unity of humankind does not derive from devotion to an abstract universalism, nor is it simply an expression of the social structure of the church as a global institution. Rather, with the Jewish tradition, it shares in a very real way the memories of exile in Egypt and in Babylon. Just as with biblical Judaism justice and kindness to the stranger and alien was a fundamental duty of the Covenant, so too with the Christian community true religion consists in care for widows and strangers. For example, the paradigm of Christian charity, in a challenge to every form of chauvinism and xenophobia, is the Good Samaritan who at great risk and cost to himself overcomes ethnic and religious hostility to care for a Jew fallen among thieves (Lk 10:29–37).

Christian perceptions of the movement of peoples are also colored by the paradigmatic events recorded in the Gospels. Thus, the life of Jesus itself begins with the flight into Egypt and the Holy Family's exile there as political refugees until the death of Herod (Mt 2:13–23). With the flight into Egypt, the status of refugee was confirmed in a most solemn way as part of the human condition. Subsequently, Christians have understood their condition as *peregrini*, pilgrims, or *homines viatores*, homeless wayfarers, without permanent homes.

Thus, in 1952, Pope Pius XII, reflecting on the large numbers of refugees and displaced people created in the post-World War II world, commented:

The emigre Holy Family of Nazareth, fleeing into Egypt, is the archetype of every refugee family. Jesus, Mary and Joseph, living in exile in Egypt to escape the fury of an evil king, are, for all times and all places, the models of protectors of every migrant, alien and refugee of whatever kind who, whether compelled by fear of persecution or by want, is forced to leave [his] native land, [his] beloved parents and relatives, [his] close friends, and to seek a foreign soil. (*Exsul Familia*, 1952)

Thus, the memory of exile is vitally important because, as with the biblical injunction to treat the alien . . . "no differently than the natives born among you . . . ; for you too were once aliens in the land of Egypt" (Lv 19:33–34), it is knowledge of our uncertain common human condition, and the divine embrace

of that condition insofar as Jesus himself grew up for a time as a refugee child, which keeps us as a church attuned to the plight of refugees and migrants today.

Such memories, instilled generation upon generation through the retelling of the infancy narratives in the Christmas cycle engender dispositions of openness to the stranger. In turn, those dispositions support the virtues of hospitality which bear fruit in the Church's service to and advocacy for refugees and migrants. The Church's defense of refugees and migrants and its advocacy of their rights is nourished and sustained by the memory of exile and the dispositions and virtues which that memory keeps alive in the Christian community.

As we go on to discuss ethical and political problems in the exercise of the rights of movement, it is important to bear in mind that Christians, by virtue of this biblical heritage and the Church's subsequent history, possess a distinctive sensibility in this area which is not necessarily shared by others. While various arguments can be made in the public forum to invite others to share in our commitments, Christians ought not conceive of hospitality to the stranger as a universal moral virtue. While Christianity and many world religions consider it such, it is an attitude that is very much in question in the political and social world in which we now live. Instead, we must think of our commitments as a kind of leaven in the human community that will gradually increase the level of solidarity among all peoples in keeping with our common vocation in the one human family (*Gaudium et spes*, No. 38).

### *The Church's Mission and Service*

It is a commonplace to assert that the Church's teaching on immigration rests on a long-held defense of the dignity of the human family. This defense of human dignity, however, is itself central to the Church's identity and mission. For the self-understanding of the Church as "a sacrament – that is, a sign and an instrument – of communion with God and of the unity of the all men" entails defense of human dignity of all who are oppressed (*Lumen gentium*, No. 1; on the Church's service to the world, see *Gaudium et spes*, No. 42–43).

Indeed, according to Vatican Council II, the service of unity across social, political and cultural divisions is one of two ways in which the Church serves the world. The other is related – namely, the defense of human rights (*Gaudium et spes*, No. 41–43). In concern for migrants and refugees, the service of unity and the defense of human rights come together. The defense of human rights, whether of basic civic freedoms or economic rights, like the right to work and the right to subsistence, demands an effective increase in the unity of the human family beyond what current political realities allow.

Thus, in the matter of asylum especially, but in the broader area of migration as well, the disproportion between basic human rights and the ability of political structures to fulfill them becomes painfully apparent. Coincidentally,

the vocation of the Church to contribute to the unity of the human family becomes more exigent. In a world that grows technically and economically more integrated each day, the challenge to the Church is to contribute to the institutional advancements and to foster the public spirit that will allow global political structures to correspond to the necessary promotion of the rights of the whole human family. Accordingly, the 1976 statement *The Church and Peoples on the Move* asserted that “the phenomenon of people on the move is an invitation to the Church to realize her own identity and fulfill her own vocation” (National Council of Catholic Bishops, 1976).

In addressing the question of asylum, the Church’s teaching on solidarity and human dignity, as well as its practice in support of these principles, confronts the imperfections of the current international system. These include: a state system weakened by economic, social and political developments; international organizations with too many responsibilities and too few resources; an unprecedented movement of people, both legal and illegal; a rise in deadly ethnic conflicts to which state apparatus is an accomplice or which the state is unable to control; decline in some places, and certainly in the United States, of a politics of the common good; a movement among some Asian nations to contest the universality of human rights. These trends indicate just how complex and difficult it will be, under present conditions, to secure rights of movement, especially for those most in need of them. The difficulties are political, legal, economic, social, and cultural. We have to deal with these: the phenomenon of failed states; the mobility of capital and the relative immobility of labor; racism, tribalism and ethnic enmity; the crosscultural validity of human rights.

To deal with such a range of issues would take us well beyond the scope of this paper. Any strategy for the defense of rights of movement, however, must take the complexity of the present situation, as well as the exceptional difficulty of action resulting from these interlocking trends, into account. What Catholic social teaching offers, in this context, is a coherent vision of the international system and its role in the defense of human rights – including the right of movement – which may serve as a framework for resolving the political and legal barriers to movement, at least in some cases. Accordingly, I turn now to the Catholic vision of the international system and its import for the future of the right of movement.

### *CATHOLIC UNIVERSALISM AND THE INTERNATIONAL SYSTEM*

In accord with its mission as a sacrament of the unity of the human family, the Church takes a universalist view of international relations. Keenly appreciative of any tendency that contributes to unity in society, the Second Vatican Council made clear that integration of the world community in modern times and the enlarged capacity of individuals and groups to undertake large-scale activity requires that we “make ourselves neighbors to absolutely every other

person” (*Gaudium et spes*, No. 27). In the light of contemporary social conditions, the Augustinian *ordo amoris*, which in part at least endorsed a priority for more immediate special relations of family kin and native place, is relativized by a more inclusive understanding of charity.

Reading the signs of the times, the Council Fathers affirm that under present social conditions it is increasingly possible and accordingly morally required to act on the presupposition that we are one human family. Such a reading of contemporary Church teaching, I believe, is supported by frequent appeals to solidarity found in papal and episcopal teaching since the time of Paul VI (*Populorum progressio*, No. 43–45; John Paul II, *Sollicitudo rei socialis*, No. 38–40). For solidarity is the virtue that affirms the unity of the human family and promotes the good of persons across national, ethnic and class lines.

Universalism in ethics has had important consequences for Catholic teaching on politics. For one, *Pacem in terris*, the charter of contemporary Catholic political theology, in affirming that the end of all political authority is the common good, understood as the promotion, defense and safeguarding of human rights, affirms that when governments fail to ensure the human rights of their people, it falls to other authorities to take on that role. Thus, *Pacem in terris* reads:

We must remember that, of its very nature, civil society exists not to confine its people within the boundaries of their nation but to protect, above all else, the common good of the entire human family. . . [C]ivil societies in pursuing their interests not only must not harm others, but must join their plans and forces whenever the efforts of an individual government cannot achieve its desired goals. . . (John XXIII, *Pacem in terris*, No. 98–99; see also No. 61)

Thus, well in advance of recent experience of failed states or genocidal regimes, Church teaching affirmed the responsibility of external political authorities to uphold the rights of persons whose governments by default, in the case of failed states overcome by ethnic or factional strife, or out of malice where governments conspired to do so, deprived their people of their human rights. This teaching on the consequent responsibility of outside authorities, it seems to me, underlies the Holy See’s position on humanitarian intervention as laid out in the Holy Father’s 1992 address to the diplomatic corps. There he said that when, after persistent efforts at diplomatic resolution, “populations are succumbing to the attacks of an unjust aggressor, states no longer have ‘the right to indifference’.” He continued:

It seems clear that their duty is to disarm the aggressor, if all other means seem ineffective. The principles of sovereignty of states and of non-interference in their internal affairs – which retain their value – cannot constitute a screen behind which torture and murder can be carried out. (John Paul II, 1993)

Thus, a failure of national governments to protect the rights of persons results in the need and the duty of outside authorities taking action on behalf of a victimized population. On this basis the bishops of the United States supported “humanitarian intervention” in their 1993 pastoral reflections on the “challenge of peace” (National Conference of Catholic Bishops, 1993).

Even in 1963, however, Pope John XXIII, himself a former diplomat, understood the weakness of the nation-state system to attain this and other necessary goals. As a result, contemporary Catholic social teaching speaks of the universal common good, that is, the well-being of the whole human family and the planet which we share; since the time of Pope John the Church has urged the strengthening of political organizations for meeting global problems. According to the Pontiff, "under present circumstances of human society, both the structure and form of governments as well as the power which public authority wields in all nations of the world must be considered inadequate to promote the universal common good." Since "problems of world-wide dimensions" cannot be handled by existing institutions, the Holy Father argued, "the moral order . . . demands that such a form of public authority be established." It was in that light, Pope John endorsed the strengthening of the United Nations system. Whether or not political structure instituted to meet global problems is the United Nations as such, the principle that some political authority is necessary to respond to problems of a global nature must be regarded as a fundamental of the Church's teaching on international politics.

Furthermore, the rights of migrants, and especially refugees, must be regarded as a responsibility of all political authority, of the United Nations imperfect as it is, of receiving countries, and ideally of a yet-to-be-devised refugee regime. For the human rights of persons are not dependent on citizenship, and the moral legitimacy of political structures is found in their realization of human rights. On this basis, Catholic social teaching has affirmed the right to migrate to include the establishment of conditions by which a person "may enter a political community" where those rights are honored (*Pacem in terris*, No. 106).

### *A Global Refugee Regime*

I must note in passing that in papal teaching, the right to migrate entails for recipient states not only the duty to accept refugees and immigrants but also the duty to integrate them into the host society (*Pacem in terris*, No. 106). But the main point I would like to make is that 30 years after *Pacem in terris* the global reality of movement requires the establishment of a genuine global authority to meet the needs particularly of refugees and internally displaced persons. From the point of view of Catholic social teaching, the paramount ethical problem in the movement of peoples today is precisely the lack of a global authority with the competence and capacity to address the needs of victimized populations in timely fashion.

In recent years, a variety of ad hoc developments have met the needs of many refugee populations. A special U.N. protection zone in northern Iraq has protected the Kurdish population there. In many places the United Nations High Commission for Refugees (UNHCR) has provided protection for internally

displaced persons as well as refugees. The Security Council's mandate for "humanitarian protection" in Bosnia and Somalia has set a standard, although a very imperfectly realized norm, for the international community to provide protection for civilians subject to ethnic cleansing, predatory rule, or failed regimes. Finally, the assignment of human rights monitors to zones of conflict, together with other efforts at conflict resolution and preventative diplomacy, have attempted to extend protection to potential victims of human rights abuse and to avert potential conflicts.

To be sure, all these initiatives represent major commitments by the United Nations and its member nations, and most constitute novel breakthroughs or, at least, major adaptations in the treatment of refugee issues. Still, they are hampered by inadequate funding for refugee activities as well as for programs that would address situations which lead to people seeking refuge outside their native land. These recent undertakings, moreover, are equally impeded by uncertainties of international collaboration in emergency situations and the delays such cooperation brings. Accordingly, the imperfections of the international system in meeting the needs of refugees are still evident, and the need for the global public authority commensurate with the problem remains.

What is needed is essentially a new refugee regime, one which would include necessary revisions in international law but which also would devise the institutions that would protect and assist refugees, and one which would, more importantly, be empowered to address effectively the political and social problems that result in refugee flows. At the very least, consolidation of the developments and lessons of the late cold war and post-cold-war periods is necessary. Elements to consider as part of such a regime would include: automatic funding mechanisms to meet emergency needs; capacity to carry out preventative measures, such as human rights reporting and conflict prevention/resolution; standby protective forces for victim populations and refugee operations; codification of the right of the international community to humanitarian intervention; streamlining of decisionmaking with the reduction of the ability of the great powers to delay or prevent action in emergency situations.

In making this argument, I by no means intend to denigrate the heroic and vast work of the UNHCR. In the spirit of Catholic social teaching, I would only urge that it – or any agency or agencies with this global charge – be given the institutional capacity, the automatic funding, and the legal framework to carry out its work effectively. This is a commonsensical requirement of human rights. When it comes to fundamental human rights, the basic requirement is to establish institutions which prevent their deprivation and, in the event of failure, to have in place the institutions which will undertake special efforts to protect them.<sup>1</sup>

<sup>1</sup>On the moral duties to support institutions and programs which protect against the deprivation of basic rights and provide prompt relief in the event of their violation, *see* Shue (1979:35–46, 50–64).

### *Asylum Reconsidered*

The approach to rights of movement based on a Catholic view of the international system puts the question somewhat differently than we ordinarily do in terms of the right to asylum. It emphasizes the duty to establish institutions to prevent violations of fundamental rights and in the event of their deprivation to protect those whose rights are in jeopardy, whereas the traditional approach is to emphasize the individual's right to asylum and the duty to grant it.

A case can be made that a global institutional approach is not the way to go, that the primary way to proceed is the traditional primacy of the individual right to asylum. I would contend, however, that under present conditions, not the right of asylum as such but the practice of asylum is secondary to the development of a new refugee response system. Indeed, as I have already suggested, the elements of such a new system, though in very flawed ways, have come into being in the last several years. In addition, the very number of refugees nations now confront makes an international political remedy preferable to one-by-one refugee admissions.

Further, the evolution of alternative mechanisms for addressing the needs of refugees and potential refugees, particularly programs of collective protection, should in effect make the right of asylum more a derivative or residual right. To be sure, as long as these other mechanisms are underdeveloped and whenever they prove ineffective, the right to asylum and the corresponding duty to provide safe haven would come into force. When the human rights of victim populations may be protected in a variety of ways, then asylum as such has reduced salience. In Bosnia, for example, civilian protection has frequently been a charade, as we saw in the fall of the safe havens of Srebrenica and Gorazde in the late summer of 1995. Had they been effective, however, asylum would not have been a necessary response to their plight.

In the ambiguous context in which the world now finds itself, however, asylum is still a much needed remedy, and the right to asylum is a very important right. Until an adequate global authority develops to take the part of potential and actual victims of human rights abuse, the institution of asylum and preemptory appeal to the right of asylum is essential to the universal common good. In the absence of other effective means of protection, the right to asylum must be honored. Accordingly, a second ethical difficulty at the present stage of history is, in the absence of an adequate global system for human rights and refugee protection, governments' frequent denial or severe limitation of asylum to those who seek it. Morally speaking, if the international community cannot or will not provide alternate means of protection, then nations are required to grant asylum. To be sure, not every claim is legitimate, and states are entitled to screen applicants for validity of their claims. But wholesale efforts to exclude asylum seekers or severely reduce their numbers are morally inadmissible as long as alternative protection mechanisms are ineffective.



An honest assessment of attitudes to asylum seekers, however, must acknowledge that the accelerated rise in refugee and potential refugee populations together with tremendous gains in movement generally contributes to the inclination of formerly generous governments to reduce the strains placed on their countries by refugee flows. While that reality argues all the more for firm commitment to the development of alternative refugee policies, it also suggests that the priority of refugees vis-à-vis other kinds of migrants be clarified in domestic and international law, immigration policies, and even in Church teaching.

Thus, a third ethical quandary, which I do not have space to explore, consists in whether and to what degree refugees have priority over other migrants. Of its nature, refugee status ought to have preemptory standing. But, in actuality, other forces make both legal and illegal migrants real competitors for acceptance in host countries. In addition, Catholic social teaching with its affirmation of the right of migration for economic purposes creates a competing human rights case for those who are fleeing severe poverty and deprivation. Commentators and critics who claim our teaching requires open borders have a point to make. The preservation of the right to asylum, it seems to me, demands clarifying the relative weight of claims of various classes of immigrants, so that the preemptory status of refugees, who have no other recourse, can be effectively guaranteed.

### *ARE BORDERS OBSOLETE?*

The charge against Catholic social teaching raises the practical questions about the place of order in the international system and the priority of refugees among itinerant peoples. As well, it raises fundamental questions about the limits of sovereignty and the function of borders.

As I have already pointed out, the world has changed in a direction where the actual conditions of political life fit more closely to the vision of Catholic social teaching. That is, sovereignty has been effectively attenuated in a great many situations and the international community takes its obligations to the universal common good and to victim populations more seriously than may have been imagined even a decade ago. It is far from a perfect picture, but the lines of a new reality can be discerned beneath many of the United Nations' ventures of the last five years, from northern Iraq to Somalia, Rwanda, and Bosnia.

At the same time that the elements of an approach to the defense of refugees emerges, the so-called push factors stimulating refugee flows are on the increase. So, even as the security of borders has decreased relevance for sending nations, it seems to have increased salience for receiving nations. A case can be made in terms of the common good for the importance of borders in that they create stable conditions under which governments can achieve the national common good in predictable ways and with a minimum of conflict. To the degree that newcomers put stress on the national system, it is responsible to

control their entrance into a country. Insofar as political authorities and the nations they represent contribute to the maintenance of effective alternatives to asylum, to that degree some restraint on refugee admissions may be justified. But, from a moral point of view, particular cases may still trump such limits unless and until such alternatives are made available to them as well.

Thus, borders are a function of the effective promotion of the common good. Where governments either prey on their own people or fail to protect their rights, borders ought not have any moral weight. Where governments are prepared to shoulder their burden for the universal common good through an adequate refugee regime and where borders can help them promote the common good domestically, there the control of borders continues to have some relevance.

### CONCLUSION

In conclusion, while I have taken an overtly political approach, supporting a new refugee regime as an alternative to asylum, in contrast to a human-rights-based approach based on right of individual refugee to asylum, I would argue that my position also represents a human rights position, because contemporary Catholic social teaching regards the promotion and defense of human rights as essential to the common good and so to the purpose of government. The difference between the position I have articulated and more traditional views is that nations have an affirmative duty to create and utilize alternatives for the defense and service of victim populations. Such mechanisms, when they are effective, do not abolish the right to asylum, but they would make it more of a limited last resort for a restricted class of individuals for whom the new remedies fail to work. To be sure, at present, asylum is a necessary remedy, and nations have a duty to provide it. But, the international community is already well on the way to providing the fuller protection of human rights across borders which modern Catholic social teaching has proposed for more than three decades as requirements of the universal common good.

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