

TARTALOM

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1. Mark N. Franke: "Political Exclusion of Refugees in the Ethics of International Relations", in: Patrick Hayden, ed., *Ashgate Research Companion to Ethics and International Relations*, Farnham, Ashgate Publishing, 2009, 309–327. (részletek)
2. Joseph Carens: "The limits of our obligations to refugees", in uő: *The Ethics of Immigration*, Oxford University Press, 2013, New York, 195-197, 218-224. (részletek)
3. David Miller: "Immigration and Territorial Rights", in uő: *National Responsibility and Global Justice*, Oxford University Press, New York, 2007, 224-227. (részletek)
4. Francis Fukuyama: "Identity, Immigration, and Liberal Democracy" (the 2005 Seymour Martin Lipset Lecture), *Journal of Democracy*, vol. 17, no. 2, April 2006, 9-19. (részletek)

1. Mark N. Franke: Political Exclusion of Refugees in the Ethics of International Relations

Politics of Dehumanizing Refugees in the Instruments of their Identification

Since ethical analysis over refugees in IR focuses most centrally on questions of refugee rights and the obligations of citizens and states to protect and respond to their rights claims, both the politics and analyses of addressing the plight of refugees have revolved around the Convention definition itself. The oppositional and even contesting relationships in which refugees and emplaced citizens are formed with one another has made it crucial for even staunch advocates of refugees' rights to be able to show that refugee claimants do indeed satisfy the

Convention definition. For the sake of both sides, scrutiny of the validity of refugee claims and identities is of primary concern, and questions about how states and UN organizations may most effectively manage the conditions under which this scrutiny may be undertaken with confidence are now serious matters of ethical debate. Underlying this general will to establish defined identity, though, is the fact that those persons who are recognized as refugees and enjoy assistance and protection as such are further labelled and formed as only the targets of ethical address (see Hyndman 2000; Malkki 1995; Zetter 1991; 2007). Accordingly those rejected or not trusted within the assessment system are even further disqualified from respect as fellow human beings.

Under the 1951 Convention and 1967 Protocol, members of the UN have already made the controversial ethical judgement that it is persecution only on the bases of the specific civil and political rights listed in the definition that are worthy of refugee status, but states must still be able meet the very difficult challenge of distinguishing clearly between Convention refugees and persons migrating for social, economic, cultural or environmental reasons. However, as is shown in critical studies of the exercises in status assessment, such distinctions cannot be found but are actually produced in the assessments themselves (see Hardy 2003; Hardy and Phillips 1997; 1999; Lacroix 2004; Parker and Brassett 2005; Shacknove 1985). Persecutions on grounds of nationality are perhaps not difficult to discern. It is not at all clear-cut, though, when persecution on the basis of a person's acts of conscience may be interpreted as violations of religious freedoms *per se*. Given that race is not an objective fact but an identity that is socially constituted through such acts as persecution, it may not be clear to state officials what race actually is in all circumstances nor how racialization may be coextensive with persecution. It also can be extraordinarily difficult to demonstrate when a social group is suffering politically *per se*. Prominent cases of dispute in this regard involve women and persons whose sexual orientations are outside of heterosexual norms, or where there are debates over whether discrimination and subordination on the bases of sex, gender or sexuality are formed through political, social or cultural acts. Thus, following this example alone, one can see that what constitutes political opinion, as opposed to any other kind of opinion, is open to interpretation as well. And in any regard, recognition of the rights-bearing refugee is reduced to a bureaucratic act rather than a social encounter (Bakewell 2001, 6).

While status assessment procedures produce, rather than find, refugees as objects of concern for citizens, scholars are also increasingly cognisant of the ways in which these procedures also reduce the identity of applicants in even greater numbers to the subject positions of liars, cheaters, frauds, and thus threats to social security and civil society, especially where given sensational focus by news media (see Akram 2002; daniel and Knudsen 1995; Esses *et al.* 2008; Fangen 2006; Kushner 2003; Leudar *et al.* 2008; Worth 2002). The conditions of most refugee claims are such that little or no objective or corroborating documentation of persecution is available. In almost all cases the determination of status rests on subjective assessment of the credibility of the claimant and the story that she or he has to tell (see Showler 2006). In this regard, studies are showing that credibility can be and is deeply and negatively

effected by the degrees of stress, intimidation, problems of interpretation, health care interventions and cultural misunderstandings that any claimant may suffer in the process (see Lavik *et al.* 1996; Masinda 2004; Miserez 1988; Pöllabauer 2004; Rousseau *et al.* 2002). Moreover, through assessment the human subject claiming refugee status is then easily treated as a mere body or psyche to be scrutinized, as if a thing (Fassin 2005), coaxing the claimants to engage in self-objectification under the guise of the 'good refugee' (see Gross 2004) and encouraging claimants' advocates sometimes to display their clients as juvenile members of humanity capable of maturation under the familial support of civil society (see Tilbury 2007). Regardless though, where refugee claimants are not granted the status they seek, they are then branded socially as persons who cannot be trusted and thus not fit for civil society. The subtleties of the claimants' concerns and experiences are lost, possibly compounding the effects of any persecution suffered before. Additionally some studies show that the effective public condemnation as liars is then the root of severe psychological harm (see Fassin 2007; Watters 2007), making it even more difficult for rejected claimants to negotiate their highly vulnerable situations – unwelcome in the state of application, likely also unwelcome and possibly even subject to prosecution in the states from which they first fled, and ineligible for assistance or protection under the UNHCR.

Rather than directly face the ethical and political problems inherent to mobilizing responses to refugee rights solely on the basis of the Convention definition, in recent decades the so-called asylum states have worked hard and fairly successfully in displacing the location of these politics from within their own territories to their peripheries and states overseas, provoking some of the greatest contemporary outrage and concern in how the ethics over refugee protection is to be resolved. The states funding the UNHCR have managed to cultivate a shift in the organization's ethic from one of facilitating resettlement to one largely concerned with containing refugee flows close to the regions of displacement, privileging the option of repatriation and providing mere humanitarian assistance, as opposed to rights protection, until a return home is deemed possible. Some states, most notably Australia, have adopted this ethic on their own shores, establishing coastal detention centres for refugee claimants where assessment hearings are not eagerly pursued and return or simple repulsion is the ultimate aim. The bulk of resources are now placed into UNHCR-sponsored and state-operated refugee camps and centres of assistance in poor regions of Africa and southeast Asia, where refugee claimants are encouraged to remain until the UNHCR is able to negotiate safe return home. The effect is to treat the displacement of refugees as moments of regional emergency despite the fact that even some very large groups of persons have remained both displaced and contained under UNHCR assistance for several generations. It is typically the case that refugee status is determined by the UNHCR in its own camp settings, insulating the wealthier states from the obligations associated with refugee claims and assessment on their own soil in the future and allowing asylum states the opportunity to hand-pick refugees from the camps on the basis of an allegedly humanitarian immigration policy (see d auvergne 2005).

It is the emphasis that states now place on a mere humanitarianism that is drawing the greatest critical response from scholars (see Edkins 2000; Harrell-Bond 1986; Hyndman 2000; Kennedy 2004; Lischer 2005), provoking a wide-ranging rethinking about the politics of the whole category of refugee and the ethics of exclusionary citizenship as well (see Nyers 2006; Soguk 1999). An increasing number of studies now show that, on balance, the humanitarian assistance for refugees being provided for refugees in camp and detention situations simply fails to come close to addressing the reasons for their flight, or to protection of fundamental human rights and freedoms. Moreover, the conditions of life established in these sites of containment often allow for even more widespread and profound violation of refugee rights than were the reason for their initial displacement, along with the intensification of social and cultural problems that may already be present between persons under protection (see Silove *et al.* 2007; Szczepanikova 2005; Verdirame and Harrell-Bond 2005; Waters 2001). Instead, this assistance is directed at keeping people alive in secure containment facilities as if refugees are, at least temporarily, surplus humanity (see Agamben 1998, 119–35; Bauman 2004; Rajaram and Grundy-Warr 2004) until it is deemed by the UN that it is safe for them to return home. In this respect, like the LNHCR in different circumstances, the UNHCR has been involved even in the forcible return of refugees. In any event, as is established most clearly in Jennifer Hyndman's (2000) recent study of camps in eastern Africa and as is reflected in Savitri Taylor's (2005) argument for international cooperative address of irregular migration, international response to the plight of refugees is increasingly involving the management and control of them as populations, rendering them problems to be disciplined within the context of IR (see d ubernet 2001; Stedman and Tanner 2003; Welch 2004; 2005) and cultivating politics of resistance against state sovereignty at the same time (Moulin and Nyers 2007; Turner 2005). Rather than examine the fundamental problems in this assistance regime, the UNHCR and its supporters place greater emphasis, at the level of ethics, on curtailing what is known as 'refugee cheating', which amounts to what refugees and refugee claimants do to attempt self-protection and self-determination within the limits they suffer under protection, while not necessarily cooperating with UNHCR and state objectives (see Essed *et al.* 2004; Fangen 2006; Kibreab 2004; Kumsa 2006; McKelvey 1994; Rousseau and Foxen 2006; Turner 2006; Vincent and Sorensen 2001).

Facing Ethical Responsibilities of Refugee Politics

Given the very unsatisfying ways in which refugees have ultimately been situated and treated by UN organizations, the interplay of states, and academics themselves, some attention is being placed now on how research into refugees affairs brings with it the very ethical problem of objectification, and often these studies recommend as a solution that refugees must be brought in as participants in the research and analysis. The general suggestion here is that refugees must be empowered in the process of efforts by scholars, states and organizations to understand their situation

in IR and how the international community may best respond to refugee claims. yet as Giorgia d oná (2007) indicates, such efforts are themselves already deeply entwined with and conditioned by prior power relations within which the refugee and the researcher are set apart already as subject and object. As with the vast majority of the study of ethics in refugee issues, the position of civilian-citizen-subject is still conserved as one for whom ethics is an issue at the expense of relegating others as uncivilized-refugee-object and thus the concern of ethics. Consequently no engagement with the ethical relationships underlying the possibility of the two is yet permitted. The challenge of opening scholarship to direct engagement with the ethical dilemmas of refugees in IR remains one of finding approaches through which critical perspectives on the norms of citizenship, civility and emplacement may be effectively developed in relation to their politics of exclusion.

There are a few theorists who have pushed this very point and who have begun the work of problematizing the idea of citizenship in its relation to the constitution of refugeeness (see dillon 1999; Lui 2004; Malkki 1994; Nyers 2006; Soguk 1999; Warner 1992; Xenos 1993). Their works serve largely to trace the violences of refugee formation inherent to IR. However, the greater importance of this line of scholarship is its identification of the need to also develop a politics within the context of IR that can effectively open the citizen/refugee relation as an ethical problem for the purpose of a shift in ethical practice. And exploration of what this ethical politics might be has only just begun.

Perhaps it should come as no surprise, but serious exploration of this politics is not coming from the refugee studies literature itself. Rather it is being developed by scholars who are working most seriously to think critically about the ethics in IR, more generally, from which the study of refugees is constituted. The focus in this regard is a return of sorts to Immanuel Kant's (1991) renderings of the international, wherein all rational humans seek security, civility and ethical life within the protection of their own sovereign states but within the context of global cosmopolitan right for which states strive perpetually (see Shapiro 1998). Key to Kant's ethic is state recognition of citizens' rights to hospitality within each other's territories. Conventional IR sees an irresolvable conflict in this principle, which in turn informs contemporary debate over perceived tensions between citizens' territorially secured freedoms and the rights of refugees to make claims within spaces outside their homelands. yet, drawing directly from Jacques d errida's rereading of this apparent contradiction, an increasing number of scholars are exploring how this irresolvable tension is exactly what allows us to move forward with an ethical address of what has come to be understood as the plight of the refugee.

Taking inspiration from Emmanuel Lévinas's (1979; 1981) thinking through of the relationship of politics and ethics in terms of responsibility, d errida's (2000) basic point is that the position of emplacement enjoyed by citizens is not something that inherently inhibits ethical address of the displaced seeking asylum but rather is the basis from which such address may begin. He contends that one can welcome others only if one has formed or claimed such a space to call home, for it is only then that one has a threshold from which to be welcoming. Thus the excluding behaviour of asserting one's sovereign right to territory brings with it the

possibility of hospitality. However, in d errida's analysis, one's sovereign claim to one's territory as home is valid only insofar as one accepts the risk of an absolute hospitality to strangers. One's home is such only in as much as it is vulnerable to the claims of others. Otherwise one's claim to territory is little more than the tenuous seizure of space.

The d erridean politics of hospitality, however, does not amount to anything like the performance of absolute openness in borders, a position that would be dismissed quickly by those making security and immigration policy for any UN member. While he argues that an unconditional principle of hospitality must form one's ethical guide, this principle must also have practical and thus conditioned application. The principle must be realized through actual policies and political acts of welcoming. As conditioned and imperfect acts, though, they must also be rendered vulnerable to constant reconsideration and reformulation. d errida's point is that, as beings who wish to be at home, freely and securely, we open ourselves, irrecusably, to a principle of hospitality that will never be perfected but toward which we must always strive to approximate our laws and policies regarding those who seek refuge in our home. We establish the freedom and civility of our homes to the extent that we work to render these things vulnerable, hospitable – we have homes insofar as we are able to be hospitable.

Mustafa d ikeç (2002) makes the important point that what we may draw most usefully from d errida's views is that hospitality is not an ethical response if it is grounded in Kantian deductions regarding what we may claim already to know of strangers and how policies of hospitality may be arranged to suit them. Rather, hospitality is such if it is truly open, in such ways so that those to whom hospitality is granted are not already defined as 'refugees' or any other such object of law and so that the citizen at home is prepared to learn from the stranger about the character of their relationship in hospitality. Moreover, as one can see in efforts to think through the application of such an ethic in specific dilemmas of international politics (see Bulley 2006; Gibson 2003; Kandiyoti 2004; Kelly 2006; Popke 2004; Worth 2006), this notion of hospitality involves a constant willingness to experience the renegotiation of one's own sense of self and, thus, at-homeness in a mutually constituted place of learning and responsibility.

The d erridean approach is, of course, open to and provokes debate. It presents many ideas that are worthy of challenge, not the least of which is his notion of an inescapable claim to being at-home and the theory of subjectivity that may be at work within it. No matter what one may think of these ideas, though, d errida's analysis of hospitality and the efforts of those trying to rethink politics and ethics surrounding the possibility of refugees from this analysis finally do offer serious and important challenge to the ethical traps and dead-ends of IR. Instead of getting lost in the mutually reinforcing feedback loops of a communitarian versus cosmopolitan non-debate, these authors seek to appreciate and understand what is ethically at play in setting up the laws of international life in terms of state versus human freedoms from the start. Moreover, they seek political guides that may permit ongoing learning about the ethical demands of the relationships that humans establish with one another as they form them. This level of ethical

engagement is crucial. Without such creative critical exploration of the supposed grounds of ethical debate in IR, we doom ourselves to the formation of people as strangers and the irresponsible diminishing of them as such.

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2. Joseph Carens: The limits of our obligations to refugees

The Duty to Admit Refugees

Why should democratic states take in refugees at all? There are at least three kinds of reasons that can generate a duty to admit refugees: causal connection, humanitarian concern, and the normative presuppositions of the state system.⁸

The first rationale is causal connection. Sometimes we have an obligation to admit refugees because the actions of our own state have contributed in some way to the fact that the refugees are no longer safe in their home country.⁹ Americans—whether supporters or opponents of the war—recognized this in the wake of the Vietnam War and took in hundreds of thousands of refugees from Vietnam, Cambodia, and Laos. The United States has the same sort of obligation toward Afghan and Iraqi refugees, especially those forced to flee because their lives were put in danger as a result of their cooperation with American troops, but, by comparison with the response to Vietnam, the country has done comparatively little to meet this responsibility so far.

We should already be starting to think about environmental refugees—people forced to flee their homes because of global warming and the resulting changes in the physical environment. One argument is that the rich democratic states bear a major responsibility for these environmental changes and so have a duty to admit the people who are forced to leave their home states because of these changes. Of course, there are counter arguments, as there are in the wider debate about how to allocate the costs of responding to climate change.

The general point is simply that causal connections can generate moral duties. I will not attempt an assessment of the competing accounts of the causes of refugee flows in this book.¹⁰ That is beyond my competence. Obviously, the assignment of moral responsibility on the basis of causal connections will depend crucially on the interpretation of those causal connections.¹¹

A second source of the duty to admit refugees is humanitarian concern. We have a duty to admit refugees simply because they have an urgent need for a safe place to live and we are in a position to provide it. This sort of moral view has many different sources, secular and religious. I won't try to identify those sources here. It is enough to note that they exist and that they converge here on a sense of obligation to help people in dire need.¹² When I advanced my claims at the outset about our obligations to Jewish refugees, I was appealing intuitively to this overlapping consensus, to a shared sense, with many different foundations, that we ought to have opened our doors to these refugees.

A third way to think about the duty to admit refugees is to see it as something that emerges from the normative presuppositions of the modern state system. The modern state system organizes the world so that all of the inhabited land is divided up among (putatively) sovereign states who possess exclusive authority over what goes on within the territories they govern, including the right to control and limit entry to their territories. Almost all human beings are assigned to one, and normally only one, of these states at birth. Defenders of the state system argue that human beings are better off under this arrangement than they would be under any feasible alternative. There are ways of challenging that view, and I will consider some of them in the next chapter. For the moment, however, let's assume that it is correct.

Even if being assigned to a particular sovereign state works well for most people, it clearly does not work well for refugees. Their state has failed them, either deliberately or through its incapacity. Because the state system assigns people to states, states collectively have a responsibility to help those for whom this assignment is disastrous. The duty to admit refugees can thus be seen as an obligation that emerges from the responsibility to make some provision to correct for the foreseeable failures of a social institution. Every social institution will generate problems of one sort or another, but one of the responsibilities we have in constructing an institution is to anticipate the ways in which it might fail and to build in solutions for those failures. If people flee from the state of their birth (or citizenship) because it fails to provide them with a place where they can live safely, then other states have a duty to provide a safe haven. Thus, we can see that states have a duty to admit refugees that derives from their own claim to exercise power legitimately in a world divided into states.

These three rationales are complementary. All three can be relevant at the same time, and any one of them is sufficient to create at least a *prima facie* duty to admit refugees.

Four Sets of Questions

Given this general sense that there is some duty to admit refugees, how can we clarify the nature and extent of that duty for democratic states? Refugees raise four basic kinds of questions for the ethics of immigration. First, who should be considered a refugee? For the purposes of my inquiry, a refugee is someone whose situation generates a strong moral claim to admission to a state in which she is not a citizen, despite the absence of any morally significant personal tie to those living there (as in family reunification). What gives rise to this sort of moral claim?

Second, what is owed to refugees? At a minimum, refugees need a place where they can be safe, but do they have a moral claim to more than that? Should they receive an opportunity to build a new life—jobs, education for their children, and so on? Are they entitled to a permanent new home rather than just a temporary shelter?

Third, how should responsibilities for refugees be allocated among different states? In particular, what is the nature and extent of the obligation of democratic states to admit refugees? This is the most crucial question from the perspective of this book.

Finally, are there limits to our obligations to refugees and, if so, what are they? Is there some point at which a democratic state is morally entitled to say to refugees: "We know that you face genuine and dire threats, but we have done enough. You are not our responsibility. We leave you to your fate."

The Limits to Our Obligations to Refugees

The fourth and final question about our duties to admit refugees is the question of limits to obligation. One of the most striking features of the refugee regime created by the Geneva Convention is that it sets no limits to the obligation of states to protect refugees seeking asylum. States are permitted to turn away people who do not qualify as refugees, but not those who meet the Convention's standards, no matter how many of them there are. To be sure, even the commitments in the Geneva Convention are constrained by the responsibility of states to maintain public order. No one expects a state to admit so many refugees that it can no longer function. But this is a minimal constraint.⁴³

I speak here of principle. In practice, as we have seen, democratic states use techniques of exclusion that they know will prevent real refugees (as well as others) from arriving, thus limiting the demands that are actually made of them to admit refugees. However, the techniques of exclusion do not technically violate the principle of non-refoulement (at least for the most part). Democratic states do not acknowledge openly that these techniques exclude refugees who would otherwise be entitled to admission, nor do they claim openly that there are too many refugees with valid claims.

My proposal to make resettlement a moral duty would add to the demands being made upon democratic states with respect to the admission of refugees. Are these demands more than it is reasonable to expect democratic states to bear? To put the question I am asking another way, when, if ever, is a democratic state morally entitled to say to refugees: "We have done enough. We have to protect the interests and needs of our own citizens and residents. We recognize that you have genuine claims, that your physical security and vital subsistence needs will be jeopardised if we do not admit you, but we are going to refuse to do so."

Many people think that there is some point at which a democratic state's concern for its own interests and its own population may make it legitimate to shut the doors, even on people who clearly qualify as refugees. David Miller acknowledges that refugees have strong moral claims to admission, but he argues that these claims have limits:

There can be no guarantee...that every bona fide refugee will find a state willing to take her in....At the limit, therefore, we may face tragic cases where the human rights of the refugees clash with a legitimate claim by the receiving state that its obligation to admit refugees has already been exhausted.⁴⁴

When is this limit reached? When are we justified in turning away genuine refugees? This turns out to be a troubling question, to which neither Miller nor any

other theorist I have read offers either clear guidance or a satisfactory answer. My own answer is "almost never."

Given the moral presuppositions of the state system, it is certainly reasonable for a state to give priority to securing the basic rights of its own citizens and residents, over comparably urgent basic rights of outsiders.⁴⁵ If one takes the moral claims of refugees seriously, however, it is not clear why their claims to an admission which is necessary to protect their most basic rights should be subordinated to much less vital interests of members of the receiving state.

People sometimes say that the question of legitimate limits to the duty to admit refugees must ultimately be left to states themselves to decide. Miller's statement is again typical:

The final judgement must be left with the members of the receiving community who may decide that they have already done their fair share of refugee resettlement.⁴⁶

The considerations that Miller says should go into determining a state's "fair share" are similar in many ways to the ones I advanced above in my discussion of the allocation of responsibility for admitting refugees. He seems to think, however, that we are obliged to take at face value a state's judgment about the extent of its responsibilities for refugees, about what constitutes its own fair share.

The difficulty with this sort of position, as we have seen repeatedly in this book, is that it conflates the question of who ought to make a decision with the question of whether a given decision is justifiable. The fact that a state has the moral right to make a decision does not entail the view that its decision is justifiable or that it is immune from criticism. Having the right to make a decision is not the same as having a right to act arbitrarily or with complete discretion. Even if no other party has or should have authority to overrule a decision, we may still be in a position to criticize it. For example, one may think that it is appropriate that the Supreme Court of the United States should have the final say on what the Constitution requires and still think that it has made a decision which is legally and morally indefensible in a particular case such as *Plessy v. Ferguson* or *Bush v. Gore*.

When the United States refused to admit Jewish refugees from the *St. Louis*, those who defended the decision asserted that America had already done its fair share of refugee resettlement, especially given the difficult economic circumstances of the time. When I criticize that decision and assert that the American response to Jewish refugees was a profound moral failure, I am not claiming that there ought to have been some supranational authority that decided how many refugees the United States would admit. I am simply saying that Americans should have made a different decision, that their collective moral judgment was

deeply flawed. The mere fact that the members of a potential receiving society think they have already done enough to meet their obligations to refugees is not, in itself, sufficient to establish that they have done enough.

Recall the approach that I proposed at the outset, that we ask what any proposed principles would have implied for our response to Jewish refugees fleeing Hitler. I have assumed from the outset that my readers will agree that turning away those refugees was wrong, that no appeal to the limits to our obligations would have justified closing the door on them. If someone wants to accept that premise but still wants to defend the possibility that the exclusion of genuine refugees in some other case would be justifiable, that person should explain what distinguishes the legitimate case of exclusion from the indefensible one.

I do not claim that it is impossible to imagine circumstances in which the exclusion of refugees might be defensible. I have already acknowledged the public order constraint, and it is possible that there would be other circumstances in which admitting more refugees would bring such high costs to the basic interests of those in the receiving society that exclusion would be justifiable. As Hume reminds us, one of the background conditions for justice is limited scarcity. If everyone were in dire need, it might be unreasonable to expect people to do more than look out for their own.

In the real world, however, this is a purely hypothetical speculation. I do not see how any democratic state in Europe or North America today could make the case that it has taken in so many refugees that it is now morally entitled to turn real refugees away. Indeed, if the argument I have advanced is correct, all of these states have a moral duty to resettle (more) refugees and are failing to meet that duty.

As I have already pointed out, the vast majority of refugees find shelter in neighboring states. Those states would have a much stronger basis to cry "Enough!" and some have occasionally done so, though even then, generally without sufficient grounds. For the most part, however, they have let the refugees in. There is a certain irony here. Immigrants from poor, illiberal, authoritarian, and religiously conservative states are often constructed as threats to the admirable values and practices of democratic states. When it comes to the admission of refugees, however, the former states have made room for millions of human beings in desperate need while most of the latter have devoted their energies to keeping refugees out.

I do not mean to romanticize the refugee-receiving states. To some degree their openness to refugees has been a matter of their inability to keep the refugees out rather than their willingness to let them in (though even poor states have soldiers with guns). Some states allow refugees in for political reasons and some (like Iran) simultaneously admit large numbers of refugees from elsewhere

and generate large numbers of their own refugees. Nevertheless, the contrast between the numbers admitted in North and South is stark.

The desire to set limits to our obligation to admit refugees is understandable, given the background presuppositions of the state system. Each state is supposed to protect the basic human rights of those within its own jurisdiction. If every state did this, we would not have to worry about admitting refugees at all. The responsibility to admit refugees is a secondary, derivative duty. Our state has a responsibility to admit refugees only because some other state has failed to carry out its own primary moral duty.⁴⁷ So, in a way, it makes sense that states resent being asked to take in refugees. This does not make it legitimate to exclude the refugees, however, or, worse still, to blame them. Anger at Nazis for creating a refugee problem should not have been transformed, as it sometimes was, into resentment of Jews.

Another concern that underlies the quest for limits is the fear that, without such limits, those states that are willing to fulfil their obligations to refugees could face an endless ratcheting up of their responsibilities. As we have just seen, admitting refugees is a secondary moral duty arising from the failure of some states to fulfil their primary moral duty. But suppose that we had a fairer allocation of responsibilities for refugees, including a formal duty to admit refugees for resettlement, and then other states failed to fulfil this duty (that is, failed to admit their fair share of refugees for resettlement). Would the states that were willing to meet their secondary responsibilities then be faced with a tertiary responsibility? Would they be obliged to take up the slack, admitting still more refugees for resettlement than required by their initial fair share, because the refugees' moral claims to membership in some society would otherwise go unmet? I see no clear answer to this question.

Some have tried to justify the adoption of the techniques of exclusion by rich democratic states along these lines, suggesting that it is a reasonable response to the dynamic of cascading moral failures that threatened to impose greater burdens on the ones who continued to fulfill their responsibilities. The problem with this line of argument is that there is little evidence that states adopting the techniques of exclusion have tried to ensure that they were receiving their fair share of refugees through the resettlement process. (Sweden may be the exception that proves the rule.)

Some will be inclined to view the ratcheting up issue as a collective action problem. While there are similarities with respect to the challenges of coordination, information, and enforcement that we face in dealing with collective action problems, there is one fundamental difference that makes the creation of a satisfactory refugee regime much more difficult: the absence of any common interest. Treating refugees justly serves relatively few state interests.

Morality and Self-Interest

What makes the issue of refugees especially difficult is that it involves a deep conflict between interests and morality. If we think about ordinary morality, it is striking how many moral principles, habits, and practices fit very well with self-interest, as conventionally understood, so long as one takes a long-term or "enlightened" view of self-interest.⁴⁸ Indeed, a lot of ordinary morality could be seen as an aid to self-interest in the sense that it prevents the emergence of the collective action problems that arise when people act only on the basis of a narrow and immediate view of self-interest. For example, it is a familiar point that capitalist market systems function much better in contexts where most people are honest most of the time, and the prevailing culture discourages graft, corruption, and theft. It is not necessary for there to be perfect compliance for people to see that these sorts of moral norms and habits are a public good, that they make everyone's lives better off. This recognition reinforces the norms, making it even more likely that honesty will be the best policy most of the time.

As a general matter, it is much easier to get people to follow a course of action recommended on moral grounds when it fits with self-interest in the way I have just outlined than when it does not. Finding ways to present moral arguments that draw attention to the links between morality and interest make it more likely that the moral arguments will be accepted. This approach is common in politics, and it can do a lot of good in guiding policies in ways that make them more ethical.

This applies to the ethics of immigration as well as to other areas. Take an example from one of the earlier chapters: providing public education and basic health care to the children of migrants who settle without authorization. This is the right thing to do from a purely moral perspective, but it is easier to persuade people to go along with the idea because it is so clearly in everyone's interest not to have children growing up in our society without a basic education or with medical conditions that might pose a risk to others.

One could make similar arguments about the collective interests served by adopting citizenship rules that include the children of immigrants in the political community, by providing the same economic and social rights to residents as to citizens, by creating a societal culture in which all feel included and respected, and by granting immediate family members a right to join citizens and residents. Even providing legal rights to irregular migrants is often in the interests of ordinary citizens for reasons I laid out in chapter 7. In all these cases, the requirements of justice and prudence largely coincide or, at least, correspond closely enough that it is possible to persuade people to do the right thing.

That is not always the case. Morality cannot be entirely reduced to enlightened self-interest. Sometimes morality and self-interest do not reinforce one

another, even in the long run. Any morality worth the name will contain views of right and wrong, or good and bad that *may* clash with self-interest, even enlightened self-interest, under some circumstances.

I am afraid that refugee policy is today one of those areas where the gap between what morality requires and what serves even long run self-interest is so great that interest can do very little work in supporting morality. During the Cold War, this was somewhat different. The openness of the West to refugees from communism was often trumpeted as one of the marks of the superiority of capitalism over communism. The connection between morality and interest in this area was maintained in part by the fact that the communists rarely permitted people to leave so that the Western states did not have to take in many refugees, and in part by the fact that the movement of asylum claimants from poor to rich countries had not yet begun so that the West could not be accused of hypocrisy in excluding them.

Today, it is much harder to show what interests are served by openness to refugees. One can try to link concern for refugees with self-interest by appealing to a collective self-image. Both Canada and the United States pride themselves on being generous because they take in more refugees than most other states. This sort of appeal has some purchase but also significant limits. It is fine so long as the demands posed by the intake of refugees are perceived not to be too burdensome, but it is vulnerable to changes in both circumstances and perceptions. One can also appeal to a form of self-interest by encouraging identification with refugees, but this becomes harder the more the refugees are removed from most of the existing population by cultural or geographical distances.

I am not suggesting that discussions of refugee policy should ignore the connections between morality and self-interest. On the contrary, as I have pointed out, it is appropriate to try to think of ways to reduce the incentives to make opportunistic use of the asylum system and to reduce the incentives to employ techniques of exclusion. Where we can, we should seek a better alignment of interests and morality. The real problem, in my view, is that the admission of refugees does not really serve the interests of rich democratic states.

The fact that morality sometimes requires actions that do not contribute to self-interest does not matter very much so long as it does not require any great sacrifice of self-interest either. The admission of refugees raised few political issues when the numbers were small. When the number of asylum claimants increased, however, the tension between morality and self-interest became greater. In the modern world, there are many millions of people who clearly qualify as refugees under any reasonable definition of the term and many of them need permanent new homes outside their states of origin. There is now, I fear, a deep conflict between what morality requires of democratic states with

respect to the admission of refugees and what democratic states and their existing populations see as their interests.

I have argued in this chapter that democratic states have a moral duty to provide refugees with a safe place to live in the aftermath of their flight and to provide them with a new home if they are unable to return safely to their state of origin within a reasonable time. I have argued further that the refugee regime created by the Geneva Convention meets some of these duties but also that it suffers from a number of important moral flaws. I have shown how it would be possible in theory to construct a better refugee regime that preserved the virtues of the Geneva Convention while remedying its flaws, and, in particular, one that allocated responsibilities for refugees more fairly. But this would require an expansion of existing commitments toward refugees, especially with respect to resettlement. That sort of expansion would not extend the obligations to refugees beyond reasonable limits, but given the ways in which it would conflict with the interests of states, we cannot be too optimistic that democratic states will be willing to do what they ought to do in admitting refugees. Needless to say, I hope that my pessimism is misplaced.

3. David Miller: Immigration and Territorial Rights

V

Let me begin with the obligations of a receiving state towards people whose basic human rights are being violated or threatened in their

²⁸ I have defended this assumption at some length in *On Nationality* (Oxford: Clarendon Press, 1995), esp. chs. 4–5.

current place of residence. Such people are usually described as refugees. In current international law, refugees are defined as people who have fled their home country as a result of a well-founded fear of persecution or violence, but there is clearly a good case for broadening the definition to include people who are being deprived of rights to subsistence, basic health care, etc.²⁹ When a refugee applies to be admitted to a state that is able to guarantee her such rights, then *prima facie* the state in question has an obligation to let her in. For several reasons, however, this does not translate into an automatic right to immigrate.

One reason is that the refugee's immediate claim is to *sanctuary*, to be in a place where her basic rights are no longer under threat. This can be achieved by granting her temporary residence in the country she has applied to move to, in the expectation that she will in due course return to her native land when the threat has passed.³⁰ For people who are escaping episodes of political turbulence or short-lived civil wars, this may be an appropriate solution. Another possibility is to establish safety zones for refugees close to their homes and then deal with the cause of the rights-violations directly—whether this means sending in food and medical aid, or intervening to remove a genocidal regime from power. In both cases there is a danger that the temporary solution becomes semi-permanent, and this is unacceptable because refugees are owed more than the immediate protection of their basic rights—they are owed the opportunity to make a decent life for themselves in the place that they live. So if a person is admitted on a temporary basis, but after some years it becomes clear that there is no realistic chance of his returning safely to his country of origin, he must then be given the chance of acquiring full citizenship rights in the country he has moved to. Equally, refugee camps and other forms of temporary shelter may be acceptable in the short term as a response to disaster, but they must not become permanent settlements by default.

²⁹ See A. Shacknove, 'Who Is a Refugee?', *Ethics*, 95 (1985), 274–84; M. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004), Introduction.

³⁰ See J. C. Hathaway, and R. A. Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection', *Harvard Human Rights Journal*, 10 (1997), 115–211.

As the number of people claiming refugee status begins to rise—as it has done in recent decades—the question of *which* state has the obligation to take them in becomes more pressing. By convention the responsibility falls to the state on whose territorial border they appear to make their admission claim, but clearly this mechanism distributes the burden of coping with refugees in an arbitrary way (and gives states an incentive to make it more difficult to arrive at their borders).³¹ Since the obligation to offer protection is shared among all those states that are able to provide refuge, in an ideal world one might envisage some formal mechanism for distributing refugees among them. However, the difficulties in devising such a scheme are formidable.³² To obtain agreement from different states about what each state's refugee quota should be, one would presumably need to start with simple and relatively uncontroversial criteria such as population or per capita GDP. But this leaves out of the picture many other factors, such as population density, the overall rate of immigration into each state, cultural factors that make absorption of particular groups of refugees particularly easy or difficult, and so forth—all factors that would differentially affect the willingness of political communities to accept refugees and make agreement on a scheme very unlikely. Furthermore, the proposed quota system pays no attention to the choices of the refugees themselves as to where to apply for sanctuary, unless it is accompanied by a compensatory scheme that allows states that take in more refugees than their quota prescribes to receive financial transfers from states that take in less.³³

Realistically, therefore, states have to be given considerable autonomy to decide on how to respond to particular asylum applications: besides the refugee's own choice, they are entitled to consider the overall number of applications they face, the demands that

³¹ This is the effect of the so-called *non-refoulement* principle, which prohibits states from forcing individuals to return to territories where their lives would be threatened. For discussion, see Gibney, *The Ethics and Politics of Asylum*, ch. 8.

³² For recent attempts to do this, see Hathaway and Neve, 'Making International Refugee Law Relevant Again' and P. Schuck, 'Refugee Burden-Sharing: A Modest Proposal', *Yale Journal of International Law*, 22 (1997), 243–97. See also Carens, 'The Rights of Immigrants', 152–7.

³³ For an excellent discussion of the wider ethical issues raised by refugee quota and trading schemes, see M. Gibney, 'Forced Migration, "Engineered" Regionalism and Justice between States', in Susan Kneebone and Felicity Rawlings-Sanei (eds), *New Regionalism and Asylum Seekers* (Oxford: Berghahn, forthcoming 2007).

temporary or longer-term accommodation of refugees will place on existing citizens, and whether there exists any special link between the refugee and the host community—for instance, similarities of language or culture, or a sense of historical responsibility on the part of the receiving state (which might see itself as somehow implicated among the causes of the crisis that has produced the refugees). The best hope is that over time conventions will emerge that distribute responsibilities in such a way that refugees from particular places become the special responsibility of one state in particular (or a coalition of several states). There can be no guarantee, however, that every bona fide refugee will find a state willing to take her in. The final judgement must rest with the members of the receiving state, who may decide that they have already done their fair share of refugee resettlement. Recall a point made in Chapter 2: the duty we are considering is a duty either to prevent rights violations being inflicted by third parties (if the refugees are fleeing violence or political persecution) or to secure the rights of people where others have failed in their responsibility (if the refugees are escaping food shortages caused by economic mismanagement, say). Such duties are weaker than the negative duty not to violate human rights oneself, and arguably weaker than the positive duty to secure the rights of those we are specifically responsible for protecting. At the limit, therefore, we may face tragic cases where the human rights of the refugees clash with a legitimate claim by the receiving state that its obligation to admit refugees has already been exhausted.³⁴

Refugees, then, have a very strong, but not absolute, right to be admitted to a place of safety, a right now widely recognized in both law and political practice. But what of immigrants who are moving for reasons other than a threat to their basic rights? On what grounds may admission decisions be taken? There has been a very marked change over time in the practice of liberal states on this issue.³⁵ Going back half a century or so, it was regarded as acceptable for states to discriminate openly on ethnic or cultural grounds, giving preference in admission to those who were seen as 'kith and kin' or who came from particular places whose

³⁴ c.f. here the discussion in Walzer, *Spheres of Justice*, 48–51.

³⁵ See C. Joppke, *Selecting by Origin: Ethnic Migration in the Liberal State* (Cambridge, MA: Harvard University Press, 2005), esp. chs. 1 and 5.

4. Francis Fukuyama: Identity, Immigration, and Liberal Democracy

[...]

Identity and the Hole in Liberal Theory

[...]

expectations of one's parents, kin, village, or priest.

Taylor points out that modern identity is inherently political, because it ultimately demands *recognition*. One's inner self is not just a matter of inward contemplation; it must be intersubjectively recognized if it is to have value. The idea that modern politics is based on the principle of universal recognition comes from Hegel. Increasingly, however, it appears that universal recognition based on a shared humanity is not enough, particularly on the part of groups that have been discriminated against in the past. Hence modern identity politics revolves around demands for recognition of group identities—that is, public affirmations of the equal dignity of formerly marginalized groups, from the Québécois to African-Americans to women to indigenous peoples to homosexuals.

It is no accident that Charles Taylor is Canadian, since contemporary multiculturalism and identity politics were in many ways born in Canada with the demands of the Francophone community for recognition of its rights as a “distinct society.” The latter’s codification in the Meech Lake amendment to the Canadian Charter of Rights and Freedoms violates the liberal principle of equal individual rights: French speakers enjoy linguistic rights not shared by English speakers. It is illegal, for example, for Francophones or immigrants to send their children to an English-speaking school in Quebec, while a similar law singling out Anglophones would not be permitted in Alberta or British Columbia.⁵

Multiculturalism, understood not just as tolerance of cultural diversity in de facto multicultural societies but as the demand for legal recognition of the rights of ethnic, racial, religious, or cultural groups, has now become established in virtually all modern liberal democracies. U.S. politics over the past generation has been consumed with controversies over affirmative action, bilingualism, and gay marriage, driven by formerly marginalized groups that demand recognition not just of their rights as individuals, but of their rights as members of groups. The United States’ Lockean tradition of individual rights has meant that these efforts to assert group rights have been tremendously controversial. As we will see, there is a tremendous divergence between the United States and other advanced democracies in the way that group rights are treated.

Radical Islamism and Identity Politics

The radical Islamist ideology that has motivated many of the terror attacks over the past decade must be seen in large measure as a manifes-

tation of modern identity politics rather than as an assertion of traditional Muslim culture. As such, it is something quintessentially modern, and thus familiar to us from earlier extremist political movements. The fact that it is modern does not make it less dangerous, but it helps to clarify the problem and its possible solutions.

The argument that contemporary radical Islamism is a form of identity politics has been made most forcefully by the French scholar Olivier Roy in his book *Globalized Islam*.⁶ According to Roy, the root of radical Islamism is not cultural—that is, it is not a byproduct of something inherent in or deeply essential to Islam or the cultural system that this religion has produced. Rather, he argues, radical Islamism has emerged because Islam has become *detrterritorialized* in such a way as to throw open the whole question of Muslim identity.

The question of identity does not come up at all in traditional Muslim societies, as it did not in traditional Christian societies. In a traditional Muslim society, an individual's identity is given by that person's parents and social environment; everything, from one's tribe and kin to the local imam to the political structure of the state, anchors one's identity in a particular branch of Islamic faith. It is not a matter of personal choice. Like Judaism, Islam is a highly legalistic religion, meaning that religious belief consists of conformity to a set of externally determined social rules. These rules are highly localized in accordance with the traditions, customs, saints, and practices of specific places. Traditional religiosity is not universalistic despite Islam's doctrinal universalism.

According to Roy, identity becomes problematic precisely when Muslims leave traditional Muslim societies by, for example, emigrating to Western Europe. One's identity as a Muslim is no longer supported by the outside society; indeed, there is strong pressure to conform to the Western society's prevailing cultural norms. The question of authenticity arises in a way that it never did in the traditional society, since there is now a gap between one's inner identity as a member of a Muslim cultural community and one's behavior vis à vis the surrounding society. This explains the constant questioning of imams on Islamist Web sites about what is *haram* (prohibited) or *hallal* (permitted): The question of whether, for example, it is *haram* to shake hands with a female professor never comes up in Saudi Arabia because such a social category does not exist.

Radical Islamism and jihadism arise precisely in response to the resulting quest for identity. It is Osama bin Laden who can answer the question of "Who am I?" posed by a young Muslim in Holland or France: You are a member of a global *umma* defined by adherence to a universal Islamic doctrine that has been stripped of all of its local customs, saints, traditions, and the like. Muslim identity thus becomes a matter of inner belief rather than outward conformity to social practice. Roy points out that this constitutes the "Protestantization" of Muslim belief, where

salvation lies in a subjective state that is at odds with one's outward behavior. Thus could Mohamed Atta and several of the other September 11 conspirators drink alcohol and visit a strip club in the days before carrying out their attacks.

Understanding radical Islamism as a form of identity politics also explains why second- and third-generation European Muslims have turned to it. First-generation immigrants have usually not made a psychological break with the culture of their land of birth and carry traditional practices with them to their new homes. Their children, by contrast, are often contemptuous of their parents' religiosity, and yet have not become integrated into the culture of the surrounding Western society. Stuck between two cultures with which they cannot identify, they find a strong appeal in the universalist ideology offered by contemporary jihadism.

Olivier Roy overstates the case for viewing radical Islamism as a primarily European phenomenon; there are plenty of other sources for radical ideologies coming out of the Middle East. Saudi Arabia, Pakistan, Iran, and Afghanistan have all exported radical Islamist ideology, and Iraq may do so in the future. But even in Muslim countries, Roy's analysis remains valid to an important degree because it is these societies' confrontation with modernity that produces the crisis of identity and radicalization. Globalization, driven by the Internet and tremendous mobility, has blurred the boundaries between the developed world and traditional Muslim societies. It is not an accident that so many of the perpetrators of recent terrorist plots and incidents either were European Muslims radicalized in Europe or came from privileged sectors of Muslim societies with opportunities for contact with the West. Mohamed Atta and the other organizers of the September 11 attacks fall into this category, as do Mohammed Bouyeri (the murderer of Dutch filmmaker Theo van Gogh), the March 11 Madrid bombers, and the July 7 London bombers. In addition, there was an extensive network of mostly Moroccan terrorists, operating out of the Belgian town of Maaseik, which supported the bombings in Casablanca and Madrid before being broken up by the police.⁷ It should be noted that al-Qaeda leaders Osama bin Laden and Ayman al-Zawahiri are both highly educated men with plenty of knowledge of and access to the modern world.

If contemporary radical Islamism is properly understood as a product of identity politics and hence a modern phenomenon, then two implications follow. First, we have seen this problem before in the extremist politics of the twentieth century, among the young people who became anarchists, Bolsheviks, fascists, or members of the Bader-Meinhof gang. As Fritz Stern, Ernest Gellner, and many others have shown, modernization and the transition from *Gemeinschaft* to *Gesellschaft* constitute an intensely alienating process that has been negatively experienced by countless individuals in different societies.⁸ It is now the turn of young Muslims to experience this. Whether there is anything specific to the

Muslim religion that encourages this radicalization is an open question. Since September 11, a small industry has sprung up trying to show how jihad, violence, and even suicide bombing have deep Koranic or historical roots. It is important to remember, however, that at many periods in history Muslim societies were more tolerant than their Christian counterparts. Maimonides was born in Muslim Cordoba, which was an incredibly diverse center of learning and culture; Baghdad for many generations hosted one of the world's largest Jewish communities. It would make no more sense to see contemporary radical Islamism as an inevitable outgrowth of Islam than to see fascism as somehow the culmination of a Christian European cultural tradition.

Second, the problem of jihadist terrorism will not be solved by bringing modernization and democracy to the Middle East. The Bush administration's view that terrorism is driven by a lack of democracy overlooks the fact that so many terrorists were radicalized in democratic European countries. It is highly naïve to think that radical Islamists hate the West out of ignorance of what the West is. Modernization and democracy are good things in their own right, but in the Muslim world they are likely to increase rather than dampen the terrorist problem in the short run.

Identity in Europe and North America

If Muslims in the West feel caught between the identity of their parents and the identity of the country in which they live, where does the latter come from? Liberal societies are known for having weak identities; many celebrate their own pluralism and multiculturalism, arguing in effect that their identity is to have no identity. Yet the fact of the matter is that national identity still exists in virtually all contemporary liberal democracies. The nature of national identity, however, is different in North America than it is in Europe, which goes far in explaining why the integration of Muslims is so difficult in countries like the Netherlands, France, and Germany.

American identity was one of Seymour Martin Lipset's chief preoccupations throughout his career, as elucidated in works from *The First New Nation* to *American Exceptionalism*. According to Lipset, American identity was always political in nature and was powerfully influenced by the fact that the United States was born from a revolution against state authority.⁹ The American creed was based on five basic values: equality (understood as equality of opportunity rather than outcome), liberty (or anti-statism), individualism (in the sense that individuals could determine their own social station), populism, and *laissez-faire*. Because these qualities were both political and civic, they were in theory accessible to all Americans and have remained remarkably durable over the republic's history. Robert Bellah once described

the United States as having a "civic religion," but it is a church that is open to the country's newcomers.¹⁰

In addition to these aspects of political culture, American identity is also rooted in more narrowly ethnic traditions, what Samuel Huntington has labeled "Anglo-Protestant" culture.¹¹ Lipset agreed that the religious traditions of America's British settlers—what he described as the sectarian nature of American Protestantism—were very important in the shaping of American culture. The famous Protestant work ethic, the American proclivity for voluntary association (which still today remains rooted in the congregational nature of American religion), and the moralism of American politics are all by-products of this Anglo-Protestant heritage.

But while key aspects of American culture are rooted in particular European cultural traditions, by the beginning of the twenty-first century they had become deracinated from their ethnic origins and were practiced by a host of new Americans. Americans work much harder than do Europeans, and they tend to believe—like Weber's early Protestants—that dignity lies in morally redeeming work rather than in the social solidarity of a welfare state.¹² But who in today's America works hard? It is much more likely to be a Russian cab driver, a Korean shopkeeper, or a Mexican day-laborer than a white Anglo-Saxon Protestant.

There are, of course, many aspects of contemporary American culture that are not so pleasant. The culture of entitlement, consumerism, Hollywood's emphasis on sex and violence, and the underclass gang culture that the United States has reexported to Central America are all distinctively American characteristics that some immigrants come to share. Lipset argued that American exceptionalism was a double-edged sword: The same anti-statist proclivities that made Americans entrepreneurial also led them to disobey the law to a higher degree than Europeans.

European identity, by contrast, is much more confused. In the period following the Second World War, there has been a strong commitment throughout most of Europe to creating the same kind of tolerant and pluralist political identity that characterizes the United States—the "post-national" ideal promoted by intellectuals like Jürgen Habermas and embodied in the European project. But despite the progress that has been made in forging a strong European Union, European identity remains something that comes from the head rather than the heart. While there is thin layer of mobile, cosmopolitan Europeans, few think of themselves as generic Europeans or swell with pride at the playing of the European anthem. With the defeat of the European constitution in referenda in France and the Netherlands in 2005, core European publics seemed to be telling elites that they were not yet ready to give up on the nation-state and sovereignty.

National identity—that is, identity at the member-state level—has been officially frowned upon since the beginning of the European

project. The most formative experience for contemporary European consciousness was the First World War, which Europeans tend to blame on nationalism and out-of-control sovereignty. The fascist past of many European countries and its association with nationalism make it inconceivable that a German or a Spaniard would wave the national flag the way that Americans did after September 11.

Yet Europe's old national identities continue to hang around like unwanted ghosts. In each member state, people still have a strong sense of what it means to be French or Dutch or Italian, even if it is not politically correct to affirm these identities too strongly or to engage in public discussions of what they mean. And national identities in Europe, compared to those in the Americas, remain far more blood-and-soil based, accessible only to those ethnic groups who initially populated the country.

Germany, for example, had a citizenship law that, until it was changed in 2000, was based on *jus sanguinis* rather than *jus solis*, meaning that one had to have a German mother to qualify for citizenship.¹³ A second- or third-generation Turk who spoke only German had a harder time achieving naturalization than a recent ethnic German refugee from Russia who spoke not a word of German. Germans often would say that theirs was not a land of immigration like the United States, despite the fact that their cities were filling up with hordes of non-European guest workers and refugees.¹⁴

The Dutch, by contrast, are famous for their pluralism and tolerance and do not share the Germans' nationalist legacy. Yet in the privacy of their own homes, the Dutch remain quite socially conservative: It is much easier for them to tolerate cultural difference when it is practiced in other, parallel communities rather than in their own. Dutch society has been multicultural without being assimilative, something that fit well into a consociational society that was traditionally organized into separate Protestant, Catholic, and socialist *verzuilingen*, or pillars.¹⁵

While other European countries do not formalize the corporatist organization of society in pillars, most tend to conceive of multiculturalism in a similar manner—as a framework for the coexistence of separate cultures rather than a transitional mechanism for integrating newcomers into the dominant culture. Many Europeans express skepticism about whether Muslim immigrants want to integrate, yet those who do are not always eagerly welcomed, even if they have acquired the language and basic cultural knowledge of the dominant society. In the United States, by contrast, first-generation Guatemalan or Vietnamese immigrants can say proudly after taking the oath of citizenship that they are Americans, and no one will laugh at them for that.¹⁶

It is important not to overstate the differences between the United States and Europe in this regard. Europeans argue with some justice that they face a harder problem in integrating their immigrants—the majority of whom are Muslim—than does the United States, where the vast

bulk of newcomers are Hispanic and share the Christian heritage of the dominant native cultural group. Numbers also matter: In the United States there are between two and three million Muslims in a country numbering nearly 300 million; were this Muslim population proportionally the same size as in France, there would be over 20 million.

What Is the Solution?

Europe's failure to better integrate its Muslims is a ticking time bomb that has already resulted in terrorism and violence. It is bound to provoke an even sharper backlash from nativist or populist groups and may in time threaten European democracy itself. Resolution of this problem will require a two-pronged approach, involving changes in behavior by immigrant minorities and their descendants as well as by members of the dominant national communities.

The first prong of the solution is to recognize that the old multicultural model was a failure in such countries as the Netherlands and Britain, and that it needs to be replaced by more energetic efforts to integrate non-Western populations into a common liberal culture. The old multicultural model was based on group recognition and group rights. Out of a misplaced sense of respect for cultural differences, it ceded entirely too much authority to cultural communities to define rules of behavior for their own members. Liberalism cannot ultimately be based on group rights, because not all groups uphold liberal values. The civilization of the European Enlightenment, of which contemporary liberal democracy is the heir, cannot be culturally neutral, since liberal societies have their own values regarding the equal worth and dignity of individuals. Cultures that do not accept these basic premises do not deserve equal protection in a modern liberal democracy. Members of immigrant communities and their offspring deserve to be treated equally *as individuals*, not as members of cultural communities. Thus, there is no reason for a Muslim girl to be treated differently under the law from a Christian or Jewish one, whatever the feelings of her relatives.

Multiculturalism, as it was originally conceived in Canada, the United States, and Europe, was in some sense a "game at the end of history." That is, cultural diversity was seen as a kind of ornament to liberal pluralism that would provide ethnic restaurants, colorful dress, and traces of distinctive historical traditions to societies often seen as numbingly conformist and homogeneous. Cultural diversity was something to be practiced largely in the private sphere, where it would not lead to any serious violations of individual rights or otherwise challenge the essentially liberal social order. Where it did intrude into the public sphere, as in the case of language policy in Quebec, the deviation from liberal principle was seen by the dominant community more as an irritant than as a fundamental threat to liberal democracy itself.¹⁷

By contrast, some contemporary Muslim communities are making demands for group rights that simply cannot be squared with liberal principles of individual equality. These demands include special exemptions from the family law that applies to everyone else in the society, the right to set up special religious schools with state support, and the right to exclude non-Muslims from certain types of public events. In some more extreme cases, Muslim communities have even expressed ambitions to challenge the secular character of the political order as a whole. These types of group rights clearly intrude on the rights of other individuals in the society and push cultural autonomy well beyond the private sphere.¹⁸

Asking Muslims to give up group rights is much more difficult in Europe than in the United States, however, because many European countries have corporatist traditions that continue to respect communal rights and fail decisively to separate church and state.¹⁹ We have already mentioned the "pillarization" that exists in the Netherlands and Belgium. The publicly funded Protestant and Catholic schools in those countries have by now been largely emptied of religious content, but the same is not true for Muslim schools, and the existence of the former makes it hard to argue in principle against state-supported religious education for Muslims. In Germany, the state collects taxes on behalf of the Protestant and Catholic churches and distributes revenues to church-related schools. This was a legacy of Bismarck's *Kulturkampf* in the late nineteenth century, when the newly unified German state tried to subdue the Catholic Church as an independent political force, but managed only partially to digest it. Even France, with its strong republican tradition, has not been consistent on this issue. After the French revolution's anti-clerical campaign, Napoleon's 1805 Concordat restored the role of religion in education and used a corporatist approach to manage church-state relations. The state's relationship with France's Jewish community, for example, was managed by the *Ministre de Cultes* through the *Consistoire Israelite*, which in many ways served as the model for Nicolas Sarkozy's recent efforts to create an authoritative Muslim interlocutor to speak for (and to control) the French Muslim community. Even the 1905 law enshrining the principle of *laïcité* had exceptions, as in Alsace, where the French state still supports church-related schools.

These islands of corporatism where European states continue to officially recognize communal rights were not controversial prior to the arrival of large Muslim communities. Most European societies had become thoroughly secular, so these religious holdovers seemed quite harmless. But they set important precedents for the Muslim communities, and they will be obstacles to the maintenance of a wall of separation between church and state. If Europe is to establish the liberal principle of a pluralism based on individuals rather than communities, then it must address these corporatist institutions inherited from the past.

The other prong of the solution to the problem of Muslim integration

concerns the expectations and behavior of the majority communities in each European country. National identity has not disappeared, and it often continues to be understood in ways that make it inaccessible to newcomers who do not share the ethnicity and religious background of the native-born. As a first step, rules for naturalization and legal citizenship need to be put on a nonethnic basis and the conditions made less onerous. Beyond this, however, each European nation-state needs to create a more inclusive sense of national identity that can better promote a common sense of citizenship. National identity has always been socially constructed; it revolves around history, symbols, heroes, and the stories that a community tells about itself. The history of twentieth-century nationalism has put discussions of national identity off-limits for many Europeans, but this is a dialogue that needs to be reopened in light of the *de facto* diversity of contemporary European societies.

Germany's Christian Democrats gingerly broached this subject after the revision of the citizenship law in 2000 by floating the idea of *Leitkultur*, the notion that German citizenship entails certain obligations to observe standards of tolerance and equal respect. The term *Leitkultur* (a term that can be translated as a "guiding" or "reference culture") was invented by Bassam Tibi, a Syrian academic living in Germany, precisely as a nonethnic, universalist conception of citizenship that would open up national identity to nonethnic Germans.²⁰ Despite these origins, the idea was immediately denounced by the Left as racist and a throwback to Germany's unhappy past, and the Christian Democrats quickly distanced themselves from it.²¹ But Tibi's original notion was exactly on the mark, and its short shelf-life only serves to indicate how big an obstacle political correctness is to open discussion of national identity.

Many Europeans insist that the American "melting pot" approach to national identity is unique and cannot be replicated in Europe. This may well be the case, but if so, Europe is heading for a social explosion. There are, however, some European precedents for creating national identities that are more open and less based on ethnicity or religion. The most obvious example is French republicanism, which in its classic form refused to recognize separate communal identities and indeed used the power of the state to homogenize French society.²² With the growth of terrorism and domestic violence, an intense discussion has emerged in France about why this form of integration has failed. Part of the reason may be that the French themselves gave up their old concept of citizenship in favor of the trendier approach of multiculturalism. The headscarf ban of 2004 was a sudden reassertion of an older republican tradition that had been allowed to lapse.

Americans may indeed have something to teach Europeans with regard to the creation of an open national identity. Observers like Robert Bellah have long noted that national identity has become a kind of civic religion for Americans.²³

American life is full of quasi-religious ceremonies and rituals meant to celebrate the country's democratic political institutions: flag-raising ceremonies, the naturalization oath, Thanksgiving, and the Fourth of July. Europeans, by contrast, have for the most part de-ritualized their political lives. No European country has a naturalization ceremony comparable to that of the United States, and Europeans tend to be cynical or dismissive of American displays of patriotism. But such ceremonies play a critical role in the assimilation of new immigrants into American political and social life.

Even more important is the role of the welfare state and economic policy. Europeans continue to cling tenaciously to the postwar welfare state and denounce the United States for its supposedly heartless social model. But the European welfare state is doing active harm to the ability of European societies to integrate culturally distinct immigrants. The flexibility of U.S. labor markets means that there is an abundance of low-skill jobs for immigrants to take, and most foreigners come to the United States in search of work. In Europe, a combination of inflexible work rules and generous benefits means that immigrants come in search not of work but of welfare. Europeans claim that the less generous welfare state in the United States robs the poor of dignity. But the opposite is true: Dignity comes through work and the contributions one makes through one's labor to the larger society. In many Muslim communities in Europe, as much as half the population subsists on welfare, directly contributing to the sense of alienation and hopelessness.

Europeans have not been able to address honestly and openly the problem of Muslim integration—either what immigrants owe their adoptive society or what that society owes its immigrants—due to a pervasive political correctness surrounding this whole set of issues. The rapid shutting down of any discussion of *Leitkultur* in Germany is but one example of this. Those political parties on the center-right that should drive such a discussion have been intimidated by the left through accusations of racism and old-style nationalism; they fear above all being tarred by the far right. This is a huge mistake. The far right will make a big comeback if mainstream parties fail to take up this issue in a serious way. Unfortunately, it has taken acts of violence to open up a more honest discussion of these issues in the Netherlands, Britain, and France. The Netherlands has come the furthest in this regard since the van Gogh murder in 2004. While the rhetoric has often taken on populist and racist overtones, the discussion is at least taking place.²⁴

The dilemma of immigration and identity ultimately converges with the larger problem of the valuelessness of postmodernity. That is, the rise of relativism has made it impossible for postmodern people to assert positive values for which they stand, and therefore the kinds of shared beliefs they demand as a condition for citizenship. Postmodern societies, particularly those in Europe, feel that they have evolved past

identities defined by religion and nation and have arrived at a superior place. But aside from their celebration of endless diversity and tolerance, postmodern people find it difficult to agree on the substance of the good life to which they aspire in common.

Immigration forces upon us in a particularly acute way discussion of the question "Who are we?" posed by Samuel Huntington. It is easy to agree on things like football and beer-drinking as elements of a common culture, but it is much harder to say which aspects of national history are important. If postmodern societies are to move toward a more serious discussion of identity, they will need to uncover those positive virtues that define what it means to be a member of the larger community. If they do not, they will indeed be overwhelmed by people who are more sure about who they are.

NOTES

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1. For an overview, see Ian Johnson and John Carreyrou, "As Muslims Call Europe Home, Dangerous Isolation Takes Root," *Wall Street Journal*, 11 July 2005.

2. See for example Bassam Tibi, "Les Conditions d'un Euro-Islam," in Robert Bistolfi and Francois Zabbal, ed., *Islams d'Europe: Intégration ou Insertion Communautaire* (Paris: Editions de l'Aube, 1995); Olivier Roy, "EuroIslam: The Jihad Within?" *The National Interest* (Spring 2003): 63–74; Unni Wikan, *Generous Betrayal: Politics of Culture in the New Europe* (Chicago: University of Chicago Press, 2002); Patrick Buchanan, *The Death of the West: How Dying Populations and Immigrant Invasion Imperil Our Country and Civilization* (New York: Thomas Dunne, 2002); Bruce Bawer, *While Europe Slept: How Radical Islam Is Destroying the West from Within* (New York: Doubleday, 2006); and Tony Blankley, *The West's Last Chance: Will We Win the Clash of Civilizations?* (New York: Regnery, 2005).

3. See Charles Taylor, *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994); and *Sources of the Self: The Making of the Modern Identity* (Cambridge: Harvard University Press, 1989).

4. Charles Taylor, *Multiculturalism*, 30.

5. See the discussion in Charles Taylor, *Multiculturalism*, 53.

6. Olivier Roy, *Globalized Islam: The Search for a New Ummah* (New York: Columbia University Press, 2004).

7. See Craig Whitlock, "How a Town Became a Terror Hub," *Washington Post*, 24 November 2005, A1.

8. Fritz Stern, *The Politics of Cultural Despair: A Study in the Rise of German Ideology* (Berkeley, Calif.: University of California Press, 1974); and Ernest Gellner, *Nations and Nationalism* (Ithaca, N.Y.: Cornell University Press, 1983).

9. Seymour Martin Lipset, *The First New Nation* (New York: Basic Books, 1963); *American Exceptionalism: A Double-Edged Sword* (New York: W. W. Norton, 1995).