

The Syrian refugee crisis is one of the gravest humanitarian crises in recent memory. Since the outbreak of civil war in 2011, an estimated of 11 million Syrians have fled their homes in search of safety, protection, and asylum ("The Syrian Refugee Crisis" 2016). Some of these Syrians have sought refuge away from their homes, but, often for practical reasons, they remain in their home country, while others flee to neighboring countries in the Middle East, or make their way to Europe. The role and responsibilities of the United States in alleviating this crisis is contested, difficult to perfectly delineate, and open for interpretation. Even though the nation's legal responsibilities are outlined in the UNHCR's 1951 Convention and 1967 Protocol Relating to the Status of Refugees, and ensconced in the 1980 Immigration Act (that came into force in 1984), the specific semantics of the text allows for a variety of nuanced readings and analyses.

While some notions such as that of *non-refoulement* are clearly defined and outlined in the Protocol, other terms are not as clearly defined, and other questions not addressed, leading to much ambiguity. In addition to literary ambiguity, logistical constraints, most notably the ability to set foot on US soil, are significant obstacles to Syrian refugees wishing to file for status in the US. In order to address these obstacles, it is vital for states to reach an explicit consensus about their moral obligations and reconcile them with utilitarian measures, instead of cowardly backing off from the responsibilities that are implicit in being signatory to the 1967 Protocol and to other instruments of international law and human rights law. A literary and theoretical analysis of the foundational texts of international refugee rights illustrates how the U.S. President's recent refugee ban is a blatant violation of these agreements and responsibilities.

The U.S. is one of 107 nations party to the 1967 Protocol Relating to the Status of Refugees. The Protocol amended the UNHCR's 1951 Convention, which was the original international agreement that defined a refugee and outlined the rights and legal obligations of states to protect them (*1951 Convention*). The Convention was based on the three core principles of *non-refoulement*, non-discrimination, and non-penalization of refugees. While the definition of refugees in the Convention was limited to those located in Europe and displaced "as a result of events occurring before 1 January 1951," this clause was amended in the 1967 Protocol to expand the definition to include contemporary refugees all over the world (Article 1). Even though the U.S. is one of three nations to be party only to the 1967 Protocol and not the 1951 Convention, the earlier un-amended articles pertaining to definition, legal status, and implementation still apply.

The U.S. has agreed to the definition of a refugee as someone who possesses a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" and consequently "is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (*1951 Convention* Article 1). These five categories egregiously omit other reasons behind fear, including environmental factors, persecution for gender or gender identity issues, war, or poverty. While the terms in this definition of a refugee can seem vague, the UNHCR's 1979 Handbook clarifies the interpretation of numerous terms. For example, the key phrase "well-founded fear" in the 1967 Protocol and 1951 Convention refers to a subjective condition supported by an objective situation. Even with this clarification, the determination of an objective situation can still be subjective; a judge may not perceive a refugee's situation as dangerous enough to warrant granting asylum. In this way, the literary and legal interpretation of the foundational texts greatly influences the outcomes and actions deemed required or contractual.

In addition to the determination of refugee status, the US and other states' legal responsibilities relating to refugees is outlined in the UNHCR's Convention and Protocol,

although they are still open for diverse interpretations and analyses. The numerous chapters elaborate on general provisions, juridical status, welfare and employment, administrative measures, and executory provisions. One key part in relation to the US's responsibilities in accepting refugees revolves around notions of non-discrimination and non-compliance. Article 9 states: "Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person" (1951 Convention Article 9). This statement maintains that the U.S. or any other member nation cannot back out of the agreement and obligation to helping refugees and others in crisis; nonetheless, the descriptive terms "provisionally" and "essential" open up the possibility for debate. The state can decide how much to help a refugee or how far along the path to granting asylum it wishes to proceed, and the state can similarly decide whether or not certain actions are necessary or not. Thus, accepting refugees onto U.S. land may satisfy the "essential" measure to ensuring their national security, but resettlement or integration can be interpreted as additional measures that can be put on hold until war or such "exceptional circumstances" are complete.

Other legal responsibilities revolve around concepts of non-discrimination and *non-refoulement*. Article 3 of the Convention states that "the Contracting State shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin" (1951 Convention Article 3). Thus, states cannot decide to accept refugees from one nation, one area of conflict, or one demographic; instead, all refugees must be treated equally in granting these provisions. As such, the US should not, and indeed cannot, seek only to accept Syrian refugees if there are other people seeking asylum from other parts of the world. Similarly, the US cannot simply decide to cease to accept refugees from a certain nation or of a particular faith. All Syrian refugees must be treated with the same procedures and provisions, although according to the 1951 Convention the U.S. should not hold a greater obligation to those coming from Syria than to those emerging from other regions or situations. Furthermore, Articles 32 and 33 of the Convention prohibit the participating states from lawful expulsion or *refoulement* of refugees. If states cannot send refugees back to "the frontiers of territories where his life or freedom would be threatened," can they justly do anything other than admit and accept them into their nations (Article 33)? This question ties into ethical quandaries of human rights, whereby states have the moral responsibility to condemn violations of and protect human rights, not turn a blind eye.

The issue of having an upper limit to the number of refugees admitted into a country is not explicitly addressed in the Convention or the Protocol. Evidently, the 1951 Convention's limit to European refugees and to events prior to 1951 stemmed from a worry of issuing a 'blank cheque' for unknown numbers of refugees in the future (Goodwin-Gill 37). The clause about not discriminating against refugees in the admission process only prohibits race, religion, and country of origin as bases for discrimination, not quantity. The Protocol states that it is to be applied "without any geographic limitation," but again has no mention of numerical limitations (1967 Protocol Article 1). If not explicitly prohibited, then it is possible for one to suggest that it is permissible. Here, moral obligations play an important role, because even if the legal text does not mention setting limits to refugees admitted, the Convention and Protocol implicitly arise from moral foundations that would preclude any ceiling on the number of people who can be granted status, unless it is found that in so according it the state is losing more than it is offering.

Even if the founding members did not foresee millions of refugees in need of our help or stipulate what to do in this instance, member nations still hold a commitment to accepting

refugees, providing them with equal treatment and rights, and preventing them from being sent back to danger. This begs the question: is it inherently worse to send refugees back to their country of origin (*refoulement*), or to never accept them in the first place?

In the end, it cannot be forgotten that these are human lives being reduced to numbers and figures. Each Syrian refugee represents a history, an experience with violence, a fight with agents of persecution. It seems unjust to cap the number of refugees admitted to any one nation, let alone ban entrance entirely, when these nations have agreed to help refugees without discrimination, penalization, or *refoulement*. Here, normative theory can add to the discussion of capping the number of Syrian refugees admitted into the U.S. Matthew Gibney explains that a central aim of normative theory is to "make explicit the values embodied in common practices like forced migration and to subject these evaluations to moral scrutiny" (48). A common practice in economic evaluations or studies is a cost-benefit analysis, which has been applied to the issue of refugees. For example, one argument maintains that refugees admitted should be capped once the cost outweighs the benefits -- that is, once environmental resources are strained or once multicultural society begins to break down (Singer and Singer 127-8). Applying such moral scrutiny to this type of argument raises questions of underlying morals and issues of human rights. Can or should human lives be equated to numbers and statistics? Is human suffering quantifiable? Even though these moral issues are not explicitly addressed in the UNHCR's Convention or Protocol, they remain extremely pertinent to the issues of determining a nation's legal and moral responsibilities to accepting refugees, from Syria or elsewhere.

This literary analysis of the UNHCR foundational texts regarding refugees becomes especially applicable when we consider recent events and policies coming from the White House. On January 27, the President signed an executive order suspending the admission of refugees into the U.S. Admission of all refugees is suspended for at least 120 days; entry of Syrian refugees is indefinitely suspended; admission is suspended for 90 days for citizens of Iraq, Iran, Syria, Yemen, Sudan, Libya, and Somalia; and admission priority is given to Christian refugees (Surana and O'Toole). James Hathaway, a leading authority on international refugee law, has called the executive order "explicitly and patently arbitrary" with no rational basis (Guerra n.p.). The order violates Article 3 of the 1951 Convention, which prohibits states from discriminating against refugees' race, religion, or country of origin during the admission process. The UNHCR Statement highlighted this issue when it declares that "refugees should receive equal treatment for protection and assistance" ("Joint IOM-UNHCR Statement on President Trump's Refugee Order"). Additionally, the order points toward the ethical quandary of whether *refoulement*, explicitly prohibited in the Convention, is less permissible than prevention of admission in the first place. If the principles of normative theory are applied to the recent executive order, we can begin to understand the underlying values and motives behind the policy, such as racism, xenophobia, and fear of terrorism. Only once we begin to address these issues through levelheaded, rational analysis of legal texts will we be able to fulfill our commitment to protecting those who need it most.

Works Cited

- 1951 Convention Relating to the Status of Refugees*. UNHCR, 1951. Print.
1967 Protocol Relating to the Status of Refugees. UNHCR, 1967. Print.
Barsky, Robert. "Law 7128 Lecture 2." Vanderbilt Law School. 2017.

Andrea Delgado, "Commentary", *AmeriQuests* 12.2 (2016-7)

Gibney, Matthew J. "Political Theory, Ethics, and Forced Migration." *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press, 2014. 48–59. Print.

Goodwin-Gill, Guy S. "The International Law of Refugee Protection." *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press, 2014. 36–47. Print.

Guerra, Kristine. "What the U.S. Learned from Turning Away Refugees Who Fled the Nazis." *Washington Post* 29 Jan. 2017. Web. 1 Feb. 2017.

"Joint IOM-UNHCR Statement on President Trump's Refugee Order." *UNHCR*. N.p., 28 Jan. 2017. Web. 1 Feb. 2017.

Singer, P., and R. Singer. "The Ethics of Refugee Policy." *Open Borders, Closed Societies*. Westport, CT: Greenwood, 1988. Print.

Surana, Kavitha, and Molly O'Toole. "Trump's Refugee Ban Has Ripple Effects Even Before It's Issued." *Foreign Policy* 27 Jan. 2017. Web. 1 Feb. 2017.

"The Syrian Refugee Crisis and Its Repercussions for the EU." *Syrian Refugees*. N.p., 2016. Web. 22 Jan. 2017.