

Justice for People on the Move

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The question of justice for people on the move is not simply the question of what is just for refugees or other migrants, it is also the question of what the present refugee crisis in Europe reveals about our conception of justice, about its limits and the extent and how it needs to change, if it does need to change. However, before coming to these issues two points need to be clarified.

The first concerns the use of the expression “people on the move” rather than refugees, migrants - legal and illegal, economic or not - or displaced persons in the title of this paper. All these alternative expressions have legal and political meaning and connotations. Furthermore, an important part of the ongoing debates in the media and of declarations by various politicians concerning the massive arrivals of asylum seekers in Europe have insisted on the importance of these distinctions. Major efforts have been made to distinguish – on the ground – between “real refugees”, displaced persons and economic migrants. The term “people on the move” in the title is used as an all-encompassing term that aims to avoid taking a stand in this debate from the outset of the paper; throughout most of the paper I will use the terms “refugees” and “migrants” or “people on the move” interchangeably. Later on, I will suggest that it is not clear just how relevant these distinctions are for the question of justice for “people on the move”. In any case, it seems that it is preferable to avoid prejudging the issue from the beginning.

The second point, to which I will also return later, concerns the size of the crisis. At first sight, it seems that it is a very large crisis. It is true that many people are arriving, on foot or by boat, at the door of Europe and asking to be let in. The estimates are not entirely sure for it seems that some people may have been counted twice, but at this point the general agreement is that the numbers are a little more than one million arrivals in 2015 and more or less 650,000 for 2014 ¹⁾, which makes somewhat more than one and a half million over two years. That is certainly a lot of people, but the population of the European Union is more than five hundred million. Therefore, the total number of refugees equals more or less 0.3%, three tenth of one percent of the population of Europe. Once the numbers are put in perspective in this way, it is not at all evident why these people cannot be absorbed and cared for and it is even more surprising that this crisis is said to

threaten to destroy the European Union. My suggestion is not: “Why is everybody getting so upset?” or “What is the big deal?” Rather, it may very well be the case that this crisis will destroy the European Union, but that is rather worrisome concerning the stability and resilience of modern institutions.

John Rawls in *A Theory of Justice* writes:

One conception of justice is more stable than another if the sense of justice that it tends to generate is stronger and more likely to override disruptive inclinations and if the institutions that it allows foster weaker impulses and temptations to act unjustly. The stability of the conception depends upon a balance of motives: the sense of justice that it cultivates and the aims that it encourages must normally win out against propensities towards injustice. ²⁾

Rawls in this case is talking about the stability of a conception of justice, but such a conception only exists to the extent that it is – so to speak – transcribed from the world of ideas to social life through specific institutions; so that beyond the stability of a conception of justice, what is at stake is the stability of institutions. As Rawls also claims that “Justice is a virtue of institutions”. There is thus an implicit thesis here, which is that justice is an important aspect of the stability of institutions. Rawls takes some care to define or at least to clarify the term “stability” as he uses it in this context. According to him, that a conception of justice is stable does not mean that the institutions to which it gives rise will not change, it does not mean that they will not disappear or be replaced by others. Rather what it means is that when such transformations happen, for example in response to external changes, the new institutions will also be just from the point of view of the original conception of justice. Understood in this way, the stability of a conception of justice is a form of meta-stability of institutions. As such it presupposes their stability in the sense in which the term is usually understood, that is to say, it requires that they do not simply collapse and disappear as a result of their failure to respond to external pressure. To put it in other terms, this meta-stability implies a form of continuity between subsequent institutions and is incompatible with a mere breakdown of institutions in conditions when what is at stake is precisely an issue of justice.

If such is the case, then the history of institutions may reveal something about the conception of justice that underlies them. Just as stability is not a definitive criterion concerning conceptions of justice according to Rawls, it is clear that instability is not a definitive criterion concerning the justice of institutions. Nonetheless, analysis of the causes of such instability can be highly informative. It can, if not provide arguments to choose between competing conceptions of justice, at least bring us to question some of the basic presuppositions of our current conception. Conceptions of justice, normative as they may be, are not immune to empirical falsification.

The “shape” of the crisis

The present crisis began in 2014, when a rising number of persons, people on the move,

refugees or migrants, made the journey to the European Union to seek asylum. They were either travelling by sea across the Mediterranean or by land through the Southern Balkans. At first those travelling by sea came from (or through) Libya to the Italian island of Lampedusa. A few of them originated from the Middle East (Syria and Iraq) but most of them came from regions of Africa marked by ongoing conflicts, Nigeria, Eritrea and Sudan. The large influx was due not so much to a rise in the absolute numbers of refugees as it was a consequence of the collapse of order in Libya following the Western intervention and the fall of Gaddafi. The ensuing chaos, which still continues today, gave free rein to human traffickers. Later in 2015 Greece overtook Italy as the main country of entry into the European Union and as the top destination of those traveling by sea. Shortly afterwards, Greece also became the starting point of a flow of migrant travelling by land, mostly on foot through the Balkans, and aiming for northern European countries, mainly Germany and Sweden. Thus the land route and the sea route are not entirely independent and that is one reason why some of the refugees and migrants are counted twice. First when they enter Greece, but as they set out for Macedonia they also leave the European Union and then are counted again when they re-enter the Union for example in Croatia.

According to the United Nations High Commissioner for Refugees, the top three nationalities of the over one million Mediterranean Sea arrivals in 2015 were Syrian (46%), Afghan (25%) and Iraqi (18%). These three nationalities alone represent 89% of all the person who used that route. According to the third quarterly report of 2015 of Frontext Risk Assessment Unit, of those using the Eastern Mediterranean Route, which represents 52% of total arrivals, 71% were Syrians, 18% were Afghan and 5.6% were Iraqi which together makes 95% of all persons using that route. Of those using the Western Balkan route, which represents 37% of the total arrivals, 40% were of “unspecified” nationality, 30% were Syrians and 15% Afghan. In short, citizens from three countries at war, wars in which Western nations are actively engaged, make up more or less 80% of all the people on the move who are now trying to enter Europe. Of those refugees and migrants who arrived by sea in 2015, 58% were men, 17% women and 25% children.³⁾ The statistics breakdown does not tell us how many of those children were traveling alone, but newspapers and NGOs like “Doctors without borders” are reporting more and more children, usually war orphans, who are traveling alone. Furthermore, recent reports from these NGOs, medias and Frontext have suggested that up to 10,000 unaccompanied children have “disappeared” since they entered Europe.⁴⁾

In April 2015, five boats carrying almost 2,000 migrants to Europe sank in the Mediterranean Sea, with a combined death toll estimated at more than 1,200 persons. The shipwrecks and loss of life sent shock waves in the European and world public who pressured governments to take preventive actions. It should be remembered however that these tragedies took place in a context of ongoing disputes within the European Union concerning the refugee crisis. Amid the upsurge in the number of sea arrivals in Italy from Libya in 2014, several European Union governments refused to help fund the Italian-run rescue Operation *Mare Nostrum*.⁵⁾ It was then cancelled by the

Italian government and replaced by Frontex “Operation Triton” in November 2014. However, Operation Triton’s original budget was 3 times smaller than that of *Mare Nostrum* and it had less boats and 4 times less aircrafts at its disposal. This has changed and the budget of Operation Triton has been significantly augmented. However, Operation Triton is a border protection, rather than a help and rescue operation. Therefore, many have accused it of being responsible for the failure to rescue refugees and the “International Organization for Migration” claims that deaths at sea have risen nine times after the end of Operation *Mare Nostrum*.

Since April 2015, the European Union has struggled to cope with the crisis, increasing the funding for border patrol operations in the Mediterranean, devising plans to fight migrant smuggling, in particular launching “Operation Sophia”⁶⁾. It has been proposing a new quota system to relocate and resettle asylum seekers among EU states and to alleviate the burden of countries on the external borders of the Union. Individual countries have at times reintroduced border controls within the Schengen Area⁷⁾, and conflicts have emerged between countries willing to accept asylum seekers and others trying to discourage their arrival. Finally, the EU has recently signed a 3bn Euros agreement with the government of Turkey which, in return for this funding, will prevent Syrians and other refugees – there are over 2.5 million in camps in Turkey – from leaving for Europe. – At this point this plan does not seem to be working very well!! – In exchange, apart from the 3bn Euros, Turkish citizens will be able to travel to Europe without a visa and the Union will once again reopen the dossier of Turkey’s candidacy to become a member of the European Union.⁸⁾ With this agreement, not only has Europe outsourced its refugee problem to a third party, but in the process it also became hostage of the Turkish government, asking it, in short, to patrol its own borders. As a result, it makes itself liable to recurrent blackmail on the part of Turkey.

From the logistic point of view, the problems of the EU are compounded by what are called Dublin rules and by the Schengen accord. Dublin rules were devised in order to prevent people from “asylum shopping”: that is, applying for asylum in many countries of the Union and waiting to choose whichever response suits them best. Therefore, according to Dublin rules asylum seekers must make their demand in the country where they first entered the EU. These countries have to take care of demanders until their application has been either accepted or rejected, and in the latter case they have to return them to where they came from, or to a “third safe country”. In consequence, Dublin rules place an inordinate financial and logistic burden on “first line countries”, countries whose borders are the external borders of the EU, especially Italy and Greece, and also to a lesser extent Hungary. While other members of the Union have been reticent to share this burden. Dublin rules also encourage asylum seekers to enter the EU illegally and to travel to the country where they want to be received and only “officially” enter the EU once they are there. The Schengen accord facilitates and to some extent encourages this form of illegal entry since once inside any of the 26 countries of the Schengen space there are no border control to traveling to any other Schengen member.

At this point, the greatest danger that threatens the European Union is the collapse of the

Schengen space. This would pretty much correspond to letting the countries on the outside borders of the Union to deal alone with the problem, while the problem is clearly not of their making. Especially, to the extent that, as statistics clearly indicate, the vast majority of entrants in Europe do not want to stay in Greece and Italy; these front line countries are victim of the attraction of richer members of the EU. The closing of the internal borders which would trap refugees in front line countries, apart from the chaos it will inevitably create, would force poorer and economically more fragile members of the Union, like Greece, to face the problem on their own.

Responsibility and solidarity

Most critics and many politicians lament the lack of solidarity among members of the European Union and consider that this lack of solidarity constitutes the main obstacle to the solution of the refugee crisis. It should be noted further that the main receiving countries, in particular Germany, are not the ones who are most at fault. They are ready to accept even more refugees. The difficulty comes more from intermediary countries who by closing their border prevent migrants from reaching their destination. It is certain that there is a failure of solidarity among members of the Union, however this lack of solidarity is perhaps not so much a cause as it is a symptom, a surface phenomenon that reflects a deeper problem. What suggests that this may be the case are the evident facts or information about the crisis which are just about never mentioned, considered relevant or apparently taken into account in policy decisions.

The first relevant and important information, as mentioned earlier, concerns numbers. Of course statistics lie and they are difficult to interpret, nonetheless alternative formulations of the same data can help to bring out a different perspective. For example, if you say that in the first quarter of 2015, 73,120 persons applied for asylum in Germany that seems like a rather large number of persons; if you add that this number represent 39.6% of the total number of demands in Europe, Germany seems to doing more than its share. However, if you put this figure in relation to the total population of Germany, it gives 905 demands per million or 0.09%. That gives a completely different image of the problem. The number of asylum demands by refugees is tiny; it is minuscule compared to the total population of the country where by far the largest number of demands have been made. The contribution of some other countries of the Union for the first quarter of 2015 measured on this scale are the following: Denmark 0.03%; France 0.02%; Greece 0.02%; Hungary 0.3% (the highest); Italy 0.02%; Poland 0.004% (one of the government which is most opposed to the quota system) and Sweden 0.12%.⁹⁾ Viewed in this way, it seems unlikely that, as some politicians and many news outlets have been claiming, as a result of the afflux of migrants Europe will soon be swarming with refugees and overwhelmed by Muslims. When put in perspective the numbers are not very large.¹⁰⁾

This raises the question of why the issue is so rarely presented in these terms. Why is the problem so often exaggerated, rather than minimized? This question can be addressed in many

different ways. One evident approach is to look for the usual suspects. Who has to gain from this over dramatization of the problem? And to look for the money trail.¹¹⁾ The question also has a moral dimension, both a personal and an institutional one. Why is everyone, it seems, inclined to spontaneously react to this important afflux of foreigners as a threat, rather than as either others in need, or simply as others with whom we can establish meaningful relations? It is true that there is a question of the numbers of arrivals, but my point so far has been precisely that the numbers do not justify this reaction of fear. There is also the problem of terrorism, but the authors of recent terrorist acts in Europe were all European citizens who do not need to pass off as refugees to enter the Union! It is not clear how sealing the borders of the European Union to people on the move will prevent from returning European jihadists who can legally enter? To the opposite, it seems that it is the reaction of fear which exaggerates the importance of the numbers and therefore the question is why? What is the cause or reason of this reaction, which is perhaps of fear, but is certainly of rejection and often of violence?

The second evident information that is generally overlooked or minimized at least by governments when addressing the crisis is the question of the origin or the cause of this sudden afflux of people on the move seeking asylum in Europe. More precisely what are not taken into account are important variables in explaining why this happens now, and how it happened. The focus not only of an agency like Frontex, but also of Operation Sophia mentioned earlier, which are both clear expressions of EU policy is on what are called “facilitators”, that is human traffickers and others who help migrants to cross illegally the borders of Europe and it is on false documents. Government officials and politicians speak of economic migrants, which in their mind means unjustified asylum seekers; they also speak of the “pull effect” of rescue operations – that is the way in which, according to them, rescue operations encourage migrants to come to Europe because they make it safer to travel across the Mediterranean. Finally, they repeat that it is impossible to accept any more migrants; “the limit has been reached!”, they say.¹²⁾

What politicians and many media do not mention as relevant is the fact that by far the largest number of these migrants come from three countries: Syria, Afghanistan and Iraq.¹³⁾ Three countries where, beginning 15 years ago in the case of Afghanistan, Western countries including many members of the European Union have been militarily active. What they do not mention is that as a result of the civil war in Syria more than seven million persons, that is one third of the population of the country are now refugees outside of Syria. Most of them (more than five million) are in camps in bordering countries, Turkey, Iraq, Lebanon and Jordan. Countries that are poorer than members of the EU and that have problems of stability of their own. Given also that it is estimated that there are another four million displaced persons inside Syria, then it follows that the European Union has received only about 10% of the total number, 11 million refugees, created by this “civil war” in which many of EU’s members are and have been active participants, either directly, with air raids, and special forces on the ground and/or indirectly, training militias and providing weapons to different parties to the conflict. For the last five years, Western powers have

not only failed to stop this civil war, but they have never really tried to stop it. While they were talking of negotiations and encouraging peace talks, their various ongoing military interventions always only aimed at preventing either this one – Assad – or that one – the rebels or ISIS – from winning the war. That is true of course not only of Western liberal democracies, but also of Turkey, Russia or the different Arab countries that participate in the conflict. Nonetheless it is clear that Western countries and members of the European Union have a particular responsibility, and should recognize that they have a particular responsibility in resolving this crisis, because they have actively participated in creating these refugees.

As Anne Hironaka cogently argued a few years ago, foreign interventions always have the effect of making civil wars last longer¹⁴⁾ and the Syrian ‘civil war’ is one more example of that. What is not mentioned is the responsibility of Western powers and of many members of the European Union in creating these refugees, in perpetuating a war that has forced them in refugee camps for years and destroyed all hope of return, of a foreseeable solution, transforming them into people on the move.¹⁵⁾ Is it surprising then that they will risk their life and that of their children in an attempt to find “a better life somewhere else” and more simply a viable future. What is never contemplated is that the refugee crisis is a direct result of the war, rather than the making of human traffickers or of the search for illegitimate economic advantages, and that the problem is not a failure at border surveillance.

Of course, it is easy to understand why Western powers are reticent to recognize that their policies in the Middle East for the last 15 years have not only been a complete failure, but have led to disasters both humanitarian and political. What is harder to understand is why in countries where freedom of expression and free press (supposedly) exist, egregious misrepresentations of the situation are barely noticed, rarely discussed, and generally accepted as the evident truth. Sophisticated conspiracy theories concerning powerful interest groups and the pursuit of national interest at all costs are explanations that cannot be summarily dismissed; what they do not explain however, is why so many intelligent and well intentioned persons are ready to accept such blatantly defective explanations and to endorse self-defeating policies.

Fortress Europe and punitive welfare

The “Centre for European Policy Studies”¹⁶⁾ and “The Migrants’ Files”¹⁷⁾ both argue that at the heart of the refugee crisis lies the “Fortress Europe” policy. The Fortress Europe policy is in a sense the reverse side of the Schengen Agreement, established in 1985, that allow the free circulation of citizens between various member countries without visa requirements, even for long term working and settlement in another Schengen country, and which put an end to all border controls between these countries. This free circulation of persons and open access to each other’s labor market, however, is only for members of the European Union who are signatories of the Schengen Agreement, 26 countries in all. The Fortress Europe Policy is there to ensure that others

– non EU citizens, non-Schengen countries citizens – do not take advantage of this agreement.

Since 2001, EU regulations impose visa requirements for citizens from what may be called “refugee producing countries”, most African countries and notably countries of the Middle East, like Syria, Afghanistan or Iraq. In order to obtain a visa which allows them to enter the European Union legally, a citizen from these countries must provide a proof of *willingness and ability* to return to the country of origin or provenance. However, a refugee is defined in European Union law, and in international law, as a person who is in need of protection or in danger of persecution. Therefore, refugees are persons who, by definition, are unable to provide the required proof, moreover at the time when she or he asks for refugee status it is unlikely that the refugee is willing to return to the country he or she is trying to escape. It follows that it is nearly impossible for any refugee from these “refugees producing countries” to enter the European Union legally. The fact that this “incoherence” has now been European Union policy for 15 years indicates that it is more than a mere accident, more than the simple result of oversight by an overburdened civil servant.

Furthermore, the European Union – as is the case for Australia, Canada and the United States – imposes carrier sanctions or penalty. That is, passenger airlines and shipping companies are legally obliged to make sure that they only transport duly documented migrants under penalty of a financial sanction, and for airline companies there is also the obligation to bring back passengers whose documents they failed to check properly and who are refused entry.¹⁸⁾ The consequence of these regulations is, not only that refugees cannot enter the EU legally, but also that they cannot even travel to Europe using normal means of transportation.¹⁹⁾ Thus, instead of being able to take a ferry across the Mediterranean, for a cost of as little as € 35 or a plane for about € 350 or less, they are forced to resort to illegal traffickers for a cost of somewhere between 2,000 and 10,000\$ US. As a result, apart from paying a lot more, refugees have to travel in dangerous conditions, on boats which are old, not always sea worthy and which are often carrying too many passengers.²⁰⁾ According to the “Migrants’ Files”, since year 2000 more than 23,000 people have died or disappeared while trying to reach Europe. EU regulations, therefore, are not only dangerous for refugees, because they make it impossible for them to use safe and legal means of transportation, they also force refugees to resort to illegal traffickers and various “facilitators”. The famous “pull factor” which encourages refugees to risk their lives on dangerous crossings from Turkey or Libya is not the result of rescue operations, but of the European Union regulations themselves, which created a lucrative and captive market for human traffickers.

According to the “Migrants’ File” the European Union spends more than € 950 million on its border protection only. Deportation of “illegal migrants”, this includes persons who have entered Europe legally but exceeded their period of stay, refugees whose demand for refugee status was rejected, illegal workers, persons who presented false documents at entry and others who entered and for various reasons are now staying illegally in Europe, deportation of individuals from this very diverse population, costs a little more than € 1 billion annually. Overall then Fortress Europe costs at least € 2 billion a year. It is far from evident that this money is being spent intelligently, at

least inasmuch as these expenses to a large extent result from self-defeating regulations, regulations which play an important part in creating the very problem they are trying to resolve. Whether or not this policy is financially sound, the most significant point I believe, is that this question is just about never raised. It seems evident to most people that we simply cannot do otherwise, that this is the only solution. Unlike healthcare or education, in this case money is not an issue. We are ready to spend “what it takes”, as if it were clear that “what it takes” is not more expensive than accepting and integrating these people into society. Why are such evident questions so rarely raised?

People on the move are generally either seen as persons who need help or as persons who are trying to gain some “illegitimate advantage” relative to their prior situation and/or to local residents. Hence a kind of division of labor which has become established between on the one hand humanitarianism, which seeks to provide help to those who are needy. On the other hand, a policy like Fortress Europe which tries to make entry difficult and the European Union as inhospitable as possible to discourage those who are suspected of simply trying to profit from wealth that has been produced by others. Of course, the two branches of the alternatives are not exclusive. An individual may very well both be in dire need of help and trying to obtain some undue advantage. That is why, it is thought, help should not be provided forever, but for a limited time only. Otherwise recipients will tend to take advantage of the system and they will become free riders who live off the efforts of others. This division of social labor and its attendant fear lead to what may be called, “punitive welfare”.

Punitive welfare is the policy that welfare recipients must prove beyond all doubts that they are really, truly lacking and that they cannot do otherwise than resort to external help in order to satisfy their most basic needs. To prove this, they must, for example liquidate all their assets to qualify for help; they must convince state officials of their willingness to work and make repeated efforts to find employment, or clearly demonstrate their absolute inability to work. Furthermore, should they earn the least amount of money and they lose all benefits. Otherwise help, it is thought, would function as an economic disincentive that encourages passivity and laziness. In spite of the fact that many economists believe punitive welfare to be a self-defeating policy that pushes people into a poverty trap, it remains the dominant approach in all our societies.

Fortress Europe, if not exactly a particular version of punitive welfare, is clearly closely related to its underlying conception of justice. In fact, the countries which are targeted by the EU’s visa regulation are not “refugees producing countries” as such, but countries from where it is feared that “economic migrants” will arrive, what could be called “economic migrants producing countries”. Economic migrants are described as people from poorer countries who come to richer countries to take advantage of the job opportunities, and of the better healthcare and welfare services found, for example, in the European Union. These individuals are seen as unfair competitors who are attempting to profit from wealth which they did not produce, parasites! Fortress Europe, like punitive welfare, are policies that are guided and justified by the belief that

persons must both deserve *and* need whatever advantage or service they receive. Economic migrants are seen as neither in need, nor deserving. Fortress Europe is justified as a policy because it aims at keeping out of Europe people who do not deserve or are not entitled to the advantages they are seeking.

The underlying reason for this double requirement, that one must both *need and deserve* whatever benefits one receives, is because otherwise it would not be fair to others. If one receives freely an advantage for which others have to work, this it seems is unfair. Furthermore, need in itself is not viewed as sufficient to overrule this judgment of unfairness. Inasmuch as some have to work to obtain the advantage in question, then clearly others cannot simply qualify because they need it. That is why recipients must both need and deserve the benefits they receive. The importance of the idea of fairness in this judgment is further suggested by the fact that when agents are seen to be suffering from an unfair disadvantage, either because of a disaster, health issues, entrenched discrimination or disability, help will be viewed as justified. It will not be considered unfair. That judgement, however, will only last as long as the disadvantage is viewed as unfair, something which help is supposed to compensate and correct. In consequence, after a while help will tend once again to become viewed as illegitimate and unjustified. It will be judged that it is not, or at least that it should not be, necessary any longer. Humanitarianism is only supposed to last only for a moment. Refugees after some time should be able to go back home or at least to fend for themselves. Yet, whether or not that becomes the case usually depends on outside circumstances, circumstances which are beyond the control of both humanitarian help donors and refugees themselves.

One characteristic of such an approach to the questions of social help, and of hospitality, is that it does not inquire into what is just for welfare recipients or for people on the move, but into whether it would be unfair to others, in this case to the citizens of the European Union, should this or that policy towards refugees be adopted. The central question it asks is not what is appropriate for those who are in need, but what policy towards them would not infringe on the rights of others. The yardstick of a just policy, then, is not what is just for refugees or welfare recipients, but what is a fair policy given the rights and obligations of others. One reason why this usually goes unnoticed, is because fairness is conceived of as a reciprocal relation. In consequence, fairness is understood to apply equally to all, therefore it seems that, by definition, formulating the question in terms of fairness for all cannot be to anyone's disadvantage. To put it otherwise, given our standard understanding of fairness as a reciprocal relation there seems to be no place for the asymmetry to which I am pointing.

That is the case in principle. However, in fact or in practice things are somewhat different and one form of asymmetry is recognized between welfare recipients and refugees on the one hand and citizens of the European Union on the other, an asymmetry that is viewed as indicating a fault on the part of those who are needy. Common sense and existing policies do view the situation of refugees and that of citizens of the European Union as different and asymmetrical. That is precisely

the reason why there is so much reticence to help them. Refugees (or at least illegal migrants), just like welfare recipients, are viewed as being outside the common scheme of cooperation. That is to say, as getting benefits without cooperating. It is for that reason that we consider that refugees are only entitled to humanitarian help. It is also what legitimates and explains punitive welfare, understood as a way to force recipients to re-enter the common scheme of cooperation, but which actually reduces them to humanitarian help. This is exactly what is now happening to Middle Eastern refugees coming to Europe. € 700 million has recently been voted to help Greece and other countries deal with the humanitarian crisis created by the closure of the borders of Macedonia and of some Schengen members of the Union, a closure which prevents the migrants from reaching countries which are ready to accept them and imprisons them in one of the economically weakest country of the Union!

If, however, we change our focus from what is fair for citizens of the European Union to what is just for refugees, there is an asymmetry and it also appears to be unfair, but not in the same way. What is unfair and unjust is simply to prevent refugees, migrants legal and illegal from joining, from integrating the common scheme of cooperation. It is effectively unfair both to them and to citizens of the European Union to prevent them from joining the common scheme of cooperation and to provide them with benefits, however small. The only fair solution would be to accept them as immigrants, that is as full-fledged participants into the common scheme of cooperation. Doing this however would require that we recognize that they have the right to be where they want to be. Defining people on the move either as illegal migrants or as refugees are two ways of refusing them that right. They are two ways of asserting that states have an absolute right to decide who they want to accept on their territory and that individual do not have a right to free movement.

Strangely enough, many liberals seem convinced that states have an absolute right to limit the movements of individuals, and act as if freedom of movement was not a fundamental freedom. Recognizing that such a fundamental freedom constitutes a basic right of individuals does not entail that states cannot have any immigration policy. It does entail, however, that those who come, for whatever reason, no matter for how long, should not be a priori considered either as criminals or as beggars unable to help themselves, but as free persons.

Notes

- 1) Which is a little less than the previous record of 1992 when 690,000 asylum demands were deposited in Europe. That crisis was created by an afflux of refugees from the Yugoslav civil war.
- 2) John Rawls, *A Theory of Justice*, Cambridge Mass.: Harvard University Press, 1971, p. 454.
- 3) See the United Nation High Commissioner for Refugee web site http://data.unhcr.org/mediterranean/regional.php#_ga=1.227173149.1447675908.1457834178 and FRAN QUARTERLY, Quarter 3, July-September 2015; FRAN Quarterly is the official publications of Frontext Risk Assessment Unit and Frontext is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The agency's reports can be downloaded at <http://frontext.europa.eu/>

- 4) It is thought that most of these children have fallen victims to human traffickers and are being exploited as illegal underage workers and in the sex trade.
- 5) *Mare Nostrum* was itself a response of the Italian government to a shipwreck in October 2013 in which 366 migrants drowned.
- 6) Operation Sophie is a military operation, also known as **European Union Naval Force Mediterranean** (EUNAVFOR Med), which aims at neutralizing established refugee smuggling routes in the Mediterranean.
- 7) The Schengen Area is made of 26 countries, members of the European Union who have abolished border controls and the use of passports at their common borders.
- 8) Cihan Tugal, "Syrian refugees in Turkey are pawns in a geopolitical game", *The Guardian*, February 15, 2016.
- 9) E. Guild, C. Costello, M. Garlick & V. Moreno-Lax, "The 2015 Refugee Crisis in the European Union", *CEPS Policy Brief*, N°332, Sept. 2015.
- 10) In comparison, about 109 million tourists and visitors, the equivalent of about 20% of the total population of the Union, enter the European Union legally every year.
- 11) According to The Migrant Files, *The Human and Financial Cost of 15 Years of Fortress Europe*, there is a very clear money trail. Something to which I will come later on. See www.themigrantfiles.com
- 12) The interesting aspect of when a politician or a head of state says that « the limit has been reached » or that « we cannot accept any more » is that such a statement is a performative. Such a statement does not correspond, or at least does not need to correspond to any data or number of refugees, it only needs to be said by a person in authority to become the case.
- 13) According to the UN High Commissioner on Refugees 89% of the arrivals in Europe came from these three countries. According to the breakdown in the statistics from Frontex Syrians, Afghans and Iraqis represent more than 80% of all arrivals (see note 3).
- 14) Ann Hironaka, *Neverending Wars: The International Community, Weak States, and the Perpetuation of Civil War* (Cambridge: Harvard University Press, 2005).
- 15) Nor is there any mention of the responsibility of the EU in creating in Libya the chaos that led to the first wave of refugees that stormed the Italian island of Lampedusa. Thousands of cruise missiles from American boats, air strikes from French and British forces destroyed the forces of Gaddafi, but once the destruction was done, once Western powers had so to speak "bombed Libyans to freedom" they turned their back on the country. Rebels forces and tribes were left to their own devices to fight it out. As if after the extensive destruction they had done, essentially from a distance, Western powers had no responsibility whatsoever to the future of Libya. Unsurprisingly the conflict is still going on.
- 16) Centre for European Policy Studies ▪ Place du Congrès 1 ▪ B-1000 Brussels ▪ Tel: (32.2) 229.39.11 ▪ www.ceps.eu See also note 7 above.
- 17) The Migrants' Files is a consortium of journalists from over 15 European countries that is coordinated by Journalism++ and winner of the 2014 Data Journalism Award and of the 2015 European Press Prize. See www.themigrantsfiles.com
- 18) E. Guild et al., op. cit.
- 19) The consequence is also, as Heaven Crawley already argued concerning the 1992 refugee crisis, that decisions concerning immigration are to some extent taken by employees of private companies rather than government officials. See Heaven Crawley, "The Refugee Crisis facing Western Europe", Research Paper 11, Geography Laboratory, University of Sussex, Falmer, Brighton, Nov. 1993.
- 20) There have also been reports of stowaways being thrown overboard when discovered, in order to avoid

having to pay the penalty for carrying illegal migrants to Europe.

