

Cosmopolitanism, Migration and Universal Human Rights

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Nordic Summer University

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Cosmopolitanism, Migration and Universal Human Rights: Introduction

This collection is the result of activities carried out within the Nordic Summer University (NSU). NSU is a nomadic university established in 1950. It is an independent and international-oriented academic institution organising symposia across disciplines in the Nordic and Baltic regions (<http://nordic.university>). The activities of the NSU are organised in thematically structured study circles. The great majority of the contributions were presented within circle 5—International Relations and Human Rights—during its winter session in Tallinn, Estonia (11–13 March 2016). Circle 5 was a joint venture between NSU and the European Humanities University, Vilnius, Lithuania, and it was co-coordinated by Oleg Bresky and Mogens Chrom Jacobsen. We warmly thank the School of Governance, Law and Society at Tallinn University and Abel Polese for their help in organising this session. Some of the contributions (Chaps. 8 and 16) come from circle 1—Understanding Migration in Nordic and Baltic Countries—and we thank the coordinators, Stéphanie Barillé and Bremen Donovan, for allowing us to publish these contributions here.

The special focus of the NSU meeting taking place in Tallinn in March 2016 was Human Rights and Migration, and it was largely inspired by the ongoing events at the time: 2015 had seen a large number of refugees and other forced migrants coming to Europe—more than a million, according to the International Organization for Migration (IOM 2016). These events created a stir at the time, but seen in the larger historical perspective the event should be relativised. It seems as if humanity has always been on the move since the movements out of Africa from the Rift Valley, the seasonal movements of our hunter-gatherer ancestors, the ‘Barbarian Invasions’ in the first millennium and European immigration to other parts of the world to mention just a few (Muséum Manifesto 2018). This would indicate that migration is the rule rather than the exception, even though the UN indicates that only 3.5% of humanity are currently international migrants (UN DESA 2019), together with more than 70 million forcibly displaced people worldwide (UNHCR 2019, 2). Seen from the perspective of the individual European countries, these movements seemed, however, overwhelming; the media coverage, at least, tried to give this impression. Governments and public

personalities (some faster than others) thus tried to find or enhance the means of circumventing international obligations and argue against them, while others embraced the other extreme by advocating open borders. This prompted the idea of trying to take stock of the present situation of cosmopolitanism: both to highlight the challenges facing cosmopolitanism and gauge the proper scope of cosmopolitanism and its potential 'darker sides'.

What we would like to present to readers in this volume as its editors is not a unitary, exhaustive and fully integrated work ordained uniformly according to a preconceived theoretical perspective and outlined as a unique argument with premises and conclusion. This is not at all the ideal we pursue here. The hallmark of the NSU is the interdisciplinary approach. Inherent in this approach is the coming together of different perspectives and methods. Disciplines have different historical roots, different assumptions and perspectives, approach problems differently, and often they even see different problems. To impose a common theoretical framework, common epistemological positions or even a common formulation of the problem would be contrary to the interdisciplinary endeavour we undertake here. A unitary approach could very well exclude interesting, complementary or conflicting paradigms and disregard individual researchers' appreciation of what is the most urgent matters of the moment. What is interesting about the interdisciplinary approach is to confront one's own assumptions and perspectives with an approach foreign or less familiar to our own discipline. This could inspire new ways to look at our own discipline, enlarge our own perspective(s), prompt us to reconsider our problem, envisage combined ways to deal with some subject matter or question our assumptions. This process can be challenging yet a fruitful one.

The theme chosen here is vast, and we have privileged new and original contributions rather than exhaustiveness. We have decided to give room for researchers' commitment and dedication to their subject and their perception of where the real problems are, rather than obliging them to fit into a preconceived framework. As a consequence, the length of chapters can vary according to the concerns and styles of the different authors and we have thus abstained from uniformity for the sake of uniformity. This will leave the reader with a variegated picture that points in many directions. This openness is exactly what is interesting and luring in the interdisciplinary venture, opening the floor for reflection and discussion of various yet complementary theoretical and empirically funded contributions. Chapters based on empirical field case studies, for example, are thus an essential part of the overall purpose of this volume, namely, to embed discussion on human rights, migration and cosmopolitanism as well as legal and philosophical concepts into the experienced world of social facts, institutions, actors and processes.

As editors, we did not feel it was appropriate to make a conclusion in the end. What the reader will take away from this volume will vary according to background, concerns and preoccupations, and we did not find that we should conclude on their behalf. The aim of this book, taken as a whole, is not to argue any specific point, but to present a panoply of approaches and in this way taking stock of the present situation of cosmopolitanism, and its interconnectedness with human rights

and migration. The purpose of this introduction is therefore to situate the theme conceptually and historically, to summarise the findings and suggest possible interrelations between the contributions.

Relationship between Human Rights and Cosmopolitanism

This volume assumes that human rights are an integral part of cosmopolitanism, even though this view does not command universal consensus. We would think, however, that this view is the one challenged today and, therefore, the proper object of our stocktaking. In fact, cosmopolitanism became popular in the wake of the fall of the Berlin Wall in 1989. During the 1990s, voices came forward to argue that democracy could no longer be confined to the limits of the nation-state. They asserted the need for a new cosmopolitan political order extending democracy and political community beyond the territorial limits of the state (Chandler 2009, 54). Should we conclude from this that cosmopolitanism basically means democracy extended to the international level with the human rights regime defining the fundamental rights of the cosmopolitan citizen? There is a different view held by our lead author Yves Charles Zarka. According to him, cosmopolitics should regulate politics and not substitute itself for it. Global democratic institutions would belong to the particular historical developments within the political sphere, and they would not be a necessary part of cosmopolitics. However, such a view would not sever the connection between cosmopolitanism (cosmopolitics) and human rights. Human rights are cosmopolitan rights, and, as such, they should be inscribed in politics (Zarka *in this volume*).

Both of these versions of cosmopolitanism would thus emphasise the connection between human rights and cosmopolitanism. Human rights, as it were, are the fundamental rights of world citizens. Since global democratic institutions are embryonic at the most, challenges would naturally concentrate on the human rights part, and that is also where our emphasis will be. In fact, the original use of the term *cosmopolis*, in ancient Greece, did not imply the idea of a world government. As noted by both Carsten Friberg and Adam Diderichsen, the fourth-century BC philosopher Diogenes of Sinope claimed to be a citizen of the world, but this seemed to be a wholly negative claim protesting against life in particular political communities and conventional morality (Friberg; Diderichsen; *in this volume*). Membership of the city-state was, however, inserted into the larger community of Greeks, the counterpart of which was the *ethnos* or *ethnikos*, which were commonly used to describe those who were non-Hellenic, barbarians, pagans (Malešević 2004, 1). The Stoic version of cosmopolitanism transcended these distinctions, having a positive moral content for those who were able to live according to nature, but it did not, as such, imply a world government, even though it was at some point associated with the Roman Empire. Ancient cosmopolitanism being essentially of the moral kind, the legal aspect is fuzzy or non-existent, and here Immanuel Kant was an innovator (Kleingeld and Brown 2014).

Kant is clearly an important inspiration for modern cosmopolitanism, and this is clear both from the contributions of Zarka and Rebecka Lettevall. They both insist that cosmopolitan rights, according to Kant, are genuine rights and not a mere question of philanthropy, but with Kant, there seems to be only one such right, namely hospitality. Hospitality means that a peaceful stranger cannot be treated with hostility, but such a stranger can be turned away if it can be done without mortal danger (Zarka; Lettevall; *in this volume*).

Modern cosmopolitanism would, of course, go far beyond Kant both on cosmopolitan rights and human rights, whatever their relation. David Beetham, reflecting on what human rights have to offer as a model for cosmopolitan democracy, considers that ‘the human rights covenants taken together provide much of what is required for the foundation of a global democratic citizenship’ (Beetham 1998: 58, 66).

Downsides and Criticisms of Cosmopolitanism

Proclaiming a right to hospitality, Kant draws on ideas dating back to the late Middle Ages. Adam Diderichsen introduces us to the works of Francisco Vitoria and their historical context. This context was the discovery of the Americas and considerations about how Europeans could approach these lands. Vitoria considered all arguments carefully on the matter and concluded that Europeans had a right to settle when no harm is done, to trade and to preach the Gospels (Diderichsen *in this volume*). The right to visit or to travel was important for different imperial and colonial ventures, and Diderichsen suggests that cosmopolitanism is stained by original sin, even though a cosmopolitanism which then allowed extensive colonisation now seems to justify movements in the opposite directions.

Jeremy Bentham’s criticism of human rights was nearly contemporary with the development of the human rights idea. Bentham thought that the vague principles of the declarations would be inoperative and foment anarchy. Jean-Pierre Cléro, in his re-reading of Bentham’s arguments, acknowledges that somehow it was possible to have a functioning human rights jurisdiction since we have one today in the form of the European Court of Human Rights and the UN’s human rights system. Anarchy did not ensue, but Cléro raises another question dear to Bentham, namely regarding the sovereignty of the people. According to Cléro, human rights risk killing politics by posing them as external standards outside of ordinary politics and by confiding decisions about them to unelected judges. With Cléro’s striking expression, the French revolutionaries merely relocated ‘the tyranny they claimed to fight’ (Cléro *in this volume*).

One could object to Bentham’s focus on popular sovereignty, considered as the sovereignty of a particular identifiable people organised in a state, on the grounds that it is difficult to restrict his own principle, utilitarianism, to a particular people rather than applying it to humanity as a whole or maybe beyond. On this conception, the burden of proof lies on those who want to limit the application of the

principle to a particular group, and arguing for this is generally an uphill venture (Jacobsen *in this volume*). This can be seen from Irina Ivankiv's treatment of visa regimes. If we accept maximising economic growth as an indicator of maximising utility, it would seem that the existing visa regimes would not survive the application of Rawlsian, utilitarian or related conceptions (Ivankiv *in this volume*). This would suggest yet another kind of 'cosmopolitanism' advocating open borders. This kind of 'cosmopolitanism' is different from the one defended by Zarka and generally held by many, which is in no way incompatible with borders and visa regimes. Respect for human rights and the 1951 Convention Relating to the Status of Refugees do not imply open borders.

That the relationship between cosmopolitanism, the state and different versions of nationalism is a complex one is clear from Barbara Gornik's empirical study (Gornik *in this volume*). By examining the public opinion on refugees, she poses a seemingly contradictory question: whether cosmopolitanism and nationalism, with all its possible exclusionary practices, might be antagonistic, yet compatible and complementary worldviews. When it comes to attitudes of the local Slovenian population, it appears that their endorsement of refugee rights could at the same time be driven by cosmopolitan and nationalistic predispositions. Thus, on the abstract level, cosmopolitanism and nationalism seem quite compatible in people's minds, and here Rebecka Lettevall's findings on the history of 'cosmopolitanism' and 'patriotism' in Sweden is illuminating. The attachment to one's country or territory was formerly seen as a complement to a cosmopolitan attitude. Today 'patriotism' is little used, and when it is, it is often conflated with nationalism (Lettevall *in this volume*). Some forms of nationalism are clearly incompatible with all versions of cosmopolitanism. Nationalism, ethnically defined, denying the existence of human rights and refusing refugees their rights according to the UN convention, would be in opposition to cosmopolitanism. In Gornik's work, we can get a glimpse of the cracks in the abstract ideals of cosmopolitanism, but at the same time make out the possibilities for a different kind of nationalism or patriotism according to Lettevall's findings.

Rights, Spaces and Citzenships

The contributions of Oleg Bresky, Leif Kalev and Mari-Liis Jakobson emphasise the differences between the post-Soviet experience and traditional conceptions of democracy and citizenship in the West. Citizenship conceptions in Eastern Europe are much more instrumental and more like a bargaining chip to negotiate social benefits. The authors warn us that the same kind of attitude is spreading to Western Europe. Traditional conceptions in the West emphasise the autonomous individual, the identification with the role of citizens, substantial participation and equal rights for all citizens, among other things (Bresky; Kalev and Jakobson; *in this volume*). These are challenged today, and Kalev and Jakobson consider the possibilities for maintaining or enhancing the traditional concept in a contemporary context. The

authors remind us that the reproduction of citizenship through social context and daily activities of the citizens, embedded meaningfully in social practices, will not come without tensions regarding interactions between state, citizens and migrant non-citizens (Kalev and Jakobson *in this volume*). Carsten Friberg is interested in the same question, but from a rather different perspective. Considering the conditions and embedding of democracy, the focus is often on legal regulation, institutions and attitudes, but the way these are embedded in and influenced by our built environment is often neglected. Friberg considers how human rights and citizens' relations interact with the environment. The keyword for him is 'ambiance', which crystallises these interactions in its concept and indicates a complex context for the implementation of abstract principles (Friberg *in this volume*).

Implementation of human rights is, in fact, a very complex process, but it also has a complex relation to citizenship. Mogens Chrom Jacobsen argues that the eighteenth-century declarations of human rights distinguished sharply between human rights and citizen rights. This becomes much murkier with the Universal Declaration of Human Rights (1948). In this declaration, citizenship and political participation become a part of human rights. This means that everybody has a right to be a citizen somewhere (but not necessarily where they are actually living). This view is not followed, however, by the Convention on Civil and Political Rights (ICCPR) (Jacobsen *in this volume*). In both cases, though, there is a dichotomy between citizens and non-citizens.

Bresky demonstrates, however, that such a strong dichotomy is not a useful approach. People staying or living in a territory have various kinds of rights. Some membership rights will not be human rights yet others will, while others again will stem from international treaties, EU law or some other source. This will yield a conception of citizenship as a continuum of various degrees of membership rights (Bresky *in this volume*). This opens up new perspectives for the management of a much more variegated situation. The challenges that migration of different kinds as well as post-migration phenomena pose can thus be attenuated and absorbed within a form of cosmopolitanism deploying graduated membership rights.

These could, to some extent, accommodate concerns that migration, identity and citizenship are exclusive, as migrants are excluded from a given community according to criteria related to identity and citizenship. Just like migration, identity and citizenship are elements that continue to fluctuate through expansion or shrinkage as political ramifications occur. In her well-known writings, Shachar (2009) sees birthright entitlements to citizenship as too arbitrary criteria for securing membership into some/any political community. Shachar argues that if we see citizenship on the blood-and-soil principle as a capital or a property inheritance, it will only help to sustain and reproduce the inequalities of opportunity. Thus, new post-national models of citizenship that would transform or maybe only add to the known binary understanding of ethnic vs civic citizenry have not yet been seen as occurring in political realities of nation-states, apart from limited cases of multiple citizenship or sovereign-state principles of residence or protection statuses (cf. Bresky *in this volume*). Of course, transnational social spaces and activities of transmigrants (including refugees) add to legal, social and political complexity, and

this must not be forgotten. However, their positions are still bounded by the concept of possessing nation-state citizenship as a guarantee of their status and their residence/jobs/protection permits.

Having thus outlined the conceptual map of cosmopolitanism, human rights and citizenship, we must consider the actual challenges to the cosmopolitan order outlined above. For this purpose, migration is a particularly effective test case, since the concern for people not belonging to the national community is at the heart of cosmopolitanism, and both legal and empirical research evidence the ways cosmopolitanism is sidestepped, chipped away, eroded or simply ignored.

Relationship Between Migration and Human Rights

The link between migration and human rights is multifaceted. One may say that they have a quite ambiguous relationship. It must be recalled that migration can be both beneficial and detrimental to human rights. Engaged in an orderly and regular manner, migration can be a vector of human development. Individuals migrate for many reasons: from education and work, to family reunification, health and lifestyle or simply for leisure purposes, they are given an opportunity to exercise and enjoy several freedoms. People fleeing persecution, violence, human rights abuse and other life-threatening circumstances also migrate to leave their country of habitual residence for a safe haven (Collier 2013).

In contrast, when engaged in irregular channels, migration across borders can present multiple threats to human rights. Smuggled and trafficked individuals face highly hazardous situations to reach the European continent, including life-threatening or exploitative circumstances ranging from precarious and/or forced labour to slavery. By increasing their vulnerabilities, it is a truism that the exercise of the most fundamental rights of migrants is thus undermined.

As migration constitutes a long and costly journey, its link with human rights is a continuous process since the challenge for migrants continues even after they have successfully reached their final destination in the post-migratory phase. The right to obtain a status that will enable the migrant to remain within the territory of the state is a right for which non-citizens have to fight for administratively.

We understand the term ‘migrants’ as referring to multiform and diverse categories which encompass different kinds of group of persons: temporary residents, permanent residents, students, circular migrants, short-term workers, sojourners, asylum seekers, refugees, irregular and undocumented migrants and many others. Considering this diversity, all these categories of persons do not necessarily have the same legal status and, accordingly, the same rights to enter and remain in the territory of the host country.

While a person fleeing persecution, violence or war can, in theory, be entitled to refugee or subsidiary protection status, the vast majority of migrants fall outside the scope of international protection (Becker 2019). Even the former nowadays face more and more difficulties persuading the authorities that they are worthy of

protection. Facing discrimination, non-citizens encounter rejection and are excluded from the enjoyment of a wide range of human rights, some arguing that states' obligations only exist vis-à-vis their citizenry (Berlinske 2019). From a legal perspective, states have a duty to respect, protect and fulfil fundamental rights to all persons who are under their jurisdiction. While ensuring economic and social rights for migrants may give rise to debate, the state cannot deprive a migrant, even in an illegal situation, of the enjoyment of fundamental rights guaranteed for all human beings by international law. As Louise Arbour, United Nations Special Representative for International Migration, stated, 'the fundamental principle of the universality of human [rights] means that those individuals deemed irregular migrants also have rights. While irregular entry and stay may constitute administrative offences for non-refugee migrants, they are not crimes per se against persons, property or national security. And while states retain the sovereign prerogative to order their removal, the very presence of such migrants under their jurisdiction places certain obligations on national authorities' (Arbour 2017, 2).

Migrants have incontestably gained a claim to rights through international law, which has contributed to democratising human rights in a way that individual rights are guaranteed to all as human beings and not as citizens, regardless of their belonging to a nation-state. Universal personhood undergirds the expansion of rights and rights claims and surpasses the sole identity of a person. This has constituted a paradigm shift as the nation-state system, which by nature was territorial, conditioned the enjoyment of rights since membership of a national community, or, more specifically, a political membership has been the criterion. With the advent of international law proclaiming equal and universal rights, transnational migration challenges the nation-state model.

This shift has been operated progressively and only on a sectoral basis. In the aftermath of the Second World War, refugees were recognised and provided with the right to asylum by the Universal Declaration of Human Rights (1948) and the Convention Relating to the Status of Refugees (1951) and its Protocol (1967). Later on, under the auspices of the International Labour Office, labour migrants became protected under a series of international conventions which guaranteed a wide range of human rights ranging from non-discrimination in the enjoyment of economic rights to social and cultural rights, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

However, even though national membership cannot be cited as the sole status that underpins the enjoyment of human rights, it constitutes an identity that does not lose its relevance: in practice, there is a 'political culture in which universal personhood continues to be subordinated to citizenship as a basis for rights' (Hill Maher 2002, 21). Many rights remained as an entitlement exclusive to citizens. The exclusion of migrants particularly those from the developing countries from the enjoyment of the right to immigration is also one of the compelling examples. In the light of the racial violence and the discriminatory policies migrants encounter, 'identities still matter to rights claims and that human rights are not hegemonic norms' (Hill Maher 2002, 25). Claims to rights based on universal personhood are progressively weakened in the face of restrictive immigration policies.

The exclusion of migrants from the right to immigrate into a foreign state finds its roots in the liberal tradition pertaining to the notion of contract and consent in so far as their inclusion into the host community depends on the consent of the members of the latter, assuming that the former has already expressed the will to join the community. The state policy on immigration and its will (or absence of will) to welcome newcomers is presumed to be the reflection of its citizens.

Freedom of Movement: A Human Right?

As shown in Zarka's chapter (*in this volume*), while the absence of a right to immigration in positive law is well established, whether or not this right exists from a philosophical perspective and whether it is compatible with cosmopolitanism can be considered a debatable issue (Jacobsen *in this volume*).

The proponents of an open border policy consider freedom of movement to be a fundamental human right. From a legal point of view, the controversy lies mainly on the duality of freedom of movement as guaranteed by international conventions since the right of emigration and the right of immigration are not guaranteed in the same terms. These rights entail different duties on behalf of different entities operating on different geographic spheres. By virtue of Article 13 of the Universal Declaration of Human Rights: '(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country'. An individual has, therefore, the right to leave his country without having the guarantee to be received in another country. This asymmetry has resulted in different duties on behalf of different entities operating on different geographic spheres.

If one is not persuaded by legal, moral and philosophical arguments for open borders, one could try to convince a state to open its borders and welcome foreigners into their territory based on economic arguments. The liberalisation of visas, along with freedom of movement for all, could have beneficial effects for their economies (Ivankiv *in this volume*). There is, however, a contradiction because states might tend to refuse entry on account of limited resources arguing that unlimited immigration policy would put an 'unreasonable' burden on their welfare system, while Ivankiv argues that an open border policy will rather have favourable impacts on the same welfare system.

Economic considerations are probably also the reason for the discriminatory visa regime, which exempts or at least facilitates the visa process for the citizens of wealthy countries and burdens those from developing countries. Some may justify this by saying it is 'the fear of others'; however, representing all foreigners as 'others' seems quite simplistic because even if the visa system can be considered discriminatory, it mostly disfavours the 'poor'. The 'fear of the poor' is what really justifies the established restrictive immigration policies as rich individuals from developing countries still have the opportunity to travel for touristic, educational, business, amenity and many other purposes.

This discrepancy in the discriminatory visa regime and mechanisms for refugee protection pinpoint the known fact that those in need of protection are not able to travel to desired destinations but stay mostly inside the borders of their own country or immediately surrounding states. It is a rather Eurocentric perspective to forget that 80% or more of forcibly displaced populations follow this pattern. In this light, Lars Erslev Andersen's chapter on Palestinian refugees in Lebanon becomes particularly salient, relativising what happens in Europe. According to EU numbers, refugees make up 30% of the Lebanese population (EU 2019). Erslev Andersen analyses the situation of the Palestinian refugees in Lebanon and how the Syrian 'refugee crisis' affected their livelihood, considering what perspectives there are for them in the future. Being in a very vulnerable position, with a protection gap that cannot be one-sidedly bridged, with dim and slim chances of return to their homes, they often feel themselves to be victims of regional politics and the impotence of international politics to help them with any possible durable solutions whether this would be the desire to return or local integration outside camps and informal settlements. Acknowledging and exercising their rights remain a difficult task, yet is the only possible course to pursue, when the endorsement of their human rights and their social rights stands contrary to their stateless status in the host country (Erslev Andersen *in this volume*).

Rejection of Asylum Seekers and Refugees: Contravention of Cosmopolitanism?

It must be recalled that once migrants, whether legally or illegally, have entered the territory of a state, the latter has a duty to respect their fundamental human rights and treat them with dignity. Criminalisation of migration in the political discourse and also in public opinion has become a common phenomenon. The migrant is 'constructed' not only as the undocumented worker who does not pay his taxes and contributes to the lowering of social standards by accepting to work for low wages and social protection, but also the alien engaged in criminal activities ranging from drug dealing to terrorist activities. This biased Manichean perception tends to have 'complex repercussions in terms of popular sentiment, future public policy and the potential for migrants to make human rights claim' (Hill Maher 2002, 29). Public opinion reveals a sentiment of rejection and fear towards migrants who are often perceived as not deserving of rights.

While Christianity has contributed greatly to the very idea of non-discrimination and has promoted a welcoming culture towards newcomers, during the so-called refugee crisis, the Catholic Church and believers in Poland seemed to have moved away from the principle that constitutes the foundation of their faith. Anna Wilczyńska and Karol Wilczyński have demonstrated that despite the very low number of refugees in Poland, the Catholic Church did not play its role in fostering a positive attitude towards refugees among its faithful, whether through its silence

(as in the case of Croatia) or negative rhetoric on the refugee crisis. Presently, the Catholic Church's influence on the opinion of Polish society seems to have declined as the Church has lost its authority over the years (Wilczyńska and Wilczyński *in this volume*).

The sentiment of rejection and fear observed towards migrants and refugees should not overshadow all the solidarity initiatives that were engaged in favour of migrants. As Drago Župarić-Iljić explained, many faith-based actors became highly involved during the period of the Balkan corridor and afterwards in the process of fostering solidarity towards newcomers. Their mandate evolved to an extent where they also became actively engaged in human rights and refugee rights advocacy activities. Despite the remaining challenges, including overall securitisation and criminalisation of migration and of citizens' solidarity, faith-based actors strive to promote a humanitarian approach shifting progressively from the provision of emergency assistance to long-term integration solutions. These were among many other humanitarian, solidary, civil society and pro-refugee rights actors, initiatives or grassroots movements active during the 'long summer of migration' (Kasperek and Speer 2015) and in its aftermath.

Analysing volunteer networks supporting refugees in Copenhagen and Berlin, Kirchner and Steen Bygballe Jensen come up with a challenging idea that these networks for refugees could serve as alternative structures for political participation and ways of belonging. Volunteers and refugees working and cooperating actively together may overcome the separation due to national legal borders (citizen–non-citizen divide) and create a sort of transborder citizenship, understood as everyday negotiation and practising of refugee rights counteracting the mistreatment of newcomers.

Various campaigns denouncing the treatment of migrants have been undertaken. But far from pressuring the European Union to take positive actions towards migrants, it drove the EU to legislate against the activism geared towards the support of migrants by criminalising the assistance of illegal migrants and targeting all those who offer humanitarian aid (Council Directive 2002/90/EC of 28 November 2002 and Council framework Decision of 28 November 2002). As a result, multiple lawsuits were brought against citizens, politicians and even medical professionals and NGOs working in the field of humanitarian aid.

Beyond the debate pertaining to migrants, there are indicators that the European states are progressively closing more and more their borders and 'building walls' (Zarka *in this volume*), notably by lowering protection standards even for categories of forced migrants already protected by international law (i.e. refugees, asylum seekers). The sole reason for fear of persecution is not always sufficient for protection to be afforded as per the terms of the 1951 Convention Relating to the Status of Refugees. Asylum is rather granted on the basis of 'humanitarian grounds' thanks to the goodwill of the states. One may think this could potentially extend the list of beneficiaries of international protection as it goes without saying that more humanity in the management of migration flows is always welcomed. The reality is far from this as a shift from a right-based approach to vulnerability-based approach has been operated. Asylum seekers cannot be trusted solely on the basis of the story

they tell: a strong suspicion and mistrust are expressed towards them; as their fear of persecution in their country of origin cannot be measured, their stories are often presumed fraudulent. Since these individuals are perceived as a burden, the authorities regard them as ‘abusive migrants’.

If an individual aspires to get refugee status, he or she must manifest visible and scientifically measurable signs of vulnerability: serious physical or mental illness is one of those situations that can render an individual eligible to remain in the territory of a given state. Camille de Vulpillières discusses how migrants are seen as biological rather than social human beings, whose human rights in the perspective of the state rely on humanitarian grounds that basically strip them of their agency. The administration, legal procedures and humanitarian reasoning might thus reduce human rights and people’s destinies to bare reification of suffering, vulnerability, passivity and dependency (de Vulpillières *in this volume*). The story of a young asylum seeker who started a hunger strike after his asylum claim was rejected is a compelling example. His health condition declined so severely that he received the right to stay as a ‘suffering body’. This could seem rather strange as the individual would not have been in this situation if he had been heard in the first place. After their asylum claim was rejected, others experienced a great deal of suffering and distress due to the fear of returning back to their country of origin and had to be recognised as psychiatric cases. While the story behind this trauma was not considered veracious, the mentally ill man was recognised as eligible for protection on humanitarian grounds (Dubois-Girard 2011, 4–5).

It seems as if supranational institutions, to whom the responsibility to ensure the proper application of human rights standards has been given, are staggering in the face of state parties’ protective tendencies of their national sovereignty with regard to immigration matters. The European Court of Human Rights, indisputable champion of the protection of human rights, tends to adopt a restrictive approach when dealing with immigration matters and access to international protection for foreign claimants, thus leaving the impression that state sovereignty punctuates the level of protection the court is willing to afford to foreigners. Two revealing examples are provided in this book: the situation of women asylum seekers and individuals accused of terrorism who potentially face *refoulement* to countries where their life is at great risk (Petropoulou; Gebre, *in this volume*).

As far as women asylum seekers are concerned, Athanasia Petropoulou shows that the Court of Strasbourg does not place their claims of asylum in a broad structural, institutional and social context while examining the existence of ill-treatment under Article 3 of the Convention, overly focusing on the individual characteristics of the applicant. In cases concerning sexual orientation and gender identity, it seems that the court sets a double standard when applying the safeguards of the Convention. Foreign victims of criminalisation of homosexuality, and often of gender-based violence in general, do not receive the same level of protection when they seek international protection as European homosexuals victims of discrimination because of their sexual orientation.

Emnet Berhanu Gebre discusses the same point regarding the application of the principle of *non-refoulement* to persons convicted for terrorism. The European Court of Human Rights is more or less resisting the pressure of the states which mangle the principle of *non-refoulement* in the name of the fight against terrorism. This issue is at the crossroads of states' obligation to protect their population along with the prerogative to oversee their sovereignty in deciding who is entitled to remain on their territory and the right of a person not to be sent to another country where his life is in danger. Gebre (*in this volume*) contends there are signs in the jurisprudence of the court that presage that the absolute character of the right to be protected against ill-treatment can be eroded in the face of growing security concerns.

From the European Union side, the states of the Visegrad group pose a challenge to the legal order of the EU, notably to the European legal cosmopolitanism developed by the European Court of Justice and the Commission. As emphasised by Joseph Krulic, despite their favourable past towards the right of asylum, these countries have recorded systematic failure in matters of asylum rights either by refusing to take responsibility in the processing of asylum applications or to accept the rule of law model. This conflict between the two represents the epitome of the debate between the sovereign right of the state and the supremacy of transnational rights recalling 'the rift between Hans Kelsen and Carl Schmitt, Grotius and the *raison d'Etat*' (Krulic *in this volume*).

The Challenges of the Post-migratory Phase

Lack of political will on the part of political elites and policymakers of asylum and integration policies may curtail the chances of obtaining adequate protection and proper implementation of both human rights and refugee rights. However, the inclusion of refugees into the education system and the labour market, as well as their participation in the social life of the destination/reception country, depends not only on the political will and the legislative and institutional capacities but also on the social climate that enables interaction between local hosts and newcomers. Župarić-Iljić and Gregurović (*in this volume*) tackle those security discourses used by politicians and the media that have caused the gradual deterioration of human rights and refugee rights in the post-Balkan corridor period. This has, to some extent, downgraded the trust that the local Croatian population has in refugees. The public perception of asylum seekers and refugees and of their rights seemingly reaffirms symbolic (non)citizen borders between cosmopolitan inclusiveness and ethno-national exclusiveness.

In the context of another Central East European country, focusing on exploring the attitudes of youth in Belarus towards civil and political rights, Olga Breskaya scrutinises different modes of political culture, and she equally emphasises the importance of the migrants' context when it comes to the endorsement or rejection of human rights. From a societal perspective, positive attitudes towards pluralism

and especially multiculturalism, in combination with critical stances towards governing institutions, could help to explain the positive perception of refugee rights (Breskaya *in this volume*).

One could also wonder whether yesteryear's immigrants are becoming accepted parts of society at the same pace in states with a more ethnic-based citizenship model (such as Germany) compared with those with a civic/citizen-based citizenship/nationhood (such as France). However, there is also a contrary tendency that we might have witnessed on the eve of the EU enlargement's cycles to countries of Central Europe and the Baltic states, where whole ethnic populations of yesterday's neighbours are becoming 'strangers' without moving, yet in the early 1990s borders were transformed in the geopolitical space and consequently made 'de-citizen-isation' and other exclusionary administrative practices towards 'new minorities' possible.

As a result of a formal naturalisation process or status regularisation in national programmes or even after a political construction (e.g. the introduction of EU citizenship) yesterday's migrants become the citizens of the present after the newcomers and the host community expressed their will for this political inclusion to become possible. This was the case during the establishment of the European Union, which resulted in the creation of European citizenship encompassing progressively 27 member states today. Since the economic and political integration was done gradually, citizens of the member states did not all acquire the same rights associated with their status at the same time. On the contrary, individuals that were part of a given community and considered as citizens can become migrants after they expressed collectively the will to withdraw themselves from it and accordingly lose some of the entitlements related to their previous status. This second case scenario arises from the ramifications that resulted from Brexit.

Conclusion

Cosmopolitanism, as we understand it here, is essentially moral and focused on the international human rights regime. Cosmopolitanism, in this sense, is challenged by proponents of open borders and utilitarianism on the one side and nationalism with its cortège of xenophobia and racism, chauvinism, authoritarianism and fundamentalism on the other. Being once associated with patriotism, it has now conceded it to nationalism. It drags behind itself memories of colonialism, which still haunt it today. The main challenge is, however, the one coming from different forms of nationalism gaining influence on the state apparatus and to some extent dragging the courts with them. Attempts to transform rights to humanitarian action circumvent the principle of *non-refoulement* and indiscriminate protection against ill-treatment, refusing asylum rights altogether, ignoring the structural, institutional and social context of asylum claims. These phenomena also express changes in people's perceptions. Even though some elements of nationalism can coexist with cosmopolitanism, other elements make this coexistence illusory. It seems that

attitudes to pluralism and multiculturalism are decisive in this respect. The elements of a more ethnic nationalism are, in turn, reinforced by security discourses and internal power struggles.

Religion can both be a challenge and a reinforcement of cosmopolitanism since it has remained silent or embraced nationalist rhetoric in some places, while religious organisations have supported the rights of refugees in other places. There is, however, a wider context of embeddedness both institutionally and in our built environment, which is important for the respect of human rights, democratic procedures and attitudes towards migrants. Authors of this volume have pointed to the notion of *ambiance* and the autonomous and participating citizen. A wide range of populations are feeling they are not being represented or account is not taken of their voices even when they express anti-migrant and anti-refugee views. Cosmopolitanism is being depoliticised in the public sphere (moved out of the mainstream) and transferred to the cultural domain as an arrogant, self-righteous and moralising position on the issue of human rights. Cross-cutting migration and human rights issues within the virtual, digital sphere, in post-truth politics, could be reasons for the polarisation of society. There is a dangerous tendency for democracy to become a bargaining chip for social benefits, and this will not bode well for the respect of human rights and thus for cosmopolitanism. There are, however, some reasons for optimism. Transborder grassroots movements and more gradual conceptions of citizenship could ease or contravene these tendencies.

Emerging challenges, however, related to all phases of migration, cannot be addressed only with declaratory efforts within the particular political sphere of the nation-state members of the United Nations system. Yet, as we have seen in many cases, the sovereignty principle acts against the legal and institutional attempts to manage human movements within a global intergovernmental policy. And then we end up in the so-called broken refugee system (Betts and Collier 2017), where we, in the case of Europe and the reactions during the so-called refugee crisis, witnessed that not every national political actor is committed to following elementary provisions of international and European regulative mechanisms (charters, conventions, principles, laws, bylaws, protocols) regarding respect of human rights in general and migrants' and refugees' rights in particular. This could potentially not only lead to the undermining of the commonly developed asylum and migration system but also jeopardise the very basic ideas of common values and dedication to the protection of human rights at no matter what cost. Otherwise, the cosmopolitan idea(1) of a global community that could strive towards more global justice will remain a prerogative of a few rich OECD countries, or, to be precise, a particular stratum of cosmopolites within these countries.

We are aware that nation-states are not the only actors within the migration and human rights regime. Other proponents, such as supranational institutions and international organisations, take a larger and larger share in the processes of regulating the drivers and consequences of migration and especially advocating and/or enabling protection for displaced persons. In the aftermath of the mass arrival of Syrian and other refugees and migrants in 2015 and 2016, we have witnessed the development of a new UN instrument—the New York Declaration for Refugees

and Migrants that seeks commitments from member states to strengthen the national mechanisms for protecting all types of migrant and refugee movements. States are obliged to respect the human rights of migrants and refugees with greater solidarity and responsibility. Yet again, the promise of more global governance is endangered because not all states of the UN have agreed to the provisions of the two new global compacts—Global Compact for Safe, Orderly and Regular Migration (GCM) and Global Compact on Refugees (GCR). However, as pointed out by Guild et al. (2019, 1), ‘while the GCM is not legally binding, the human rights obligations of states which underpin the GCM are. The application of international human rights law to everyone, including migrants, has led to frictions in the intergovernmental negotiation process, with some states declining to sign the GCM. States cannot relieve themselves of the human rights obligations to which they are already, voluntarily, bound by refusing to sign the GCM’. The future will tell us how the operationalisation and the implementation of these compacts’ objectives regarding human rights will be met in the political arena characterised by (national) fragmentation of the migration governance system, and how that will affect the cosmopolitan approach to it. Although—and we cannot stress this too much—the evocation of any sort of ‘global migration/refugee management regime(s)’ is to advocate a Janus-faced politics of population control and surveillance, as well as often a purely technocratic and social-engineering solution to such diverse and multifaceted phenomenon as human mobility.

It seems that there are many other challenges ahead. One could be possible violations of human rights and derogation from them that we cannot yet foresee. Some of them relate to assessments that are already present, like the dire effects of economic instabilities and political atrocities, together with the current global health crises. Other challenges have to do with future consequences of climate change that will not only have devastating effects on people’s livelihood, on their vulnerability and their adaptation potential, but could also threaten democracy and the guarantees of human rights, pushing humanity into a state of ‘climate apartheid’ (UN OHCHR 2019). One could pose a challenging yet unavoidable question: will human rights of people on the move because of the climate and environmental reasons be recognised as a legitimate ground for granting them some sort of protected status and when would that be? Some future mass forced migration will most likely be motivated by intertwined macro-structural reasons such as poverty, wars, hunger, climate disasters, overpopulation and others. Whether, in such a world, there would be any form of post-national cosmopolitan membership able to create a more just and equal ground for protection, a chance for a secure and prosperous life, including the respect for human rights and participation in society and politics at their destinations, remains to be seen.

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