

Refugee Protection, Political Asylum and Economic Migration: Subject to democratic contingency?

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Abstract

With decisions of 14 and 22 September 2015 taken by a majority vote the EU Council provided for a mandatory resettlement into other EU member States of refugees having applied in Greece or Italy for international protection. No parliamentary approval was required under the relevant EU and national constitutional rules.

Still, in a referendum held on 2 October 2016 the Hungarian People replied to the question: “Do you want the European Union to be able to mandate the obligatory resettlement of non-Hungarian citizens into Hungary even without the approval of the National Assembly?” 98,36% voted no, the turnout 44,04%. A consultation of the citizenry in other European countries not directly affected by the arrival of a high number of refugees and migrants would probably have led to a very similar result. In fact already one year ahead of the Hungarian referendum, in the parliamentary elections of October 2015 the Polish People largely supported the political party which clearly opposed the EU's emergency relocation and resettlement schemes and which subsequently, together with the Austrian and Hungarian governments, refused to relocate a single person.¹ In January 2018 the leaders of German centre right and centre left parties, departing from a prior policy of welcome under the threat of growing right wing electoral success, agreed on measures to limit influx of refugees into Germany.

In the UK referendum of 23 June 2016 51,89% voted in favour of withdrawing from the European Union. The turnout was 72,21%. Unlimited freedom of movement of workers within the EU single market was one of the prevailing motives to vote for the withdrawal.

Since the famous lines written by Thucydides on the Peloponnesian War, for democratic governance majorities are required. When it comes to the question whether a community is willing or not to receive refugees, politically persecuted persons or migrants and to share limited resources with them, majorities tend to protect what they perceive as their own interest². Historical evidence demonstrates that existing communities perceive the integration of newcomers to be in their own interest only when particular conditions are met: e.g. if it promises to counter demographic decline or to win cheap or qualified labour force. In most cases the appearance of newcomers gives rise to feelings of fear or grudge, related to increased unemployment, cultural contrasts, welfare tourism etc. that rightly or wrongly determine voting behaviour. The argument that the voters got it wrong is not admissible under democratic governance.

Would the outcome be different in a transnational community? Would transnational democratic institutions act differently? In a widened community there will certainly be more “ins”, but taking the EU as an example there will still be an overwhelming number of “outs” whose integration risks to cause fear and grudge. Deliberation by the European Parliament on relocation of refugees would probably tend to reflect a balance of interests within the EU. But what if decision-making on legal immigration were shifted from the national to the transnational

¹http://europa.eu/rapid/press-release_IP-17-1302_en.htm (access 17.01.2018)

² The underlying anthropological structures were sharply analysed by Carl Schmitt, *Der Nomos der Erde*, Berlin 1950.

level? The views prevailing in the citizenry would exercise similar constraints on EU institutions than they do on national authorities. Only the utopian extension of democratic governance to the scale of a global transnational community could structurally tackle the problem and change the outcome. Is sub-global democracy structurally non-solidary?

In the authors' view, the answer is yes, as long as the sovereignty of the people is conceived along the model of the sovereignty of an absolute monarch, bound neither by Law, nor Morality. Protection of refugees, right to political asylum and respect of human dignity in economic migration are principles of Law, sanctioned in international law and in constitutional texts on national and transnational level. "Migration is not a problem to be solved, it's a human reality to be managed."³ The planned contribution will argue that the contingency of democratic procedures will not allow to tackle the burden of managing such human reality unless citizens and their political representatives feel bound by the dignified achievements of humanity entrenched in the Law⁴.

³ Remarks by William Lacy Swing, Director General of the UN International Organization for Migration (IOM) at the opening of the international forum on Migration Statistics, Genève, 15 January 2018.

⁴ The issue seems to be quite topical. The question: "Can democracy exist in the absence of the rule of law?" was e.g. recently addressed in a meeting organized by CEPS on January 22nd at the European Parliament in Brussels.