

The Oxford Handbook of Political Obligation

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CHAPTER

32 The Political Obligations of Refugees

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Abstract

Refugees are people who are forced to leave their home state because their human rights cannot be protected while they remain there. This chapter explores their political obligations from three complementary angles. First, are they obliged to obey the state's immigration laws while trying to claim asylum? The chapter rejects the argument that by seeking admission they give tacit consent to such laws, and proposes instead that where the state's immigration regime is reasonably just, refugees are under a natural duty of justice to comply with it. However, where refugees face threats that would make compliance very costly, their obligation can be set aside on grounds of necessity. Second, do refugees once formally admitted have special obligations to integrate with their host society? The chapter explores whether such obligations might arise from gratitude for the benefits that refugees have received, but concludes that, since integration is a public good, fair play offers a better explanation. Third, it examines the duties refugees have to people remaining in the society they have left, and suggests that these stem on the one hand from their duty to testify to ongoing injustice, and on the other from their continuing associative obligations to their erstwhile compatriots. Refugees may therefore have an obligation to participate in political activities in support of those they have left behind.

Keywords: consent, fair play, gratitude, integration, obligation, refugees, testimony

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According to the United Nations High Commissioner for Refugees (UNHCR), there were about 43.4 million refugees in the world at the end of 2023—people who had been forced to leave their home countries from fear of persecution, violence and other human rights violations.[12] This number has been steadily increasing over the last decade, and not surprisingly it has attracted the attention of philosophers, who have asked how we should respond to the fact that we share our planet with so many displaced people living in insecure and often dangerous conditions (notable book-length contributions include Gibney 2004; Price 2009; Bradley 2013; Parekh 2017; Owen 2020; and Souter 2022). The focus has been on the rights of refugees, and the obligations that states and their citizens have toward them. Must a state grant entry to every refugee who asks for it, or is it

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permissible to set an upper limit to the number that can be accepted? Must states allow all refugees to settle permanently if they so choose, or is it acceptable in some cases to provide them with temporary protection? What political rights should refugees be granted? Far less attention has been paid to the question of refugee duties: the specific duties that may accrue to refugees as they navigate between the old political community from which they have escaped and the new political community in which they hope to find sanctuary. But although it is understandable why philosophical discussion should have focused on the rights rather than the duties of refugees, to ignore the latter entirely is to fail to see refugees as moral agents who have to make choices, albeit not under circumstances of their own making. Matthew Gibney puts the point well:

> Unless we recognize the moral choices refugees make, we risk dehumanizing them, we risk reducing them merely to victims defined solely by immediate circumstances. Just as recognizing people as rights holders may be a way of acknowledging their dignity, so, too, is recognizing them as duty holders. (Gibney 2020, 135)

My specific concern in this chapter is with the political obligations of refugees, as opposed to their moral duties in general, although I shall interpret "political obligation" in a broad sense that covers more than just the obligation to obey the laws of the state under whose jurisdiction you live at any time. So, for example, I will count as political obligations, obligations to vote in democratic elections and to carry out various other civic duties, even if they are not legal requirements. What makes an obligation political, on this understanding, is
p. 334 that it is owed to the members of one's political community and the institutions they support, and so ↳ there is a question how people with an in-between status—forced to leave one state, not yet fully integrated in another—can have such obligations. To answer it, I propose to investigate the obligations of refugees from three different angles.

First, there are obligations that might be owed to the state in which the refugee is trying to seek asylum, prior to that asylum being granted. We might think of someone who has made an asylum application while living temporarily in a third country, someone who is attempting to enter the state's territory physically, standing at a border fence, or crossing the sea in a small boat, or someone who has succeeded in entering without permission and is now waiting for her asylum application to be assessed (I'll refer to all of these as "asylum seekers"). The state will apply its immigration laws to refugees in each of these categories: the question that then arises is whether asylum seekers have any obligation to comply with such laws, and if so on what grounds?

Second, we should consider the position of the refugee whose asylum request has been granted, and who is now living in a new society. What obligations does he have as a result of being offered membership? Are his political obligations just the same as those of any other resident, or might there be special obligations—such as the obligation to become a citizen—that arise in virtue of the grounds on which he has been admitted?

Third, we must ask whether refugees owe political obligations to those they have left behind in the states that they have abandoned. At first glance it might appear that if a state has forced a person to leave through its inability to protect them from persecution or violence, all obligations to that state are immediately canceled. But this leaves it open what might be owed to the people who remain in that state: for example, might there be an obligation to help them in their struggle to overthrow a dictatorship?

There is a fourth possible angle on the obligations of refugees, though for reasons of space I will not consider it here: this concerns the position of refugees who find themselves living long-term in refugee camps, such as those administered by the UNHCR. Although current conditions of life in these camps are often very poor (see Parekh 2017, chap. 1), were they to reach minimal standards of justice, they might be considered as political regimes capable of generating obligations of compliance for the inhabitants (for discussion see Gates and Klosko 2022; Rafanelli, this volume).

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How should “refugee” be defined for present purposes? A fair amount of ink has been spilt on this Issue (see Shacknove 1985; Price 2009; Lister 2013; Ferracioli 2014; Kukathas 2016; Miller and Straehle 2020; Owen 2020), but most now conclude that for debates in political philosophy, the narrow legal definition of a refugee set out in the Geneva Convention of 1951, which confers refugee status only on those fearing persecution on grounds such as race and religion, should be replaced by a wider definition that encompasses, for example, those fleeing civil war or state collapse. In line with this trend, I understand refugees here as “people whose human rights cannot be protected except by moving across a border, whether the reason is state persecution, state incapacity, or prolonged natural disasters” (Miller 2016, 83). The fact that they are forced to emigrate to protect their human rights is what distinguishes refugees from other migrants.

32.1 Angle 1: Do Asylum seekers Have an Obligation to Obey Immigration Law?

In discussions of political obligation, it is standardly assumed that obligations to obey the law, whatever their
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specific justification, can only arise if the laws in question are reasonably ↳ just (Rawls 1971, 112; Klosko 1992, chap. 5). This must also apply to refugees, so here we reach our first crossroads: those who deny the very possibility of just immigration law, perhaps on the ground that any restriction on people’s freedom to migrate is unjust, must also reject any obligation to obey it. To proceed any further, therefore, we must assume that those parts of immigration law that apply to refugees can be reasonably just, which at least requires (a) that the state allows a sufficient numbers of refugees to enter to meet its international responsibilities toward them; (b) that if selection is necessary, the criteria used to choose who is granted asylum are defensible at the bar of justice (see Miller 2020); (c) that the admission procedures used comply with standards of procedural justice, requiring for example that a serious attempt is made to gather evidence that would allow asylum claims to be properly assessed, that there is an appeal mechanism for those turned down, and so forth. These conditions are quite demanding, and so we reach another crossroads: perhaps there are no existing states whose immigration law is sufficiently just as to engender obligations to obey it, at least on the part of refugees.

Suppose we move beyond this crossroads as well, and assume that in at least some cases, immigration law is reasonably just. Some of it is aimed at asylum seekers, but how could this create an obligation on their part to obey it? One possible answer is that by taking steps to seek asylum, in one of the ways outlined above, they have thereby given their consent to the immigration law of the state they are trying to enter. In political philosophy, there is a long tradition of attempts to ground political obligation in consent; this often makes use of the idea that consent can be given “tacitly,” by behaving in a way that signals acceptance of the political regime, as well through an explicit act of consent, such as swearing loyalty (see Beran 1987; Simmons 1979, chaps. 3–4). We might then think that when refugees approach the state to seek asylum, for example by filling in a visa application form, they are thereby consenting to the procedure by which asylum decisions are made (although as Grey (2015) argues, this cannot plausibly apply to people who knowingly break the rules in question).

What are the conditions under which someone’s behavior can constitute obligation-creating consent (for a fuller analysis, see Simmons 1979, chap. 4)? One is that the actor should know, or should be expected to know, that her behavior implies the giving of consent. A second is that the actor can reasonably avoid acting in that way. Together these conditions ensure that the giving of consent is voluntary, and can therefore give rise to obligations. This enables us to explain, for example, why tourists and other visitors who choose to enter a country thereby consent to obey that country’s laws during their stay. But can tacit consent also apply to refugees, who are forced to cross a border to avoid a threat to their human rights? It seems not: unlike the tourists, refugees have no reasonable alternative to entering a country where they can be safe, so their attempt to cross a border isn’t voluntary in the relevant sense.

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