

7 Human Rights and the EU's Responsibilities Towards Refugees

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7.1 Introduction*

One may say, looking at (among other things) its central legal documents,¹ that the EU is committed to human rights. I mean this in the sense that the EU regards it as very important that it lives up, both domestically and internationally, to what human rights demand.²

However, when it comes to the treatment of refugees – the subject of the present chapter – it is in a number of ways not so clear what human rights demand. When saying this, I am not thinking of human rights as a juridical discourse, in which the implications for how refugees should (not) be treated can sometimes be fairly definite: think, for example, of such principles as non-refoulement (that is to say, an asylum seeker may not be sent back to a country where they are in danger of being persecuted on certain grounds) and the right to asylum as specified in the Charter of Fundamental Rights of the EU (Art. 18).³ Instead, I consider human rights as a moral idea, stating (put very broadly) that the very important interests of all human beings ought to be reliably protected. One can think here of such interests as being safe, not being tortured, being able to freely express one's views and having a decent standard of living. This moral idea is one that the EU is committed to, in the sense that it finds it very important to live up to its demands,⁴ and for this moral idea, it is in several ways less clear what it implies for the treatment of refugees. To take a central case: human rights, morally understood, cannot immediately imply that all refugees who arrive at the EU's borders always and necessarily have to be admitted.⁵ If we think of a small country such as Portugal, we see that having to admit all refugees may sometimes not be plausible.⁶ However, it is at the same time very implausible that, as far as human rights are concerned, "anything goes" with regard to questions such as how borders may (not) be protected, what changes of the international order should be sought, the numbers of refugees that should be admitted to the EU or to a particular country, what rights refugees should have once they have been

admitted etc. A plausible moral idea of human rights does, it seems, have certain implications for these (manifold) questions regarding the permissible treatment of refugees, and clarity is to be provided in terms of what these implications are and why.

This chapter will not deal with all these questions. I will assume, for instance, that there are certain “deontological constraints” (that is, certain ways of acting, or failing to act, that morally have to remain off limits) concerning the protection of the EU’s borders and with regard to discouraging asylum seekers from reaching the EU’s borders⁷ and, likewise, that there are constraints saying that migrants who are at risk of drowning are to be rescued. I will also assume that human rights would demand the EU to do a suitably specified fair share in a global cooperative scheme that would give all refugees a safe place, if (nearly) all countries cooperated in such a scheme;⁸ where I assume that in this case, the costs of cooperating would be less than sizeable for the citizens of the countries concerned. (Discussing the full-cooperation case in which the cost is sizeable is beyond the scope of the present chapter.) While assuming all this, this chapter will focus on defending the claim that, *based on human rights, the EU has the responsibility to admit refugees at least up to the point at which sizeable costs for its citizens would arise – even if admitting them up to that point means doing more than a suitably specified fair share.*⁹ This also means that the EU and EU countries can be morally required to take up the slack of other countries that fail to do their fair share in protecting refugees.¹⁰ The italicised claim is my broad answer to the question of how many refugees the EU should admit, based on a human rights view; my arguments will become clear in what follows. I am not aware that this precise position has been defended in recent literature, although somewhat similar positions have been taken.¹¹

This chapter will defend, in short, that when we are talking about admitting refugees, human rights involve duties for the EU which (at least) go to the point of becoming sizably demanding. I emphasise, however, that admitting refugees does not, in the end, always come at a cost (financial or otherwise).¹² One may think, as just one example, of the circumstance that the EU’s population is ageing and that admitting refugees could very well bring benefits in this light.

This chapter will often focus on the EU and take a human rights approach. Human rights seem a suitable focus as they are very prominent as an international moral discourse and practice¹³ and also very prominent among the EU’s “values” – in word and also in (at least some of) the EU’s deeds, aimed at human rights realisation at home and sometimes also abroad.¹⁴

The chapter proceeds as follows. Section 2 clarifies the central concepts of a refugee and of human rights as well as the idea of so-called non-ideal theory. Section 3 forms the core of the chapter and argues that the

EU should, in admitting refugees, at least act up until the point at which sizeable cost to its citizens (the notion of “sizeable cost” will be clarified) would be incurred. Section 4 deals with objections. Section 5 concludes and briefly considers the question of whether the EU’s committing itself to human rights makes any difference to how it should act towards refugees. Or can the EU’s responsibilities be specified independently of such a commitment?

7.2 Central Concepts and the Perspective of the Chapter

I will now explain the concepts of a refugee and of human rights and then briefly go into non-ideal theory – a key element of this chapter’s perspective. For the most part, my aim will be to clarify rather than extensively defend the conceptual and methodological choices made – let alone to defend them against all possible alternatives.

a) *Refugee*

In many social and public discourses etc., the notion of a refugee refers to someone who is in a specific kind of trouble: refugees are not where they normally live, and they would be faced with great problems if they returned there. Philosophical discussion will typically try to arrive at a definition that is better elaborated and better defended. It would be a pity if such discussion were to “dissolve” the notion so that refugees ended up, say, being “simply” people in need like so many billions. Certainly, it might turn out that, in the end, the moral duties towards refugees are not (even) more weighty or (even) more extensive than those towards certain other (categories of) people in need – I will come back to this. But even if that were so, the notion of a refugee itself had better be somewhat distinctive and, also, not deviate too far from common usages.

I propose, for the purposes of this chapter, to understand the distinctiveness of the concept (its role, one might say) as the concept’s singling out a category of people who present very strong moral claims for admission to another country.¹⁵ In daily usages in society, a term (i.e. “refugee”) can, of course, refer to many different things (and will often be quite unclear). I have said that refugees are often taken to be people in a particular kind of trouble. Law and policy have often been more specific: refugees face persecution if they return to their country (Geneva Convention), or they face a situation of generalised violence or the like (cf. UNHCR).¹⁶ In philosophical discussions and elsewhere, it has been asked:¹⁷ what if people would face other severe problems with their human rights protection or realisation if they returned home?¹⁸ I think that the following is, in principle, a good line to take: people *can’t return home, or they will have a serious*

problem in terms of the protection or realisation of their human rights. (Importantly, I do not think that any broadening of the concept of a refugee should practically be proposed in the current political situation, but in the philosophical discussions in the “background culture”¹⁹ of a society, the italicised proposal appears to be a sensible line to take.) More precisely, I believe the concept of refugee would best refer to people who cannot return to their home country because they would have a serious problem with the protection or realisation of their human rights, a problem which would be solved most appropriately (in a sense to be further explained) in their home country.²⁰ For in certain cases, also in the non-ideal situations that interest me (see later in this chapter), the most defensible outcome may be a solution at home rather than envisaging – as is the topic of the present chapter – that people be admitted to another country.²¹ (In all cases, the people concerned should, of course, be respected as – among other things – willing, autonomous beings and should have a voice in and, wherever possible, a measure of control over the directions of their lives.)

The additional aspect, then, for people to be deemed refugees would be that the solution to their problems should not – at present – be most appropriately provided at home. This aspect stems from the concern of keeping the concept of a refugee somewhat distinctive.²² I believe various factors can contribute to the most appropriate solution not being in someone’s home country. To provide it there may not be feasible in the short run for, say, some internal non-state agent or some outside agent,²³ or it may be that a solution cannot be provided by – for instance – an outside actor in an acceptable way (for example, it could not be done in keeping with due respect for a people or a country or while steering clear of forceful intervention with, potentially, a lot of bloodshed). It may, I believe, be very hard to specify such contributing factors, and endeavours to do so should certainly involve the people concerned themselves. In any case, it is not possible to try to do all this in this chapter, and I will have to leave this discussion here.²⁴

Finally, due to this addition (“not most appropriately solved in someone’s own country”), some people may fail to qualify as refugees while still having strong, justified claims that states and/or various non-state agents take certain steps to ensure the protection and the realisation of their human rights.²⁵ While such claims on the part of refugees (in this chapter’s sense) will not always be stronger and/or more justified, the moral claims of refugees for admission to another country are generally stronger.

b) Human Rights

I now turn to the concept of human rights.²⁶ I will focus on human rights as a moral concept, rather than a legal one – more particularly, as a minimum

ideal of justice, meaning that if human rights were fulfilled everywhere, the world would be broadly, albeit not entirely, just.²⁷ Here, I mean justice in the Rawlsian sense of “the first virtue of social institutions”²⁸ and also of a world order.²⁹ The content of these requirements concerns the reliable protection of very important interests of all human beings.³⁰ More concretely, I would think of a list such as the Universal Declaration of Human Rights, which specifies, in the words of James Nickel, seven “families” of human rights: security rights, due process rights, liberty rights, rights of political participation, equality rights and social rights and, in addition, rights that address the problems faced by distinctive groups.³¹

When the EU stresses the importance of countries – both within and outside the EU – abiding by human rights, it is broadly such a list that is in play.³² And its appeal is not least moral:³³ countries (as well as other agents) should respect and fulfil the human rights on this list, where the general ideas driving this seem to be such notions as the importance of the weighty interests of all human beings and of a world that is just. In other words, the conception of human rights that I propose seems to fit rather well with some very important things that the EU subscribes to (both in words and also in certain actions) and that we may, loosely, call a central part of the EU’s “values”.³⁴

One could wonder whether it is at all plausible for a conception of human rights such as the one just briefly outlined to have sufficient “resources” for determining how refugees should be treated and, in particular (for the present chapter), for how many refugees the EU should admit. Or is it too indeterminate for that, even if a number is articulated in a very general way: for instance, by referring (as I will) to something like “sizeable cost to EU citizens”?

Replying to this doubt allows me to briefly elaborate on the justification of human rights in the moral conception proposed. As I see it, a particular human right (say, a human right to freedom of expression, meaning that the ability of people to express their views ought to be reliably protected in certain ways) exists if two things are the case: (1) reliably protecting the interest in question is very important,³⁵ and (2) there are suitable duty bearers for reliably protecting it.³⁶ The way to establish (1) is mainly by showing what are the benefits for people if the interest is reliably protected and the disadvantages if it is not. Telling stories may be the main way to do this.³⁷ Establishing (2) will mainly be done by drawing on widely acceptable ideas about when agents have duties: for example, that this depends on their capacities to provide reliable protection (perhaps at a limited cost to themselves) and on the extent to which they have played a role in causing a problem for the protection of an interest.³⁸ Thus, in justifying what human rights exist, this conception would draw on considerations of (1) the importance of human interests and (2) who the suitable duty bearers

for reliably protecting those interests are. Both of these considerations are important resources – as we will see – for drawing conclusions about the EU's responsibilities towards refugees. Both will play a role in arguing that the EU must admit at least as many refugees as it can until there is sizeable cost for its citizens. In this sense, human rights are helpful: my conclusions will draw on considerations already (very nearly) implied in human rights.

c) Non-Ideal Theory and Some Further Assumptions

In this chapter, I will mainly focus on non-ideal theory – theory about situations in which some institutions and their actions and certain actions of individuals are (at least provisionally) taken as a given, even if such actions are probably not the best possible, taking into account how human beings are.³⁹ Among other things, I am especially interested in what the EU should do even if certain other parties (such as, perhaps, the US) do not act as they should. Presumably, the first answer in such cases will always be that one should try, with permissible means, to get the “defectors” to act as they should. But the question remains as to what should be done if they cannot be brought to act in such a way; this is one of the things that particularly interests me in this chapter.

A final point about what the chapter assumes: I am, as stated earlier, simply presupposing that there are certain “deontological constraints” – things that one should always or may never do to asylum seekers. To mention only two examples, people who are at risk of drowning need to be rescued, regardless of longer-term considerations, and people may not be shot at or treated in other inhumane ways when a country or the EU guards its borders. In the case of the examples just mentioned, the relevant categorical dos and don'ts simply flow, respectively, from an elementary morality of rescue (cf. Peter Singer's well-known example of the child drowning in a pond)⁴⁰ and from (almost) absolute prohibitions to actively and greatly set back people's very important interests (“don't kill”, etc.). To further discuss such deontological constraints is beyond the scope of this chapter.

7.3 A Responsibility for the EU to Admit Refugees at Least Until Its Citizens Would Incur Sizeable Cost

Ideally, an institutional arrangement would be in place that can in fact (and not just on paper) effectively protect refugees.⁴¹ Such an arrangement might, for example, be an effective international treaty between largely sovereign states – including entities such as the EU – in which all participants do a fair share in admitting and otherwise protecting refugees. However, let us focus on a situation in which by no means all countries do a fair share. This is, and will probably long remain, closer to the world's current

reality. As said, the first thing to be tried by the complying countries is to get the non-compliers to do their fair share after all. Yet what must these countries or the EU do if the non-compliers cannot be brought to act as they should, as will presumably often be the case? I want to defend that based on human rights, the EU has (EU countries have) the responsibility to admit refugees at least to the point at which sizeable costs for its citizens would arise, even if admitting them up to that point means doing more than a suitably specified fair share.⁴²

Let me, first off, give a specification – not, of course, the only one possible – of “sizeable cost”. “Cost” does not merely mean “financial cost” here. Rather, the cost for a country’s citizens remains less than “sizeable” – or, in other words, quite small – as long as nothing very important is compromised, such as a well-functioning legal system, good health care, a well-functioning political community and civil society, a reasonable level of economic prosperity and employment etc.⁴³ I am well aware that a list such as this one faces questions from at least two directions: first, for greater specification, and second, for greater abstraction: that is to say, for further clarification of what the list is a list of (basic goods, capabilities etc.)⁴⁴ so that it becomes clearer why exactly these things should be “very important” – and what that means. I must leave either kind of question open here and simply propose that as long as no things such as those mentioned are compromised, there are no sizeable things at stake for the citizens of a country or of the EU in admitting more refugees.⁴⁵ As said earlier, admitting refugees certainly does not always come at a cost for a country and its citizens, but sometimes it may – especially if very great numbers of refugees are concerned in a short timeframe.

I am now in a position to make the argument for the claim that the EU or a country should admit refugees at least up to the point of incurring sizeable cost, even if that means doing more than a fair share. The idea is that until sizeable cost arises, there is (by definition) nothing really substantial at stake for a country’s citizens.⁴⁶ Now, if non-citizens in need are not even helped out when there is nothing really substantial at stake for citizens, non-citizens count for hardly anything at all. (This is, to be sure, a statement about non-citizens in general; I will come back to the question of whether refugees represent a special case.)

However, suppose that one would consider already having done one’s fair share as a sufficient justification for not doing more in this case. This would mean, I would object, that the cost of non-compliance by other countries would have to be borne by the refugees – by the people whose very important interests are in great jeopardy. And this seems even more morally problematic than the EU or a country having to do more than its fair share by taking up the slack of the non-compliers.⁴⁷

But what if there *is* something really substantial at stake? That is, in my terminology, what if the cost *is* sizeable or more? I take it for granted that a

country's government (or EU institutions) may, to a certain extent, be partial to their citizens. A French government that would have as much concern for Chilean citizens as for French citizens – except in such respects as not actively harming them⁴⁸ – would not recognisably be a French government at all. It is a moot point, however, just how far the partiality of a government or of the EU for its own citizens may go. It is clear that all kinds of valuable goods could be safeguarded for EU citizens if the EU acted to avoid sizeable or higher costs for those citizens,⁴⁹ but people who are not EU citizens may suffer. Would we, at this price, want a world in which some countries and their citizens are in relatively fine shape because of such partiality? Perhaps the answer is affirmative: for instance, because otherwise, everyone would suffer or because the existence of countries of a certain kind – for example, democratic countries – might be beneficial for everyone.⁵⁰ Yet defending partiality in the sense that governments often need not go beyond less-than-sizeable costs for their citizens may also be a “bias of the lucky against the unlucky”.⁵¹ It is because of this hesitation that I say that countries and the EU should admit at least as many refugees as they can at less-than-sizeable cost to their citizens; perhaps they should admit more refugees than this.⁵²

Suppose they need not admit more refugees than they can at less-than-sizeable cost to their own citizens. Then the reasons for not having to do more could be strong,⁵³ and they might be strong enough to overrule the reasons for doing a fair share when the cost of doing a fair share is sizeable or more. Whether this is so will depend on large issues, such as which concept of morality one embraces. But if it were so, there could be (what may be called) tragic situations in which some refugees need protection while no one is morally required to take them in.

To what extent does this account rely on human rights in formulating duties towards refugees? The claim that the EU should admit refugees at least up until the point at which sizeable costs would arise for its citizens draws on the weight of the important interests of human beings. If a human being's important interests do not matter, why care about some human being in dire need, even if you can easily help them out (or even also if you have been directly or indirectly involved in causing their need)? In addition, there will, even if less-than-sizeable costs are at stake for its citizens, be a duty for the EU to admit refugees only if we accept certain ideas about duties – for example, the idea that one has a duty where one has the capacity to help someone at little cost to oneself or where one was objectionably involved in bringing about someone's dire need. Now, these thoughts about interests and duties are also a crucial part of what is needed for accepting that there are (certain particular) human rights in the first place.⁵⁴ So the concept of human rights that I propose on the one hand and the previous thoughts about the EU's duties towards refugees on the other fit each other well.

Let me make two qualifications. The first concerns the thought that the EU may not have the duty to admit more refugees than it can with non-sizeable costs for its citizens. This thought is certainly connected to thoughts about capacity as a suitable ground for bearing duties. But, as we have seen, it also involves ideas regarding the degree to which states may be partial to their citizens, and these ideas arguably – although this is disputable – play less of a role in the concept of human rights that I proposed. Secondly, it may be asked how this concept of human rights is supposed to lead to duties towards refugees specifically. Is it not the case that the duties that can be distilled from it are, in fact, rather general duties to respect, protect and promote human rights? I will, in reverse order, discuss these two issues in the next section.

7.4 Some Objections

Important objections to the claim that the EU should admit refugees at least until sizeable costs would arise for its citizens include the following. First, why admit refugees rather than focusing on other people whose human rights are badly protected or badly fulfilled?⁵⁵ Secondly, once again, just how partial may a state be towards its own citizens? And could the degree of permissible partiality differ for states and for the EU? Finally, do the (un)supportive attitudes of citizens make a difference in how states and the EU should or may act towards refugees?

a) Do Refugees Represent a Special Case?

Suppose that a state or the EU should be committed to human rights (understood broadly as the concept outlined earlier). Then, according to what has been said here, that state has certain duties to respect, protect and promote human rights, certainly for its citizens, but also for non-citizens. If the reliable protection of the very important interests of non-citizens really matters – and this is what human rights say – then it is plausibly forbidden for a government to actively set back these interests (save perhaps in very exceptional circumstances), and it must arguably further the fulfilment of these interests insofar as this is compatible with duly caring for its own citizens. A government cannot (save perhaps in very exceptional circumstances) abide by human rights if it kills or wounds foreigners or if it does not (say) assist starving people when it can easily help out.⁵⁶ But – assuming that there is a limit to what a government ought to do to better fulfil the human rights of foreigners – then why should it admit refugees, rather than focusing on some other people in need?⁵⁷

I believe the answer is twofold. First, thinking about human rights-related duties should indeed begin by considering all human rights-related duties.

Negative duties (not killing etc.) will have to be upheld across the board, but with positive duties, there will be some leeway. Secondly, however, one of the criteria will plausibly be that all vulnerable groups of individuals receive attention. It is generally impermissible to pay no attention at all to one vulnerable group (for example, refugees) because one is already doing a lot for another (say, disabled people). I could imagine there to be some exceptions, but their case would really have to be made. One may add that the human rights situation of refugees is usually very serious and one of imminent danger: by definition, the way for them is to go elsewhere because of a severe human rights problem they would face at home. In deciding how to go about fulfilling human rights in situations in which one cannot do everything, refugees therefore generally put quite strong claims for priority on the table. A very good case can be made that refugees must find a safe place. If they do not, the consequences will be dire for them.⁵⁸

b) The Partiality of States and of the EU Towards Their Citizens: Revisited

I would now like to revisit some questions and doubts regarding the permissible degree of a state's and the EU's partiality towards their citizens. Earlier, I said that a state or the EU should take refugees in – or, more broadly, work to better fulfil the human rights of foreigners, of which protecting refugees is a vital part – at least as long as the cost to its citizens is less than sizeable. As long as that is the case, nothing of great substance is at stake for its citizens. But why would a state or the EU be allowed to be partial towards its own citizens up to that point?

While I am not certain whether this question can be answered at all, I am certain of two things: (1) that a state may, to a certain extent, be partial towards its own citizens; otherwise the French state would not recognisably be the French state at all, and (2) that a state may, in any case, not take partiality beyond the point at which important goods – for example, a well-functioning legal system, a reasonable level of economic prosperity and employment – have already been reasonably protected for its citizens, insofar as this is feasible by social arrangements. If it were permissible to take it even further, foreigners would count for very little indeed. So to take partiality to the point just indicated is the maximum degree of partiality that may be permissible,⁵⁹ but perhaps only less is permissible – all the more so where the EU or a country has contributed to human rights problems for foreigners.

Secondly, how does this account of partiality, which has been focusing on states, apply to the EU? I want to leave aside questions of how best to understand the EU – for instance, more as a collaboration of sovereign states, more on a federal model or in some combined or altogether different

way. Still, it may be plausible from a variety of perspectives that an EU not partial towards EU citizens to a certain extent would not recognisably be an EU (along the lines of the example of the French state), but, at the same time, the benefits at stake for EU citizens must at least be sizeable for partiality to be possibly permissible. If one follows this line, it is likely that the EU as a whole – and many EU countries specifically – should admit more refugees and do more for refugees than they currently do.

c) Support From Citizens

I would like to address one final question that may arise in relation to the position that I have taken: could the fact that in some countries many citizens would not support admitting refugees up to the point of sizeable costs, would arise be a morally acceptable reason for these countries or the EU to admit fewer refugees? My answer is threefold. First, in the short term, citizens' attitudes and behaviour, also if morally problematic, can (but will not always) be a given for policymakers when devising and carrying out policy. Where this is so, it is inevitable for policymakers to take these attitudes and this behaviour into account, and they should do so in what seems morally the least problematic way. The result could be called non-ideal justice, or perhaps it is better considered as an extent of injustice. Second, with certain attitudes and behaviour on the part of citizens, it is plausibly not the business of a government in a liberal-democratic society to try to change it, be it in the shorter or longer run. This is different, however – and this is the third point – when such attitudes and behaviour touch on the fundamentals of a liberal-democratic social order: on the freedoms, equality and rights which are the cornerstones of that order. Then, where governments could change the attitudes and behaviour in question, they should try to do so, and the liberal-democratic ideal itself is important in deciding which means are (im)permissible in such endeavours.

7.5 Conclusion

I have defended that, based on human rights, the EU has the responsibility to admit refugees at least to the point at which sizeable costs for its citizens would arise, even if admitting them up to that point means doing more than a suitably specified fair share. I have taken this position, which can be applied to countries, with the EU specifically in mind.

If the EU takes this position seriously, many questions – some more practical, some more theoretical – will obviously arise in trying to follow through on it. Let me close by briefly addressing one: does this position have its validity and importance whether or not the EU is committed to human rights (in the sense that it finds it very important to protect and fulfil human

rights)?⁶⁰ Or does the EU's commitment to human rights somehow make a difference to this position's validity or importance? My view on this comprises two parts.⁶¹

The first part is this: polities (such as the EU or a country) should, as a matter of minimum justice, appropriately protect and fulfil human rights at home and abroad – and the position developed in this chapter tells us something about what this means for the treatment of refugees. A polity that does not appropriately protect and fulfil human rights is simply unjust, and this is so whether it subscribes to human rights or not. The EU is not more unjust than some other polity if the EU subscribes to human rights in words but does not follow suit with its deeds while that other polity did not subscribe to human rights at all, either in words or in deeds.

Yet, secondly, if the EU commits itself to human rights – as it, in fact, does – but does not act in accordance with them, this may open it up to some moral complaints that do not hold for a polity not committed to human rights. For example, there could be complaints of hypocrisy⁶² or complaints that the EU has failed to act in accordance with human rights despite knowing well that – and, not seldom, also how – it should do this. And in this sense, the EU does have additional moral reasons, based on its commitment to human rights, to take the position developed in this chapter seriously.

Notes

- * Many thanks to Marie Göbel, Andreas Niederberger, Marcus Düwell and Matthias Hoesch for very useful comments on an earlier version of this chapter. Some of the thoughts in this chapter were first proposed in an Ethical Annotation which I edited at Utrecht University's Ethics Institute (see Philips et al. 2023).
- 1. Some important documents are the Charter of Fundamental Rights of the European Union (2000) and the subsequent Treaty of Lisbon (2007). It is beyond the present scope to explore other sources that make it clear what the EU finds important or what it does, and go into the related question of what the EU is in the first place.
- 2. This is not to say that the EU's actions always live up to what it finds important.
- 3. Indirectly, the Dublin Regulation (2013) is also relevant. This is an EU law stating that the country where someone first applies for asylum is responsible for handling the asylum request.
- 4. Based on the central documents mentioned in note 1 – documents that can be regarded as having moral importance in addition to legal status. Morally, they typically do not provide clarity about the points that follow in the text. The EU is, of course, also legally committed to human rights, and there are various reasons for it to live up to its legal commitments, in part no matter how the moral side turns out. This chapter focuses only on the moral side.
- 5. Many of my arguments are also applicable to countries. Cf. Section 4.
- 6. I believe that the Portugal example is relevant for the EU (however much larger the EU obviously is than Portugal), once one varies the numbers.

7. A similar point would hold for other migrants, although this chapter will only focus on refugees. I assume, of course, that there is no constraint saying that someone who is a refugee always and necessarily has to be admitted to a particular country. Such a constraint is in conflict with my argumentation for the italicized thesis.
8. “Nearly all” would have to be developed more precisely (it is meant to exclude, for example, Syria for refugees fleeing from Syria), but that is beyond the present scope.
9. I will use the expressions “(moral) responsibility” and “(moral) duties” synonymously. Clearly, certain elements of the italicized claim (such as “at least”, “sizeable costs”, “suitably specified fair share”) need explanation; see later in this chapter. Due to space constraints, I cannot further discuss the distinction between citizens, denizens, residents etc. or the question of what the most fortunate terminology would be. (“Citizens”/“foreigners” will be commonly used, and emphatically a neutral sense is intended.)
10. Further development and defence of this claim will follow in Section 3. For the determination of a fair share, cf. Gibney 2015.
11. My position is substantively close to that of, for example, Matthew Gibney (2004, 82–84), who does not, however, base his position on human rights, while it is less demanding than that of, say, Joseph Carens (see 2013, 219; Carens’s position is, in important respects, not human rights based) and more demanding than that of, for example, David Miller (e.g. 2016, 193, n. 43; Miller’s view is importantly based on human rights but on a different conception than this chapter’s).
12. By this I mean that, although at some point some costs are more than likely involved, they are plausibly outweighed. As always in this chapter, I am talking about the societal level. To develop the notion of “little societal cost” at the level of social groups or individuals – thus involving considerations of social justice – is a task I cannot undertake here. Thanks to Andreas Niederberger for pressing this point.
13. See e.g. Sikkink 2017. Of course, human rights as a global discourse and practice are also contested in many ways (for some debates, see e.g. Philips 2020, Ch. 3).
14. Even though EU countries and the EU do unfortunately sometimes, even structurally, violate and fail to fulfil human rights, including those of their own citizens. See e.g. Amnesty International 2019.
15. In this chapter, I will focus on people who are not in the country where they normally live. It is beyond its scope to discuss internally displaced persons and persons without a nationality, although their plight is, of course, extremely important. A particularly strong moral claim for admission is not necessarily a decisive moral claim; a notion of a refugee should, I think, typically leave it an open question, at least to an extent, whether someone should, in the end, be admitted to some country. Or, put more generally and adequately, it is arguments that should make clear what moral duties and permissions etc. there are, rather than conceptual stipulation. It is, of course, imaginable that so much in the way of argumentation has preceded a certain conceptualisation of who is a refugee that many questions about moral duties are already answered once it is clear that someone is a refugee.
16. Cf. UNHCR 2011, 19. See also <www.unhcr.org/what-is-a-refugee.html> [May 1, 2022].
17. Cf., for one, Carens 2013, 200–201.

18. I use “protection” generally, but sometimes also (along with “respect”) to refer mainly to negative aspects (non-violation, preventing violation), while “realisation” or “fulfilment” (or sometimes also “promotion”) emphatically also includes more positive aspects. In the wake of Shue 1996 (Ch. 2), a tripartite distinction between duties to “respect, protect [against disrespect by others, JP] and fulfil” human rights has gained some currency (see e.g. <www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> [May 1, 2022]). The details are beyond the scope of this chapter.
19. Cf. Rawls 2007, 6.
20. This is, as I will explain further, broadly inspired by David Miller 2016, 82. Elaborating on this, one could go on to distinguish various kinds of refugees (as e.g. Owen 2020 does). I am not sure that this would be a good move; it may end up weakening the case for protection. (How and if this is plausibly so would, however, need further investigation, which I cannot provide here.)
21. Importantly, discussing how to get institutions worldwide “into a more just shape” always also needs to be in view in discussions concerning refugees.
22. Here I somewhat agree with Miller 2016. But Miller himself wants to exclude those who “could [also] be helped . . . by outside intervention of one kind or another” (82) from qualifying as refugees. I don’t think this suggestion works. (I am indebted to Matthias Hoesch for discussion on this point.) The position I take here, that admission to another country should be the most appropriate reaction to someone’s plight, is in certain respects closer to Owen’s 2020.
23. In giving these examples of agents, I am assuming that, in many situations of interest in the present context, a country’s government will be either unwilling or unable to provide protection. To be sure, people may become refugees due to factors that have nothing to do with their country’s government, but they will, in any case, not be refugees if their government is both willing and able to protect and fulfil their human rights.
24. The difficulty of articulating these factors partly has to do with human rights troubles arising from the misbehaviour, unwillingness or inability of various agents (among whom the state where the human rights issues arise or aggressor states) where all of these could potentially be different. More generally, and quite obviously, every real-life situation will be very complex, with many agents, multiple background factors and many possible scenarios involved.
25. Somewhat comparably, Serena Parekh 2020, Ch. 4, warns against placing too much moral weight on a distinction between refugees – she aptly discusses that various understandings are possible – and others in need, among whom are various kinds of migrants.
26. For elaboration on a number of elements of the (incomplete) conception of human rights that I am now going to propose and for how it relates to the philosophical literature on human rights, see Philips 2020, Ch. 2 and 3.
27. That I focus, for reasons also indicated in the introduction, on human rights in a moral sense does not mean that legal rights would be unimportant; they are just beyond the scope of the present chapter. For the relation between moral and legal rights as I see it, cf. note 33.
28. Rawls 1999a, 3.
29. *Pace* Rawls 1999b.
30. This notion of a human right owes much to Shue’s 1996 notion of a moral right; cf. also Beitz 2009.
31. Nickel 2007, 93–94.
32. Also e.g. on many (semi-)official occasions.

33. Although there are, of course, also legal aspects, there is no presumption that legal rights should “mirror” (Buchanan 2013) the moral ideal: for one, there are also non-legal aspects to the realisation of the moral ideal, and for another, legal rights are not all about fulfilling this ideal.
34. Human rights as outlined are so central a part of the EU’s values, we may add, that, in the EU’s normative view of itself, they are not to be overridden by anything else to which the EU also subscribes.
35. And for broad categories of people: see note 26.
36. Thus the existence of a human right, in this conception, is not prior to there being suitable duty bearers.
37. There may be an additional role for examining the coherence, implications etc. of positions taken on (in this case) the importance of reliably protecting certain interests – always, of course, in light of the empirical realities.
38. That is to say, the extent to which they have played such a role without there being a suitable justification for doing this.
39. The terminology and many of the thoughts here come from John Rawls (esp. 1999b). There are many kinds of non-ideal theory, depending on exactly what one takes as a given. I will now, in the text, especially highlight a certain kind of non-compliance. I also assume the existence of borders, of countries and the EU.

In ideal situations – in which institutions are as good as they can be, given people as they are, there would be (I presume) almost full cooperation with a fair-division scheme of admitting refugees; I do assume that there are substantial numbers of refugees in such situations, due to, among other things, (already inevitable) climate change and also because possibly the great majority, but not all, polities would abide by human rights. It is, not unimportantly, a moot point whether there would be countries and an EU in ideal situations and whether (and if so, how) there would be borders, but I believe it is not at all impossible that there would be (cf. Philips 2020, Ch. 4).

40. Singer 1972. Importantly, enough of the example remains in (always much more complex) real-life situations.
41. See note 39.
42. Just to be sure: the idea is that states may be allowed to just avoid great costs for their citizens, not that states may only stop admitting refugees after these great costs have arisen.
43. Self-determination is another consideration often regarded as morally relevant in the literature (see e.g. Walzer 1983, Miller 2007, Wellmann 2008). It could be understood as, primarily, the ability of a polity, as composed at a given moment, to decide its own course into the future. So understood, it may or may not plausibly imply that a polity should be able to decide who to admit. But it certainly does not imply that every decision that a polity takes about this is morally justified.
44. Very freely based on Rawls 2000 and Nussbaum 2000. In any case, the goods concerned should be important to people with widely different views and from widely different walks of life. My own proposal would be that the list comprises widely acceptable components or preconditions of a good life that can and may be influenced by social arrangements.
45. When these goods become compromised could be discussed in much more detail. I will not, however, pursue this further here.
46. Following up on note 44, I would cast this “non-substantial” cost as: citizens can, insofar as this depends on goods provided through social arrangements,

still have an approximately, although not an entirely, good life. I am thinking in the spirit of certain sufficientarian accounts of justice (for a general discussion, see Shields 2012) where the goods beyond a certain threshold are such that there are only relatively weak morally relevant reasons to further or even protect them.

47. "Comparing" these two morally problematic things appears to make sense (*pace* Karnein 2014, 604); one of these things is best characterised, I think, as "having to behave as a sucker" (someone could object to having to do this); not as "not upholding fairness". I thus agree with Stemplowska 2019 and others such as Hoesch 2017 and Owen that the slack of non-compliance should be taken up. (It is beyond this chapter's scope to discuss whether this may be enforced.) At the same time, and as argued in the text, I believe that cost to a country's citizens may possibly set limits to what needs to be done. I say this not to define a lower limit of duty on which (almost) everyone will agree, but simply because I think cost may continue to play a role even in determining human-rights duties. For more on the conception of human rights used here, see Philips 2020. Thanks to Matthias Hoesch for criticism on this point.
48. I mean, the French government's not violating negative duties: this, at the minimum, should be the same towards French and Chilean citizens, and perhaps some other things should be the same as well. (For the present purposes, "government" and "state" can be used synonymously.)
49. Of course, this should, as indicated, always stay within certain limits, such as upholding negative duties towards all people.
50. Cf. Christiano 2008. However, this argument may easily become ideological and/or cynical.
51. T.M. Scanlon as quoted in Scheffler 1994, 113.
52. The moral permissibility of partiality of individual persons for themselves may be easier to argue for (see e.g. Scheffler 1994; Philips 2007, Ch. 2) than the partiality of governments for their citizens, although the two might be connected.
53. These reasons could ultimately draw on the reasons it is doubtful that individuals must, in general, further the impersonal good at great personal cost (see e.g. Philips 2007, Ch. 2).
54. See Section 2.
55. And why should it admit refugees rather than helping them out in some different way?
56. This is not to say that the bystander model is usually an adequate way to describe the EU's or a country's place and actions in the world; it is not (see e.g. Pogge 2008). Also, a foreign government will not always be the first or even an appropriate duty bearer.
57. And why would it have to fulfil these duties by admitting refugees rather than, say, contributing financially to accommodating them in their region of origin? See note 58.
58. Moreover, accommodating refugees in their region of origin will often bring human rights problems with it and will often be unfair to the accommodating countries; money often cannot compensate for all the social complications (although there may emphatically also be positive sides) generated by sheltering large numbers of refugees.
59. But is this general position compatible with the acknowledgement of certain deontological constraints and negative duties for which one must presumably go to larger costs to uphold them? I made an attempt to reconcile the two in Philips 2007, Ch. 4. The general answer is, I think, that as long as the

constraints cover situations in which the costs (not merely financial) remain relatively small, one can more or less maintain the “until sizeable costs” position. (See Section 2 for some constraints that I find plausible.) If this is no longer the case, one must either resort to a lesser degree of partiality after all or simply admit that – one way or the other – one faces a “tragic” situation, in the sense of one in which there are only bad choices.

The position taken in this chapter assumes, of course, that not admitting refugees does not, as such and by itself, already constitute the violation of a constraint or of negative duties.

60. See Section 1.

61. Elaborate arguments would be needed to decide between the view outlined next and alternatives, and this is beyond the present scope.

62. For further development of a notion of hypocrisy, see e.g. Philips 2020, Ch. 4.

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