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The humanitarian system is severely challenged today. There are more displaced people today than at any time since World War II. Former UN Secretary General Ban Ki-moon called the situation a “monumental crisis” that will require a response based on “monumental solidarity.”¹ We need to develop much better ways of protecting the humanity of those threatened by tragedies today.

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The first part of this article highlights some resources found in the religious and spiritual traditions of our world for responding to this crisis situation. It gives particular attention to Christian inspiration to serve the needs of the displaced, and then it proposes some ethical perspectives that are more policy-oriented.

Religious and spiritual perspectives

Recently some secular political philosophers, like Joseph Carens, and some refugee scholars, like Philip Marfleet, have been arguing that the time has come to make borders fully open to all who are fleeing from persecution, conflict or disaster.² In a similar spirit, the modern human rights movement affirms the universal dignity of all human beings and seeks to tear down walls dividing people into those who count and those who do not count when the most basic requirements of humanity are at stake.

1. Ban Ki-moon, “Remarks on Forced Displacement: A Global Challenge,” Speech at UN News Centre, Washington, D.C., April 15, 2016: http://www.un.org/apps/news/infocus/speeches/statments_full.asp?statID=2997#.V0DRKCMrIb1.

2. Cf. J. Carens, “Aliens and Citizens: The Case for Open Borders,” *Review of Politics* 49/2 (1987) 251-273; P. Marfleet, *Refugees in a Global Era*. New York, Palgrave Macmillan, 2006, 288-290.

This orientation also has strong support in the world's great religious traditions. Both Judaism and Christianity hold that all persons are created in the image and likeness of God and share a dignity that reaches across the borders between nation states. Pope Francis drew on this biblical vision during his visit to the Greek island of Lesbos, where he assured Syrian refugees that "God created humanity to be one family" and called Europe to "build bridges" rather than "put up walls."³

Further, albeit with slight differences, each of the great monotheistic traditions – Judaism, Christianity and Islam – trace their origins back to the Patriarch Abraham, who was himself a migrant from the home of his kinsfolk to the land of Canaan. The identity of Jews is shaped by the story of the Exodus: a migration from slavery in Egypt to freedom in the land of God's promise. And the New Testament tells us that just after his birth, Jesus was driven from his home by persecution as a refugee to Egypt along with Mary and Joseph. Muslims measure time from Muhammad's *hijra*, or migration, from Mecca to Medina. Thus each of these faith communities sees its religious and ethical commitment as reaching across borders.

Thus in 1963 Pope John XXIII affirmed that "the fact that someone is a citizen of a particular State does not detract in any way from their membership in the human family as a whole."⁴ Consequently "Refugees cannot lose [their] inherent rights simply because they are deprived of citizenship of their own States."⁵

Pope Francis has repeatedly stressed that the Christian vocation includes a responsibility to reach out to refugees in a spirit of compassion or mercy.

3.Cf. Francis. Address to Refugees, Mòria Refugee Camp, Lesbos, Greece, April 16, 2016, in w2.vatican.va; *Ibid.*, *Meeting with the People of Lesbos and with the Catholic Community. A Remembering of the Victims of Migration*, Lesbos, Greece, April 16, 2016, in *ibid.* Cf. A. Spadaro, "Roma e Costantinopoli si incontrano a Lesbo. L'ecumenismo delle frontiere," in *Civ. Catt.* 2016 II 237-248.

4.John XXIII, Encyclical *Pacem in Terris*, No. 12, in w2.vatican.va.

5.*Ibid.*, No. 57.

Ethical priorities for policy

Some years ago the philosopher Martha Nussbaum called nationality a “morally irrelevant” characteristic of personhood, an ethical position that implies open borders.⁶ It is clear, of course, that states and borders continue to play very important roles in relation to displaced people. There is a duty to love all humans as our neighbors, but there are also duties to those with whom we have special relationships, such as the members of our family or own country. Thus a key task is to determine the ethical priorities that should exist among these duties. Such priorities can help shape a policy-oriented approach to humanitarian crisis. In some circumstances, responsibilities to those who are nearer should take priority over concern for those at greater distances. On the other hand, when those farther away have greater needs, they can have priority.

Catholic social thought formulates this in terms of what is called “the principle of subsidiarity.” This principle affirms that there are special duties within smaller, proximate communities. But it also insists that when there is serious need at a greater distance or when local communities do not respond adequately to this need, larger regional communities or the international community as a whole can have a duty to provide help (*subsidiium*).⁷ Though the subsidiarity principle was developed within Catholic social thought, the United Nations has adopted it.⁸ It means that the primary responsibility toward displaced persons falls on the country of which they are citizens. But if their own country fails to protect them, the duty moves to neighboring countries and to international actors.

Thus there are duties *both* to one’s fellow citizens *and* to forced migrants. Neither is absolute. Duties to fellow citizens do not always trump duties to refugees, nor do duties to refugees always override duties to co-citizens.

6.Cf. M. Nussbaum, “Patriotism and Cosmopolitanism,” in *Ibid.*, *For Love of Country*, Boston, Beacon Press, 2002, 5. She later changed her opinion on the importance of the nation states.

7.Pius XI, Encyclical *Quadragesimo Anno*, Nos. 79–80, in w2.vatican.va.

8.Cf. United Nations High Commissioner of Refugees, *South Sudan emergency*, in www.unhcr.org/en-us/south-sudan-emergency.html.

Let me suggest several priorities among these types of obligation, focusing first on *negative* duties *not* to act in ways that cause humanitarian crises, and then on *positive* duties to those facing crisis.

Most of the refugee movement in the world today is caused by wars, such as the conflicts in Syria, Afghanistan, Somalia, South Sudan and Yemen. Key negative duties relevant to such displacement can be highlighted by drawing on the moral tradition known as the just war ethic. This tradition requires that force be strictly limited to defending the rights of innocent persons to life, freedom and security, and the rights of nation states to self-determination and territorial integrity. Conversely, there is a negative duty *not* to use force to deny people their political freedom, to exploit them economically, or because they are culturally different. Violation of these negative duties is both immoral and criminal.

Such a violation is just what happened in the abomination of the Rwanda genocide of 1994, where force was used to slaughter most of the Tutsi people. It was also violated in the atrocity at Srebrenica, where thousands of Bosnian Muslims were killed because of their identity in an “ethnic cleansing.” Thus a central priority in efforts to prevent humanitarian crises should be much stronger efforts to prevent the unjust use of force.

Just war norms also forbid intentional attacks on civilians, as well as disproportionate collateral harm to civilians. International law sets forth such prohibitions especially in the Fourth Geneva Convention and the First Protocol. Several recent cases of forced migration have been due to such violations. For example, as Human Rights Watch affirms, in the civil war that began in South Sudan in December 2013, both the government of the country and the opposition forces have “committed extraordinary acts of cruelty that amount to war crimes and in some cases potential crimes against humanity.”⁹ Because of this

9. Human Rights Watch, *South Sudan's New War: Abuses by Government and Opposition Forces* (Human Rights Watch, 2014), 1, 82 and 83. Cf. *Interim Report of the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206* (2015), in www.southsudanhumanitarianproject.com/reports/doct-532.

mayhem, by January 2018, some 2.5 million South Sudanese had become refugees and the number of Internally Displaced Persons (IDPs) was approaching 2 million.¹⁰ In Syria, violation of the basic rights of civilians has led to the single largest forced migration in recent history.

This raises the question of our *positive* obligations to assist the displaced given our responsibilities to people in our own country. To address this issue we can draw on a mode of moral analysis originally developed in the 1970s in the context of debate about response to the apartheid regime that separated South African people by race and ethnicity.

In that debate, some maintained that only those who had created the apartheid system had a duty to work to overcome it, namely white South Africans. But a very different ethical approach was proposed by several scholars at Yale University who argued that under certain circumstances there can be positive duties to help remedy harms we did not ourselves cause.¹¹ They called their approach the Kew Gardens Principle, for it arose from reflection on a tragic case that occurred in the Kew Gardens section of New York City in 1964 where a young woman named Kitty Genovese was viciously assaulted and stabbed to death while 38 people stood nearby and just watched, not even calling the police.¹² The public outrage that occurred points to the fact that most people have a conviction that in some situations omission can be as bad as commission.

Drawing on this conviction, the Kew Gardens Principle argues that an agent has a positive duty to help when four conditions are present: 1) there is a critical *need*; 2) the agent has *proximity* to the need; 3) the agent has the *capability* to

10.Cf. www.unhcr.org/en-us/south-sudan-emergency.html/; A. Rusatsi, "Il Sud Sudan. A sei anni dalla travagliata indipendenza," in *Civ. Catt.* 2017 IV 466-474.

11.This is a long established idea in Catholic moral theology.

12.J. Simon – C. Powers – J. Gunnemann, *The Ethical Investor: Universities and Corporate Responsibility*, New Haven, Yale University Press, 1972, 22-25. For further insight into what was learned about the murder cf. N. Lemann, "A Call for Help: What the Kitty Genovese Story Really Means," *New Yorker*, March 10, 2014, 73f.

assist; 4) the agent is likely the *last resort* from whom help can be expected. Subsequent reflection has added a fifth condition: action can be taken *without disproportionate harm* to the one providing assistance. While bearing in mind the differences in application of the principle between individual persons and sovereign States, these criteria can help us think about the scope of positive duties toward displaced people today.

First, need. There is no doubt that very many people are in grave *need* of protection in Syria and South Sudan today. Those inside the borders of these crisis-torn countries face harms that could kill them, and they are in flight because of this vulnerability. The duty to respond falls first upon those whose *proximity* gives them knowledge of the need and better understanding of how to respond. This means that the government of the nation where the crisis occurs and local communities within that nation bear the prime responsibility. In South Sudan and Syria both the governments and the opposition forces in each country have the negative duty to stop their atrocities and the positive duty to help lift the burdens of suffering.

Duty to take positive action, however, does not end at the national borders of the countries where crisis is present. When people in a neighboring country or even in a country at a great distance become aware of crisis, this awareness leads to what might be called intellectual or psychological proximity. It puts them in *moral* proximity to those who are suffering. In the case of South Sudan, the regional organization of Sudan's neighboring countries, called the Intergovernmental Authority on Development (IGAD), has played a diplomatic role by seeking to mediate the present conflict in South Sudan.

Regrettably, economic and political self-interest has sometimes distorted the mediation efforts of several IGAD countries, particularly Uganda and Ethiopia. This has led several countries from outside the region to become involved in an effort known as IGAD Plus, which includes the African Union, the UN, China, the U.S., the UK, Norway and the EU. A sense of moral responsibility arose in these more distant countries because of their proximity through awareness. These

combined regional and global efforts have certainly not been perfect. But they have helped and suggest ways that action can be taken from a distance.

The criterion of *capability* also sheds light on positive duties to respond to humanitarian crises. It has become common to point out that someone who cannot swim does not have a duty to aid a child who is drowning, while a good swimmer can have such a duty. Lebanon, Turkey and Jordan are today already massively overburdened with Syrian refugees. They are not capable of providing asylum for many additional refugees. On the other hand, the wealthy nations of northern Europe, North America and the oil-producing Gulf states are capable of receiving many more asylum seekers and of sharing the weight being carried by Syria's already overburdened nearest neighbors. Countries with greater economic and political capacities to help have proportionally greater responsibilities to do so. These duties may be carried out by granting asylum to more refugees, by providing larger opportunities for resettlement, and especially by providing economic assistance to Turkey, Lebanon and Jordan, who are already carrying a disproportionate burden.¹³

The existence of such positive duties was at the root of the emergence of the moral and policy framework known as the Responsibility to Protect (R2P). When we speak of "responsibility to protect" in today's international discourse, reference is made to concepts that are more precise than those of the primary responsibility of the State to ensure human rights are respected, to protect public order, social harmony and security for people, their families and their properties. The Responsibility to Protect is defined on the basis of three fundamental principles: 1) The State has the responsibility to protect its own population from any serious crime, or from any violation of rights considered part of the *ius cogens*, that is, values that are fundamental and binding in all situations, such as genocide, war crimes and crimes against humanity.

13.Cf. United Nations High Commissioner of Refugees, *Greater support in countries of first asylum needed to stem refugee outflows*, August 26, 2015, in www.unhcr.org/55ddd2c86.html.

2) In carrying out this task the State must be sustained by the international community, which has the responsibility to sustain it as it protects. 3) The international community assumes the responsibility to use all diplomatic, humanitarian and peaceful means to protect populations whenever a State fails in its duty and allows determined crimes to take place. Finally, every action of the international community must follow the principles of international law and the Charter of the United Nations.¹⁴

The Responsibility to Protect has been the focus of heated controversy since it was endorsed by heads of state at the UN General Assembly in 2005. It should be observed that there are difficulties of a technical, juridical nature with R2P compared with the Charter of the United Nations. The second and third principles raise important international questions, both about the difficulty to harmonize the international community's obligation to protect with the right to non-interference, foreseen by Article 2.7 of the Statute of the United Nations, and also because there is not yet an international legal test that authorizes the use of collective force beyond the types in Chapter VII of the same Statute. A juridical formulation of the principle would demand at least a reform of Article 39, including – among the types that authorize the Security Council to intervene – the crimes referred to in the concept of R2P. A reform would also be needed, or at least an authoritative interpretation of Article 2.7, to define the competencies of the United Nations in the case of crimes referenced by the Responsibility to Protect. Instead, when a State appropriates to itself the right to intervene with force in another State applying the principle of Responsibility to Protect, it actually leads to a negation of the entire construction of the international law of the 20th century.

Despite the critiques of R2P, it is important to note that it has led to effective protection of people in a number of crises. For example, when conflict flared in Kenya following the disputed

14. Concerning the approval of the R2P by the UN General Assembly, cf. *World Summit Outcome Document*, Nos. 138–139, in www.globalr2p.org/media/files/wsod_2005.pdf.

2007 elections, the UN, the African Union and a number of other governments, including the U.S., took initiatives to stop the conflict. These led to a power-sharing agreement and halted descent into civil war.¹⁵ R2P can be carried out successfully through nonviolent political and diplomatic means.

R2P has also been invoked to justify the use of military force to protect people from atrocities. For example, in 2012, France and the Economic Community of West African States took military action with UN approval to restore peace in Mali. And in 2013, French and African Union troops acted to stop the atrocities and the displacement of nearly one million people occurring in the Central African Republic.¹⁶ Though these cases are not fully resolved, they indicate that the doctrine of the Responsibility to Protect can help reduce crises.

Libya and Syria, however, raise questions about the relevance of R2P today. In Libya, the UN authorized the use of “all necessary measures” to protect civilians when fears arose that Libya’s leader, Muammar al-Qaddafi, was about to commit atrocities.¹⁷ NATO intervened with airpower, Qaddafi was killed, and his regime was overthrown. Sadly, Libya has since fallen into chaos. This had led some to conclude that pursuing humanitarian goals not required by national self-interest is likely to do more harm than good.¹⁸ It can be argued, however, that the intervention in Libya failed not because it was excessive but because it was incomplete. NATO and the U.S. should have followed up their intervention with action to rebuild and to prevent the chaos that developed.

Syria has also been invoked to suggest that R2P is dead. The political complexities and moral ambiguities of the Syrian

15.The International Coalition for the Responsibility to Protect. *The Crisis in Kenya, II. International Response to Halt the Spread of Violence*, in www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya.

16.About UN action concerning the Central African Republic, cf. *UN Security Council Resolution 2127 (2013)*, in [www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2127\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2127(2013)).

17.Cf. *UN Security Council, Resolution 1973 (2011)*, Nos. 4 & 6, in www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973%282011%29.

18.Cf. A. J. Kuperman, “Obama’s Libya Debacle: How a Well-Meaning Intervention Ended in Failure,” in *Foreign Affairs* 94 (2015) 66-77.

situation go very deep. But these complexities do not discredit the existence of a duty to protect people facing atrocities when protection is possible.

The duty to protect the Syrian people does call for continuing political and diplomatic initiatives to find a path toward their protection. Not only Assad and the rebels, but also other international actors are keeping the crisis in Syria alive.¹⁹ The global community, therefore, has a duty to engage these powers diplomatically and to seek other possibly effective ways to protect those in the dire Syrian crisis.

There is also continuing responsibility toward the large number of Syrians presently seeking asylum in Europe and the developed world. At a minimum, we need to live up to the 1951 call of the Refugee Convention that refugees fleeing persecution be granted asylum. Countries in Europe and North America have the capability and resources to grant asylum to significantly more refugees from Syria than they are. Indeed, the number of Syrians seeking asylum in Europe is not even close to the number already within the borders of Syria's neighbors.

When in fall 2015 the then Prime Minister of the United Kingdom, David Cameron, announced that his country would grant asylum to 20,000 Syrians over the next five years, he was appropriately reminded that Lebanon had admitted that many Syrians over the past two weekends. Developing countries today host 84 percent of the world's refugees, and the very poorest countries provide asylum to 25 percent of the global total.²⁰

A substantial increase in the funds being provided to Syria's neighbors by the Global North should be a priority today. To achieve this, the rich nations of the Global North need to overcome racially or religiously driven xenophobia and the mistaken fear that refugees are likely to be terrorists under false guises.

19.Cf. G. Sale, "Il 'martirio' di Aleppo," in *Civ. Catt.* 2017 I 34-45; *Ibid.*, "La Turchia e le 'enclave' curde in Siria," *ibid.* 2018 I 476-490; *Ibid.*, "The War in Syria," in *Civ. Catt. English Edition*, August 2018.

20.United Nations High Commissioner of Refugees, *Global Trends: Forced Displacement in 2016*, 2, in www.unhcr.org/en-us/statistics/unhcrstats/5943c8a34/global-trends-forced-displacement-2016.html?query=Global%20Trends.

The recent work of some scholars has shown that advocacy for ethical standards can have significant positive impact in some domains of contemporary international politics.²¹ For example, the standards of the international law of refugee protection and on the regulation of armed conflict were the result of normative advocacy by groups such as the International Committee of the Red Cross over the past century. More recently, “normative entrepreneurs” have advanced the effort to hold political leaders accountable for violating normative standards in several international tribunals. This suggests that ethical standards can come to have real impact on the conduct of nations.

The Christian community has a role to play in advancing this effort. Pope Francis has repeatedly called both the Catholic community and all persons of good will to join in the effort. There is hope that with normative pressure from a wide range of nongovernmental bodies, including religious communities, we can make progress in living up to the responsibilities that – as we have stated here – we have only partially taken up. The task is urgent; so should be the response.

21.Cf. M. Finnemore – K. Sikkink, “International Norm Dynamics and Political Change,” in *International Organization* 52 (1998) 887-917.