NEW ISSUES IN REFUGEE RESEARCH

Refugees in the 'sick role': stereotyping refugees and eroding refugee rights

Vanessa Pupavac

School of Politics
University of Nottingham
United Kingdom

E-mail: vanessa.pupavac@nottingham.ac.uk

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From political hero to traumatised victim

Images of distraught refugees daily haunted Western news reports in the 1990s. A renewed consciousness of refugees' plight was manifest. Fresh international attention was devoted to the problem of refugees in UN Security Council resolutions and elsewhere. Refugee awareness organisations sprang up on university campuses. Media reports devoted space to refugees' plight, highlighting their anguish and defencelessness in human interest stories. These stories would typically invoke the iconic figure of a grief-stricken woman, clutching her head or child in despair, underscoring refugees' desperate situation and the urgency of addressing refugee problems. Traumatised, scarred, in shock has been the common sympathetic representation of refugees since the end of the Cold War. Thus the refugee as a feminised, traumatised victim has become the prevailing cultural image of the refugee.

It is difficult now to remember that for most of the Cold War refugees to the West were commonly presented as political heroes and courageous defenders of freedom, not traumatised victims. The familiar image of the refugee was associated with the political dissident. Alexander Solzhenitsyn was perhaps the archetypal figure of the political exile. His novella *One Day in the Life of Ivan Denisovich*[1] tackled the suffering of prisoners in Soviet camps, but the prisoners' lives were not viewed by Western audiences through the paradigm of trauma, but politics. Equally the Hungarian-born writer Arthur Koestler was considered an intellectual and political combatant in the twentieth century struggles. His most famous work *Darkness at Noon*[2], repeatedly republished, portrays persecution and torture, but its themes were also viewed in political terms. Political suffering rather than psychological trauma was the recurring interest.

Again the Czech writer and dissident Milan Kundera was embraced by the West. On the eve of the Berlin Wall's collapse, Russian poet Irina Ratushinskaya, author of *No, I'm not Afraid*[3] or *Grey is the Colour of Hope*[4], was upheld as a brave champion of artistic freedom. Solzhenitsyn, Ratushinskaya and others were embraced in Western official circles in their Cold War struggle as demonstrating the superiority of the Free World against the Communist bloc. Meanwhile radical circles had their own iconic political refugee figures, notably South African political activists against Apartheid. Human rights advocacy work too during the Cold War revolved around the human rights subject as a political actor and prioritised the cause of prisoners of conscience and targets of political oppression.

Either way, the iconic images of refugees to the West were strong, heroic figures struggling for freedom and justice both politically and intellectually. They were figures for us to admire in their defiant stance and personal sacrifice. We could

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[1] Aleksander Solzhenitsyn, *One Day in the Life of Ivan Denisovich*. Harmondsworth: Penguin, 1974.

[2] Arthur Koestler, *Darkness at Noon*. London: Cape, 1940.

[3] Irina Ratushinskaya, *No, I'm not Afraid*. Newcastle upon Tyne: Bloodaxe Books, 1987.

[4] Irina Ratushinskaya, *Grey is the Colour of Hope*. London: Hodder and Stoughton, 1988.

vicariously bask in the nobility of their struggles and have our way of life affirmed for us because they had sought refuge in our society.

The romanticised image of the heroic political exile did not imply that all refugees were welcomed, far from it. All too frequently tacit or not so tacit racial distinctions were made in deciding who qualified as a refugee and who did not. One only has to recall the outrageous behaviour of the British Labour government in 1967 rushing through legislation to prevent Kenyan Asians from fleeing to Britain by revoking their right to enter Britain on their British passports, thereby effectively making people who were actually British citizens stateless persons.[5]

The Kenyan Asians were not greeted as either fellow citizens or political exiles against an oppressive regime, but blatantly discriminated against on racial grounds and treated as unwanted immigrants. The Kenyan Asians were denied the Cold War political and moral status of the refugee as political exile and denied protection both as citizens and refugees. One should not therefore romanticise past treatment of refugees, which undeniably involved blatant discriminations. The comparison I am making here refers to the concept of the refugee itself, and how the image of the refugee had heroic political associations during the Cold War, which have since been eroded.

In this paper I explore how refugees are being constructed as depoliticised subjects within a health paradigm and how the medicalised representation of refugees' interests is ultimately detrimental for defending refugee rights both within Britain and internationally. My paper is informed by the powerful insights of the philosopher Hannah Arendt, who has written some of the most compelling passages on the refugee predicament, and the sociologist Talcott Parsons' concept of the sick role.[6]

Arendt observed over fifty years ago that where refugees are regarded as political actors then their rights are more likely to be respected than if they are not.[7] Her analysis suggests problems for realising refugee rights when refugees are regarded in medical as opposed to political terms. Representing refugees in a sick role may have been inspired by compassion, however, as Parsons' analysis of the sick role indicates, the capacity of the sick to determine their own interests is problematised. The exaggeration of refugees' incapacity has dangerous consequences, which helps legitimise decisions being taken away from refugees.

Rather than refugees determining whether they need to flee and where they seek asylum, these decisions are increasingly being managed for them to their detriment. Thus the displacement of the cultural image of the refugee as political exile by the image of the traumatised victim has troubling implications for refugee rights.

I begin the paper by examining the problem of the rights of the stateless in a world of states and the difficulties refugees have realising rights as depoliticised subjects. I then examine how identification with the refugee cause is linked to political disenchantment and a demoralised sense of political subjectivity following the end of

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[5] Kenan Malik, The Meaning of Race: Race, History and Culture in Western Society. Basingstoke : Macmillan, 1996.

[6] Talcott Parsons, *Social Structure and Personality*. New York: Free Press, 1965; Talcott Parsons, *Action Theory and the Human Condition*. New York: Free Press, 1978.

[7] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985.

the Cold War. To illustrate Western cultural attitudes towards refugees, I consider a fictional account of the refugee experience in Ian Rankin's recent best-selling novel *Fleshmarket Close*[8], which encapsulates well contemporary demoralisation and anomie along with the dehumanising treatment of refugees. I finally outline the rise of the health paradigm to understand refugees' condition and how the paradigm risks undermining refugee rights and inverting them into external rights of governance over refugees.

Vulnerability of the human rights subject

The international system is based on a world of states. Refugees by definition are those who are no longer secure in their own state and therefore are compelled to leave. Yet at the same time they urgently need asylum somewhere, they lack rights of residence within the international state system. They no longer enjoy rights as citizens of their home state, nor do they enjoy rights as citizens of the state they seek to enter. They are dispossessed of citizenship rights and therefore homeless in the world. Here we have the fundamental problem raised by Rousseau over two centuries ago: individuals need to belong to a state for their rights as individuals to be realised; the proclaimed rights of man do not coincide with the rights of citizens. In short, refugees as a category needing protection do not enjoy the protection of citizenship or the rights that flow from that political membership.

The refugee predicament has been compellingly analysed by Arendt over half a century ago. Mindful of her own experience of statelessness, internment and the fate of friends such as Walter Benjamin, Arendt eloquently outlines the dangers of losing citizenship. Against arguments for denaturalisation being made in the United States during the McCarthy era, she declared:

> As long as mankind is nationally and territorially organized in states, a stateless person is not simply expelled from one country, native or adopted, but from all countries – none being obliged to receive and naturalize him – which means he is actually expelled from humanity.[9]

Equally the poet W.H. Auden evokes the problem of the stateless in his much-cited poem *Refugee Blues*:

> The consul banged the table and said;
> 'If you've got no passport you're officially dead':
> But we are still alive, my dear, but we are still alive
>
> Went to a committee; they offered me a chair;
> Asked me politely to return next year:
> 'But where shall we go to-day, my dear, but where shall we go to-day?'[10]

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[8] Ian Rankin, *Fleshmarket Close*. London: Orion Books, 2004.
[9] Quoted in Elisabeth Young-Bruehl, *Hannah Arendt: For the Love of the World*. New Haven and London: Yale University Press, 1982, p. 275.
[10] W. H. Auden, Refugee Blues in John Wain (ed.) *Oxford Anthology of Great English Poetry, Vol. II*, Oxford: Oxford University Press, 1990, p. 693.

The concept of human rights has evolved to address the problem of those who are stateless or whose state fails to secure their rights by codifying supranational rights. As such human rights represent a very powerful discourse in seeking to overcome the lacuna in rights protection and empower vulnerable people. However the codification of human rights only apparently resolves the problem by creating supranational rights. The problem of enforcing rights when one does not belong to a political community remains. As Arendt observes in her discussion of the plight of refugees during the Second World War:

> It turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them.[11]

This experience led her to conclude that it was impossible to realise human rights when one lost citizenship rights:

> If a human being loses his political status, he should, according to the implications of the inborn and inalienable rights of man, come under exactly the situation for which the declarations of such general rights provided. Actually the opposite is the case.[12]

The only possibility Arendt sees of ensuring the right to asylum is respected is if the right is treated as sacrosanct by the host state. In other words, the law itself is viewed as sacrosanct and therefore respected even though the refugees themselves lack political or moral authority, and society feels no great empathy towards their fate. Accordingly the host state respects the sanctity of law, feels their obligation towards the law and applies it impartially irrespective of whether officials feel any obligation politically or personally towards the refugees themselves. Arendt highlights just this scenario in Denmark during the Second World War:

> Prior to the war Denmark had treated its refugees by no means nicely; like other nation-states it refused them naturalization and permission to work. Despite the absence of anti-Semitism, Jews as foreigners were not welcome, but the right to asylum, nowhere else respected, apparently was considered sacrosanct. For when the Nazis demanded first only stateless persons for deportation, that is, German refugees whom they had deprived of their nationality, the Danes explained that because these refugees were no longer German citizens the Nazis could not claim them without Danish assent.[13]

Thus Denmark, no more welcoming of Jews than other states at the time, appeared to demonstrate better respect for the right to asylum because of their perception of the law's sanctity, its sanctity tied up with the Danish state's own sense of political subjectivity. Interestingly Denmark was also the first state to ratify the 1951 Refugee Convention. Arendt's insights are highly relevant to the problem of protecting refugee

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[11] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985, p. 292.
[12] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985, p. 300.
[13] Hannah Arendt, *Responsibility and Judgment*. New York: Schocken Books, 2003 p. 6.

rights today. For the sanctity of the international law on asylum is being undermined by demands from states such as Britain for a more flexible system. This development does not bode well for refugee protection in the future. I now want to highlight briefly the historical status of the 1951 Refugee Convention, before examining international human rights advocacy of the 1990s, which sought to codify human rights as supranational rights, and its impact on refugee rights.

Sanctity of the 1951 Refugee Convention?

The 1951 Refugee Convention[14] marked a fresh attempt to establish rights for stateless people through signatory states binding themselves to protect refugees, initially applying essentially to European refugees from the Second World War, and then expanded under a 1967 Protocol.[15] The appalling fate of stateless persons in Europe during the Second World War drove the drafting of the 1951 Refugee Convention. Its drafters, shocked by the inhumane conduct of supposedly civilised modern European states, wanted Europe to retrieve itself morally and ensure that refugees could not be treated like that again so strove to offer refugees rights similar to their own citizens or foreign citizens.

The Convention's opening appeal is to human rights, but human rights were not treated as international law during the Cold War, therefore its sanctity compared to other international documents cannot be put down to respect for human rights. Why then was the Convention accorded such exceptional respect? Why was this so, when other documents such as the Universal Declaration, also inspired by the horrors of war, were ignored? Why did this respect endure when policy-making was dominated by Realist thinking?

One explanation for the high respect it was accorded was the spectre of war in Europe, which meant countries felt they had a real stake in it. The possibility of oneself becoming a refugee was vivid to all European populations, mindful not just of events in Europe, but the experience of camps in the Far East, and the potential for war in Europe between the two Cold War blocs. Western states could afford to be magnanimous in Europe with the iron curtain politically and the obstacles of international travel geographically limiting refugee numbers. Moreover post-war governments welcomed migrant labour in the economic growth years, creating an alternative safety valve for insecure populations.

Thus the Convention could embody ethical concern, because it did not clash with national interest in Europe, and even represented a certain sense of mutual self-interest, which helps explain the patterns of its application and Western preferences for European refugees. Its provisions do allow states to invoke considerations of national security, but drafted in revulsion against the horrors of a recent war and fear of future war, unburdened by numbers, the Convention gained a political and moral force internationally that belied the inherently weak position of refugees themselves. The sanctity that the Convention was held in this political climate facilitated the right

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[14] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

[15] Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

to asylum being recognised by signatory states to a degree that they might not otherwise have done.

Notwithstanding the substantial legal protection that the Convention has provided to many refugees, the sanctity of the Convention has arguably only really been upheld where its provisions have not been seriously tested. That the Convention was rather shaky when applied to those outside Cold War Europe, that many Commonwealth citizens were not protected by Britain, for example, illustrates how Western political identification with refugees from Communism and this compatibility with national interest underpinned its strength in the past. Historically those considered members of a political or national community are more likely to have their rights recognised.

Thus ethnic Germans in East European countries have found it considerably easier than other ethnic groups for their claims to be recognised by Germany. Equally East European dissidents immediately found themselves embraced into western political communities as champions of freedom and therefore the Free World during the Cold War. However the majority of refugees in the twentieth century were not political refugees, as Arendt observed:

> The new refugees were persecuted not because of what they had done or thought, but because of what they unchangeably were – born into the wrong king of race or the wrong kind of class or drafted by the wrong kind of government.[16]

She argues that it is precisely this group of people who cannot qualify as being politically persecuted who turn out to be in most danger. Typically the individual political refugee has found it easier to have an asylum claim recognised in Western states than the mass of ordinary people, as Arendt analysed fifty years ago, so too today. Why is it that position of the non-political refugee is the most precarious?

First states are most generous in granting asylum when they are exceptional rights for exceptional categories of individuals. States are reluctant to extend such rights for large groups of people. Second the political refugee can be identified as having a political status, albeit negative as a persecuted dissident voice, whereas the mass of ordinary refugees are anonymous, they have no voice in a polity, they are striped of political membership. As Arendt declares, 'Innocence, in the sense of complete lack of responsibility, was the mark of their rightlessness as it was the seal of their loss of political status'.[17] Thus we can see how the Kenyan Asians were excluded in the past, and more recently the mass of ordinary Zimbabwean refugees and now Iraqi refugees, who have committed no political act against their government, and therefore have not been personally denounced by their government, and therefore have no evidence of personal threat – their misfortune is to be at risk of persecution anonymously.

In contrast the political refugee can cite evidence of personal threat and be accepted as a named exception. Equally recognition through artistic fame helps refugees, as Arendt notes, singling them out as exceptions from the mass of anonymous, ordinary

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[16] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985, p. 294.
[17] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985, p. 295.

refugees, 'the chances of the famous refugee are improved just as a dog with a name has a better chance to survive than a stray dog who is just a dog in general'.[18]

The importance of political status illustrates the limits of international ethical concern to protect refugees save in exceptional circumstances. This record helps explain how the Convention seems less robust half a century on, even though human rights have been taken more seriously since the end of the Cold War. Major Western signatory states such as Britain are fundamentally questioning its provisions. As the UNHCR's *Refugee* magazine reported on the Convention's fiftieth anniversary, its provisions are being attacked as 'outdated, unworkable and irrelevant', and its 'legal retrenchment' demanded.[19]

The Convention is now seen as a burden for Western states. In this vein, the British Prime Minister Tony Blair has argued that the Convention needs reform "with vastly increasing economic migration around the world and most especially in Europe'.[20] If respect for the Convention was maintained primarily because its preservation was not so costly to national interest and there were even political gains in compliance, today there is no longer a sense of mutuality in the Convention, or that Western societies might have their own interests at stake in ensuring its robustness. Since the end of the Cold War the potential for a European-wide war has receded and with it the threat of one's own society experiencing displacement.

The Convention is now less personally relevant for Western societies and its provisions inconvenient as better communications and the fall of the iron curtain have facilitated travel to Western Europe. Although the idea of Europeans becoming refugees again was plainly evident in former Yugoslavia, there is no real sense that this could happen to us. Instead the closeness of the refugee burden, rather than the possibility of a refugee fate, has exercised policy-makers' minds. European Union asylum discussions in important respects revolve around the question: 'How can the refugee be made deportable again?' as Arendt observed fifty years ago.[21] Consequently Western states simply do not identify with the Convention as they did during the Cold War and are therefore more cavalier about its provisions.

Even if they are still careful formally to uphold its principles, the major states want its provisions reformed, so that they have more control over its operation. Thus Blair has affirmed how the Convention's 'values were timeless', even as he has led demands for its revision.[22] And if policies guided by 'the spirit of the Convention' operate anything like those for Bosnia in 'the spirit of Dayton' then governments intend to give themselves free rein to determine refugee rights as they see fit. As Arendt warned, 'The more the number of rightless people increased, the greater became the temptation to pay less attention to the deeds of the persecuting governments than to the status of the persecuted'.[23]

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[18] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985, p. 287.

[19] Marilyn Achiron, 'A Timeless Treaty under Attack', *Refugees*, Vol. 2, No. 123, (2001), pp. 6-7.

[20] Quoted in Marilyn Achiron, 'A Timeless Treaty under Attack', *Refugees*, Vol. 2, No. 123, (2001), p. 7.

[21] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985., p. 284.

[22] Quoted in Marilyn Achiron, 'A Timeless Treaty under Attack', *Refugees*, Vol. 2, No. 123, (2001), p. 7.

[23] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985, p. 294.

Refugees as human rights subjects

To what extent has international human rights advocacy of the last decade and a half countered these attacks on refugee rights? Historically human rights have lacked the status of international law. The appeal to human rights failed during the Second World War, as Arendt observed. The 1948 Universal Declaration of Human Rights sought to set down human rights in an international document, although the formalisation of rights was considered merely declaratory at the time of its creation.

The Convention's opening appeal is to human rights, but human rights were not treated as international law during the Cold War and the Convention's sanctity did not rely on respect for human rights. However, international advocacy through the 1990s strove to make human rights documents recognised as international law. By the end of the decade confidence was such that the focus of lobbying was moving on from codification to enforcement of international human rights. International human rights NGOs such as Human Rights Watch were confidently pronouncing that the age of sovereignty was passing and that international human rights were becoming recognised as supranational rights. If it were indeed the case that human rights were now firmly established then this was good news for refugees who by definition lack the protection of citizens' rights and, in the erosion of states ' generosity in this area, depend on human rights as the only rights of the stateless.

However the advances suggested by the move from codification to enforcement for individuals is more apparent than real. While the codification of human rights is conceptualised as empowering those who are powerless and lack rights, and therefore has a strong moral appeal, this does not resolve the inherent problem of how these rights can be realised. Crucially the codification of human rights as the rights of those who are not in a position to claim rights themselves only semantically resolves the problem of their lack of rights.

The dilemma raised by Arendt over how those who most need human rights protection, the stateless, enforce their rights when they are no longer members of a political community remains. The human rights subject, as opposed to the rights-bearing citizen, is by definition a subject who lacks capacity, who is unable to assert his or her interests in a political community, and therefore depends on external advocacy. But who is entitled to act as the external advocate? How do human rights subjects determine who their external advocate is or hold their advocate accountable for how their rights are interpreted and enforced?

Adequate answers have not been given by human rights proponents. Moreover international human rights organisations have increasingly adopted a more paternalistic model of human rights advocacy paralleling their shift away from advocacy around political prisoners to depoliticised victims, and consequentialist ethics highlighted below. In the shift away from advocacy around political prisoners, there has been a subtle reversal of hierarchies with external professional human rights advocates assuming the primary political role on behalf of human rights holders as opposed to their earlier more modest and supportive role in the relationship. Effectively international advocates have become the moral and political agents of human rights under an expanded human rights' remit, interpreting the interests of human rights victims.

However the relationship between human rights holders and their external advocates is neither reciprocal, nor equal. The complete imbalance of power in the relationship leaves the human rights subject unable to determine the course of this relationship. Effectively, since the human rights subject is powerless and relies on the external advocate, human rights become the rights of the external advocate. In the case of refugees, the external advocate is formally the UNHCR, but the UNHCR does not have a monopoly on that role. Refugee protection is determined more broadly by the international community, the international community essentially comprising of a coalition of the most powerful states and their approved NGOs. Thus human rights become effectively the rights of the powerful states rather than the rights of the stateless.

Furthermore philosophical developments within international human rights advocacy and the humanitarian aid sector have unintentionally facilitated approaches compromising refugee rights. Historically international human rights advocacy and humanitarian principles have been influenced by deontological ethics, that is, an ethics which emphasises a universal humanity beyond politics, religion, ethnicity or race and treats people as ends in themselves whatever their status.

Human rights advocacy based on deontological ethics has prioritised recognition of people's fundamental civil and political rights against the state, irrespective of their politics, and prioritised the rights of political prisoners. While humanitarianism based on deontological ethics has prioritised addressing people's material needs irrespective of their politics. Such an ethics is important to refugees who lack political status and have to appeal for recognition as non-members of a political community.

Against the tradition of deontological ethics, global ethics in the 1990s witnessed a shift to consequentialist ethics, advancing human rights to secure political and developmental goals.[24] Human rights conditionality on humanitarian aid has sought to use aid as a lever to transform conflict situations and promote security, peace and justice in the long-term.[25] So refugee protection is now interpreted within a wider international agenda. However approaches informed by consequentialist ethics risk neglecting the immediate plight of refugees, making questionable distinctions between deserving and undeserving populations, and subordinating their acute needs to uncertain future strategic ends.

Disturbingly the imperatives of consequentialist ethics have led to people being kept in dangerous war zones and prevented from fleeing and seeking asylum abroad in the name of not aiding ethnic cleansing and maintaining multiethnic societies. Thus people whose lives are in danger are being treated as instruments of conflict management as opposed to people whose personal safety is paramount and ends in themselves. In short, human rights advocacy no longer necessarily treats people as ends in themselves, but increasingly treats them as means to advance the strategic goals of the international community.

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[24] Hugo Slim, 'Sharing a Universal Ethic: The Principle of Humanity in War.' *The International Journal of Human Rights,* (Winter 1998), pp 28-48; Hugo Slim, 'Fidelity and Variation: Discerning the Development and Evolution of the Humanitarian Idea.' *The Fletcher Forum for World Affairs,* (Spring 2000), pp 5-22.

[25] Devon Curtis, Joanna Macrae, and Mark Duffield, Special Issue: Politics and Humanitarian Aid: Debates, Dilemmas and Dissension. *Disasters*, Vol. 25, No. 4 (2001).

Meanwhile the inversion of rights has become more patent as human rights advocacy moved on from rights codification to rights enforcement. The concept of humanitarian intervention brings out how human rights turn out not to be the rights of stateless people, but the rights of the great powers to intervene. Accordingly the prevailing global ethics today does not uphold freedom of movement, the right of the individual to self help, but does uphold humanitarian intervention, that is, the rights of the great powers (see for example the influential work of John Rawls[26]). This may be compared to the earlier Kantian position, which made the right to visit foreign countries, temporary stay, and hospitality, fundamental to any notion of world citizenship and was wary of an expansive remit. Kant writes in the third Definitive Article of Perpetual Peace that, 'The law of world citizenship shall be limited to conditions of universal hospitality'.[27]

In contrast to the Kantian ethics, contemporary global ethics seemingly seeks a comprehensive programme of rights, but seems reluctant to endorse this right of free movement. To champion open borders and oppose all immigration controls is widely considered absurd, even among global civil society advocates. I suggest below that the championing of refugees may relate to a contraction of social empathy not its expansion. Many policies associated with contemporary global policies accord with containment policies reflecting a shift from security threats from states to non-state actors. These changing security concerns have been discussed as a shift from geopolitics to biopolitics, which seek to restrict mobility and keep people in their place rather than champion the rights of the stateless.[28]

Arendt's warnings on the limits of human rights to protect stateless persons therefore continue to be apposite. Indeed ironically many international human rights documents such as the UN Convention on the Right of the Child are actually codified as rights claimed against one's state and do not create a right against the international community. Effectively the human rights subject is still presumed to be a citizen of a state and expected to realise their human rights as members of a political community.

The rights of man are still the rights of citizens, it seems. So many of human rights documents created in the last couple of decades do not address the basic problem of the rights of the statelessness. As human rights advocacy has taken on more and more themes, which involve particular visions of the good life, it appears to have drawn attention away from this core problem in an international system made up of states. Global civil society is meaningless if the rights of stateless persons to asylum have not been defended. Yet ironically the sanctity of asylum, the central rights needed for the stateless individual, has been eroded alongside the expanding human rights regime of the 1990s. This contrary development in international human rights casts serious doubt on the project's gains in the 1990s.

Moreover the expansion of human rights into questions of substantive justice has not only distracted from this basic problem of the rights of the stateless, but has also unwittingly exacerbated the problem and weakened respect for existing refugee rights.

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[26] John Rawls, *The Law of Peoples*. Cambridge, Mass. and London: Harvard University Press, 1999).

[27] Immanuel Kant, *Perpetual Peace and Other Essays on Politics, History, and Morals*. Indianapolis and Cambridge: Hackett, 1983).

[28] Mark Duffield, 'Getting Savages to Fight Barbarians: Development, Security and the Colonial Present', *Conflict, Security and Development*, Vol. 5, No. 2, (2005), pp. 141-159.

How is this possible? The extensive international human rights sponsorship in recent years has involved efforts both to use human rights as an engine of social reform and to advance human rights as supranational law. So many international human rights provisions embody norms, which are not yet norms globally, but which advocates would like to become universal norms. This aspirational aspect of human rights is not in itself novel, but what is novel is to try to treat aspirational human rights as law.

These ambitions are contradictory and strain the meaning of law and undermine its sanctity. For human rights as aspirational norms embody desired future norms, that is, they are not yet present norms and as such will not be fully respected as law. But when laws are unrealisable, however well-meaning and desirable they may be in principle, they risk undermining the rule of law overall, that is, the status of all laws as peremptory norms. Respect for the law becomes regarded as discretionary rather than obligatory. In short, where everything is law, then nothing is really law. This leaves documents such as the Convention vulnerable as its beneficiaries are in no position to assert their interests and guarantee their rights are respected and dependent on the sanctity of the Convention itself.

There is a further problem with contemporary human rights advocacy, which overlooks the imbalance of power between parties in enforcing rights. Classically, laws restraining the exercise of power of the stronger party have been considered the best way of protecting the weaker party. Thus human rights were previously interpreted primarily as freedom from state interference to limit potential state abuse.

However, 1990s' human rights advocacy reversed this wisdom. The expansion of human rights to encompass substantive justice, and not just the relationship between the state and individuals, but relations between individuals in the private sphere, has turned human rights from rights of non-interference into external rights of intervention, expanding the authority of individual states or the international community over individuals. Moreover the idea of codifying questions of substantive justice into international law involves the codification of a particular model of justice as law and circumvents political determination.

In other words, the international human rights regime involves external advocates determining the interests of vulnerable populations globally on their behalf without them being able to hold the self-appointed advocates accountable for how their interests are interpreted. We can see this in the broad shift in refugee protection from the defence of refugee rights as rights of self-help towards external management of refugees, which I highlight in the final section. I now want to link this re-interpretation of refugee rights to changing assumptions about the individual in Western societies away from the liberal ideal of the autonomous rational individual. The re-interpretation of rights from freedoms to external governance is linked to the erosion of the political subject more broadly.

Changing Western mood

Refugees' plight was given unprecedented space in the Western media during the 1990s. This apparent identification with refugees' suffering at first glance belies the negative developments refugees have faced as Western states have tightened their asylum regimes and sought to limit refugees' right to seek asylum under the 1951

Refugee Convention. Why has identification with the cause of refugees not translated into better protection of refugee rights? What is being identified with when the refugee cause is taken up today? Just as the image of refugee as political exile embodied the Western Cold War ideal of the courageous individual defying the totalitarian state, so the more recent image of the refugee as a traumatised victim also embodies contemporary ideals.

Historically those on the margins of society have often come to personify society's highest ideals or fears. So it is unsurprising that refugees should assume this role too. The shifting image of refugees from political heroes to traumatised victims does not simply reflect the changing fortunes of refugees, but also reflects some changes in Western societies.

The end of the Cold War signalled the triumph of the West over the Soviet bloc. However the immediate optimistic pronouncements of 'the end of history' were soon superseded by more pessimistic interpretations of the 'end of history' in the West as signifying the exhaustion of grand visions and a clear sense of national purpose. Politics appears impoverished with the erosion of competing leftwing and rightwing political projects. Public institutions whose legitimacy was tied to the former political divisions or traditions have also found it difficult to find shared values for society.

Communal life has weakened as people have become disengaged from politics and civic involvement, whether political parties or trade unions, or voluntary work, while traditional organisations such as churches or even recreational clubs have witnessed declining membership as Putnam's *Bowling Alone* has analysed.[29] Social disorientation and atomisation have meant people are more likely to feel fearful of their neighbours than share a sense of social solidarity. Thus instead of the demise of communal engagement releasing a robust individualism, society has witnessed the spread of a more besieged outlook and more fearful individuals.

The contemporary (Anglo-American) personality has become defined in terms of vulnerability and damage.[30] Diverse disciplines have proclaimed the death of character, the death of the subject, the death of the hero, and the death of public man along with the decline of community and social solidarity. Meanwhile public policy has retreated from the ambitious structural transformations associated with welfare state into micro management of people's sense of well-being. In this retreat social conditions have become pathologised as problems of individuals' personality, life style and personal relationships. Thus public policy has become concentrated on interventions to reform individuals: the problem of employment as employability, health as life style, and so on.

At the same time the British elites feel more estranged from the rest of the population despite the unprecedented low levels of social unrest. The ideal of the common man has deteriorated in politics and culture, paralleling the decline of beliefs in social progress and citizens' involvement in civic life. Public policy has retreated from progressive assumptions about the rationality and autonomy of citizens. The view of

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[29] Robert Putnam, *Bowling Alone: the collapse and revival of American community*. London : Simon & Schuster, 2001.

[30] Frank Furedi, *Therapy Culture: Cultivating Vulnerability in an Uncertain Age*. London: Routledge, 2001; James Nolan, *The Therapeutic State: justifying government at century's end*. New York and London: New York University, 1998.

citizens has become degraded with the diminishing of their political role. The political ideal of the individual as a mature, autonomous, robust, rational subject has been displaced by a postmodern model of the self as a more fluid, vulnerable, emotional, feminised, childish creature who is at risk of harm or dysfunction and requires external support for self-realisation.

Public policy, retreating from previous political assumptions about the capacity of citizens to determine their own lives, increasingly treats citizens as requiring professional governance. Fears over the risk of dysfunction among the general population, not just among a residuum, are leading to new generalised life-long interventions to direct people's lives. At its most radical, the postmodern subject is diminished to a victim/abuser, whose selfhood is to be realised through indefinite therapeutic governance.

Accompanying this jaundiced view of citizens, civil rights are becoming eroded as freedoms and inverted into rights of professional intervention. The good citizen is a citizen who seeks support and is in touch with her emotions; the irresponsible citizen is the citizen who does not acknowledge the need for support and is in denial of his emotions. Indeed the cultural expectations around vulnerability have become prescriptive. The proverbial British stiff upper lip, for example, has not only become anachronistic, but is treated as dysfunctional in contemporary policy models, while traditional masculine values are often singled out as problematic. The spectre of white trash has displaced the idealisation of the common man.

Alienation from British society among the political and professional classes has taken various forms: erosion of the progressive ideal of the comprehensive school and middle class flight from the local state school, disengagement from domestic voluntary work or relocation abroad to find authentic communities. Abandonment of national civic engagement for global advocacy too often appears to express alienation from British society rather than deeper social commitment. Importantly identification with refugees seems to embody an inner emigration among British professionals away from the general population, which contemporary social policy commonly identifies negatively as antisocial, abusive, racist, intolerant, irresponsible, greedy and selfish.

In short, the refugee cause may have replaced identification with the common man and therefore represent contraction of social sympathies rather than their enlargement. If refugees are portrayed as deserving subjects, too often this portrait serves to outline the undeserving masses of British society against whom refugees need to be protected. So an element of interest in refugees may actually be misanthropic and antithetical to communal feeling and social solidarity, expressing professionals' own sense of alienation from society, most overtly in their concerns directed against the general population.

Consequently today's identification with refugees is distinct from the Cold War ideological identification with the West's struggle against communism (or alternatively among radical circles, ideological identification with Third World nationalism against foreign oppression). The nightly images of distraught refugees on Western television screens in the 1990s were not simply because of refugees in Europe, but because of their cultural resonances. The post-Cold War images of traumatised refugees embody the West's own diminished sense of self. The

representations of refugees are overwhelmingly feminised and infantilised images as against the previous images of refugees as heroic political figures.

Typically the pictures will be of a helpless woman perhaps with a child. Men are out of sight, only reappearing as economic migrants, bogus asylum seekers or human traffickers. The professional idealisation of the refugee fits with cultural attraction towards self-identities based on diagnosis or wounded attachments to a traumatic past.[31] Identifying with refugees is therefore not unconnected to the contemporary narcissistic cult of victimisation, in which refugee advocacy invites us to feel good about ourselves by identifying ourselves with their pain.

Identifying with refugees as traumatised victims identifies with ethical subjects who are passive, politically innocent, untainted by communal ties or economic self-interest. Such identification with refugees expresses a wider disillusion with the political subject, but does not translate into demands for freedom of movement within and across borders. Today's emphasis on refugee trauma, their *emotional* suffering, in important respects represents a retreat from political activism against immigration controls and defending the rights of migrants to live in the United Kingdom.

Indicatively sympathy and support for the economic migrant is limited, save where the migrant is cast as the female trafficked victim, as professionals seek to guard the pristine figure of the traumatised refugee victim against the populist hate figure of the self-seeking economic migrant. However the refugee as traumatised victim, having lost a heroic political status, is no longer as distinct from the illegal immigrant and is seen as alien to the political community and an alien social burden. Accordingly we have the rise of the reviled figure of the bogus asylum-seeker.

Treatment of refugees in Rankin's *Fleshmarket Close*

A fictional portrait of refugees' encounter with British society marked by social decay, anomie and demoralisation can be found in Ian Rankin's best-selling crime thriller *Fleshmarket Close*.[32] The novel portrays a bleak world of victims and abusers, of rapists and rape victims, of abusers turned victims and victims turned abusers. A communal vision and belief in social progress is lacking. The fictional Knoxland estate is a site of squalor, sleaze and moral disintegration. Aspirations appear reduced to petty rivalry and personal survival. There is precious little of the ideal of the common man here. Instead the men are portrayed as involved in crime, low life, racist, squalid, weak, petty characters, in short, white trash.

Inspector Rebus is the archetypal anti-hero and therefore departs from the contemporary victim model of the self. But repeatedly, Rankin presents us with demoralised characters, unable to withstand their difficulties and succumbing to the degraded social conditions, while officials are portrayed as corrupt or hypocritical - a local councillor is glimpsed in a stripe club soliciting prostitutes. Rankin's very title

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[31] Wendy Brown, *States of Injury: Power and Freedom in Late Modernity*. Princeton: Princeton University Press, 1995; Ian Shaw and Louise Woodward, 'The Medicalisation of Unhappiness? The management of mental distress in primary care', in Ian Shaw and K. Kaupinnen, *Constructions of Health and Illness: European Perspectives*. Aldershot: Ashgate Press, 2003, pp. 125-138.
[32] Ian Rankin, *Fleshmarket Close*. London: Orion Books, 2004.

Fleshmarket Close suggests a degraded view of humanity and the reduction of human souls to meat.

The plot of *Fleshmarket Close* revolves around the murder of a refugee in a rundown housing estate near Edinburgh. Britain is depicted as no haven for refugees. In the community, refugees are exploited by illegal landlords and illegal employers, who can treat them like virtual slaves by threatening them with violence or being reported to the authorities for deportation. Equally Rankin's fictional Whitemore refugee centre is cruel and corrupt, profiteering from refugees' plight.

The refugees, locked up in inhumane conditions awaiting deportation, are portrayed as broken, suicidal, grief-stricken, the children frightened, old and sad before their time, and their traumatised parents unable to protect them. Whitemore's petty bureaucratic rules, such as not letting refugees take fruit from the canteen into their rooms (or rather cells), further limit their autonomy and make their situation more unbearable.

Through Whitemore, Rankin draws attention to an uncaring asylum system. But Whitemore symbolises a more general national decline, and exhaustion of progressive and civic ideals. Whitemore, as the major employer in the area, represents the state of de-industrialised Britain, a parody of the much heralded new services economy, and a parody of welfare services. On the one hand it is organised around profit-making rather than social justice. On the other hand it is a rather parasitical business, dependent on state funding and to rub salt in the wounds of British industrial decline,

Whitemore is run by a US company. Whitemore's degenerate character is epitomised by its director, who is complicit in a refugee bail and housing scam and seeks to evade public accountability by invoking company confidentiality in bad faith. His fate – attempted suicide and mental breakdown – embodies the irreconcilability the unethical nature of his work and self respect. If his secretary seeks solace in drink, her integrity is saved in the novel by her betrayal of the company and her anonymous tip-off about conditions in the centre. Meanwhile the immigration officer's inept actions become complicit in a gangland power struggle. Indicatively the figure who ultimately has the most authority and extensive connections in Rankin's world is the gangland boss Cafferty, in a parody of civil society networks.

The novel's atmosphere and arrangement represent refugees as vulnerable and mute victims, who lack political or moral agency. Symbolically we are first confronted with a refugee as an abused, abandoned, anonymous body, as opposed to a named individual and member of a community. But even when the murdered refugee is subsequently identified as Stef Yurgii, a Kurdish human rights lawyer, he is revealed as a desperate individual who has lost his principles and is clutching at straws.

We find out the refugee is not murdered as a political champion of abused illegal migrants, conducting serious investigative journalism and disregarding his own safety for the public good, but as a blackmailer of a trafficking gang, motivated by the personal goal of trying to secure false papers for his family to remain in the United Kingdom. The ambivalence of Yurgii's actions is reinforced by suggestion that he is using his affair with a young Senegalese migrant woman to get information against the gang to be used for his own ends, rather than for the good of other refugees. Moreover the sense of his actions' futility and ambivalent motives is reinforced by their rather cursory retrospective reconstruction in the novel. Refugees are repeatedly

portrayed as isolated and cowed, so even where they are together in their private suffering, they are unable to act publicly and any compassion shown is fleeting or covert.

Meanwhile their erstwhile champions are a sorry fragmented lot with mixed motives. There is the opportunistic immigration lawyer, reliant on bureaucratic connections for his public position. Then there is the rather dippy, isolated artist, not yet old enough to be a batty old lady, a veteran of Greenham Common, but now marking a lonely vigil. Neither character is shown to be part of a political movement, nor do they seem to be integrated into a community.

Both the lawyer and the artist are unable to galvanise public support or help the refugees organise to protect themselves and are symbolically thrown off the Knowland estate when they get too close to seeing how the refugees survive illegally. Furthermore both seem to be building their careers on the refugee cause. If the lawyer's politics are obviously tied to the local bureaucracy, the artist too is apparently dependent on local authority sponsorship, her refugee-themed art perhaps enabling her to tap into public social inclusion funding (I've noticed countless sponsored exhibitions on refugees up and down the country in recent years, including in Scotland!).

Likewise the artist's accommodation of a refugee mother and her child in her flat is treated ambivalently. The reader is left to wonder whether the act is a substitute for the family that the lonely woman does not have and therefore whether the gesture symbolises the strengthening of human bonds or their demise.

There are only sparks of humanity, individual informal gestures, ad hoc actions, no communal responses of compassion, and no policy reversals. Thus there is only an informal shady resolution of the problem of asylum when Rebus blackmails an immigration officer to ensure that Yurgii's family are granted asylum. And Rebus' gesture of anonymously giving Yurgii's children some toys or elsewhere establishes no communal ties or generalisable policies. In sum, Fleshmarket Close portrays an atomised, demoralised, misanthropic vision, its title encapsulating a degraded human intimacy. If there is justice in Rankin's world then it is only rough justice.

Refugees in the sick role

I now want to turn from a fictional account to outline how refugees are conceptualised today within a health paradigm. In some respects the turn to health can be seen as an attempt to transcend the alienating world of contemporary society and reconnect with people. There is an important coalescence around health and human rights as is evident in growing academic and practitioner works spanning the two fields and the reports in medical journals such *The Lancet* and the *British Medical Journal*.[33]

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[33] For example, British Medical Association Board of Science and Education, *Asylum Seekers: Meeting their Healthcare Needs*. London: British Medical Association, 2002; Helena Nygren-Krug, *International Migration, Health and Human Rights*. Geneva: World Health Organization, 2003; Kimberly A. Maynard, *Healing Communities in Conflict: International Assistance in Complex Emergencies*. New York: Columbia University Press, 1999; WHO, *25 Questions & Answers on Health and Human Rights*. Geneva: World Health Organization, 2002, to take just four examples.

Organisations such as the Medical Foundation for the Care of Victims of Torture are inspired by human rights in their work, while many refugee advocates have invoked a health paradigm to support refugee claims. A claimant's mental health has become an important component of substantiating claims to persecution in asylum cases. Thus refugee law groups have become involved in refugee health, for instance, the Immigration Law Practitioners Association published a report on refugee health.[34] Equally academic writing critical of official policies often invokes their consequences for refugees' health. In this vein, Liz Fekete, in her passionate denunciation of European deportations policies, pleads that:

> Today, those caught up in the EU's deportation drive include torture victims, those severely traumatised by war, psychiatric patients and the terminally ill. Even vulnerable children, including those who have sought asylum in Europe unaccompanied by any adult, are caught up in it. Some have developed symptoms of complete depressive breakdown, including severe apathy. Unable to thrive emotionally and physically, due to traumatic experiences in their home countries compounded in Europe by their fear of deportation, they have had to be hospitalised and fed intravenously.[35]

Repeatedly she invokes the plight of refugees in terms of trauma, later invoking the trauma of child refugees:

> Again, there seems to be no thought given to the long-term traumatic implications for children forced to watch their parents being degraded, humiliated and even assaulted during the deportation process.[36]

Professional interest in refugees' mental health became manifest across the Atlantic following the American Psychiatric Association's recognition of PTSD in 1980. During the 1980s, reports on the mental health of Cambodian and Vietnamese refugees and then Latin American refugees began appearing, building on US interest in the psychiatric problems of holocaust survivors and Vietnam veterans, and also Latin American psychiatric work with former political prisoners, but with important differences.

Henrik Ronsbo of the Danish Rehabilitation and Research Centre for Torture Victims has examined how when the notion of trauma originally appeared in Latin American psychiatry in the late 1960s and 1970s, therapeutic work was seen as complementing political resistance.[37] Interventions sought to resurrect a political subject and reintegrate the person into a political community. The professional acted in solidarity

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[34] Health Education Authority's Expert Working Group on Refugee Health, *Promoting the Health of Refugees: A Report of the Health Education Authority's Expert Working Group on Refugee Health: Its Present State and Future Directions*. London: Immigration Law Practitioners Association, 1998.

[35] Liz Fekete, 'The Deportation Machine: Europe, Asylum and Human Rights.' *Race and Class*, Vol. 47, No. 1, (2005), p. 66.

[36] Liz Fekete, 'The Deportation Machine: Europe, Asylum and Human Rights.' *Race and Class*, Vol. 47, No. 1, (2005), p. 75.

[37] Henrik Ronsbo, Unpublished paper presented to EADI 11th General Conference, Bonn, 22 September 2005.

with the tortured person's politics. Trauma was understood as a political condition inhibiting the political rights of the individual. In sum, therapeutic work was conceived within a political paradigm. However with the merging of the combat veteran, the torture victim and the refugee in the psychiatric literature of the 1980s there was also a shift away from the idea of rehabilitating a political subject to managing a victim at risk. In other words, trauma is no longer an attribute of a political subject, but is understood within a health paradigm as an attribute of dysfunction.[38]

In Britain specific concern for refugees' mental health was evident in the setting up of the Medical Foundation for the Care of Victims of Torture in 1985. The Foundation in important respects spans the shift from a political to a health paradigm. But it was not until the end of the Cold War that broader interest grew in refugees' mental health. Initially much of this interest focused on humanitarian interventions abroad.

The real explosion of interest in the subject among British health professionals was not until the late 1990s, demonstrating how the cultural model of the traumatised victim preceded the subject becoming an issue widely taken up by the British National Health Service (NHS). This interest has now become more formally recognised within individual NHS trusts. Nottinghamshire NHS Trust for example has set a trauma centre which is involved in both treatment and dissemination of best practice in refugee health to health professionals within its trust as well as nationally.

Concern for refugee health as a distinct subject is often presented by professionals as belated attention to a long neglected problem, arising from a growing sensitivity within the health services towards health inequalities and cultural awareness which has encouraged more interest in refugees. Certainly official dispersal policies have meant that refugees are being settled into areas where they are not joining existing communities from their home country and so more professionals across the country can expect to deal with refugees than before.

There is a broad view that the dispersal system means people cannot rely émigré networks to provide informal help on an everyday basis and depend more on public resources. Thus the dispersal policies contribute to a greater professionalisation of the refugee experience, exacerbated by problems of social isolation, which foster more mental health problems. Nevertheless the argument that the dispersal system necessarily leads to more mental health problems is only partly persuasive and tends to assume that refugees share the contemporary vulnerable personality of Western societies as opposed to a strong, stoical character associated with former cultural expectations. For the essence of character (as opposed to personality) is that the individual has internalised the authority and values of the community and thus embodies the community and the community values even if physically apart from the community.

With that proviso, it is not difficult to accept that many refugees have health problems, which have been exacerbated or even precipitated by their plight, and that many express existential anxieties in health terms, whether psychologically or somatically. Furthermore their health problems may not have been adequately

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[38] Henrik Ronsbo, Unpublished paper presented to EADI 11th General Conference, Bonn, 22 September 2005.

addressed in the past, and the new focus on refugee health may result in more resources and better-directed services for refuges. Refugees may also resourcefully tap into the cultural expectations that refugees are traumatised and incapacitated for access to other resources such as incapacity benefits. I know of the refugee needing a washing machine making his claim in terms of PTSD-related symptoms – nightmares causing him to sweat and wake up dripping wet and therefore needing to change his sheets daily; or the refugee wanting to be rehoused from a flat to a house repeatedly talking about how he found gardening helped him psychologically. These two refugees did have certain health problems, but they were also aware of the social capital in diagnosis in Britain as compared to their own society.

Claim-making based on health does not simply promote services for refugees or supplement earlier arguments around refugees suffering, although such claim-making may spring from a desire to raise broader social and professional awareness of the refugees' plight. Crucially contemporary concern for refugee health involves a changed perception of the refugee identity from the refugee as political exile to the refugee as patient.

Refugee advocacy based on a health paradigm may use the language of solidarity, but casting refugees in the sick role departs from earlier political solidarity and is better understood in Parsonian terms as 'permissive empathy'.[39] Permissive empathy, unlike political solidarity, is not based on a relationship between equals and risks distancing refugees from wider society rather integrating them into a political community. Moreover the prism of health, of function and dysfunction, has risky consequences for refugees, although appearing positive at first sight, because it raises questions over the capacity of refugees for self-determination.

Parson's discussion of the sick role and permissive empathy helps clarify the advantages and disadvantages of claim-making on the grounds of health.[40] Importantly individuals in the sick role are not considered to be at fault and they are exempt 'from normal expectations of performance'.[41] This is what Parsons means by permissive empathy. Professional diagnosis, its associated permissive empathy and treatment, shield individuals from social obligations and mediate their relationship to the wider society. The release from responsibility creates a relationship of dependency, which undermines individual autonomy.

At the same time the permissive empathy extended by professionals dispels ordinary resistance to institutions and allows unparalleled institutional access over individuals' lives and relationships.[42] Crucially, 'In adopting the sick role, individuals accept that their capacity to function is impaired and that therefore their ability to exercise individual autonomy is significantly impaired'.[43] Thus professionals voice individuals' interests in the sick role, rather the individuals themselves, albeit

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[39] Talcott Parsons, *Social Structure and Personality*. New York: Free Press, 1965; Talcott Parsons, *Action Theory and the Human Condition*. New York: Free Press, 1978.
[40] Talcott Parsons, *Social Structure and Personality*. New York: Free Press, 1965; Talcott Parsons, *Action Theory and the Human Condition*. New York: Free Press, 1978.
[41] Talcott Parsons, *Action Theory and the Human Condition*. New York: Free Press, 1978, pp. 77-78.
[42] Frank Furedi, *Therapy Culture: Cultivating Vulnerability in an Uncertain Age*. London: Routledge, 2001, p. 98.
[43] Frank Furedi, *Therapy Culture: Cultivating Vulnerability in an Uncertain Age*. London: Routledge, 2001, p. 98.

temporarily for Parsons. If Parsons viewed the sick role as a temporary condition, the adoption of a health paradigm as a way of understanding individuals' status more generally has profound consequences for their civil and political rights.

Hence the presentation of the refugee as patient is a double-edged sword. On the one hand the refugee may be offered greater protection in the sick role and be released of certain social obligations such as employment, but on the other hand the refugee in the sick role is no longer viewed as a political subject with the capacity to exercise rights of self-determination, but becomes an object of professional management. In short, permissive empathy develops professional management of refugees, not greater refugee rights.

Furthermore approaching refugees predominantly through a health paradigm orientates refugees into an individualised patient-professional relationship counter to their wider political or communal ties and identity. However belonging to a political community is vital to realising rights as explored above. There are obvious temptations for refugees in relinquishing to a sick role, but self-help, initiative, ingenuity, and not too much trust in authorities are vital for those in an insecure position politically and socially as refugees are. Again Arendt's experiences of statelessness warn of 'the price for misplaced confidence and refusal to act'.[44]

Identifying refugees in depoliticised terms does not advance refugee rights as I have already indicated. The traumatised refugee represents a demoralised figure who becomes subject to professional management. Indicatively during the Cold War, coinciding with the image of refugees as political subjects, refugees living in Britain were largely unmanaged, and free to choose where they could live. There was not the same gulf between asylum seekers and refugees in how they were treated within Britain, the key significant difference being their lack of travel documents and inability to travel abroad while their claim was being processed.

Refugees (the term asylum seeker had little currency until the 1990s), largely organised themselves and were drawn to London to settle with an existing émigré community. Refugees often continued to be involved in the politics of their country and their cause tended to be championed by political activists empathising with their political struggle rather than by professionals. Insofar as refugee interests were represented by professionals, then those professionals were essentially lawyers defending their legal rights. Conversely today welfare professionals, notably health professionals have displaced the émigré community, political activists, and even lawyers.

Given the cultural image of refugees as traumatised it is perhaps logical that health professionals will play a prominent role in refugee services today, especially outside of the capital in areas, which do not have the recent historical experience of more politicised émigré communities. Strikingly too even non-health refugee programmes may represent a form of therapeutic governance. Employment training programmes or other integration programmes such as youth or gender empowerment classes are often not so much practically orientated towards direct job-related skills but life skills, essentially emotional management directed towards their self-esteem, interpersonal

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[44] Elisabeth Young-Bruehl, *Hannah Arendt: For the Love of the World*. New Haven and London: Yale University Press, 1982, p. 160.

relations and attitudes. This professionalisation also coincides with the greater management of refugees through the dispersal system and greater use of detention. One cannot image the likes of Kundera, Solzenitsyn or Ratushinskaya being treated in this way. Kundera, for example, has always viewed his personal life as private and not for public scrutiny. But it has become routine for the mass of ordinary refugees today, who are not only presumed to be bogus until proved otherwise, but who are also increasingly treated as lacking elementary traits of sociability.

Ultimately casting refugees in the sick role questions their moral agency and legitimises their rights being inverted into the rights of the external advocate. In the final section I want to highlight how paralleling the treatment of refugees as depoliticised traumatised subjects, there has been a broad reinterpretation of refugee protection internationally from a focus on defending refugee rights to refugee management. At the heart of this reinterpretation internationally has been the compromising of refugees' essential right to freedom of movement, which has been directly attacked by the international community.

From refugee rights to refugee management

There has been much written on how the UNHCR's role at the end of the Cold War shifted from being primarily the guardian of refugee rights to the manager of refugees. The UNHCR had previously been involved in running refugee camps, nevertheless, it had not traditionally considered itself a relief organisation as such.[45] Yet a change was immediately evident in the first Gulf War of 1991 as the UNHCR took on managing relief for the Iraqi Kurds and became more pronounced in Bosnia as UNHCR became the lead organisation coordinating aid in Bosnia.

This shift was controversial among those familiar with the UNHCR's work. A major historian of the UNHCR Gill Loescher has argued that adopting a relief role distracted the UNHCR from its core mandate, which it was struggling to maintain.[46] Indeed in adopting this new role, the UNHCR arguably seems to have been more successful protecting itself as an institution than protecting refugee rights.[47] As such the UNHCR's new relief role may have improved its reputation with Western governments, who were clashing with the agency over refugee legal protection, but critically it can be seen to represent a displacement activity and a flight from its responsibilities towards its core mandate.

I have already discussed the shift to consequentialist ethics in global ethics and how consequentialist ethics risks sacrificing refugee rights to international security and development strategies. The influence of consequentialist ethics is evident in the UNHCR's evolving mandate, which encompasses conflict management and human security. The UNHCR's mission statement states that it includes seeking 'lasting solutions' and outlines that:

> UNHCR seeks to reduce situations of forced displacement by
> encouraging states and other institutions to create conditions,

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[45] David Rieff, *A Bed for the Night: Humanitarianism in Crisis*. London: Vintage, 2002, p. 132.
[46] Gil Loescher, (ed.) *The UNHCR and World Politics: a perilous path*. Oxford: Oxford University Press, 2001.
[47] David Rieff, *A Bed for the Night: Humanitarianism in Crisis*. London: Vintage, 2002, pp. 133-141

which are conducive to the protection of human rights and the peaceful resolution of disputes. In pursuit of the same objective, UNHCR actively seeks to consolidate the reintegration of returning refugees in their country of origin, thereby averting the recurrence of refugee-producing situations.[48]

The UNHCR, as other international organisations, wanted to be more involved in politics of conflict in the 1990s. The UNHCR became impatient with the principle of neutrality and more willing to speak out publicly against parties to a conflict. The politicising of the UNHCR was initially welcomed as suggesting hopes for a more robust defence of refugee rights. However UNHCR's politicisation and expanded remit have retreated from treating refugees as ends in themselves and have allowed individual refugees and their rights to become subordinate to the security interests of the dominant states.

Critics have argued that the UNHCR's expanded mandate made it more 'relevant' to the great powers by supporting policies keeping refugees in region, but 'weakened' its core mandate to protect refugees' rights.[49] Moreover this approach was not only influenced by the resources the UNHCR had at its disposal, but deliberate policy decisions against evacuation. Thus UNHCR was extremely reluctant to help people evacuate Sarajevo or other designated safe areas even on its returning relief flights or trucks.[50] The rationale of the safe areas or safe havens policies in both Northern Iraq and Bosnia Yugoslavia was to prevent population displacement and the creation of ethnically pure states.

However these laudable aims confused wartime humanitarian priorities of saving lives with peacetime human rights policies of ethnic tolerance and justice. In effect the approach denied people, many of whom were already displaced from their homes, the right to flee, that is, freedom of movement, which was more in the interests of Western states than the people themselves. In other words, the UNHCR was complicit in containing would-be refugees in a war zone against their will and thereby increasing the numbers of killed and wounded.

Once again 'the internment camp', whether in the safe areas policy or detention centres, 'has become the routine solution for the problem of domicile of the "displaced persons", as Arendt observed fifty years ago.[51] This containment of refugees directly contradicts with the UNHCR's mandate to protect refugees' freedom of movement. Consider Article 26 of the 1951 Convention on freedom of movement, which states:

> Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.[52]

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[48] UNHCR Mission Statement, available at http://www.unhcr.org
[49] David Rieff, *A Bed for the Night: Humanitarianism in Crisis*. London: Vintage, 2002, pp. 140-141.
[50] David Rieff, *A Bed for the Night: Humanitarianism in Crisis*. London: Vintage, 2002, p. 142.
[51] Hannah Arendt, *The Origins of Totalitarianism*. San Diego: Harcourt, 1985, p. 279.
[52] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

Furthermore the terrible scramble for places on the few isolated conveys out of the designated safe areas in Bosnia belies the arguments that the UNHCR and other international actors were regarded by refugees as acting in their interests when they sought to keep them in the region.

At the same time that the UNHCR appears to be compromising refugees' core rights, its remit has expanded to encompass questions of substantive justice such as gender justice. The UNHCR's mission statement states how, 'In all of its activities, UNHCR pays particular attention to the needs of children and seeks to promote the equal rights of women and girls.'[53] This illustrates how the UNHCR too is no longer simply concerned with how states treat refugees, but relations within refugee groups.

Essentially the UNHCR operates an expanded concept of human rights that goes beyond the relationship between individuals and states and concerns relationships within the private sphere. The goal of equal rights for women and girls is laudable, but it is disingenuous of the UNHCR to present itself as promoting equal rights among refugees, among the stateless the vast majority of whom the UNHCR finds so difficult to protect and are therefore effectively rightless.

This contradictory position tends to confirm how refugee rights have become rights of external management as opposed to the rights of refugees themselves. The erosion of refugees' rights as rights of self-determination is further indicated in the UNHCR mission statement, which speaks of how, 'UNHCR is committed to the principle of participation by consulting refugees on decisions that affect their lives'.[54] Participation in decisions about oneself may help legitimise the decision-making process, but is not the same as self-determination and accountability. The UNHCR is assuming more prerogatives to determine the interests of vulnerable populations globally on their behalf but populations such as the Bosnians are unable to hold the UNHCR to account for how their interests have been interpreted. The concept of participation represents a retreat from the principle of refugees determining their own rights to seek asylum.

More recently UNHCR has retreated somewhat from its novel relief role and the direct management of refugees into refugee advocacy on refugee protection and best practice. In this turn to advocacy it is again following trends in the rest of the humanitarian sector.[55] However the turn to advocacy does not represent a return to more robust protection of refugee rights, but in important respects represents a further disavowed retreat from direct field responsibility while nevertheless maintaining the moral high ground from a distance. Its initiation of a global conversation on refugee protection too sidesteps responsibility for upholding the Convention, while its advocacy over best practice retreats from the hassles, contradictions and responsibilities of policies in practice.

The UNHCR has secured its future for the moment but its record of refugee protection since the Cold War is shaky. If the task of protecting the stateless is impossible in a world of states, the UNHCR's failure to secure the Convention is understandable.

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[53] UNHCR Mission Statement, available at http://www.unhcr.org
[54] UNHCR Mission Statement, available at http://www.unhcr.org
[55] Vanessa Pupavac, 'The politics of emergency and the demise of the developing state: problems for humanitarian advocacy.' *Development in Practice*, Vol. 16, Nos. 3&4, (June 2006), pp. 255-269.

However what is not excusable is the UNHCR's own compromising of refugee rights. Refugee legal protection has materially worsened since the end of the Cold War. West European states have been less welcoming of refugees and in different ways striving to deter would-be refugees from their borders, expanding their powers of governance in third countries, instituting more harsh appeals systems, taking away certain rights of appeal, removing benefits, restricting asylum seekers' freedom of residence or movement, housing them in detention centres and so.

Asserting refugees as political subjects?

This paper has suggested that the rights and well-being of refugees have best been realised when refugees are regarded as political subjects, and greeted as members of a political community. Indeed even negative recognition of political subjectivity through denunciation and persecution as a political dissident furthers a refugee's position internationally and helps a refugee gain membership of a different political community in another country. But the treatment of refugees as political subjects has tended to apply only exceptionally.

The position of the majority of refugees is inherently precarious because of their exclusion from their original political community and their exclusion from an alternative political community. Moreover today refugees' integration into a political community in exile is complicated by the present weak sense of political subjectivity.

It is difficult to assert the moral agency of refugees in a political climate which lacks confidence in the moral agency of citizens too. If the lives of ordinary citizens are increasingly managed today, then it is unsurprising that refugees find that their conditions are increasingly externally managed. It is difficult for professional advocates to escape this cultural paradigm. The construction of refugees as traumatised may dramatise their suffering and underscore the validity of their claims for asylum, but casting refugees in a sick role problematises the capacity of refugees to determine their own interests and tends to legitimise the external management of refugees.