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The Neoliberal Understanding of Human Rights and the Failure to Protect Refugees

Abstract: The connection between neoliberalism and human rights, which both took flight in the 1970s and 1980s, has garnered significant scholarly attention. Interestingly, from the 1970s onward, there have also been important turning points in the history of refugee protection that have fostered a minimalist approach to refugee protection. Given neoliberalism's significant influence on the contemporary understanding of human rights, the question arises whether this neoliberal understanding of human rights also extends to refugee rights and refugee protection. This article argues that the minimalist approach to refugee protection presupposes a specific understanding of the rights of refugees that combines with a neoliberal understanding of human rights in general. Refugees are no longer perceived to have rights, but to have needs. Like human rights in general, refugee rights were reshaped according to the idea that saving bare lives and provision of basic needs is deemed sufficient.

Keywords: neoliberalism, human rights, refugee rights and protection

I. Introduction

In his lectures on neoliberalism, published as *The Birth of Biopolitics*, Michel Foucault notes that neoliberal thinking carries a specific understanding of human rights that is based on negative and economic freedom and the idea "of the independence of the governed vis-à-vis governmentality" (2004b, 42). In recent years, the neoliberal understanding of human rights has attracted increasing academic attention. Prominent scholars like Samuel Moyn and Jessica Whyte have sought to establish the conceptual and normative links between neoliberalism and human rights that both took flight in the 1970s, became widespread in the 1980s, and still predominate today. Moyn discusses the reshaping of human rights against the backdrop of neoliberal retrenchment policies that states started to adopt in the 1970s and that are typically associated with the governments of Thatcher and Reagan, and, although somewhat less known, the Dutch government of Ruud Lubbers (Mellink and Oudenampsen 2022), who also served as the United Nations High Commissioner for Refugees from 2001 to 2005. Whyte in turn discusses neoliberalism as an intellectual project that emerged in Germany in the 1940s with the appearance of the so-called ordoliberals and which later, in the 1950s, came to be adopted by the economists of the University

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of Chicago, among whom Nobel Prize winner Milton Friedman stands out. Notwithstanding this difference in periodization, and despite the varieties of neoliberalism in actual practice, their work elucidates a coherent neoliberal understanding of human rights. The general picture that emerges is that human rights have been made to fit the political economy of neoliberalism, which prioritizes the protection of market freedoms and undistorted competition over social welfare considerations. This occurred partly because the simultaneous rise of human rights and neoliberalism displaced alternative concepts of justice (Moyn 2014, 150), such as the New International Economic Order (NIEO) proposal by postcolonial states for a more equitable global economic system, or Rawls's egalitarian difference principle (Moyn 2018). The result was an emphasis on individual human rights violations, neglecting structural accounts of such violations and broader human suffering (Moyn 2014, 159). There are both weak and strong conceptual points to be made here. On a weaker view, human rights simply have not made a difference in the era of escalating inequality. Moyn thus argues that, disconnected from egalitarian justice and material equality, "[h]uman rights, even perfectly realized human rights, are compatible with inequality, even radical inequality" (2018, 213). On a stronger view, which complements the weaker interpretation, the shift away from social justice and structural thinking has also reshaped the conceptual understanding of human rights. Indeed, from the 1970s onward, the discursive inroads of neoliberalism in human rights law and politics have prioritized civil and political rights while social and economic rights were interpreted in terms of basic needs and "reimagined in a spirit of global anti-poverty" (ibid. at 145). Human rights became focused on alleviating poverty rather than promoting equality. The point, contrary to Jiewuh Song's criticism, is not that determining the requirements of human rights will provide a complete picture of global justice (2019, 364). Rather, it is more modest: that human rights could have been conceptualized differently (Moyn 2018, 145).

Interestingly, alongside the ascendancy of human rights and neoliberal policies, the 1970s, 1980s, and 1990s also witnessed significant turning points in the development of international refugee law and refugee protection: first, the failure of the Conference on Territorial Asylum and the abortion of an individual right to asylum, second, the pervasion of human rights law into refugee law, that, third, heralded the "repatriation turn" (Chimni 1998, 352) and the regionalization or extraterritorialization of asylum policies. These three developments represent a shift from concern for the refugee's welfare and her legal, social, and economic integration in receiving countries to the perception of the refugee as a helpless victim depending on charity and humanitarian assistance for her survival (Harrell-Bond 2002, 55). During this period, the Office of the United Nations High Commissioner for Refugees (hereinafter UNHCR) notably expanded its mandate to include non-European refugees in the global South. This expansion unfolded against the backdrop of structural adjustment programs that international financial institutions such as the International Monetary Fund (IMF) and the World Bank powerfully advanced in the Third World. These programs made development aid and loans contingent on Third-World countries implementing structural reforms of their economic and political institutions, in line with neoliberal policies of privatization, deregulation, and trade liberalization. Consequently, these countries were compelled to cut back on public spending for social welfare initiatives (Fraser 2022, 46). Prior to these structural adjustments, postcolonial states had maintained a more or less generous open-door policy for refugees, which came to an end as these countries became financially drained (Rutinwa 1999). This historical juncture signifies the inception of leveraging refugees as assets to solicit funding and development assistance in exchange for containing refugees within the region of origin, spurred by Northern states implementing policies aimed at excluding refugees (Anker, Fitzpatrick, and Shacknove 1998, 298). Consistent with the neoliberal rollback of the state dominant in the 1980s (Peck and Tickell 2002), states increasingly abdicated their responsibilities to UNHCR, such that in all large refugee crises around the world UNHCR would be the means by which assistance was delivered on the ground (Hathaway 2005, 995–96).

However, refugee law and rights fall outside the present academic discussion on human rights in a neoliberal age. Likewise, scholars in migration law and political philosophers typically do not give significant consideration to the impact of neoliberalism on the conceptualization of human rights when analyzing the plight of refugees. Yet if neoliberalism has been highly influential in shaping the contemporary understanding of human rights, a question arises whether this neoliberal understanding of human rights also extends to the conceptualization of refugee rights and refugee protection on the basis of international refugee law. What adds weight to the question is that the Convention Relating to the Status of Refugees[1] (hereinafter the Refugee Convention), although adopted shortly after the Universal Declaration of Human Rights,[2] is not a specialized human rights treaty as is commonly assumed (Chetail 2014). Not until the late twentieth century did human rights law significantly transform refugee law, reshaping both the definition of a refugee and the concept of protection. If the Refugee Convention is not inherently a human rights instrument, the question is whether the aforementioned permeation of human rights law into refugee law, which commenced in the 1980s, has redefined the conceptual understanding of refugee rights and protection in alignment with the neoliberal understanding of human rights.

To address this question, I will apply the theoretical force of Moyn's and Whyte's arguments on the neoliberal interpretation of human rights, alongside Foucault's insights, to examine the international refugee protection regime. Furthermore, this article relies heavily on the interpretations of international refugee law and the meaning of "international refugee protection" offered by UNHCR, the world's largest and most well-funded humanitarian organization. UNHCR wields significant influence in the interpretative making of international refugee law (Kennedy 1986; Venzke 2012) and plays a pivotal role in defining what the refugee problem is and what refugee protection means (Malkki 1995). Moreover, UNHCR has often found itself acting as a subcontractor in implementing the restrictive and repressive asylum policies of Western states, especially those of the European Union (EU) (Lavenex 2015; Spijkerboer 2018, 2893). The organization's financial reliance on donor states incentivizes it to reinterpret refugee protection in line with the objectives of these restrictive policies, which aim to keep refugees at a distance (Harrell-Bond 2002, 72). As a corollary, the concept of "international refugee protection" has changed remarkably since the establishment of UNHCR in 1950. This transformation can be most accurately described as a transition from state-based legal protection and integration in the host country toward an emphasis on physical safety, material assistance, humanitarian and development aid, and containment of refugees within the region of origin. I will argue that the shift from state-based legal protection to humanitarian protection and physical safety presupposes a specific understanding of the rights of refugees that combines with a neoliberal understanding of human rights in general. Refugees are no longer perceived to have rights, but to have needs. Like human rights in general, refugees' rights were reshaped according to the idea that saving bare lives and sufficient provision of basic needs was enough to strive for.

The article proceeds in five parts. Part II introduces neoliberalism to readers who are familiar with refugee law but not with neoliberalism, explaining it as a political economy rich with views on human freedom, dignity, equality, and the rule of law, to illuminate the neoliberal understanding of human rights. Part III discusses the emergence of the international refugee protection regime in the early twentieth century and reflects on the beginning of the downfall of legal refugee protection with the rise of UNHCR in the 1970s. Part IV demonstrates that the incorporation of human rights law into refugee law has resulted in a minimalist understanding of protection in terms of "assistance" and "sufficiency." Part V discusses the repatriation turn and how it linked refugee protection to neoliberal development policies, illuminating why non-Europeans have needs but not rights.

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[1] (Geneva, 28 July 1951) 189 U.N.T.S. 137, *entered into force* 22 Apr. 1954.

[2] (10 December 1948), U.N.G.A. Res. 217 A (III) (1948).

II. The Neoliberal Shaping of Human Rights

National asylum policies in Western affluent states are usually driven by a discursive logic that frames refugees as a fiscal burden on welfare resources and as a potential threat to the sustainability of the welfare state. As meticulously canvassed by Lieneke Slingenberg, official discourse of EU member states even uses the exclusion of potential refugees from general welfare schemes to deter new arrivals and to incite asylum seekers to leave (2014, 372). Consequently, as pointed out by Peo Hansen (2021), much migration scholarship reiterates the idea that states justify restrictive asylum policies to demarcate the "community of legitimate receivers of welfare state benefits" (Bommes and Geddes 2001, 3).

However, if, as Moyn argues, the most important transformation of the twentieth century is the passage from the welfare state to the neoliberal state (2018, x), the focus on welfare sources and rights to analyze current asylum policies is insufficient and perhaps even inapposite. Indeed, Hannah Arendt, in *The Origins of Totalitarianism*, had already noted the curious contiguity between the antecedents of neoliberalism—capitalism and imperialism—and the degrading treatment refugees received in Europe after World War I. The famous ninth chapter, "The Decline of the Nation-State and the End of the Rights of Man," was the closing chapter of Part Two, called "Imperialism," of *The Origins*. Reading Arendt's reflections on the refugee question within the context of her discussion of imperialism makes the refugee's rightlessness and exclusion appear within the rationality of the competitive market society and global capitalism. Indeed, in Arendt's thinking there is nothing contradictory or ambivalent between imperial expansionism that scatters capital, investment, and production across the globe and the fact that refugees do not, in any manner whatsoever, profit from a world without borders and are "forced to live outside the common world" (1966, 302).

Today, there is a resurging interest in understanding the economic and neoliberal realities behind refugee exclusion, evidenced by a growing body of literature exploring how neoliberal ideology affects or materializes in national asylum policies. There is a growing belief, echoing Slavoj Žižek (2015), that refugees are the price of the neoliberal global economy. Sarah van Walsum had already highlighted, in 1994, that there is a glaring inconsistency in states' dismantling of their national security systems, on the one hand, and the rhetoric they deploy to protect that very same national security system against refugees and migrants (1994, 211). Some, like Peo Hansen (2018), demonstrate how neoliberal austerity policies across the EU have pushed refugees to the margins in receiving countries, arguing that nearly everything that is needed for successful integration, such as housing, education, health care, and active labor programs, has been exempted from public investments. Likewise, Ali Bhagat (2020) shows how neoliberalism produces "refugee disposability" in both the labor and housing markets, whereas Nicolas de Genova (2013) and Ines Valdez (2021) have demonstrated how global capitalist production thrives on the exploitation of cheap refugee and migrant labor. Others, like Odessa Gonzalez Benson (2016), illuminate how workfare, privatization, and cost efficiency prevail in refugee policies in the United States, arguing that the 1980 US Refugee Act ties the refugee to neoliberal citizenship. In turn, Arun Kundnani (2021, 65) argues that warehousing refugees in camps is inextricably linked with neoliberalism's global market order, while Nancy Fraser (2022) and Saskia Sassen (2014) believe that global capitalism has expropriated large numbers of refugees and has expelled them from the social and economic orders of our time.

While the scholarship outlined above provides insights into how the political economy of neoliberalism influences national asylum policies, this article delves into international refugee law to examine whether the neoliberal conception of human rights has similarly influenced and

redefined the understanding of refugee rights and international refugee protection. The remainder of this section therefore discusses the neoliberal imagination of human rights.

In order to bring the neoliberal imprint on human rights into view it is necessary to first discuss such core notions as freedom, rule of law, and human dignity that form the bedrock of neoliberal thinking.

Let's begin with the concept of freedom. The core idea is that it is not the state but the competitive market that guarantees and enlarges individual freedom and serves as the best and most efficient way of allocating resources such that everyone gets what he deserves. Key in neoliberal thinking is that human freedom is to be shielded from egalitarian state interventions such as redistributive taxes and welfare provisions. Human freedom is thus primarily understood as negative freedom, or, more specifically, as economic and entrepreneurial freedom (Whyte 2019, 114). Importantly, neoliberalism, like imperial capitalism before (Arendt 1945), calls for an active state to create a legal framework that protects private property and actively conditions the formal mechanisms of competition to function (Pistor 2019). So Arendt notes that despite all its talk of liberty and a private space where the individual can plan his own life and flourish, the capitalist elite all too heavily relies on the state to create a good business climate and globalize national markets (Arendt 1966, 149). Neoliberalism does not strive to increase the pie for all or to follow a utilitarian principle of maximizing the greatest happiness and welfare for the greatest number. Instead, with the visible hand of the state, it aims to increase the pie for the ruling class elite (Foucault 2004b, 118–20). The ensuing gap between "the all too rich" and "the all too poor" (Arendt 1966, 155), which Arendt identified as the road to the suicide of capitalism and imperialism (1945, 35), is not seen as lamentable. Rather, inequality is regarded as structural and necessary because it is what spurs competition between individuals (Harvey 2007, 16). Furthermore, impoverishment and, as Foucault argues, even death resulting from scarcity, are deemed necessary (2004a, 42). Indeed, according to Nancy Fraser, the expropriation of nonpropertied individuals, which involves violently seizing assets and resources while deeming certain groups "lesser beings" based on established hierarchies of race, residence status, and gender, is just as fundamental to the functioning of capitalism and neoliberalism as exploitation itself (2022, 33). For an example that illuminates the relation between neoliberalism and expropriation, consider the 2017 report of the UN General Assembly on immigrant detention. The report evidences that immigrant detention has become a source of profit for private companies, constituting a multibillion-dollar industry. It explicates that privatization at the cost of human rights protection for immigrants is justified with a neoliberal logic of competition: subcontracting immigrant detention to for-profit companies fosters competition, which in turn ensures that detention facilities are "improved" while costs are minimized.[3]

From the centrality of negative and economic freedom unfolds a strong belief in *Rechtstaat*, or the rule of law that protects the individual from the arbitrary exercise of power by a government whose actions are bound by foreseeable rules (Harvey 2007, 66). As Foucault graphically puts it, for neoliberals the rule of law is the bastion of human freedom (2004b, 171). Applying the rule of law to economic legislation ensures a framework in which the individual can freely act on the market and in which legal intervention in the economic order can only occur through formal legal principles. Hence, Foucault explains that the rule of law is the exact opposite of the plan (for instance, the American New Deal) since the plan—and here Hayek is quoted—"shows how the

[3] See United Nations High Commissioner for Human Rights, Report of the Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, Note by the Secretary-General, U.N. Doc. A/72/286 (4 August 2017), 11. https://www.ohchr.org/en/documents/thematic-reports/report-working-group-use-mercenaries-means-violating-human-rights-and-1.

resources of the society must be consciously directed in order to achieve a particular end. The rule of law, on the other hand, sets out the most rational framework within which individuals engage in their activities in line with their personal plans" (Hayek as cited in Foucault 2004b, 173–74). Neoliberalism utilizes the rule of law first to safeguard property rights and contractual freedom and second to depoliticize the economy. According to Tamanaha, this implies that within neoliberal ideology, substantive equality and redistributive justice are incompatible with the rule of law (2008, 535). Furthermore, Tamanaha highlights another important role the rule of law plays within neoliberal ideology: it serves to disqualify opponents of neoliberalism as "threatening the rule of law" (ibid. at 536). Marshaling the rule of law to the defense of neoliberalism, Tamanaha argues, neoliberalism presents itself as a civilizing project.

Next to negative freedom and the rule of law, human dignity constitutes a core element in neoliberal thinking that comes to the fore particularly in its view on social policies. Once again, Foucault's insights are enlightening in this regard. He demonstrates that within neoliberalism, social policy cannot serve as a counterbalance to the distressing outcomes of an unrestricted market and therefore does not aim at material equality. The only social policy neoliberals can accept is based on the capitalist ideology of growth that enables the individual to achieve a certain level of income that gives assurances and access to private property (Foucault 2004b, 144). As Foucault notes: "it is up to the individual to protect himself against risk" (ibid. at 145). This corresponds with the conception of the human being that neoliberalism presupposes. The man of neoliberalism is the "entrepreneur of himself, being for himself his own capital, being for himself his own producer, being for himself the source of his earning" (226). Intriguingly, Foucault suggests that within this framework the epitome of the human is the immigrant whose mobility is depicted as an individual investment (230). This specific understanding of human dignity cuts two ways. On one hand, it emphasizes individual responsibility for one's own well-being. On the other hand, it implies that dependency on the state for welfare is inherently undignified. Social policy must therefore be limited to a very basic minimum, to what is necessary for survival (Foucault 2004b, 142–43; Whyte 2019, 101–03). Thus, neoliberalism only allows a depoliticized and humanitarian concern with the poor, the marginalized, and the excluded that is to be limited to what Moyn reveals as the neoliberal ideal of sufficiency. In the era of market fundamentalism, Moyn argues, sufficiency "concerns how far an individual is *from having nothing* and how well she is doing *in relation to some minimum of provision* of the goods things in life . . . The ideal of sufficiency commands that . . . it is critical to define a bottom line of goods and services . . . beneath which no individual ought to sink" (2018, 3–4).

This neoliberal understanding of freedom, rule of law, and human dignity has exerted great influence on the understanding of human rights in law and politics. According to Harvey, the neoliberal concern for the individual and individual human rights activism are deeply intertwined (2007, 176). In her history of the Chicago Boys and their brutal Chilean experiment, Naomi Klein asserts that human rights have been blinders to the violence and terror of neoliberalism (2008, 118–19). Likewise, Susan Marks insists that human rights have put discrimination and formal equality on the agenda but have swept "the systematic basis of inequality under the carpet" (2012, 16). Moyn offers a different and more nuanced interpretation of the historical coincidence that the glory years of human rights share the same lifespan as the predominance of market fundamentalism. According to Moyn, human rights did not cause, abet, or facilitate neoliberalism, but they have tragically failed to address the neoliberal production of glaring inequality and precarity. On his view, human rights "have been condemned to watch but have been powerless to deter" (Moyn 2014, 151). Within the ambit of neoliberalism, human rights were interpreted in a minimalist sense that, first, prioritized civil and political rights, and second, disconnected social and economic rights from egalitarian theories of social justice. Human rights were primarily understood as tools of status equality, serving antidiscrimination, the rule of law, political

participation, and democracy. Meanwhile, social and economic rights were increasingly and systematically interpreted in terms of basic needs (Moyn 2018, 142). The linkage between basic needs and human rights transformed the latter into a threshold concept, ensuring the alleviation of suffering and the prevention of death from hunger, lack of shelter, and inadequate medical care. Human rights became premised on the view that saving bare lives was enough to strive for and emerged "as weak tools to aim at sufficient provision alone" (ibid. at 176). Crucially, as Moyn observes, human rights politics primarily targeted the postcolonial and developmentalist state (2014, 155). The West powerfully asserted that the development and integration of postcolonial states into the global economic order was achievable only under the conditions of "good governance." This necessitated the reform of political institutions in postcolonial states, promoting democratic and transparent governance systems that uphold the rule of law and human rights (Anghie 2005). At the same time, the linkage between human rights, basic needs, and sufficiency displaced and bypassed the NIEO's more egalitarian demands. Sufficiency became the West's counter to the NIEO's plea for economic justice and equality that called for fairer trade terms, heightened development aid, and enhanced control over natural resources for developing nations (Moyn 2018, 143). Hence Antony Anghie argues that development policies spreading in the 1980s and 1990s, and morally justified by human rights, did not promote human dignity and social justice (2005, 271). Instead, they furthered "a distorted economic version" (ibid. at 263) of human rights as market-friendly and trade-friendly rights (256). On the understanding that neoliberal development policies have resulted in impoverishment of Third-World nations (Fraser 2022), Anghie argues that human rights were utilized to reshape the Third World in favor of global capitalism, sidestepping the significant economic inequality and power disparity between the Third World and the West. As will be argued below, the readiness of Southern states to contain refugees in their territories was predicated on Western promises of financial support and development aid.

Whyte deepens the argument of Moyn by examining the neoliberal view on human rights that dates back to the 1930s and 1940s. Drawing on the work of Von Mise, Röpke, Rüstow, and Hayek, who self-identified as neoliberal, Whyte demonstrates that they framed their commitment to the competitive market economy in terms of human rights. In their neoliberal version human rights were defined in terms of negative freedom and functioned as protections against egalitarian interventions. "[T]he early neoliberals," Whyte asserts, "believed the survival of the competitive market required the re-establishment of its moral foundations. It was through this lens that they viewed human rights. Redefined to exclude social protections, human rights, they believed, could protect the market order by securing property and private investments and fostering the moral of the markets" (2019, 39–40).

Importantly, for these neoliberal thinkers human rights square with the dichotomy they defended as necessary between the economic sphere as a realm of freedom and the political sphere characterized by conflict and disagreement over a just society. They assert a divide: the competitive market fosters mutual beneficial relations, fostering harmony and peace through trade and exchange, while politics is viewed as a realm of conflict, oppression, and violence (Whyte 2019, 29). What emerges from this dichotomy is a depoliticized economy that is shielded from penetrating political contestations over redistribution and the pursuit of a just society. For neoliberals, human rights fall on the side of the economic sphere as they constitute a firewall between the individual and the state, limiting a private sphere in which the state cannot intervene and human life and freedom can flourish. Within these constraints of the economic and private sphere, human rights are limited to civil and political rights. Social and economic rights, however, are viewed with suspicion as they engender disagreement over redistributive justice and necessitate state action and intervention (Moyn 2018, 57). Indeed, as Moyn argues, "the most extraordinary fact about the human rights revolution . . . is that . . . it unceremoniously purged attention to economic and social rights, to say nothing of a fuller-fledged commitment to distributive equality"

(ibid. at 122). The particular strength of Whyte's argument is that she demonstrates that human rights NGOs such as *Liberté sans Frontières*, Amnesty International, and Human Rights Watch that saw the light of day in the 1970s explicitly drew on this neoliberal understanding of human rights as they "largely pursued a narrow agenda of protecting what Hayek termed 'classical civil rights,' rather than promoting social and economic rights" (Whyte 2019, 76–77). These NGOs, Whyte argues, embraced and stabilized the dichotomy between the economic and political as they limited their efforts to protect civil and political rights (ibid. at 160–61).

However, as already noted in the introduction, what is missing in the academic reflection on human rights in a neoliberal age is a discussion of refugee rights. Similarly, in the discussion of humanitarian and human rights organizations UNHCR is usually left out of the picture despite its status as the largest and most generously funded humanitarian organization that advances assistance and development in the global South. The next section therefore discusses the evolution of refugee law with a focus on the meaning of protection. Since the adoption of the Refugee Convention, refugee rights and protection have been conceptualized in different ways and have undergone significant developments. Initially, refugee protection was understood to denote legal protection that ensured that refugees integrated into the social, cultural, and economic fabric of their host state. However, contemporary conceptions of protection primarily center on ensuring physical safety and providing material assistance, with an increasing emphasis on self-reliance in recent years. Likewise, UNHCR evolved from an agency whose core initially consisted in offering consular protection to a humanitarian agency that administers large refugee camps and settlements and thinks of itself "as the relief-provider with the duty to keep refugees alive" (Harrell-Bond and Verdirame 2005, 291). Significantly, the varied interpretations of refugee protection coincided with the distinction that emerged between European refugees who needed legal protection and new African refugees who were believed to need only material assistance (Glasman 2017, 344). It is my contention that these different conceptualizations of protection need to be examined through the lens of the neoliberal understanding of human rights.

III. The Decline of Refugee Protection and the Rise of UNHCR

In 2022, Thorvaldsdottir, Patz, and Goetz published the results of their empirical study on UNHCR's finances (2022). Utilizing statistical analysis on a dataset comprising state contributions to UNHCR and the organization's expenditures at the country level spanning the period from 1967 to 2016, the researchers aimed to test the donor-bias hypothesis. Contrary to the prevalent belief that donor states' geopolitical interests supersede UNHCR's mandate, the analysis yielded results the authors found surprising: a definitive link between donor-state interests and UNHCR's aid allocation could not be established. The authors concluded that UNHCR allocates its funds in accordance with its mandate, suggesting that donor-state contributions do not undermine UNHCR as a mandate-driven agency.

Interestingly, the authors adopted a specific and narrowly defined interpretation of UNHCR's mandate, referencing the 2013 UNHCR's Note on Mandate, which stipulates that UNHCR must serve "refugees globally regardless of their location." The authors interpret this mandate solely in terms of allocating aid to meet the needs of refugees "universally and equitably." However, this interpretation is not only limited but also dehistoricized, as it overlooks the developments and changes in the concept of refugee protection over time. The research into UNHCR's finances is rooted in what Bourdieu, in relation to neoliberalism, describes as a strong discourse—a discourse that possesses the means to empirically validate itself as it has all the powers of the world behind it and orients "the economic choices of those who dominate economic relationships" (Bourdieu 1998, n.p.). When considering the shifts and varied understandings of refugee protection over time, the perspective on the relationship between donor states' interests and fund allocation

changes dramatically. As this section argues, UNHCR's actions and operations are shaped by a shifting conceptualization of protection that aligns with donor-state interests to confine refugees to their region of origin, while also being influenced by a neoliberal understanding of human rights as discussed earlier.

Let me begin by elucidating the concept of refugee protection during the nascent stages of the refugee protection regime. In the critical period of postwar reconstruction in Europe the concern and care for refugees was framed in terms of legal protection and welfare. The International Refugee Organization (IRO), founded in 1946 to deal with massive numbers of refugees after World War II, carried the responsibility for the "legal, social and economic welfare of refugees" (Dresden Lane 1956, 280). The emerging international refugee protection regime did not seek to solve the problems that caused people to flee in the first place or address the difficulties refugees were facing within their own countries. Instead, it focused on addressing the plight of refugees upon fleeing and upon crossing the borders of their home states (Oudejans 2020; Venzke 2012, 91). This predicament was rooted in refugees' lack of legal protection. The International Red Cross had already expressed the view that the lack of any form of legal protection was the main cause of the distress refugees had to suffer, in a 1921 letter on the question of Russian refugees:

> These people are without legal protection and without any well-defined legal status. The majority of them are without means of subsistence, and one must draw particular attention to the position of children and the youths among them who are growing up in ever-increasing misery without adequate means of education . . . It is impossible that, in the 20th century, there could be 800,000 thousand men in Europe unprotected by any *legal organization recognized by international law* (emphasis in original).[4]

Refugees were thus conceptualized as a class of unprotected persons because they could no longer rely on the protection of their home state when abroad. As H. F. van Panhuys, a legal scholar in public international law, explains, in international law "an alien could not lay claim to protection by virtue of his general status as an alien, but rather by virtue of the fact that he was *a national of a foreign State*" (van Panhuys 1959, 44) (emphasis in original). The alien was a *Gast im Recht* (guest in law), enjoying legal protection under international law provided that his national government would give him its backing (ibid. at 57). International law was thus premised on the view that the responsibility for the alien lay with his own state of nationality. This gave states the right to offer their nationals diplomatic protection in the face of injuries by another state in whose territory they remained, based on the notion that whoever mistreats a citizen also harms the state. Conversely, states had the absolute duty to take back their nationals. International protection was thus clearly an element of nationality and was premised on a state's duty to readmit its nationals.

But international protection on the basis of nationality was of no avail to refugees as the distinguishing feature of the refugee was precisely that he was no longer protected by his home government. In a decisive 1949 letter to the Social and Economic Council, the IRO highlighted the refugee's exclusion from international law:

> The refugee is an alien in any and every country to which he may go. He does not have the last resort which is always open to the "normal alien"—return to his own country . . . Moreover, the refugee is not only an alien wherever he goes, he is also an "unprotected alien" in the sense that he does not enjoy the protection of his country of origin . . . A refugee is an anomaly in international law, and it is often impossible to deal with him in

[4] "Memorandum from the Comité de la Croix-Rouge at Geneva to the Council of the League of Nations." *League of Nations Official Journal*, March–April 1921, 228.

> accordance with the legal provisions designed to apply to aliens who receive assistance from their national authorities. (As cited in Hathaway 2005, 84–85)

Considered an anomaly within international law, there was a clear awareness of the refugee's predicament, characterized by what Arendt astutely termed a state of total rightlessness. Indeed, if, as Arendt argued, the first loss that rightless refugees had to suffer was the loss of home without the possibility of finding a new one (1966, 293), this was because the refugee, no longer protected by a home government, had nowhere to return to.

The awareness that their lack of legal protection and concomitant rightlessness make refugees vulnerable in every aspect of their lives significantly shaped the drafting history and the adoption of the Refugee Convention. Indeed, the plight that befalls refugees upon fleeing and that they experience outside their own country critically informed the 1951 legal refugee definition, a key element of which is alienation: only a person outside his own country is eligible for refugee protection. In addition, the purpose of conferring refugee status is to restore the legal person of the refugee and to offer surrogate international legal protection. Chapter II of the Convention ensures that the personal status of refugees shall be governed by the law of their country of residence and grants refugees the right to property, free association, and access to courts. Chapters III and IV further spell out what protection means under the Convention, obliging states to accord refugees treatment on equal footing with citizens or aliens with respect to work, welfare, and social security. As can be gleaned from its preamble, protection under the Convention thus aims to "assure refugees the widest possible exercise of their fundamental rights and freedoms." Crucially, refugee protection is by definition temporary until a durable solution becomes available. Since the inception of the international refugee regime, the three publicly acknowledged durable solutions have been: return to the country of origin, resettlement in a country other than where refugee protection is provided, or naturalization in the country of asylum. Strictly speaking, these durable solutions are beyond the scope of the Convention. Soon after the Convention was ratified, the international community demonstrated favor for integration and resettlement, the latter exemplified by Western nations' proactive stance in alleviating the burden on Austria, which had become the destination for Hungarian refugees fleeing Soviet repression following the 1956 Hungarian uprising. This solidarity was underscored by the resettlement of two hundred thousand refugees between 1956 and 1957 (Zieck 2013, 46).[5] However, over time, the international refugee protection regime, particularly UNHCR, began to shift its focus away from international legal protection and toward the durable solution of repatriation.

The initial step in this direction was the failure of the Conference on Territorial Asylum and the abandonment of an individual right to asylum, which coincided with the steady ascent of UNHCR. An important aim of the conference, for which preparations had started by the 1950s, was to establish an individual right to asylum and a corresponding legal duty of states to grant asylum within their territories. At the outset, the prospect that the Convention on Territorial Asylum was

[5] It is important to note, however, that the history of successful resettlement is nonetheless also disquieting due to the fact that there were hardly any resettlement places for refugees from World War II (see Dresden Lane 1956, 272), who, as Zieck recalls, "still lingered in the camps in Austria and Germany" (Zieck 2013, 61). Zieck explains the difference in welcoming refugees partly by ideological motives. Unlike the war refugees, the Hungarian refugees were perceived as "freedom fighters" from the communist world who affirmed the liberal identity of Western democracies (ibid. at 66). Welcoming attitudes were also clearly economically driven. The refugees in European camps were often old, sick, poor and included widows and children who were not viewed in terms of labor power (see Dresden Lane 1956, 272), whereas the anticommunist refugees were seen to constitute a large labor potential that would fuel the economies of receiving states (see Harell-Bond 1985, 8; Barnett 2002, 9).

going to be adopted was positive as seventy-six countries informed UNHCR that they would agree to its adoption.[6] In the end, however, the conference failed and the Convention was not adopted.

Among the many factors that contributed to its failure, one reason, relevant to my purpose, was that it proved to be impossible to arrive at a shared meaning of the notion of asylum. During the decades following the adoption of the Refugee Convention, asylum was widely used to envision a durable solution for refugees within the states that hosted them (Kennedy 1986, 33). However, it was also acknowledged within international law that the concept of asylum was theoretically underexposed and had "no clear or agreed meaning" (Grahl-Madsen 1980, 50). During the twenty-year drafting process of the Convention on Territorial Asylum it was therefore deemed necessary to substantively define asylum and provide a clear and sound meaning for it. As the legal scholar Alte Grahl-Madsen, who participated in the drafting process, recalled, it was generally agreed that "the term 'asylum' must clearly mean something more, or something different, from both *non-refoulement* and non-extradition" (1980, 50). As is well known, in international law the prohibition of refoulement encompasses both nonrejection at the border, thus securing the right to seek asylum and be given access to a status-determination procedure, and nonreturn of recognized refugees to persecution. According to Grahl-Madsen, asylum is something more than a positive formulation of the prohibition of refoulement. This suggests that it cannot be reduced to the right to seek asylum or be limited to protection from return to a state where the refugee's life and freedom is at risk. In other words, asylum encompasses more than just a procedural right and goes beyond ensuring physical safety. With authority, Grahl-Madsen therefore stated that asylum "must have something to do with residence," enabling refugees to live in the territory of the host state, instead of merely remaining and lingering there: "It is, of course, of little value for a person to be allowed to 'stay' or 'remain' in a territory, if one gets no chance of finding a livelihood" (ibid. at 52). Indeed, as David Kennedy also elucidated, asylum was meant to be related to the refugee's full integration within a territorial jurisdiction (1986, 49).

Unfortunately, twenty years of effort was not sufficient to arrive at a clear and internationally agreed-upon definition of asylum. While it was acknowledged that asylum should encompass more than just nonrefoulement, the exact parameters remained unclear. Without a precise definition of asylum, establishing an individual right to asylum, which was already challenging, became even more difficult. Consequently, the granting of asylum remained within the discretion of state power. If, as Arendt asserted, states abolished the right of asylum at the turn of the twentieth century (Arendt 1966, 280), the end of the 1970s made it evident that it was unlikely to be reinstated.

A few years after the failed 1977 conference, David Kennedy published an insightful article in which he discussed the results of interviews he conducted with UNHCR protection officers. From these interviews, a collective vision on refugee protection emerged that not only informed their work but also permeated their academic writings, leaving a significant impression due to its breadth and depth. Published in 1984, the article can be read as shedding light in retrospect on why a clear definition of asylum was elusive and why establishing an individual right to asylum proved to be unattainable. Both the theoretical and the normative difficulties pertaining to the concept of asylum derived from the distinction between refugee law and asylum law, based on the Westphalian distinction between the international and national that prevailed among UNHCR officers. They viewed refugee law as formal, neutral, and international, contrasting it with asylum law, which they perceived as domestic and political. This distinction led protection officers to perceive refugee protection as a matter of international concern while simultaneously enabling states to evade their

[6] UNHCR, Note on International Protection Addendum 1: Draft Convention on Territorial Asylum (submitted by the High Commissioner), U.N. Doc. A/AC.96/508/Add.1 (26 September 1974). https://www.unhcr.org/publications/note-international-protection-addendum-1-draft-convention-territorial-asylum-submitted.

responsibility by keeping refugees outside the scope of state responsibility. Indeed, in its 1985 Note on International Protection, UNHCR emphasized that it cannot serve as a replacement for states in providing protection. However, it acknowledged that states were failing to fulfill their obligations to offer protection, necessitating a solution at the global level. The Note then continues to stress the need to increase the effectiveness of UNHCR, "as it is becoming increasingly evident in all areas of the world where refugee problems exist that UNHCR's presence is often the most effective, and sometimes the only, means of ensuring that the principles of international protection are observed."[7]

The perceived gap between international refugee law and domestic asylum law not only enabled states to drop out of refugee protection, but it also caused nonrefoulement to become detached from positive aspects of refugee treatment and the various protections that add up to asylum in a host state. According to Kennedy, due to the disparity between refugee law and asylum law, "[s]tates will be required to do something—not return refugees—as a matter of international law, but their sovereign discretion to refuse asylum will not be disturbed" (1986, 61). So, in the collective vision of UNHCR officers, refugee protection is limited to nonrefoulement and disconnected from legal, social, and political integration within a host country or country of asylum. To say the same thing differently, the perceived distinction between refugee law and asylum law made it possible to detach refugee protection from territorial integration within a state responsible for refugee status and protection. Hence, Kennedy argues: "[T]here is a relationship between increasing national autonomy and the expanding UNHCR mandate. The more one thinks of refugees as international, the greater is the disjuncture posed between asylum and refugee status, and the easier it is for a sovereign state to grasp the opportunity for sovereign discretion leaving the UNHCR to worry about refugees" (ibid. at 29).

Indeed, starting in the late 1970s and early 1980s states increasingly left care for refugees to UNHCR. Rather than protecting refugees by integrating them into their societies and restructuring their asylum policies under a Convention of Territorial Asylum, states intensively outsourced their protection obligations to UNHCR. The outsourcing of protection to UNHCR coincided with the rolling back of state protections in the 1980s (Peck and Tickell 2002). While refugee protection originally aimed to restore the legal status of the refugee so as to assure the widest possible exercise of her rights and freedoms, the externalization of protection to UNHCR led to the marginalization of refugees, who were left in precarious living conditions. It is precisely at this juncture in history that both the meaning and the practice of protection begin to undergo dramatic changes. In the abovementioned 1985 Note on International Protection, UNHCR captures this shift by stating that it "cannot be overlooked . . . that the emphasis of protection problems in the 1980s has increasingly shifted to such fundamental issues as the physical safety of refugees and even their very survival."[8] After the failure of the 1977 Convention, UNHCR underwent a transformation in both its mandate and its role in international protection. Initially established with resistance to the notion that it would provide material assistance to refugees, by the late 1970s it had redefined itself as a humanitarian relief organization (Wilde 1998; Harrell-Bond 2002; Venzke 2012). Furthermore, it began to assume a de facto sovereign role over refugees (Wilde 1998, 114). In his study of the history of UNHCR refugee classification, Joël Glasman observes a corresponding shift in perception from regarding refugees as individuals requiring legal protection and asylum, until the 1970s, to regarding refugees as individuals in need of physical safety "associated with immediate life-saving services in emergency situations" (2017, 350).

[7] UNHCR, Note on International Protection (submitted by the High Commissioner), U.N. Doc. A/AC.96/660 (23 July 1985). https://www.unhcr.org/publications/note-international-protection-submitted-high-commissioner-3.
[8] Ibid.

Since the late 1970s, UNHCR has aligned with the neoliberal discourse on human rights and basic needs, evident also in its visual representation of refugees over time. Primarily portraying women and children as passive and vulnerable victims urgently in need of rescue, this representation, as highlighted by Schwöbel-Patel and Ozkaramanli, "feeds into a narrow understanding of protection" (2017, 4). Moreover, these visual representations are integral to the packaging and marketing of refugees, effectively expropriating the refugee body as a lucrative venture for UNHCR. Referred to as a "fundraising machine" (Morris 2021, 2693), UNHCR capitalizes on these representations to attract donations and channel greater amounts of money for refugee assistance (Harell-Bond 1985). It is no coincidence that both state and private donations to UNHCR skyrocketed between the 1970s and early 1980s. UNHCR's annual budget ballooned from $12.5 million in 1972 to $500 million in 1980, turning it into a multibillion-dollar agency (ibid. at 4; Morris 2021, 2690). In addition to utilizing visual depictions of impoverished refugees to attract donor funding, UNHCR has implemented a data-collection system to track refugee numbers, consistently reporting record-high figures almost every year. However, Fransen and de Haas have critically analyzed UNHCR's representation of the statistical rise in refugee numbers. While alarmist statements about peaking refugee numbers, such as reaching a new record of 80 million displaced persons worldwide in 2020, may sound concerning, Fransen and de Haas (2021) explain that this statistical increase is driven by the inclusion of new populations in the dataset, such as internally displaced persons (IDPs) and individuals within IDP-like and refugee-like situations, as well as the inclusion of countries that were previously excluded. While in 1970, seventy-six countries were included in UNHCR's dataset, this number increased to 214 countries in 2018. This artificial inflation of numbers not only serves as a means to bolster UNHCR's fundraising, but it also fuels the perception of a refugee crisis and an invasion of refugees that, from the perspective of states, legitimizes harsh and exclusionary asylum policies. However, in reality, over the past seven decades, refugee numbers have fluctuated between 0.1 and 0.3 percent of the world population (Fransen and de Haas 2021). Through this misrepresentation in its documentation of refugee numbers, UNHCR reinforces the notion that states are overwhelmed by a mass influx of refugees (de Haas 2023).

This section commenced with a brief discussion of the conclusion drawn from empirical research into UNHCR's finances, which suggests that UNHCR remains by and large unaffected by the interests and manipulation of donor states. I argued, however, that this study adopted a narrow interpretation of UNHCR's mandate and empirically validated a limited view of protection. Donor states exploit this constrained view of protection to fund the containment of refugees within their region of origin while at the same time UNHCR's financial reliance on donor states motivates it to reinterpret its mandate and the concept of protection in line with the policy goals of donor states (Venzke 2012, 89). So while UNHCR prospered, refugee protection declined. The next section argues that it is within this context that international refugee law began to intersect with human rights law.

IV. Human Rights for Refugees

The gradual but steady pervasion of human rights law into refugee law occurred amid the global proliferation of human rights. As the Nobel Committee noted when awarding Amnesty International the Nobel Peace Prize in 1977, this rise of human rights activism was premised on "the defence of human dignity against torture, violence, and degradation." This emphasis on defending human dignity against torture contained a clue about how human rights would critically reshape refugee law. The obvious point of entry for human rights was the scope of persons in need of international refugee protection. Both Article 1(A) of the Refugee Convention, which defines who qualifies as a refugee, and Article 33, which prohibits refoulement, are relevant in delineating this scope of protection. Article 1(A) provides the definitional criteria that determine

which persons qualify for refugee status, limiting protection to persons with a well-founded fear of persecution on the basis of race, religion, nationality, membership in a social group, or political opinion. Article 33 of the Convention obliges states not to expel or return (*refouler*) the refugee to the frontiers of territories where his life or freedom is threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion. From the 1980s onward, human rights law broadened the scope of persons in need of protection by defining refoulement in reference to the prohibition of torture, cruelty, and degrading behavior. According to Chetail (2014, 26), this was initially stated in academic legal scholarship and subsequently restated by states parties to the Refugee Convention, as well as acknowledged by international human rights institutions and domestic and regional courts. There are some key milestones to mention. In *Soering v. the United Kingdom*,[9] a landmark case from 1989 before the European Court of Human Rights (ECtHR), the Court authoritatively reshaped its approach to extradition to a territory where the individual would risk the death penalty. The Court ruled that extradition would constitute a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) (ECHR) that prohibits torture or inhuman and degrading treatment or punishment. The ECtHR reaffirmed its approach in *Chalal v. the United Kingdom* (1996),[10] when it ruled against the deportation of Chalal to India as this would, again, constitute a breach of Article 3 EHCR. The Salah Sheekh case was also a significant judgment by the ECtHR (2007),[11] underscoring the Court's role in safeguarding the rights of asylum seekers and ensuring that states do not expose individuals to the risk of torture or inhuman treatment by returning them to unsafe conditions in their home countries. In addition, the Committee against Torture (CAT), which oversees the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 10 December 1984) has provided numerous decisions that reinforce the incorporation of the prohibition of torture in relation to nonrefoulement. In *Mutombo v. Switzerland* (1994),[12] CAT requested that Switzerland refrain from deporting a Zarian refugee to his country of origin where he would face a risk of torture. In its General Comment No. 20 from 1992,[13] the UN Human Rights Committee clarified that Article 7 of the International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966) (ICCPR), which prohibits torture and cruel, inhuman, or degrading treatment or punishment, includes an obligation not to extradite, deport, expel, or otherwise remove a person to a country where they face a real risk of such treatment. At the regional level, the EU Qualification Directive,[14] which establishes the common standards for recognition of third-country nationals as refugees or persons in need of protection, restates the prohibition of refoulement on the basis of international human rights law. Article 15 of the Qualification Directive states that member states must ensure that applicants for international protection are not returned to their country of origin or any other country where there are substantial grounds for believing that they would face a real risk of being subjected to torture or inhuman or degrading treatment. In the 2009 landmark case *Elgafaji v. Staatssecretaris van Justitie*,[15] the European Court of Justice clarified that Article 15 also encompasses a prohibition on returning persons to a state

[9] Soering v. the United Kingdom, no. 14038/88, 7 July 1989, ECHR. https://hudoc.echr.coe.int/eng?i=001-57619.
[10] Chahal v. the United Kingdom [GC], no. 22414/93, 15 November 1996, ECHR. https://hudoc.echr.coe.int/fre?i=001-58004.
[11] Salah Sheekh v. the Netherlands, no. 1948/04, 11 January 2007, ECHR, https://hudoc.echr.coe.int/fre?i=001-78986.
[12] Mutombo v. Switzerland, Merits, Communication No. 13/1993, U.N. Doc. CAT/C/12/D/013/1993 (27 April 1994).
[13] Available in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 (1994).
[14] Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted.
[15] Case C-465/07 Elgafaji v. Staatssecretaris van Justitie [2009] ECR I-921.

where they faced serious threats to their lives due to the general situation of violence in the context of international or internal armed conflict. To sum up, human rights law has expanded the scope of persons in need of protection by also including persons who face a risk of torture or inhuman and degrading treatment.[16]

It is important to register that the incorporation of human rights law into refugee law and the prohibition of refoulement reflects the advocacy for human dignity against torture and inhuman and degrading treatment but remains silent on other provisions of the Refugee Convention. Indeed, as Chetail observes, the remaking of refugee law in terms of human rights law was carried out by the ICCPR (2014, 44). Despite the emphasis on work, welfare, and social security for refugees in Chapters III and IV of the Refugee Convention, social and economic rights were conspicuously absent in the transformation of refugee law in accordance with human rights principles (Hathaway 2005, 2–3). So while the scope of persons in need of protection expanded with reference to nonrefoulement and human rights, other provisions that accord refugees social and economic protection remained more or less undebated (Chimni 1998, 354). In other words, in the process of incorporating human rights law into refugee law, protection from refoulement came to define protection almost exclusively without adequately addressing the social and economic rights of refugees. Once more, we observe the predominance of nonrefoulement, this time influenced by human rights law. Of course, protection from refoulement is important. It is a primary, but not the only, priority for refugees. Jean-François Durieux clearly articulates the fundamental problem that is at stake here, arguing that the Refugee Convention is not about those persons whom we cannot deport, but about those people we want to protect (2007, 17).

The incorporation of human rights law into refugee law was thus premised on the view that human rights protect the individual's dignity against the state, thereby reinforcing the neoliberal dichotomy between the economic and private spheres, where civil and political rights reign, and the political sphere; difficult questions about redistribution and equality—relevant to issues of the refugee's social and economic integration—are divorced from questions about the protection of dignity against torture and degradation. It is crucial to note that the disregard for a comprehensive and substantial system of legal, political, social, and economic rights has also diminished the necessity of refugee integration in the host country. In the process of reshaping refugee law according to human rights principles, the disconnect between "protection" and "integration" widened significantly. The social and economic marginalization, rather than dignified integration, of refugees manifested differently in the global South and global North. To start with the latter, the disregard for dignified integration was particularly evident within the EU. First, the market integration of EU member states made the social and economic exclusion of refugees glaringly apparent. At the time of the abolition of the EU's internal borders in order to create a common market, refugees were excluded from free movement within the Union and thus denied the economic benefits of the internal market. As prominent legal scholar Elspeth Guild insists, this sent a clear message that refugees are not to profit from the common market (2006, 635). The lack of regard for dignified integration was also apparent with the creation of a Common Asylum System. Persons who could not be returned to their country of origin on the basis of Article 15 of the Qualification Directive enjoyed less protection than Convention-based refugees. This was evident from the 2003 EU Long-Term Residents Directive (LTR),[17] which ensured fair treatment of third-country nationals legally staying within the EU and stipulated that their status should approximate that of member-state nationals. However, the Directive included Convention refugees, granting them legal certainty about their residence after five years calculated from the

[16] For a detailed overview of the inclusion of the prohibition of torture in relation to nonrefoulement see Wouters (2009).

[17] Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who Are Long-Term Residents.

moment of their application for protection, but excluded persons in need of international protection based on the prohibition of refoulement and human rights law. It was not until 2010, with the recasting of both the Qualification Directive and the LTR Directive, that the two statuses were finally made equal. Today, however, politicians of the extreme right, who are gaining majorities across Europe, are calling for once again excluding refugees from long-term residence in Europe. More generally, as Linda Bosniak (2008) argues, in Western liberal democracies the immigration powers of the state are no longer only exercised at the territorial border of the state but permeate the territorial inside to dictate the terms of integration and determine the allocation of rights and benefits for refugees. Hard norms of exclusion at the border have moved inside and mobilized antirefugee sentiments that have demanded restrictive and exclusionary neoliberal policies that deprive refugees of the ability to fully participate in the host society. This led, for example, to the disinvestment in reception facilities for asylum seekers, resulting in overcrowded and substandard reception conditions in countries as affluent as the Netherlands and Belgium. Likewise, exclusionary integration policies with respect to housing and work have further hampered the living conditions of refugees, ensuring that they remain outsiders. Simultaneously, an individualized notion of integration gained prominence, shaping legal and political approaches to refugee integration in Western European nations. Within this framework, refugees are viewed as nonintegrated individuals separated from society, burdened with the sole responsibility for assimilating into their host communities, rather than integration being viewed as a collective and public endeavor involving both refugees and the host state. For instance, in 2013, the Dutch government stipulated a duty to integrate but ceased publicly funded integration programs designed to prepare applicants for the mandatory integration exams. Instead, immigrants and refugees had to rely on private companies for these courses, including language instruction. To afford these programs, they could apply for social loans of up to 10,000 euros (de Waal 2021, 42). Hence Nevzat Soğuk's astute observation that the incorporation of refugees within Western societies is at the same time a marginalization to keep refugees at a distance from the normal order of things and the possibilities it offers for a human life to flourish (1999, 53).

The link between protection and integration was also severed in the global South. In the 1960s and 1970s many African countries had a benevolent "open door policy" for refugees from countries that were struggling against apartheid, racism, and colonialism (Rutinwa 1999, 5). During this period, the expansion of African economies and robust welfare programs allowed them to host refugees without detrimentally affecting local populations (ibid. at 18). Refugees enjoyed free movement rights, had access to labor markets, and enjoyed education. Reflecting on the pre-UNHCR era in Kenya, Harrell-Bond evokes the refugee-friendly environment, quoting the Kenya Refugee Consortium from 2000: "This was a productive period for refugees as the host country engaged in programs to help them integrate into the society, for example into the civil service, teaching profession and other specializations" (2002, 77). This open-door policy ended in the 1980s (Glasman 2017, 350). Under the influence of human rights, refugee protection was progressively reduced to nonrefoulement and the provision of material assistance to meet the basic needs of refugees in the global South. This minimalist conception of protection is evident in UNHCR's Note on International Protection from 2001, which is the first note in which human rights are prominently featured. Here, UNHCR introduces a novel rationale for the Refugee Convention, stipulating that it is humanitarian and human rights based. On this novel understanding, the refugee's rights to safety and security underpin the Convention. In the same year, commemorating the fiftieth anniversary of the Convention, UNHCR powerfully proclaimed nonrefoulement as the cornerstone of refugee protection, symbolizing it as "[t]he wall behind which refugees can shelter," as depicted on the cover of *Refugee Magazine*.[18]

[18] See https://www.europeansources.info/record/50th-anniversary-the-wall-behind-which-refugees-can-shelter-the-1951-geneva-convention/.

Human rights law has played a decisive role in reshaping refugee law, shifting its focus from providing refugees with comprehensive legal protection and rights to primarily offering them shelter. That is, human rights have been utilized to justify the approach to refugee protection that has predominated since 1980 and that has focused on the refugee's safety and survival, protecting her from hunger, death, and lack of shelter. To borrow from Agamben, human rights can only comprehend the refugee's life as bare or sacred (1998, 133). Harrell-Bond therefore argued that when human rights law entered the language of refugee protection and UNHCR's discourse, emphasis was put on the human suffering of refugees who were believed to be helpless victims in need of assistance to fulfill their basic needs (2002, 75). Likewise, according to Chimni, humanitarianism, which he qualifies as the caring arm of imperialism (2009, 23), has facilitated "the erosion of the fundamental principles of refugee protection" (2000, 244).

The incorporation of human rights law and the break between protection and integration carried another normative implication for refugee protection: it breathed life into the narrative that the refugee's country of origin was ultimately responsible for the protection of the refugee's human rights. As a result, in a twist of plot, human rights did not improve the dignity or welfare of the refugee but instead contributed to the containment of refugees within the region of origin as it hastened the emphasis on returning refugees home. Hence, Chimni argues: "A new approach, couched in the language of human rights, was articulated. It called for providing assistance to refugees in the region of origin and contended that the appropriate solution to refugee flows from the third world was voluntary repatriation, inaugurating the repatriation turn in refugee studies" (1998, 352).

The following section argues that the shift toward repatriation linked refugee protection with development aid. In its New Vision for Refugees from 2003, the UK government made this link explicit, arguing that there is a significant overlap between refugee protection and development aid that is "rightly focused on assisting the most poor" (Bruin and Teitler 2003, 16).[19] Consequently, a weak notion of protection was reinforced, primarily focused on providing basic assistance and alleviating the refugee's basic needs.

V. Repatriation, Containment, and Development

By 1985, return home was officially and globally favored as the most enduring solution for refugees.[20] Repatriation legitimized the limitation of protection to material assistance and provision of the refugee's basic needs in the global South, and to the idea of sufficient protection in the global North. To fully understand this shift, the repatriation turn must be placed within the context of neoliberal development policies.

Crucially, the repatriation turn in international refugee law fits into the imperial narrative of the dynamic of difference, which, according to Anghie (2005), animated international law and revolves around the concept of the standard of civilization. This concept posits a cultural disparity between the "civilized" or "developed" world, characterized by notions of rationality, freedom, rule of law, democracy, and commerce, and the "uncivilized" or "underdeveloped" world, marked by poor governance, poverty, tribal conflict, and backwardness. While subjects from the civilized world enjoyed protections under international law, subjects from the uncivilized world were excluded from it on account of being irrational and uncivilized. This effectively legitimized suppression and violence against colonized peoples, all in the name of the civilizing mission aimed at controlling

[19] Several (draft and final) versions of the UK's New Vision are circulating. I am referring to the one included in Rene Bruin and Jeroen Teitler's *Niemandsland. Opvang van vluchtelingen in de regio* (2003).
[20] See UNHCR, Note on International Protection (submitted by the High Commissioner), U.N. Doc. A/AC.96/660 (23 July 1985). https://www.unhcr.org/publications/note-international-protection-submitted-high-commissioner-3.

them and bringing them within the folds of civilization. So in essence, the dynamic of difference was used to justify that different legal standards applied to the European and non-European worlds. Anghie does not include international refugee law or the global governance of refugees in his discussion of how the history of international law was driven by the imperial decree that European states are civil and sovereign, while non-European states are not. Yet the standard of civilization and the dynamics of difference in international law also shed light on the repatriation turn in refugee law.

To begin with, the repatriation turn was driven by what Chimni described in his influential 1989 article, "The Geopolitics of Refugee Studies," as the emergence of the myth of difference. The myth of difference originated in the 1980s when refugees from the Third World began arriving in the global North, and posited a divide between European refugees who were said to have fled for individual and political persecution and non-European refugees from underdeveloped and poor countries who were perceived to be victims of political breakdowns brought about by social unrest and corrupt, outlaw states. It fostered the notion that European and Third-World refugees were driven by distinct motives for fleeing their homelands. Third-World refugees were perceived as victims of corrupt postcolonial states where human rights abuses were rampant. Moreover, the Third-World refugee was perceived as a faceless part of a mass influx (Harrell-Bond 1989, 47). In contrast, the European refugee was perceived as an active enemy of his government of origin deserving protection from persecution. So, in 1985, UNHCR could proclaim: "[T]he majority of today's refugees are persons who do not fall within the 'classic' refugee definition in the UNHCR statute. Rather, they are persons who have fled their home country due to armed conflicts, internal turmoil and situations involving gross and systematic violations of human rights" (as cited in Harrell-Bond 1989, 50). This presumed difference and the inherent biases embedded within these perceptions were soon adopted in the global South. Prior to the 1980s, the cause of refugee flight was often perceived in political terms and refugees were viewed as freedom fighters fighting for their right to self-determination against racism and apartheid. However, post-1980, refugees were predominantly perceived through a humanitarian lens (Rutinwa 1999, 18).

The perception of differing reasons for flight also led to the privileging of legal refugee status for European refugees and rationalized the implementation of different standards for Third-World refugees. Despite the absence of any mention in the Refugee Convention regarding the responsibility of the country of origin for the refugee, the sudden emphasis on root causes and corrupt states underscored refugee-producing nations' accountability for their citizens. Therefore, in its Note on International Protection from 1990, UNHCR underlined the responsibility of the country of origin to assume responsibility in the search for appropriate solutions, and called for a more detailed articulation of the concept of responsibility particularly in relation to the country of origin. Here UNHCR reaffirmed what it had first stated in its 1985 Note, namely, that return to the home country was the preferred solution to the refugee problem.[21] In short, the myth of difference justified a new approach in refugee protection that focused on returning refugees home. Back in 1998, Chimni captured this shift with great acumen: "[T]he exilic bias in international refugee law has been easily undermined and replaced with repatriation as the only solution to the world refugee problem. For if the state of physical origin alone is responsible for refugee flows then other countries would appear to have no obligation to resettle those fleeing inhumane conditions" (1998, 361). A discourse on temporary protection with a view to eventual return home prominently emerged and persisted over time. But as Serena Parekh rightly observes, the moral ideal of return home is (mis)used by states to justify the containment of refugees within their region of origin (2016, 18). By the early 1970s UNHCR had begun experimenting with the idea of keeping refugees in their region of origin so as to facilitate their return home. As early as 1974, Prince

[21] UNHCR, Note on International Protection No. 62 (XLI)–1990, in U.N. Doc. A/45/12/Add.1 (5 October 1990). https://www.unhcr.org/publications/note-international-protection-0.

Sadruddin Aga Khan, United Nations High Commissioner for Refugees, advocated for the innovative concept of establishing "safe havens." He did so while reflecting on UNHCR's experience in Chile, where temporary protection was provided following Pinochet's coup. Right before the global outburst of neoliberalism that was brutally experimented with in Chile (Harvey 2007, 9), Aga Khan applauded the experience with safe havens during the Chilean crisis and stated that they may be an important innovation "in the development of the law and practice relating to asylum and human rights."[22] States eagerly began to explore extraterritorial asylum policies aimed at keeping refugees safe in their region of origin and facilitating their eventual return home. At the close of the twentieth century both UNHCR and states seemed to have substituted a right to stay for a right to asylum elsewhere (Hathaway and Neve 1997, 133).

The broader context of the repatriation turn and the nativist understanding that refugees properly belong in the country of origin was constituted by the underdevelopment of the non-European world. The contrasting perspectives held by the global South and global North states regarding the causes of this underdevelopment have been extensively documented (Anghie 2005; Whyte 2019). Broadly speaking, developing states in the global South compellingly but unsuccessfully argued that colonial expropriation and exploitation were the root cause of underdevelopment in the Third World. According to this perspective, the promotion of development necessitated that postcolonial states regain economic sovereignty over their natural resources, thereby requiring a fundamental restructuring of the world economic order. In contrast, Western states unjustly, yet effectively, attributed underdevelopment to Third-World countries themselves, labeling them as undemocratic, economically irrational, corrupt, and plagued by tribalism. Underdevelopment qualified as a lack of respect for democratic government and human rights. This view was widely embraced as even human rights NGOs depicted Third-World misery as the result of the lack of an institutional framework that promoted the morals of the market (Whyte 2019, 225). According to this perspective development could only be attained by making structural adjustments, disciplining postcolonial states, and integrating them into the global economic order. Politically, this process of discipline necessitated the establishment of "good governance," characterized by democratic and legitimate governance supported by human rights principles such as free speech and political participation (Anghie 2005, 249). Economically, reform demanded that postcolonial states seek a capital injection from international financial institutions through structural adjustment programs that entailed adopting neoliberal measures like deregulation, privatization, and trade liberalization.

Echoing the civilizing mission that had animated international law, neoliberal adjustment and development policies were rationalized and justified under the pretext of promoting humanitarian causes aimed at uplifting the impoverished and underdeveloped Third World. The repatriation turn fell squarely within this humanitarian narrative: the nativist understanding that non-European refugees properly belonged in their country of origin promoted development aid as a dual strategy to tackle the root causes of refugee flows and facilitate return home as the preferred durable solution.[23]

However, the idea of refugee protection as a development issue arose amid severe economic decline within postcolonial states. As numerous scholars have insisted, neoliberal development policies that made loans and economic aid dependent on economic reforms have resulted in severe

[22] UNHCR, Opening Statement by Prince Sadruddin Aga Khan, United Nations High Commissioner for Refugees, to the Executive Committee of the High Commissioner's Programme, Twenty-Fifth Session, Geneva (14 October 1974). https://unhcr.org/admin/hcspeeches/49f8112be/opening-statement-prince-sadruddin-age-khan-united-nations-high-commissioner.html.

[23] UNHCR, Note on International Protection (submitted by the High Commissioner), U.N. Doc. A/AC.96/660 (23 July 1985). https://www.unhcr.org/publications/note-international-protection-submitted-high-commissioner-3.

impoverishment and have reinforced massive global inequalities. Nancy Fraser vividly explains this point, asserting that predatory loans by the IMF and the World Bank cannibalize and expropriate the global South by confiscating its resources through the creation of sovereign debt (2022, 46). Indeed, Rutinwa attributes the end of the generous open-door policy in these states to austerity measures imposed by the IMF and the World Bank as conditions for economic aid, which compelled governments to abandon welfare programs. As local populations became impoverished, it became impossible to uphold generous policies to host refugees (Rutinwa 1999, 18). Just as neoliberalism critically reshaped socioeconomic human rights in terms of antipoverty measures, refugee protection as a development issue came to be understood primarily in terms of providing relief assistance to address the physical and material needs of refugees. In a similar vein to how austerity displaced egalitarian demands for social justice by postcolonial states, so too provision of basic needs displaced the legal protection and welfare of Third-World refugees. Indeed, the differential treatment of European and Third-World refugees illustrates how refugee rights intersect with a neoliberal interpretation of human rights. In their anthropological research on refugee treatment, Harrell-Bond and Verdirame identify the differing standards of treatment that European and non-European refugees receive: "In Africa and throughout countries in the 'developing world,' however, unlike Europe and North-America, UNHCR's work was never protection-driven. In addition, the 'full-belly' theory—the idea that rights and legal protection are pointless for starving refugees—provided an ideological guise to this approach. As a result, UNHCR in Africa did not really monitor compliance with refugee law" (2005, 289–90). Refugee law, much like international law in general, predominantly extends protection to civilized European refugees. But whereas the European refugee has rights, the Third-World refugee has needs.

In Western asylum policies, the ideal of return home justified the notion of effective or sufficient protection. Evidently, the interlocking agendas of development policies and refugee protection served, and still serve, the interest of Western states to keep refugees at a distance. The idea was that economic development would contain the need to flee (Brochmann 1999, 305). A case in point was the UK New Vision for Refugees from 2003, which openly opted for exclusive regional protection under the graphic slogan "pro-refugee, anti-asylum seeking." In its New Vision the Blair government empathically depicted a novel perspective on international refugee protection: "If we are seeking to imagine the best possible regime for refugees then we should be ambitious. In this visionary world there would be no refugees and there would be no abuse of human rights. Everyone would be adequately protected by his or her own state. This may sound like an utopia but it is the only full solution to the refugee problem" (Bruin and Teitler 2003, 8). Note that the ideal that everyone is to be protected by his or her state of origin as a solution to the refugee problem supports Arendt's critique that human rights effectively are the rights of citizens, and fail to protect those who have lost their state's protection. Moreover, the proposed regional protection of refugees presupposes the very limited understanding of protection discussed above. According to the UK's vision, regional protection is meant to be effective protection that entails providing a basic level of primary humanitarian assistance—such as food, shelter, and health services—while ensuring that there is no risk of persecution or refoulement (Bruin and Teitler 2003, 12). The New Vision repeatedly referred to UN High Commissioner Ruud Lubbers, the former Dutch prime minster mentioned above in the Introduction. Under the auspices of Lubbers, UNHCR also launched a new vision of refugee protection in 2003 with the Convention Plus initiative, which promoted the idea of regional refugee protection to prevent refugee flows to the global North. Both Blair's New Vision and Lubbers' Convention Plus emphasized that effective protection necessitates a strong connection to development and, recognizing the close relationship between development and human rights, underscored the relevance of institutions like the World Bank and IMF for refugee protection. Although considered radical at the time, the UK's and Lubbers's proposals sparked interest in development-focused refugee protection, as they promised to reduce asylum flows to Northern states—particularly within the EU, where migration deals with third

countries have directed a significant portion of the European development aid budget toward migration management practices (Strik 2019, 10). Essentially, this means that development aid has increasingly been conditioned on keeping refugees within their region of origin. In other words, financial support and development aid are provided based on the developing state's performance in deterring refugees and migrants from reaching the global North. On the other side, the debt regime and the ramifications of structural adjustment have incentivized states in the global South to host refugees within their region, as it serves as a means to secure funds, development aid, and economic assistance, alongside incentives like trade agreements and visa liberalization (ibid. at 4). Consequently, migration deals perpetuate the dependency of postcolonial states on donor states Tsourapas (2019), and, as Zetter argues, subordinate "impacted countries to an economic-development and containment model applied by advanced imperial donor countries of the Global North" (2021, 1767). Indeed, historically, countries such as Kenya and Iran have linked refugees to development aid. More recently, migration deals with Turkey, Ethiopia, Lebanon, and Jordan have followed suit under UNHCR-led consultations (Freier, Micinski, and Tsourapas 2021). Crucially, these migration deals or partnerships are founded on a minimalist understanding of refugee protection as they prioritize sufficient rather than full protection (Strik 2019, 13). That means that migration partnerships are only finalized if the third country offers a minimum level of protection against refoulement. Despite the substandard living conditions of refugees in these third countries, Annick Pijnenburg claims that in both politics and academia, scant attention is given to the impact of these migration partnerships on the socioeconomic rights and conditions of refugees (2023, 152). Indeed, the dire predicament of refugees contained in the region is consistently ignored, as "the international community (including the EU) has not enabled refugees to subsist in the countries where they find themselves" (den Heijer, Rijpma, and Spijkerboer 2016, 621). While not the first of its kind, the EU-Turkey statement reached in 2016[24] to stem the unauthorized arrival of Syrian refugees to the EU is widely regarded as a model for subsequent migration agreements with third countries such as Libya, Tunisia, Egypt, and Lebanon. The Dutch legal scholar Tineke Strik, also a member of the European Parliament, meticulously delineates the outcomes of a fact-finding mission in Turkey. These outcomes corroborate the limited conception of sufficient protection that Syrian refugees, including those returned from Europe under the agreement, receive in Turkey. They are not *refouled.* But that is all we can say:

> Readmitted Syrians have been transferred to *de facto* closed camps where they are locked in cells and have very limited communication opportunities and access to the outside world. . . . Syrians receiving temporary protection in Turkey live in extreme poverty, due to the combination of limited access to social welfare systems and to the labour market, where a quota system for Syrian refugees is applied and employees requesting for a working permit face long and expensive procedures. Many of them are exposed to exploitation at the informal labour market, including a substantial number of Syrian children. (Strik 2019, 16)

The narrow understanding of protection is also evident in the 2024 partnership between the EU and Egypt, which was preceded by a significant increase from 2018 onward in UNHCR's budget for its financial operations and activities in Egypt. Examining the expenditure breakdown for Egypt on UNHCR's website,[25] it becomes apparent that the bulk of the funds are allocated as follows: $1.3 million for fostering a favorable protection environment encompassing legal assistance and policy development, $1.5 million for ensuring a fair protection process, and $3.2 million for security against violence. However, the largest portion of the budget, amounting to $32.2 million, is dedicated to meeting the basic needs of refugees. This stark contrast highlights a

[24] Council of the EU, "EU-Turkey Statement, 18 March 2016." https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf.

[25] https://reporting.unhcr.org/operational/operations/egypt.

disproportion between the allocation of resources toward refugees' basic necessities versus that toward their legal and political protection, which in comparison is close to nil. The case of Egypt underscores the prevailing neoliberal conception of refugee protection and reflects a broader trend of state withdrawal from assuming responsibility in this regard. Furthermore, it serves as a testament to the interests of Northern states in keeping refugees at arm's length. Notably, following the substantial increase in UNHCR's budget from 2018 onward, the European Union entered into a billion-euro agreement with Egypt. This agreement seeks to foster Egypt's transition into a modern economy through structural reforms in consultation with the IMF, as well as improving its business and investment environment, in return for Egypt's commitment to contain refugees within its borders.[26]

With the repatriation turn, containment in the region of origin, and the development approach, refugee protection has transitioned into a mechanism aimed at aiding those in need. The repatriation turn in refugee protection, driven by the desire of Western states to keep refugees at a distance, was rooted in the imperial myth of difference and unfolded amid the backdrop of neoliberal development policies that have exploited the Third World. This has fostered a restricted notion of refugee protection, primarily focused on providing basic assistance and fulfilling the refugee's immediate needs. This matches the neoliberal perspective on human rights, which emphasizes the prevention of death from hunger and destitution but falls short in addressing broader rights and dignities.

VI. Conclusion

In the age of neoliberalism the protection of refugees has lost its original aspiration of equality and freedom as reflected by the explicit purpose of the Refugee Convention to restore the legal person of the refugee so as to "assure refugees the widest possible exercise of their fundamental rights and freedom." Securing fundamental rights to refugees includes not only respecting the norm of nonrefoulement, but also providing access to housing, health, welfare, and opportunities for education and employment. Refugee protection should be conceptualized as securing the conditions that enable refugees to rebuild their social lives. As David Owen cogently argues, it requires "refugee inclusion in the social and economic life of the state of asylum" so as to "increase the ability of refugees to exercise agency in relation to their immediate environment and to engage in autonomous choices with respect to their short-term future" (2018, 31). It requires, to borrow from Moyn, "the power of the state to make individual flourishing and equality a reality" (2018, 122).

However, as the preceding pages have argued, since the 1970s refugee protection has been conceptualized in line with the neoliberal view on social policy that state assistance must be limited to a very basic minimum and to what is necessary for survival. Refugee protection has been consecutively conceptualized as a matter of humanitarian assistance, of human rights, and of development. Despite the variations in emphasis, there lies a fundamental issue of a minimalist interpretation of refugee protection. This interpretation has severed the refugee's physical safety from her legal and political protections, as well as from her socioeconomic welfare. Furthermore, refugees have been marginalized by the rollback regime of neoliberalism, largely existing outside the purview of state responsibility, with UNHCR becoming the primary vehicle for assisting them. They have been reduced to politically dependent subjects, described by Fraser as "expropriable

[26] European Commission, Joint Declaration on the Strategic and Comprehensive Partnership Between the Arab Republic of Egypt and the European Union, 17 March 2024.
https://neighbourhood-enlargement.ec.europa.eu/news/joint-declaration-strategic-and-comprehensive-partnership-between-arab-republic-egypt-and-european-2024-03-17_en.

others," that is, individuals "constituted as unfree, dependent beings; stripped of political protection, they are rendered defenseless and inherently violable" (Fraser 2022, 15).

However, on the understanding that reliance on assistance and dependency is inherently undignified within the theory and ideology of neoliberalism, the protracted situation in which millions of refugees find themselves today can also be said to qualify as a failure or weakness of neoliberalism itself. Indeed, according to Peck and Tickell (2002) the devasting effects of rollback neoliberalism are today counterbalanced by its twin brother, rollout neoliberalism. A regime of rollout neoliberalism acknowledges the shortcomings of the rolling back of state protections and disinvestment in public services but also demonstrates neoliberalism's adaptability by disciplining and mobilizing the excluded and downtrodden into new circuits of capitalist investment economies. Rollout neoliberalism penetrates and exploits areas of exclusion, poverty, suffering, and destitution created by the retrenchment policies of the 1980s by mobilizing and engaging the excluded in entrepreneurship (Peck and Tickell 2002, 395). The emphasis on physical safety and material assistance that has contained refugees in protracted situations of rightlessness within the region of origin is today supplanted by a growing concern and care for rights-based protection and the refugee's socioeconomic well-being with opportunities for work and education. Limited physical protection and security from being contained in the region of origin is now openly acknowledged as undignified, and counterbalanced by the promotion of self-reliance (Easton-Calabria and Omata 2018).

Indeed, today we witness a transition in which refugee protection is conceptualized in terms of self-reliance and entrepreneurship. The rollout of the World Bank in close cooperation with UNHCR to invest in refugees is a telling example. Interestingly, the Refugee Policy Review Framework issued by the World Bank in 2019 retrieves the full catalog of rights, long overshadowed, that derives from the Refugee Convention. The rights the Bank invokes include rights to free movement, work, education, and housing, which are believed to be instrumental in fostering human dignity through self-reliance and entrepreneurship.[27] By framing refugee displacement as a developmental opportunity, the World Bank endeavors to provide a dignified response to protracted refugee situations. This entails ensuring socioeconomic well-being and fostering economic opportunities, which requires conducive conditions for investments in both refugees and the private sector. Entrepreneurship is envisioned as a means to uplift refugees from poverty.

The theory sounds ideal. However, as argued by Bhagat and Roderick (2020) in their examination of aid allocation in Kenya to refugees designated as potential entrepreneurs, who are expected to initiate small businesses and repay loans, this entrepreneurial survival lures refugees into assuming debt through credit arrangements, thus creating and perpetuating new cycles of debt. Moreover, self-reliance must be viewed within the context of access to public goods, markets, and networks that remain inaccessible to refugees, rendering the notions of self-reliance and entrepreneurship meaningless for them. The conceptualization of refugee protection through the lens of self-reliance and entrepreneurship does not mark the demise of rollback neoliberalism. To the contrary, as argued by Easton-Calabria and Omata, self-reliance is used as means for the international community to minimize cost of refugee protection and justify withdrawal (rollback) of assistance (2018, 1466).

The shift from legal protection and territorial integration within the state to mere protection against refoulement and physical safety coincides with the rise of both neoliberalism and human rights

[27] World Bank Group. 2019. *Refugee Policy Review Framework: Technical Note*, 10. https://documents1.worldbank.org/curated/en/159851621920940734/pdf/Refugee-Policy-Review-Framework-Technical-Note.pdf.

activism that started in the 1970s. The definitive abolition of a territorial right to asylum, the incorporation of human rights into refugee law, the repatriation turn, and the subsequent containment of refugees in the region of origin are inseparable from the neoliberal premise that saving bare life and sufficient provision of basic needs is enough to strive for. Sufficient protection of refugees has turned a blind eye to positive freedom and material equality. But refugee protection is about more than saving lives (Oudejans 2020). It is about making human life possible again. Over against neoliberal policies that have drained, as Hansen points out, all the areas that are key to the flourishing of refugees' lives, such as housing, labor market opportunities, education, and health care, the "reception of refugees would require substantial public investments and planning efforts" (Hansen 2018, 132). In essence, the reversal and transformation of the narrative on refugee protection demands not only time but also a concerted effort in both political and intellectual spheres, underscored by a critical examination of how this narrative intersects with neoliberal interpretations of human rights.

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