



Routledge Studies in Contemporary Philosophy

COSMOPOLITAN NORMS AND EUROPEAN VALUES

**ETHICAL PERSPECTIVES ON EUROPE'S
REFUGEE POLICY**

Edited by
Marie Göbel and Andreas Niederberger



Cosmopolitan Norms and European Values

This volume offers a systematic philosophical analysis of the normative challenges facing European refugee policy, focusing on whether the response to it can be based on European values. By considering the refugee policy through the lens of European values, cosmopolitan norms and universal human rights, the contributions expose the weaknesses and limitations of existing regulations and make proposals on how to improve them.

The EU is often seen as a cosmopolitan project. Europe is supposed to be a community of states that aspires to be guided by cosmopolitan norms. However, the idea of a cosmopolitan Europe has never been unanimously shared, and in recent years, it has come under increasing scrutiny, particularly with regard to the EU's refugee policy. The guiding idea of this book is that a deeper philosophical understanding of the normative issues at stake can foster greater conceptual clarity and enrich political debates on the future of European refugee policy. The first part of the book revolves around the question of whether the rise in refugee numbers over the past decade has led to a crisis in the EU and, if so, how this crisis relates to or impacts European values. The second part traces the history of the discourse on "European values" and examines from a philosophical perspective how we can plausibly understand these values in terms of their moral grammar, their normative content and their implications for the behaviour of the EU and its member states. Finally, the third part puts forth recommendations for a feasible and normatively more compelling European refugee policy based on human rights, human dignity, justice and democratic self-determination as the decisive normative requirements.

Cosmopolitan Norms and European Values: Ethical Perspectives on Europe's Refugee Policy will be of interest to researchers and advanced students working in ethics, political philosophy, political science, social sciences and law.

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Introduction

Marie Göbel and Andreas Niederberger

Since the Russian war of aggression against Ukraine began on February 24, 2022, the European Union has taken in several million refugees from Ukraine. This is much more than the number of refugees who came to Europe in any other year in recent decades. Despite this high number, hosting the Ukrainian refugees is not a significant problem for either the EU or the main member states involved. Unlike the “summer of migration” in 2015, the common refugee policy towards refugees from Ukraine has – at least so far – tended to strengthen the EU rather than plunge it into crisis. The activation of the mass influx directive even allowed refugees from Ukraine to determine where they take refuge themselves.¹ Thus, the EU has chosen a solution to the otherwise highly controversial issue of refugee allocation among EU member states which seemed impossible before. Interestingly, the EU explains its policy towards Ukrainian refugees in terms of values: Russia should not succeed in its illegal and unlawful war of aggression, so fleeing should not be a factor forcing Ukraine to give up its resistance.² And even more generally, the EU claims to support Ukraine as a defender of universal values.³

This book discusses European refugee and migration policy, especially before the Russian war of aggression. From what has been said so far, this analysis could be seen as outdated given the way the EU dealt with the Ukrainian refugees in 2022. Indeed, if the handling of these refugees had been the result of the EU’s new overall refugee and migration policy, the EU would have overcome many of the difficulties of the last decade. But the issues that have been at the forefront at least since the refugee crisis in the mid-2010s are still relevant. The handling of refugees from Ukraine does not represent a new direction in EU refugee and migration policy. As far as we can see so far, it is a special provision responding to the particular character of the conflict between Russia and Ukraine and, above all, to the special interests of the Eastern European EU member states in this conflict. The problems of the general refugee and migration policy still remain or are even worsening. This is particularly evident in the ongoing controversy

within the EU, parallel to the handling of refugees from Ukraine, about how to deal with refugees who came again in increasing numbers to the EU in 2022 via the so-called Balkan route or the Mediterranean Sea. The war in Ukraine has also brought no change to the precarious humanitarian situation on the borders between Belarus and Poland or between Turkey and Greece. Moreover, some EU member states are signalling that accepting Ukrainian refugees should free them from further obligations to other refugees in the medium and long term.

Since 2015 at the latest, the treatment of refugees and migrants has had a particularly strong impact on the public perception of the problems facing the European Union. Yet this is not necessarily the biggest challenge. The security situation, the economic and socio-political difficulties arising from new and old military threats, the post-pandemic situation, inflation and possible de-globalisation and the worsening climate crisis certainly affect many more people more directly than the refugee and migration issue. Nevertheless, it is precisely because of the relatively limited dimension of the refugee issue and the immediate consequences that policies in this area have for refugees that the contradictions between the EU's normative self-description or normative claims and its actual policies become particularly evident. In the other areas, there are different interpretations of expected developments and controversies about what is normatively correct and how to deal efficiently with the problems at hand. Here, too, there are important ethical questions about the use of military force, the achievement of social justice and the consideration of future generations. In the area of refugee movements, however, there is a supposed normative consensus that has also been laid down in international and European law, against which the EU appears to be acting. Some are even calling for a different consensus that moves away from the protection of basic human rights and focuses on the fulfilment of particular identitarian interests. But if this supposed consensus on refugees is abandoned, the EU will be giving up essential normative foundations that are also relevant far beyond the refugee sphere. If there is no longer recognition of the human rights claims of people who are obviously in situations where their human rights are at risk, the question also arises for Europeans as to what significance their fundamental rights have in the European multi-level system. Do their rights really count at times when being able to rely on them is critical, including with respect to the political system?

This volume focuses on the normative contradictions of the EU's refugee and migration policy and, against this background, asks for a normatively more convincing way of dealing with forced displacement and migration. In doing so, it approaches this policy field by means of philosophy. It asks what the normative challenge for the EU in this area actually is and whether the EU has so far failed to meet this challenge, thereby creating and contributing to

several crises. In its Charter of Fundamental Rights and the Lisbon Treaty, the EU refers to values that it claims to embody and promote: human dignity, freedom, equality, solidarity, democracy and the rule of law.⁴ Many therefore see the EU's failure in the area of refugee movements and migration as a failure of the EU to live up to its values. In such statements, the term "values" is often used generically as a collective label for very different types of normative claims and goals. Not violating human rights is then just as much a value as promoting prosperity in Europe. Several contributions to this volume examine "European values" in light of the possibilities for differentiation and specification which philosophy offers and ask whether it is correct to refer to the relevant normative reference points as values or whether it would be better to speak of norms or rights. Contrary to some existing suggestions to abandon the language of values altogether in the context of the EU and its policies, this book includes proposals on how to give serious consideration to the references to values in their specific meaning and to explain what it would mean for the EU to pursue its values.

Talk of values can and does serve different purposes. Sometimes it aims to identify something unifying and motivating that goes beyond mere interests or arbitrary inclinations. People may pursue different interests, but if they share values, they may be willing to put those interests aside and act in accordance with or to promote the values. Values can therefore have a special motivational power. Sometimes, however, values are also used to distinguish people, groups or entire communities based on their supposedly different values. In this case, there may even be common interests, but different values make it difficult to imagine a good and uncomplicated coexistence between the different people and groups. While these views also attribute a special motivational power to values, they do not understand this in an integrative way. Instead, they find that there are no common goals and ways of acting if there are no shared values.⁵

The idea that the EU is a values-based project can therefore be perceived in two very different ways. On the one hand, it presents the EU as a political entity that not only serves contingent interests, but also exists to realise values, that is, normatively valuable things. Because of its values, the EU thus transcends a narrow "Europe first" perspective. Instead, it sees itself as an essential building block of a cosmopolitan order, with important implications for its relations with all others in the world, especially in pursuing the goal of securing human rights for all. On the other hand, the reference to European values is also used to distinguish Europe and Europeans from those who allegedly have different values. Standing up for European values, in this view, means defending what is most valuable to Europe against those who want to set other priorities.

In the area of forced displacement and migration, these two ideas are in direct competition: do European values require Europe to set aside immediate

interests and inclinations in order to implement values calling for the protection, reception and integration of refugees and other migrants? Or are European values to be protected from immigrants who allegedly do not share these values or dispute their validity? This tension becomes particularly problematic when we realise that the supposedly particular European values are, in fact, universal values, or values that emphasise the very universality of the foundations of the European project. Some notions of human dignity, freedom, equality, solidarity, democracy and the rule of law may have their origins in Europe. But it is precisely in these supposedly European ideas that these values represent something that transcends particular claims and corresponding obligations or expectations tied to specific relationships. What can it mean that the universality of Europe must be defended against the particularity of the values of those who come to Europe? How can such a Europe pretend to stand for universality? The contributions to this volume therefore also revolve around the question of how the cosmopolitan and, in the case of forced displacement and migration, primarily human rights dimension of “values” relates to determinations of Europe’s particularity.

The transition from philosophical-normative considerations to political recommendations is not easy since such a transition involves additional dimensions and factors that the sometimes idealised view of philosophy tends to neglect. Nevertheless, philosophical considerations can lead to suggestions as to where the EU should be criticised, where there is a need for change and how reform efforts could be initiated. In this sense, the contributions to this volume emphasise the importance of human rights for the legitimacy of European politics on the one hand while pointing to the further democratisation of the EU on the other. However, they also underline that trading off human rights and democracy against each other, which is characteristic of many positions in the field of forced displacement and migration, is neither normatively convincing nor politically helpful. Human rights cannot achieve the validity they strive for without democratic embedding. And democratic procedures that recognise no limits to their own impact on the protection of human rights and the participation of all who are subjected to them in one way or another cannot claim legitimacy. The European project, then, for all the friction between its respective goals or “values”, requires that human rights and democracy be pursued jointly and together.

On the Structure and Contributions of This Volume

The first part of the book revolves around the question of whether the rise in refugee numbers over the past decade has led to a crisis in the EU and, if so, how we should understand this crisis. As of 2015, there has been

much talk of a “refugee crisis”. However, many have rightly pointed out that this vocabulary makes refugees either the crisis themselves or the core of the crisis in European societies, institutions or politics. A large number of newly arriving refugees is certainly a challenge for the different levels of the European multi-level system and especially for municipalities, which are often responsible for the initial care of those arriving as well as for their transition to a more normal daily life and their integration into society and the labour market. However, as we saw in the case of the refugees from Ukraine, such challenges do not necessarily lead to crises. And looking at the situation in the EU in 2015 and since, the tensions only marginally concern the material resources needed to care for and integrate refugees. The disputes clearly were and are primarily political and legal in nature. They have mainly centred on the application and future of the Dublin system and the EU’s general future refugee and migration policy – often understood as the question of how best to protect Europe from further irregular migration.

In his contribution, *Matthias Hoesch* therefore first defines what a crisis is. Against this background, he considers what meaning the term “European refugee crisis” could reasonably have. For there are various possible understandings of the term, each of which sees a particular object as the theme of the crisis. The consideration shows that proposals to understand the refugee crisis as a crisis of refugees, as a crisis of the concept of refugees, as a crisis of refugee care, or as a crisis of European societies caused by refugees are not convincing. Hoesch argues that the term “European refugee crisis”, properly understood, refers to a crisis of the European asylum system. This is the comprehensive system that grants or denies the right to asylum in each case, allocates responsibility for refugees and provides them with the necessary resources to protect them during their status determination and beyond. This more precise understanding of the crisis allows for a more specific assessment of the importance of norms and values in relation to the crisis and its resolution.

Andreas Niederberger, in his contribution, also starts from the crisis already diagnosed by Hoesch. He points out, though, that we should see this crisis of existing procedures and institutions in Europe, which are no longer able to decide or enforce controversial allocations, distributions and redistributions – e.g. of refugees or financial resources – in the context of a second crisis. Forced displacement and migration to Europe are in fact the result of a crisis of legitimacy of the global order. Many people are no longer willing to stay in places where, for political, economic, social, ecological or cultural reasons, they are unfree and, thus, unable to live a decent life. We must therefore also assess the impact of attempts to “solve” the European crisis: for example, by democratising the EU and its policies or by giving member states greater freedom to opt out of European policies on the

global crisis. Niederberger shows how the two legitimization crises mutually reinforce one another. The strong tensions between them make it difficult to find a simple and common solution to both crises. Niederberger therefore rejects recent proposals to prioritise overcoming the legitimacy crisis within Europe or overcoming the global crisis. Instead, he outlines a principle for addressing the global legitimacy crisis that also takes into account the legitimate concerns of European populations for democratic control and participation in decision-making.

The EU sees itself not only as an instrument that serves the interests of the member states; it also views itself, as already outlined, as an expression and embodiment of shared values in Europe. This commitment to values does not always play a central role in shaping European policy. However, it is brought into play in some situations, either to give European politics a more general and unifying horizon or to problematise the policies or interests of individual member states when or because they contradict European values. Despite all attempts to develop these values into a control mechanism that can also be used as a legal instrument, the reference to values has so far remained primarily a discursive option. The second part of the book, therefore, starts by tracing the history of the talk of “European values”. It becomes clear that such talk has not always served unproblematic purposes, even if great relevance is attached to these values. This, in turn, also explains why many shy away from referring to European values. Indeed, “European values” are often suspected of being mere and disingenuous rhetoric. The values in the fundamental legal documents of the EU, however, of course provide an important starting point for evaluating the EU in terms of key normative claims. Especially from the philosophical perspective of clarifying the EU’s legitimacy or the normative soundness of its operation, it certainly makes sense to use these legal assertions for an internal or immanent critique of the EU. The second part of this volume therefore also attempts to clarify from a philosophical perspective how we can plausibly understand European values in terms of their moral grammar and normative content. This entails specifying the implications and effects that European values might or should have for the behaviour of the EU and its member states.

European values are often presented as an expression of Europe’s long history and thus as an essential and clearly defined foundation of the European integration project since its beginnings in the 1950s. In his contribution, *Wim Weymans* instead argues that it was not until the late 1990s that the EU institutions in particular began to invoke European values as a means of legitimising the European project, replacing more ambitious and substantive (but perhaps less successful) ideas such as a “European identity” or a “social Europe”. In order to be acceptable to all, these European values first had to be stripped of the clear and substantive content that

they had had up to that point, when mainly Christian politicians defended such values in a narrow conservative sense. Yet the increasing reference to values by European bodies and others at the turn of the century had little to do with this earlier conservative agenda. At the same time, the current populist reinterpretation of these values, especially in the context of the “refugee crisis”, should not be understood as a simple reincarnation of this older conservative understanding of values either. Moreover, a look at the use of European values in European politics shows that these values do not provide the EU with a clear normative framework. However, this lack of conceptual clarity of these values can also be an advantage, as it can help foster a debate on the normative core of the European project, provided that an appropriate political space is created.

The questions of how we should understand values and what values mean to those who consider them as such are not only politically controversial and a matter of public negotiation. They are also the subject of philosophical attempts at clarification, which can be directed at both the normative content and the logic of values. In her contribution, *Marie Göbel* presupposes that the reference to “European values” in political discourses can be normatively problematic for a number of reasons, especially in the context of forced displacement and migration. However, she argues that much could be gained from a clearer understanding of what we mean when we talk about “European values” and from a more careful and reflected use of the phrase accordingly. To this end, she carries out an analysis of the basic meaning of the term “European values” which focuses especially on the value character of European values: in what sense are “European values” values, and what does this imply for the relevant concept of “European”? This leads her to the proposal that “European values” should be understood as a normative self-commitment of European policy to a set of universal moral ideas. So, on the one hand, the analysis shows that it is possible to interpret the term “European values” in a plausible fashion, which also does justice to both the particularity of Europe’s normative foundation and the universal moral ideas it is meant to reflect. On the other hand, Göbel argues that it is crucial to distinguish between the concept of a value and other normative concepts such as principles and human rights. Based on this, she shows how framing Europe’s human rights obligations in terms of (European) values, especially in the refugee context, implies the danger that questions regarding the respect of human rights are secretly replaced by questions regarding the protection of a European value order.

In the area of forced displacement and migration, pro-refugee activists continue to criticise the EU for not adhering to its own values. In his contribution, *Philipp Schink* starts from the plurality of values as they can be found in the European Treaties and, with a view to the aforementioned criticism, examines what practical attitude we could expect from the EU if the values

laid down were indeed its values. To this end, he explains that the values contained in the Treaties are not all on the same level and must therefore be considered as being in a hierarchical order. Some values may be intrinsically valuable while others have more of an instrumental importance with respect to other values. We need to see the values as a network and further determine their respective content and interrelations in political procedures. Even more essential with respect to the practical application of values is, however, that values can stipulate both a goal and the way in which goals are to be achieved. Adherence to values may therefore require both their promotion and their respect – and it may be that promotion and respect do not simply go hand in hand but that promotion requires disrespect for values, or vice versa. Now, according to Schink, the analysis of the European Treaties tends to suggest a promotion meaning of European values: the EU has the task of guaranteeing the respect of values, especially in the workings of the member states. This does not mean that the EU itself should not be held accountable for its actions in the area of forced displacement and migration. Rather, it means that we must understand the EU's failure to control its member states as a "serious and persistent breach" of the values set forth in the Treaties.

The second part of the book thus attempts to provide adequate understanding of the existing discourse on values as well as the values enshrined in the Treaties and to consider them in terms of their normative content. The third and last part of the book makes suggestions, drawn more directly from the philosophical discussion, on what the normative foundations of European refugee and migration policy should look like. It thus contributes to the clarification of what European values could and should be. Approaches to the philosophical debate on displacement and migration usually share the view that the EU can only claim legitimacy as part of or as a contribution to an overarching cosmopolitan order. In explaining what this means, however, they refer to quite different normative considerations to determine what is normatively required or permissible. This is reflected in the contributions to this final part of the book, which invoke human rights, human dignity, justice and democratic self-determination as the decisive normative requirements. And all these suggestions also include indications of where and how a more convincing and appropriate policy in the area of forced displacement and migration could be implemented.

Marcus Düwell, in his contribution, assumes that human rights form the core of European values and that these human rights are in turn based on human dignity. It follows from the assumption that the "European" in European values does not point to a specific set of values. Rather, it serves to identify the primary addressees: namely, European agents. Against this background, Düwell examines what the basis of European values in human dignity means for dealing with those who do not have EU citizenship. More

precisely, he shows that duties towards refugees can only be determined in comparison to possible duties towards non-Europeans “in need” who are not (yet) refugees. This, in turn, raises follow-up questions about what exactly the duties of Europeans towards refugees are and how the possibly limited capacities of duty bearers are to be deployed.

In his contribution, too, *Jos Philips* assumes that Europe must safeguard the human rights of refugees. This task has already been partly translated into legal obligations, such as the requirement of non-refoulement or the right to asylum. In other respects, the protection of refugees’ human rights remains a moral idea in need of interpretation, given the possibilities but also the disputes in which the EU and its member states currently find themselves. Philips argues that in the most plausible interpretation, the human rights nature of the task at hand means that refugees are not to be admitted only up to a fair share in a European or global scheme for distributing refugee responsibility. Because human rights are at stake, the EU and its member states also bear responsibility for refugees beyond their respective fair share if others do not fulfil their own. They can only limit bearing this responsibility if its fulfilment would lead to sizeable costs for European citizens – and even this should only provide a possible argument for not taking on further responsibility. Nothing would oblige the EU and its member states in this case not to assume further responsibility.

For *Therese Herrmann*, we need to consider the EU’s refugee policy in the light of philosophical discussions about justice that extends beyond nation state contexts. There is widespread agreement that states must be the expression and instrument of a just basic structure in order to claim legitimacy. What is less clear, however, is whether justice must also be realised in relation to those who are not members of the respective state orders. In her contribution, Herrmann distinguishes between a number of cosmopolitan approaches that agree that non-members also have normative claims. They differ, however, in their definition of the respective character and scope of the claims and, in particular, whether they understand them as claims of justice. For it turns out that a key difference is that some understand the duty owed to refugees as a humanitarian one: i.e. ultimately as a duty of assistance. Like all duties of assistance, such humanitarian duties to refugees would give the duty bearers discretion in terms of interpreting and fulfilling the duties. Duties of justice, by contrast, would refer to solid rights-duties relations and, accordingly, they would grant refugees claims that they could assert in a legal-institutional order. Despite the different strength of humanitarian and justice duties, however, an evaluation of EU policy in their light shows that even with regard to humanitarian duties, the EU cannot be said to fulfil them to a sufficient degree. Thus, even from the perspective of a weak cosmopolitanism, the EU proves to be illegitimate in this respect.

The final contribution to this volume also addresses the question of the EU's cosmopolitan character or of cosmopolitan demands on EU refugee and migration policy. For *Martin Deleixhe*, however, the normative horizon within which the EU operates cannot simply be limited to demands of cosmopolitan justice. Failure to meet such demands for justice is often excused by reference to competing but equally or even better justified normative demands for democracy. The necessary analysis of the arguments for an alleged tragic tension between cosmopolitanism and democracy shows, however, that a supposed incompatibility cannot be proven. On the contrary, cosmopolitanism and democracy are both necessary, and they can be mutually reinforcing. Deleixhe therefore ends with a proposal that the EU, by unconditionally fulfilling the demands of international refugee law, can also be fully in line with its democratic character.

So far, the percentage of migrants in the world population has remained relatively stable, and the UN hopes that progress towards the sustainable development goals in more countries will create incentives for people to stay and contribute to further development.⁶ However, economic inequality and injustice, dictatorial and authoritarian political conditions, climate change and other ecological transformations, as well as military conflicts, are also important factors in decisions to flee and migrate. In view of the expected developments in these fields, there will certainly be more reasons for displacement and migration in the coming decades than in the past.⁷ The EU, or rather Europe at all its levels, must therefore come up with a functioning policy in this area. Simply closing the borders and allowing migration only to the extent that it directly serves Europe's own interests is normatively unacceptable but also practically impossible. The practical impossibility is also closely linked to the normative issue because normative unacceptability undermines the willingness of potential refugees and migrants, as well as of significant parts of the European population, to accept an exclusive border policy.

This book pinpoints the contradictions of existing European migration and refugee policy. It identifies new approaches to normatively acceptable or even necessary and practically achievable solutions. And it outlines concrete perspectives for political action in this area, based on normative principles already found in the European project which do not have to be brought in from the outside. It thus shows that and how philosophy can contribute to the discussion of the future in the field of forced displacement and migration without having to limit itself to the role of a moral preacher.

Notes

1. <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0091>> [December 9, 2022].

2. Bosse 2022.
3. Cf., for instance, <www.epp.eu/papers/united-in-solidarity-with-ukraine-defending-european-values-against-putins-war> [December 9, 2022].
4. “Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter”. (Charter of Fundamental Rights, Preamble, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>> [December 19, 2022]).

“Art. 2. The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”. (Treaty of Lisbon, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=urisrv%3A0J.C_.2008.115.01.0001.01.ENG&toc=OJ%3AC%3A2008%3A115%3ATOC> [December 19, 2022]).

5. One can also understand recent diagnoses in political science in this sense, which explain major conflicts in the transnational political sphere in terms of value orientations and thus call for a reassessment of interest politics. Cf. Münkler 2017; Kreuder-Sonnen/Zürn 2020.
6. Cf. <www.migrationdataportal.org/themes/future-migration-trends> [December 19, 2022].
7. Cf. on this also the most recent IOM *World Migration Report* (<<https://world-migrationreport.iom.int/wmr-2022-interactive/>> [December 19, 2022]).

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Part 1

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