

Security and the ethics of asylum after 11 September

by Matthew J Gibney

"Security", the philosopher John Stuart Mill wrote in 1861, "is the most vital of all interests."

“On it”, he argued, “we depend for all our immunity from evil, and for the whole value of all and every good, beyond the passing moment”.¹ On 11 September, the citizens of Western countries had the truth of Mill’s words brought spectacularly home to them. This lesson unleashed some lamentable consequences. The attacks of that fateful day led to war; war created refugees; refugees fled in search of asylum. The first two months of the war against the Taliban resulted in the movement of some 130,000 refugees, most of whom found a kind of rough asylum in neighbouring Pakistan. Pakistan’s borders had remained relatively open to refugees in part because of pressure by UNHCR for the country to serve as a humanitarian refuge for the course of the crisis. Yet while Pakistan was expected to offer more asylum during the course of the ‘war on terror’, all signs were that Western states would be offering less.

Operating almost in unison, these states implemented a number of policy and legislative changes that are likely to have a profound effect on the provision of protection for refugees. In the US, the government temporarily suspended the resettlement of some 20,000 refugees who had been told that they would be able to enter the US. Under the new USA-PATRIOT Act, aliens suspected of terrorism can be detained without charge for seven days. In addition, members of terrorist organisations prescribed by the Justice Department can now be deported or barred from entering the US without judicial review. In the UK, the new Anti-Terrorism Crime and Security Act was quickly passed. The Act allows the Secretary of State to reject asylum claims for persons deemed a threat to national security. It also broadens the state’s authority to detain individuals considered a ter-

rorist threat, while curtailing appeals for some asylum seekers. In Canada, the government’s new Anti-Terrorism Plan creates new detention places for foreigners suspected of terrorist activities, provides for a tightening of screening systems to ensure that those involved with terrorist groups do not enter asylum systems and allocates more money for deportation.

Legitimate asylum seekers, state officials have been quick to claim, have little to fear from well-targeted security measures. But the question is whether such measures are indeed well-targeted. My aim in this article, however, is not to analyse the adequacy of individual pieces of legislation but to make some observations on the broader social context in which these laws and policies have flourished. Asylum is increasingly viewed as a vehicle through which terrorists and other undesirables might enter Western states. In the aftermath of 11 September, these concerns are not hard to understand. Yet the terrorist attacks also provide an opportunity to remind ourselves of the central value and continuing importance of asylum for refugees.

Asylum as a threat to security

The view that asylum policy might have implications for security was established long before the events of 11 September. The latest incarnation of asylum as a security threat is rooted in the mid-1980s and can be traced to four major developments. The first was the ratification of the Single European Act in 1987, which began the move towards the abolition of border controls between European Community member states. Negotiations about the implications of a frontier-free Europe prompted new concerns about the security implica-

tions of mutual interdependence. From the start, discussions welded matters of asylum and immigration with more nefarious issues of organised crime, illegal migration and terrorism. Linkages between these concerns, moreover, became institutionalised in the Amsterdam Treaty. Fittingly, asylum was placed under the category of matters leading to a common area of ‘Freedom, Security and Justice’.

The end of the Cold War also played a key role in joining refugee and security concerns. The defusing of the major security threat of the post-War period – the threat of nuclear annihilation – provided academics, government and military officials with a strong incentive to concentrate their energies on a range of new (and hitherto distinctly second-rate) security concerns. The ‘threats’ posed by asylum seekers and refugees were simply one of a number of new non-state threats to be formulated in this period.

A third important factor has been the Security Council’s increasing prominence since the early 1990s as a vehicle for sanctioning military intervention by states. Interventions in Iraq, Somalia, Haiti and the Former Yugoslavia were, as Adam Roberts has observed, in part legitimated by the desires of the dominant powers to stem refugee movement.² Under Chapter 7 of the UN Charter these interventions could be deemed legitimate only if they were in response to threats to “international peace and security”. Thus actions by the Security Council provided another link in the chain of the refugee/security association.

Finally, the increased linking of refugee issues with security reflects the spread of democratisation since 1989. The rise of multiparty democracy in Africa, in particular, has arguably diminished the autonomy of state élites in determining the security agenda. Widespread social concerns

about the economic, cultural and social threats posed by refugees and other immigrants have, accordingly, tended to make their way into the defence considerations of states such as South Africa and Tanzania. Even in the more established democracies, the end of Cold War hostility and uncertainties created by economic globalisation have created the space and the appetite for a new range of public fears.

These developments are significant in their own right but the movement towards a new security perspective on forced migration really picked up pace in the wake of actual terrorist activity. The bombing of the World Trade Centre in 1993 in New York by Islamic extremists, one of who had an asylum decision pending, and, of course, the attacks of 11 September 2001 by foreigners on visitor and student visas demonstrated that security talk actually corresponded to an empirically verifiable threat. These attacks spawned a range of new restrictive laws and policies across Western states and particularly in the US. There is now an unprecedented consensus among states on the following issues: that refugees generally constitute more of a threat than an asset; that the dangers posed by asylum seekers are arguably more diverse than ever before; and that there is a need for international cooperation to deal with these new security risks.³

The refugee as a victim of insecurity

The connection between refugees and security runs deeper than just the last two decades, however. When the English political philosopher, Thomas Hobbes, set out to justify obeying the modern state to a conflict-ridden and deeply divided seventeenth-century English audience, he placed the state's role in delivering security at the centre of his argument. The sovereign, according to Hobbes, shall do "whatsoever he shall think necessary to be done...for the preserving of Peace and Security, by preventing discord at home and Hostility from abroad."⁴ In the contemporary age, characterised by judicially-specified limits on state authority, few would grant the state the prerogative to do "whatsoever [it] shall think necessary" to ensure peace at home. Yet, when the treatment of foreigners - "Hostility

from abroad" - is concerned, almost anything goes. Expanded detention, new deportation procedures for foreigners and the Bush Administration's suggestion that military trials may be used for some of the Taliban fighters held at Guantanamo are cases in point.

Widespread public indifference to such discretionary treatment is closely linked to the view of the foreigner as threat. How can we be sure that those claiming asylum come in search of help rather than to harm us? Might they not be hostile to our values and institutions? Do not their true loyalties lie with the state they have left? What is in short supply in our relations with foreigners is trust. This lack of trust is simply exacerbated when a history of racist assumptions has been left to fill the void between what we do and do not know about particular groups of people. Moreover, at a time of widespread fear and insecurity, the grounds for worrying about the motives of foreigners are stronger than ever.

Yet the refugee is no ordinary foreigner. There is something deeply ironic in seeing her as a threat. For the refugee is, by definition, a person who is a victim of insecurity. Her very search for protection vindicates the importance of security. But this is only one side of the coin of refugeehood. By virtue of being escapees from violent conflict and human rights violations, refugees are also (albeit unwilling) representatives of these phenomena. They are human examples of how states can sink into violence, torture and oppression. As representatives of these undesirable features of social life, it is not surprising that refugees are often construed as carriers of the instability and insecurity that led to their initial departure. As in the case of those fleeing plague, reactions to them typically involve a mixture of sympathy for their plight and concern that they might be the carriers of the disease that wracked their own societies. There is, then, something discomfiting in the very idea of the refugee.

An ethically defensible response to 11 September

What, then, might be an ethically defensible response to security concerns for asylum raised by 11 September? We need to begin by

ensuring that this general feeling of discomfit is disentangled from more legitimate concerns over security that states might have. This process of disentangling requires that states subject their own security concerns to the

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same kind of scrutiny that they currently apply to the claims of asylum seekers. However, let me work towards this conclusion by saying a little more about security.

Security is, for the most part, an instrumental value. That is, we want it because it enables us to realise other values, such as freedom, peace of mind and justice. However, its instrumental role suggests that the value of any gain in security is not absolute; it needs to be weighed against the costs it might have to the other important values. This has important implications. For example, we could ensure that the type of terrorist attacks that occurred on 11 September could not happen again, if we were prepared to ground all planes permanently. Few of us, however, would be willing to tolerate the consequences of this move. The cost in terms of our freedom to move would alone far outweigh the added security this measure would bring.

But the trade-offs associated with increased security are not only shared out among citizens. Importantly, as we have seen, the security of foreigners, like refugees in search of a secure place of residence, is sometimes traded off against the interests of citizens. At times of high national drama, the consequences for foreigners of these trade-offs are rarely a matter of great public debate. Yet, from an ethical perspective, the interests of outsiders must count for something. In the aftermath of 11 September, many officials and public figures have called for new restrictions on asylum with barely a passing mention of the effect of these measures on the lives of refugees. Yet the unspoken truth is that, as shocking as the recent terrorist attacks in New York, Pennsylvania and Virginia were, the number of people killed by them is dwarfed by the number of people whose lives are saved from death and torture annually as a result of the asylum policies of the US, Canada and

other Western countries. Even if, as some ethical theories argue, there are good moral reasons for prioritising the needs of one's compatriots, the value of these lives saved cannot be completely written off.

One reason why we can be sure that the costs of making asylum more restrictive would be more death and suffering is because the claims of refugees are subjected to rigorous scrutiny. Rather than taking their claims at face value, Western states put refugees through an elaborate set of procedures to prove that their security would really be under threat if they were returned. The aim is to sort out those who really need protection from those who would use asylum to serve other, less urgent or less morally compelling ends. A refugee must establish that their fear is 'well-founded' and that this fear applies to them as an individual. This process of establishing the credibility and applicability of a claim to refugee status is both expensive and resource intensive. Yet, officials argue, it is necessary if the integrity of the provision of protection is to be ensured.

Here we have a powerful model for how states should deal with their own security concerns in the wake of 11 September. Just as Western states do not take at face value an asylum seeker's claim to be threatened, so they should not take the act of exclusion on security grounds as self-justifying. Especially at the current time, when terrorist attacks have made our

governments more prone to exclusion, we need to apply some rigorous criteria for determining the validity of security threats.

There are three questions that we can draw from current asylum practices that are helpful in this regard. First, are we applying a clearly stated standard for what constitutes a security threat (an analogue to Article 1F of the Refugee Convention)? Second, is there a procedure for investigation as to whether claims to exclude on security grounds are 'well-founded' (an analogue to current refugee determination systems)? Three, has a personal link between the individual seeking entry and the supposed security threat been established (an analogue to the reluctance of states to give blanket protection to asylum seekers from particular countries)? These questions may not provide a blueprint for dealing with all the thorny issues raised by security in entrance but they indicate clearly enough a general principle: that the standards states use for evaluating security threats to their own societies should be at least as stringent as those demanded of individual asylum seekers wishing to be admitted.

Conclusion

A shiver ran down the spine of many people in the West on 11 September. The world they

looked out upon now seemed a much less secure and much more uncertain place. This changed world provided the rationale for new measures of exclusion and control on refugees, asylum seekers and, in some cases, foreign

residents generally. No one with a modicum of historical memory could be surprised that these measures have flourished. At times of high anxiety, political communities tend to become less tolerant, more insular places.

Yet if this was the exclusionary moment spawned by 11 September, another moment is still possible. The insecurity and uncertainty generated by the terrorist attacks brought many people in stable, rights-respecting countries closer to the insecurity that blights the lives of many of the world's refugees. In so doing, they showed why the institution of asylum – with its promise to swap vulnerability for protection – is so supremely important and why it should not be bartered away for a marginal increase in security. For most of us, this moment of connection lasted for only a few short minutes. But it is a moment we would do well to replay in our minds. If we let this feeling of connection with refugees inform current measures to protect our societies, the events of 11 September might well cement, rather than erode, the values that security promises to preserve.

Matthew J Gibney is Elizabeth Colson Lecturer in Forced Migration at the Refugee Studies Centre, University of Oxford. His book, *The Ethics and politics of asylum: liberal democracy and the response to refugees, will be published by Cambridge University Press in late 2002.* Email: matthew.gibney@qeh.ox.ac.uk

1 John Stuart Mill *Utilitarianism, On Liberty, Considerations on Representative Government*, edited by H B Acton, J M Dent, London, 1992, p56.

2 Adam Roberts 'More Refugees, Less Asylum: A Regime in Transformation', *Journal of Refugee Studies*, Vol 11, No 4, 1998.

3 For detailed discussions of the implications of transforming migration into a security concern, see Jef Huysmans 'Migrants as a Security Problem: Dangers of 'Securitizing' Societal Issues' in Robert Miles & Dietrich Thranhardt, eds, *Migration and European Security: The Dynamics of Inclusion and Exclusion*, Pinter, London, 1995; and Ole Waever et al *Identity, Migration and the New Security Agenda in Europe*, Pinter, London, 1993.

4 Thomas Hobbes *Leviathan*, edited by C B Macpherson, Penguin, Harmondsworth, 1968, pp 232-233.

