

# Capable and Culpable? The United States, RtoP, and Refugee Responsibility-Sharing

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Over a decade since its adoption by the UN General Assembly, the norm of the Responsibility to Protect (RtoP) remains contested, and its “pillar three” component regarding coercive intervention remains particularly controversial.<sup>1</sup> The conflation of RtoP and humanitarian intervention, however, occurs to the detriment of noncoercive policy tools that pose fewer risks than the use of force, both in terms of externalities, such as civilian harm, as well as in terms of legitimacy issues regarding the broader normative framework. In this article, I work from the premise that in the wake of mass atrocity situations, facilitating access to asylum, granting temporary protection, and upholding the principle of non-refoulement represent essential steps toward fulfilling the international norm of RtoP. Through these steps, states can address RtoP’s call for collective international response in a “timely and decisive manner” to protect civilian populations and prevent further victimization in the context of genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>2</sup>

There are robust foundations for connecting RtoP to refugee response, including the link between mass atrocity crimes and mass displacement. Large refugee flows often stem from mass atrocities in conjunction with a state’s “manifest failure” to provide internal protection for its citizens.<sup>3</sup> RtoP as refugee response also fits with the norm’s call for the international community to “use appropriate diplomatic, humanitarian, and other means” to help protect populations from mass

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atrocities crimes.<sup>4</sup> However, the implementation of RtoP as refugee protection faces significant obstacles regarding responsibility-sharing. These obstacles must be engaged if we are to consider paths forward for the meaningful but noncoercive implementation of RtoP in the wake of mass atrocity-generated refugee crises.<sup>5</sup>

The notion of what constitutes a “fair share” in the allocation of refugee protection responsibilities is highly contested.<sup>6</sup> While much attention has focused on the capacity of states to offer protections, less attention has been paid to how a state’s past policy decisions might also shape its responsibility to protect refugees. This article explores the role of culpability as a criterion in orchestrating RtoP responsibility-sharing, building upon previous work rooted in theories of reparations, while charting a distinct course.<sup>7</sup> In particular, I draw upon the climate justice and political realism literatures as useful and pragmatic frameworks to articulate responsibilities to protect refugees and to address equity and legitimacy issues in RtoP responsibility-sharing. Though there have been considerable efforts in theorizing refugee “burden-sharing,” practical questions regarding how such responsibilities might be better framed to appeal to the public have been largely ignored. In addressing the legitimacy and pragmatics of responsibility-sharing, I suggest ways to connect refugee responsibilities to states’ past policy decisions and national interests.

The article proceeds in four parts. The first section outlines the challenges associated with allocating refugee protection responsibilities and contextualizes the ongoing refugee crisis within broader patterns of inequity in global refugee responsibility-sharing. The second section bridges work on climate justice with an emerging turn in political theory toward political realism to articulate culpability-based responsibility-sharing as a practical normative framework that is attentive to issues of equity and legitimacy. The third section provides an empirical and normative exploration of culpability-based obligations in the case of U.S. responsibilities toward Syrian and Iraqi refugees. The concluding section advocates framing RtoP as refugee protection in terms of both culpability and national interests. Following political realism, this section proposes some potential paths for negotiating the tensions between these two concepts. With regard to Syrian and Iraqi refugees, fulfilling RtoP through refugee protection could enable the United States to facilitate refugee responsibility-sharing as a global public good; address legitimacy challenges associated with perceptions of double standards in its policies toward the Middle East; pursue opportunities for reconciliation with

foreign populations harmed by these policies; and counter narratives from militant groups such as ISIS.

## REFUGEE RESPONSIBILITY-SHARING

The existing refugee protection regime, rooted in the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees, provides little guidance as to how states should distribute legal, financial, and physical responsibilities in the face of humanitarian displacement crises. This problem of “burden-sharing”<sup>8</sup> has led refugee studies scholars to conclude that the lack of norms, rules, and decision-making procedures governing the division of interstate responsibilities for refugee protection has resulted in a refugee regime that is only “half complete.”<sup>9</sup> It is noteworthy that a similar responsibility-sharing challenge emerges with the implementation of RtoP, as there is no clear guidance regarding “how to make sense of the widely accepted, and detrimentally vague, claim that the ‘international community’ has a moral responsibility to respond to gross violations of human rights.”<sup>10</sup> These deficiencies in the responsibility-allocation mechanisms facilitate continued paralysis in collective action and present a major obstacle to the effective implementation of RtoP as refugee protection. They also enable tremendous inequity in the distribution of refugees. To date, neighboring states in the Middle East have absorbed the vast majority of the millions of refugees flowing from Syria and Iraq, and this disproportionate shouldering of responsibility by states in the region is in line with global trends. Due to geographical proximity variables reinforced by the legal obligations of non-refoulement,<sup>11</sup> as well as a broader inequality among states to prevent refugees from arriving on their territory via effective deterrence, exclusion, and control measures,<sup>12</sup> the responsibility for an estimated 86 percent of the world’s refugees is shouldered by developing countries.<sup>13</sup> Moreover, Alexander Betts identifies a variety of institutional developments that have allowed wealthier states to bypass and avoid contributions to the refugee regime, thereby transferring a greater share of the costs to poorer countries.<sup>14</sup> Such dynamics reflect a troubling deficit of distributive justice in global refugee governance.

Discussions of refugee responsibility-sharing have largely focused on capability as a central criterion. The allocation of moral and legal obligations has tended to prioritize factors related to states’ relative capacities to assist refugees, such as their level of economic development and territorial size.<sup>15</sup> Matthew Gibney emphasizes

standards such as GDP, population size, unemployment level, and population density, whereby absorbing refugees has “less of a transformative effect” on the overall citizen population of host states.<sup>16</sup> Historical context provides important empirical parameters in this regard. During the 1990s Balkans crisis, for example, an EU draft version of a responsibility-sharing scheme proposed a quota system utilizing size, population, and wealth to determine state capability. This formula for refugee distribution was dropped from the final text of the resolution, however, and was replaced with ambiguous principles referencing “the spirit of solidarity” and “equity of distribution.”<sup>17</sup> While the 2015 EU plan for distributing asylum seekers emanating from the ongoing refugee crisis in the Middle East similarly used capability-based algorithms to assign responsibilities,<sup>18</sup> only three member states had fulfilled their relocation quotas by the fall of 2015, leading observers to conclude that EU members are “committed to burden sharing in principle but not in practice.”<sup>19</sup>

It is likely that capability-based calls for responsibility-sharing have been insufficiently attentive to the roles of national interests<sup>20</sup> and identities.<sup>21</sup> Such schemes have perhaps also neglected the importance of establishing meaningful connections to refugee situations, such that potential host states perceive themselves as important stakeholders that have significantly shaped displacement crises and can in turn be shaped by them. If appeals to shared responsibilities among states on the basis of capacity have largely failed to overcome collective action problems in refugee responsibility-sharing, might appeals to special responsibilities on the basis of culpability be more productive? How might the logic of culpability-based responsibilities proceed? The following section bridges work in climate justice, refugee studies, and political realism to articulate a framework for integrating culpability that emphasizes equity and legitimacy as central to effective refugee responsibility-sharing.

## INTEGRATING CULPABILITY INTO THE RESPONSIBILITY TO PROTECT REFUGEES

Like global refugee governance, climate governance faces significant challenges regarding what factors should be given the most weight in shaping distributions of responsibility. Work on climate justice has been particularly attuned to fair and equitable burden-sharing, as this arena is concerned with protecting the rights of the most vulnerable and amplifying the voices of those who have done the least

to cause climate change but who are most harshly affected by its impacts.<sup>22</sup> This parallels the disproportionate acceptance of refugees by developing states that can least afford to host them and that may have done little—relative to major powers that have externally intervened—to causally contribute to the origins of the displacement crises. Just as Caroline Deere-Birkbeck argues in making the case for climate justice, the refugee regime needs to “tak[e] into account issues of justice and fairness and ensur[e] that the interests of the least advantaged countries are heard.”<sup>23</sup>

While amplifying the voices of the least advantaged arguably provides a morally compelling position, there is also a pragmatic component to attending to issues of inequity in responsibility-sharing. Many global governance ideals related to cross-border problems like climate change, human rights, and RtoP have emerged in a Western-centric and asymmetrical power environment. Daniel Bray’s work on *pragmatic cosmopolitanism* notes that the normative force of these ideals is dependent on “how justifiable they are to differently situated others.” Moreover, the manner in which the allocation of responsibility regarding these ideals is framed determines the extent to which they are perceived as either “coercive or liberating” by less powerful actors.<sup>24</sup> RtoP, like other cosmopolitan normative frameworks, is at significant risk of being viewed merely as an instrument of neo-imperialism. Its local implementation and the internalization of its attendant norms therefore depends not only on shifting its vocabulary from forceful intervention to noncoercive forms of human protection like asylum,<sup>25</sup> but additionally on elucidating responsibility-sharing paths that give primacy to equity and legitimacy. Integrating the impact of past policy decisions by major powers more centrally into RtoP discourse and constellations of responsibility-sharing can be a valuable tool for incorporating both of these principles.

To date, little work has focused on the integration of culpability as an important criterion in shaping refugee protections. Michael Barutciski and Astri Suhrke observe that during the Kosovar refugee crisis, some states had “special duties” rooted in their moral responsibilities for having caused the situation.<sup>26</sup> More recently, James Souter provides a detailed theoretical framework for asylum as a form of “reparation” for past injustice, arguing for “special obligation[s] on the part of states to provide asylum to refugees for whose lack of state protection they are responsible, whether through their military interventions, support for oppressive regimes, or imposition of damaging economic policies.”<sup>27</sup> In the first work to explicitly bridge RtoP, refugee protection, and culpability, Jason Ralph

and James Souter draw on the reparative framework to argue that the United Kingdom and Australia, as mid-level powers, bear special responsibilities toward Iraqi refugees that are derived from their morally relevant connections in having helped create situations of vulnerability for populations in ISIS-held territories.<sup>28</sup> Robyn Eckersley's recent work on climate refugees also suggests that both capability and culpability—causal contributions to the problem—are important in allocating responsibilities to provide refugee relief.<sup>29</sup>

This study contributes to this nascent line of inquiry regarding the role of past policy decisions in shaping culpability while expanding upon and charting a distinct course from previous work. In elucidating potential layers of responsibility on behalf of the United States, I provide an empirical and normative expansion of Ralph and Souter's work and also broaden the scope of special responsibilities beyond Iraqis to include Syrian refugees. The richness of the reparations literature provides one arguably compelling prism through which to view states' obligations to refugees. Following political realism, however, this analysis is sensitive to the social and historical context in which political action takes place. Political realism in normative political theory is distinct from the Realist School of thought in international relations theory, though it shares some common ground with such classical realists as Hans Morgenthau and E. H. Carr.<sup>30</sup> While sometimes conflated with non-ideal theory, political realism moves beyond applying feasibility constraints to emphasize that theorists "must make sense to those [with] whom we speak" and must view those whom we address as agents "who need to be convinced and motivated to act *as they are*."<sup>31</sup> Particularly in the case of the United States, where the term "reparations" is bound up with issues of racial injustice and elicits highly polarized (and racialized) views, this framing might be problematic and at odds with "the practice of real politics."<sup>32</sup> Culpability might not have much practical import if it has little resonance within the public sphere. I therefore take a theoretically distinct route in bridging insights from political realism with concepts from climate justice to conceptualize culpability as an important vehicle for addressing equity and legitimacy issues in responsibility-sharing. I also argue that attention to equity and legitimacy should be articulated as being supportive of national interests. Bolstering frameworks for global cooperation in an increasingly interdependent security environment and countering narratives of neo-imperialism through the acknowledgement of special responsibilities can serve to strengthen national security.

Situating refugee responsibility-sharing within climate justice work provides important analytical context and resonates with Bray's notion of *pragmatic ethics*, emphasizing the need for cosmopolitan ideals to draw on "the lessons of history and the empirical conditions of the present."<sup>33</sup> The role of culpability in allocating responsibilities for mitigation and adaptation costs has been central to climate justice over the past two decades. The *historical responsibility* perspective that emerged in the 1990s argued that responsibility-sharing formulas should emphasize the impact of past emissions. In this view, advanced industrialized countries should bear the greatest costs because they contributed disproportionately to the current buildup of greenhouse gases.<sup>34</sup> The salience of culpability is also found in the related *polluter pays* principle, which insists that polluting countries should bear the costs of their pollution.<sup>35</sup> *Polluter pays* conceptualizes historical emissions in the context of corrective justice as "creating a tort problem of allocating costs for injury."<sup>36</sup> In this view, developed states have a responsibility to correct for the harm of their past emissions and to compensate those who have suffered.

This logic of assigning responsibility based on causation and assessment of liability bears similarities with Souter's conceptualization of asylum within the paradigm of reparations. Another parallel between these literatures is found in efforts to clarify the conditions of liability. Steve Vanderheiden notes that causal responsibility for environmental harm may give rise to obligations to rectify the injustice of harming innocent victims even in the absence of direct fault.<sup>37</sup> Similarly, Ralph and Souter argue that the establishment of "direct causal connections" between the 2003 invasion of Iraq and the rise of ISIS in 2014 is not necessary in justifying the special responsibilities of British and Australian governments toward Iraqi refugees, since the invasion ultimately rendered Iraq "vulnerable to external shock."<sup>38</sup>

The principle of *common but differentiated responsibilities* is also instructive for refugee responsibility-sharing. With its origins in the 1992 UN Framework Convention on Climate Change, this principle has been interpreted to connote that, while all states are responsible at some level for addressing environmental problems, some parties bear distinct responsibilities based on their distinct situation.<sup>39</sup> For example, obligations vary across states in terms of time frames of implementation, levels of intensity needed to reach shared standards, levels of consumption and production, historical contributions to global emissions, and national capacities regarding levels of resources.<sup>40</sup> The *common but differentiated responsibilities* principle thus integrates both culpability and capability as important elements for orchestrating responsibility-sharing.

Refugee responsibility-sharing should be conceptualized along similar lines, as culpability-based responsibilities do not nullify the importance of capacity as an important component, nor do they eclipse the “necessarily distributive” aspect of responsibility underpinning the normative framework of RtoP.<sup>41</sup> Rather, integrating culpability as an important criterion in allocating responsibilities can facilitate greater equity and bolster the legitimacy of refugee responsibility-sharing and RtoP by directly engaging the dynamics of power asymmetries and holding key actors accountable for their policy decisions. When combined with appeals to national interests, appeals to culpability might also prove more productive in mobilizing RtoP as refugee protection than solely focusing on shared moral obligations based on factors of capacity.

The following section outlines three potential paths for articulating culpability based on past and current policy decisions in the case of U.S. responsibilities toward Syrian and Iraqi refugees. This is a worthy empirical and normative endeavor for several reasons, the first of which is the magnitude of the crises. At the start of 2016, Iraq and Syria comprised two of the three main origin countries for asylum seekers and migrants arriving in Europe.<sup>42</sup> The conflict in Syria has produced 4.9 million refugees and has resulted in the internal displacement of over 6.6 million Syrians. As of 2015 over 4.4 million Iraqis were internally displaced, while an estimated 264,100 were refugees.<sup>43</sup> Second, both the Syrian and Iraqi conflicts have been characterized by mass atrocity crimes perpetrated by a combination of state security forces, ISIS, and other militant nonstate actors, which reinforces the salience of RtoP as a framework for preventing further victimization through refugee protections.

A third reason to examine these two cases is that they underscore the relevance of importing the principle of *common but differentiated responsibilities*, wherein both capability and culpability coexist as important elements in orchestrating responsibility-sharing. In the next section we will see that in addition to possessing a *capacity* to provide protections, the United States has a history of military intervention in the Middle East. Given its capacity and its connections to the situation, the lack of adequate refugee response from the United States threatens to further undermine the legitimacy of RtoP as a normative framework. If it seems as though the most powerful state in the international system implements RtoP only through selective coercive intervention, and yet fails to offer adequate nonviolent forms of protection to victims fleeing mass atrocities for which it is partially responsible, this reinforces the perception that RtoP is merely a veneer for realpolitik and



neo-imperialism. It also reinforces perceptions of U.S. foreign policy writ large as being animated by imperialism and double standards, which fuels distrust and antipathy toward the United States and undermines its legitimacy and national security. Exploring U.S. responsibilities to Syrian and Iraqi refugees provides an instructive opportunity not only for problematizing legitimacy issues but also for linking culpability-based responsibilities to national interests.

## U.S. RESPONSIBILITIES IN SYRIA AND IRAQ

Given its relatively high capacity, the United States has been pressed by the International Rescue Committee to accept at least 65,000 Syrian refugees by the end of 2016. This figure represents half the number proposed by the UN High Commissioner for Refugees (UNHCR) for international resettlement by the end of 2016, and it stands in stark contrast to the 1,541 Syrian refugees resettled by the United States between 2012 and 2015.<sup>44</sup> The Obama administration's announcement to accept 10,000 Syrian refugees in 2016 produced significant public and political backlash. As a result of the politicization and securitization of refugees from Muslim-majority countries, the U.S. House of Representatives passed the American Security Against Foreign Enemies (SAFE) Act—a bill placing a moratorium on the entry of Iraqi and Syrian refugees. Thus, while significant portions of the American public now view Syrian and Iraqi refugees through the prism of national security, little attention has been paid to U.S. culpability in contributing to their displacement or to the implications of the U.S. refugee response for its own legitimacy as a global actor and the legitimacy of RtoP as a global norm.

In assessing the normative terrain of the contemporary global refugee regime, Betts briefly alludes to culpability-based obligations in the ongoing refugee crisis emanating from the Middle East, noting that conflicts in Syria, Iraq, and other states in the region have been shaped by U.S. and European foreign policies.<sup>45</sup> The specific causal trajectories of U.S. foreign policy decisions in these cases remain undefined within the literature, however. As with climate change, the displacement crises in Syria and Iraq undoubtedly involve complex chains of causation that raise difficult questions regarding agency and complicated responsibility-allocation questions.<sup>46</sup> While complex and controversial, the messiness of this endeavor should not preclude a consideration of culpability trajectories. Building on Souter's observation that the causal link between an external state's actions and the refugees' lack of protection should be "at least fairly strong"

to establish culpability,<sup>47</sup> this section will outline several potential categories of U.S. responsibilities to protect Syrians and Iraqis fleeing mass atrocities. First, the role of the United States in the Iraq War raises the prospect that it bears responsibilities toward both Iraqi and Syrian displacement. Second, U.S. handling of the Syrian conflict warrants scrutiny in considering obligations toward Syrian refugees. Finally, broader patterns of U.S. foreign policy regarding selective support for authoritarianism in the region may also shape U.S. obligations.

#### *U.S. Responsibilities Stemming from the Iraq War*

In addition to high levels of civilian harm and grave consequences for the country's social, economic, and public health infrastructure,<sup>48</sup> another significant cost of the Iraq War was the formation of ISIS and other militant groups that emerged during the U.S. occupation.<sup>49</sup> The role of the United States in initiating the 2003 war raises the prospect that it bears culpability-based responsibilities toward displaced Iraqis and Syrians in the following ways:

(1a) *Responsibilities toward displaced Iraqis.* Poor preparations for and handling of the war directly contributed to growing instability and violence that displaced millions of Iraqis. With its devastating consequences for post-war governance and society, de-Baathification is regarded by scholars as one of the most troubling legacies of the U.S. military operation.<sup>50</sup> Such strategic errors and an overarching failure on behalf of the United States and its allies to provide for post-war stability and security in Iraq facilitated violent sectarianism that resulted in persecution, ethnic cleansing, and massive forced displacement.<sup>51</sup>

(1b) *Responsibilities toward both Iraqis and Syrians displaced by ISIS.* The causal link between the U.S. initiation and handling of the Iraq War and the rise of ISIS as a militant group fighting U.S. forces is supported in terrorism and security studies literatures.<sup>52</sup> Central Intelligence Agency officers similarly acknowledge that the U.S. invasion inadvertently reinvigorated al-Qaeda and facilitated the rise of al-Zarqawi—the leader of the group that would become ISIS.<sup>53</sup> While the question of war resulting in reactionary violence is largely unaddressed in the just war literature, it has important implications for responsibility-sharing vis-à-vis RtoP as refugee protection, as the trajectory of the militant group responsible for ongoing war crimes, crimes against humanity, and possible incidents of genocide against civilians in Iraq and Syria cannot be divorced from the execution of the Iraq War.<sup>54</sup>

(1c) *Responsibilities toward displaced Syrians.* Another argument for establishing U.S. obligations toward Syrian refugees is that the Iraq War contributed to the outbreak and evolution of conflict in Syria in terms of both demographic and ideological factors. The arrival of over one million Iraqi refugees in Syria further strained inadequate urban resources and infrastructure and contributed to burgeoning social tensions within the country.<sup>55</sup> Colin P. Kelley et al. identify the Iraq War and its accompanying influx of Iraqi refugees between 2003 and 2007 as a significant causal factor in explaining the outbreak of the Syrian conflict.<sup>56</sup> The war also facilitated the development of more sophisticated strategic thought in militant Salafist circles and the expansion of targets qualifying as legitimate enemies.<sup>57</sup> These post-2003 ideological shifts have arguably made the Syrian conflict more deadly and intractable, influencing key dynamics with regard to the recruitment of foreign fighters and the emphasis on sectarian schisms that extend beyond ISIS.<sup>58</sup> Given the role of the Iraq War in fostering a strand of sectarian identity politics that developed unprecedented cross-border relevance and momentum, Ranj Alaaldin concludes that “it is questionable whether, but for the emergence of the new Iraq, the conflict in Syria would be a regionalized conflict fought along sectarian boundaries.”<sup>59</sup>

#### *U.S. Handling of the Syrian Conflict*

There are two causal links between U.S. policy decisions regarding the Syrian conflict and Syrian displacement. First, by insisting early on upon Assad’s ousting and endorsing the rebels’ position, the Obama administration undermined the potential for negotiations and contributed to greater deadlock among the warring parties. Whereas during the same period the administration endorsed a “government-opposition dialogue” in response to the Saudi-led military repression of the Bahraini opposition movement, it rejected such an approach in the case of Syria.<sup>60</sup> Security scholars point out that demanding regime change as a condition for ending a civil war typically prolongs the war and escalates harm to civilians. As Alexander Downes asserted in 2013, “By declaring that Assad has no future as president of Syria, the U.S. has effectively torpedoed meaningful negotiations to end the war short of decisive victory for one side or the other.”<sup>61</sup> Second, beginning in 2013 the U.S. role in the proxy war dimensions of the Syrian conflict escalated from support primarily via nonlethal and humanitarian aid to the Free Syrian Army to the supply of American-made antitank missiles transferred to CIA-vetted insurgent groups.<sup>62</sup> This provision of support and weapons

to warring factions in the conflict provides a fairly strong causal basis on which to assert obligations to assist Syrian civilians fleeing the conflict's violence.

### *U.S. Support for Authoritarian Regimes*

Applying a culpability-based model of responsibility to the refugee crisis emanating from the Middle East, one finds that the United States bears important obligations in light of the broader effects of its structural double standards regarding human rights and authoritarianism in the region. Between 1945 and the end of the cold war, U.S. foreign policy was guided largely by three main interests: containing communism, maintaining access to oil, and protecting its close ally in the region, Israel.<sup>63</sup> These goals ultimately converged to produce strategic military and economic alliances with repressive authoritarian regimes that persisted into the twenty-first century, even as the post-cold war era saw an initiation of human rights and democracy promotion agendas. Scholars suggest that U.S. administrations have funded a variety of human rights-related initiatives in the Middle East as a substitute for abandoning alliances with these oppressive regimes.<sup>64</sup>

The George W. Bush administration highlighted deplorable human rights conditions in Iraq as an attempt to give moral purpose to the U.S. invasion and subsequent war, but these efforts were understood in the region largely through a prism of U.S. double standards and were critiqued for being inefficient, rhetorical, and imperialistic.<sup>65</sup> Arab intellectuals noted the vivid contradictions between U.S. rhetoric regarding principles of democracy and human rights and the U.S. record of supporting authoritarian regimes and violating human rights in the region.<sup>66</sup> As Jeremy Pressman observes, repressive allies in the region “helped protect U.S. national interests on access to energy resources, counterterrorism, and the security of Israel,” so U.S. officials continued to prioritize short-term security needs and only selectively pursued stated U.S. commitments to freedom and democracy.<sup>67</sup>

U.S. double standards regarding human rights and support for illiberal and repressive regimes in the Middle East had consequences for local voices promoting human rights throughout the region. For example, these voices were stifled by authoritarian rulers bolstered by U.S. patronage and were undermined by allegations that local human rights groups “served foreign, Western, imperialist agendas,” which “resulted in minimal Middle Eastern agency in defining the nature and scope of its own predicament vis-à-vis the human rights paradigm.”<sup>68</sup> Such was the case in Syria, where the regime could easily portray internal and external opposition as “tools of the imperialists,” given high levels of antipathy and distrust

toward U.S. policy.<sup>69</sup> The consequences of decades of U.S. foreign policy supporting authoritarian regimes arguably contributed to both the environment of repression that shaped the trajectories of the Arab uprisings as well as the poor capacity of local human rights networks to respond adequately in their aftermath. I therefore argue that the impact of U.S. regional hegemony in the Middle East generates a responsibility to protect refugees fleeing the violence that has erupted in this context. This aspect also underscores an opportunity for the United States to address the legacy of its double standards regarding human rights principles and policy actions in the region—a significant source of distrust and antipathy toward the United States capitalized on by militant groups—by fulfilling RtoP through refugee protections.

## THE STRENGTHS AND LIMITATIONS OF CULPABILITY

The allocation of responsibility for refugee protections based on culpability carries with it both strengths and weaknesses. While there is evidence that framing an in-group as responsible for harm can motivate reparative intentions,<sup>70</sup> using the criteria of past and current policies to allocate responsibility raises questions regarding who determines the relative weight of past policies in contributing to complex causal chains and how consequences from interventions supported by more than one actor can be allocated fairly across parties. How, for example, does one allocate responsibility among the chief initiator of the war (the United States) and coalition partners such as the United Kingdom and Australia? How should the relative weight of the Iraq War in the formation of ISIS and in the ideological transformation of global Salafist militants be considered vis-à-vis the roles of other key actors, such as Saudi Arabia? Adding to the complexity of allocating responsibility in Syria is the fact that Iran and Hezbollah played significant roles in providing regional support to Assad. Russia's culpability-based responsibilities are particularly noteworthy in light of its military backing of the Assad regime and the role of its airstrikes in causing Syrian civilian harm and displacement.

Refugee responsibility-sharing systems will undoubtedly be vulnerable to arguments that complex causal chains and the contributions of multiple agents ultimately dilute the culpability-based responsibilities of any one agent. But if we look again to climate justice, similar arguments have arisen in allocating responsibility for greenhouse gas emissions, to which Henry Shue has responded that the contributions of multiple actors “cannot be a reason for the United States to

continue to do nothing now,” particularly as failure to act exacerbates the problem, generating new and additional layers of culpability.<sup>71</sup> Difficulty in quantifying causal links does not legitimate the postponement of action. Given an increasingly complex and interdependent security environment, states must develop governance and responsibility-sharing mechanisms poised to engage multicausality. Directly grappling with the complexities of allocating culpability also offers a valuable opportunity to address the legitimacy issues associated with normative frameworks like RtoP. By problematizing the dynamics of power asymmetries and seeking to hold powerful actors such as the United States accountable for policy decisions that have severe consequences for the least advantaged members of the international community, RtoP and its potential responsibility-sharing mechanisms can facilitate greater equity in the shouldering of the responsibility to receive and protect refugees and can counter perceptions that conflate RtoP with neo-imperialism and forceful intervention.

In addition to calling on scholars to be mindful of the social context in which politics unfolds, political realism urges scholars to be attentive to historical lessons.<sup>72</sup> In this vein it is important to note that in both the Vietnam and Kosovo crises, U.S. causal involvement did ultimately shape U.S. leadership in initiating responsibility-sharing arrangements.<sup>73</sup> However, in other cases where arguments could be made for culpability, the refugee response has been limited. For example, as part of its containment strategy during the cold war, the United States supported the authoritarian regimes of Haitian presidents François and Jean-Claude Duvalier, whose corruption, human rights violations, and oppression produced a refugee crisis in the 1980s. Haitian requests for political asylum were largely rejected, however, and U.S. immigration authorities routinely detained and deported Haitian asylum seekers. This juxtaposition underscores the difficulty of demanding adherence to a culpability-based responsibility-sharing model in cases where culpability takes the form of broader foreign policy decisions regarding long-term support for authoritarian regimes, rather than a direct military intervention.

Because the legitimacy of RtoP as refugee protection is ultimately dependent on addressing issues of equity as well as accountability, the failure to acknowledge and respond in situations of culpability presents a significant hurdle to effective responsibility-sharing. In the climate justice literature, scholars have observed that the discourse surrounding allocations of responsibility can be powerful in shaping how parties conceptualize problems and responses.<sup>74</sup> Here, proponents

of RtoP as refugee protection should heed this lesson and recognize the need for greater attention to issues of culpability in public discourse and deliberation surrounding humanitarian displacement crises. Iraqi displacement was largely ignored by the U.S. State Department and by U.S. legislators until 2007, when a series of Senate hearings highlighted the “heavy responsibility” of the United States in generating the humanitarian crisis.<sup>75</sup> As policy actors in the United States have increasingly engaged with proposals to halt the entry of all Syrian and Iraqi (or even all Muslim) refugees, there is an urgent need for renewed discussion of culpability vis-à-vis RtoP and refugee response.

## CONCLUSIONS: LINKING CULPABILITY WITH NATIONAL INTERESTS

I have argued that integrating culpability as an important criterion in allocating responsibilities can facilitate greater equity and bolster the legitimacy of refugee responsibility-sharing and RtoP by directly engaging the dynamics of power asymmetries and holding key actors accountable for their policy decisions. Given political realism’s insistence on grounding argumentation in a social and historical understanding that is attentive to the constraints of “the practice of real politics,”<sup>76</sup> I also recognize the challenges of implementing a culpability-based approach. States may resist acknowledging their contributions to refugee crises, and may seek to use debates over establishing culpability in situations of complex causal chains to justify limited action. A related challenge emerges in convincing states that culpability is not fundamentally at odds with national interests, particularly if acknowledging wrongdoing in past policy actions is linked explicitly with greater costs moving forward. While the caveats to the culpability argument are therefore significant, it is worth reiterating that appeals to refugee responsibility-sharing solely on the basis of capability and generalized moral obligations have failed to stimulate adequate response, and have done little to address the equity and accountability concerns that are pivotal to the legitimacy of RtoP. Moreover, there is some historical evidence, as I have discussed above, that a state’s recognition of its causal involvement in refugee-producing conflicts can facilitate action. In this concluding section I offer some potential strategies for integrating both culpability and national interests into a framework for advocating RtoP as refugee protection.

First, arguments for RtoP as refugee protection should be articulated in terms of cooperative security and collective goods. In climate governance work, frames emphasizing the earth's atmosphere as a global public good have supported arguments that preserving its health is in the interest of all states. Explicit connections between environmental harm and the wellbeing of states have generated attention to "environmental security" issues, which provides an impetus for action. RtoP as refugee protection may benefit from a similar strategy, emphasizing national interests and refugee responsibility-sharing as a global public good. As Richard Beardsworth notes, "Without self-interest, international moral action on the part of a state is highly improbable since its primary moral and legal obligations are to its own people."<sup>77</sup> States developed an international regime to assist refugees following World War II in part because they recognized that organized sharing promoted national interests by yielding greater predictability, greater international order, and lower transaction costs in the face of a displacement emergency.<sup>78</sup>

Linking culpability-based (and capacity-based) refugee responsibilities to national interests could be particularly productive in light of an evolving international security environment in which policymakers increasingly recognize how intrastate tensions facilitate regional instability. The ongoing threat of ISIS as both a nonstate and pseudo-state actor that has demonstrated a will and capacity to engage in violence locally and globally underscores the need for an international protective infrastructure. As such groups "unleash[ing] violence across longer distances become more dispersed and more lethal, the world will need to have standby capacities to cope with the damage they inflict," including the refugee flows produced by their violence.<sup>79</sup> RtoP should be articulated within a cooperative security paradigm that connects upholding principles of equity and legitimacy regarding refugee protection to the self-interest and survival of states. Legitimacy necessitates addressing issues of power asymmetry and culpability-based responsibility. In the case of the United States, upholding international norms and facilitating solutions to collective action problems arguably strengthens U.S. authority and legitimacy. In an era of unprecedented interdependence, it is essential that states build cooperative frameworks and uphold international norms such as RtoP to cope with transnational threats. Arguments linking culpability-based responsibility to national interests should therefore emphasize that the development of effective policies on terrorism and the resolution of refugee crises alike necessitate that states engage with international institutions and frameworks of responsibility-sharing to solve problems in a globalized context.



In the case of the United States, arguments linking culpability-based responsibility to national interests should stress that the erosion of U.S. legitimacy vis-à-vis its foreign policy double standards regarding human rights undermines its national security, as does its failure to acknowledge its special responsibilities toward refugees fleeing mass atrocity situations shaped by U.S. policy actions. In an attempt to overcome barriers associated with acknowledging wrongdoing, the acceptance of responsibility should be framed as an opportunity to repair relations with foreign populations that have been harmed by U.S. policy actions, particularly in the Middle East. Conflict resolution scholars have found that acknowledging culpability is pivotal to reconciliation,<sup>80</sup> and social psychologists have observed that accepting responsibility for negative behavior is less threatening to self-identity when the situation is perceived as an opportunity for learning and for personal and relational growth.<sup>81</sup> Members of Congress and the American public may be more inclined to view the acknowledgement of culpability as supportive of national interests if they view the situation as an opportunity for learning from past mistakes, improving relations with foreign populations, and, consequently, improving national security.

Taking into account the contemporary realities of local politics,<sup>82</sup> such arguments unquestionably face hurdles with regard to nativist and securitized constructions of the refugee threat, as well as the dynamics of partisan conflict and political polarization in the United States. Culpability arguments are likely to resonate more with ideological liberals and Democrats. For example, in Matthew Leep's study of partisan congressional debates about U.S. culpability, strategic interests, and civilian casualties in the Iraq War, he notes that it was largely Democratic members of Congress who facilitated "concern, guilt, and sympathy for distant suffering" in Iraq.<sup>83</sup> Among the U.S. public, Democrats are also significantly more likely than Republicans to believe the Iraq War shaped the emergence of the Syrian refugee crisis and to support taking in refugees from Syria and other Middle Eastern countries.<sup>84</sup> Following political realism's attentiveness to motivating those who "need to be convinced" might mean, in the case of the United States, focusing on appeals to ideological conservatives. Some potential paths might include framing culpability-based responsibilities in terms of traditional American values, religiosity, American exceptionalism, and national security.

While these themes are prevalent within conservative and Republican narratives of partisan identity, they also resonate with notions of American identity among broader segments of the U.S. public. There is a long tradition of calls for self-

criticism and reflection in American political culture and identity rhetoric; particularly relevant is the “Jeremiad” rhetorical genre, which accepts responsibility for past transgressions in calling for “a greater adherence to traditional American values.”<sup>85</sup> This narrative of American identity fuses scripture prophecy with Enlightenment ideals and links progress to notions of redemption.<sup>86</sup> Appeals to American values and constructions of American identity regarding religiosity and exceptionalism<sup>87</sup> might permit efficacious arguments connecting culpability to national interests. In fact, some support for the pragmatics of this approach can be found in recent efforts among American evangelicals<sup>88</sup> and other faith-based groups<sup>89</sup> advocating for Syrian refugees.

Engaging constituents’ security concerns is especially pertinent given the securitization of refugees from Muslim-majority states vis-à-vis the threat of ISIS. Arguments integrating culpability and national interests should articulate how refugee protections can serve to enhance rather than undermine U.S. national security. Audrey Kurth Cronin, for example, argues that providing protection to the civilians fleeing ISIS-controlled territory is an important component for a U.S. offensive containment policy.<sup>90</sup> Framed in other terms, the closing of borders to refugees by the United States and European countries can undermine counterterrorism efforts by “validat[ing] jihadist claims about the immorality and hypocrisy of the West.”<sup>91</sup> Concrete actions to fulfill RtoP through offering protections to Syrians and Iraqis fleeing mass atrocity crimes can also address the perception that the United States is “anti-Muslim,” a notion that is used for recruitment by militant Salafist groups.

In sum, arguments for fulfilling RtoP through refugee protection can ultimately be strengthened within the public sphere and find resonance with constituents by emphasizing that such protections can serve national interests. Using a culpability-based approach will bolster cooperative security, combat the narratives of militant groups such as ISIS, provide opportunities for reconciliation, and counter perceptions of human rights double standards. While negotiating the constraints associated with convincing American audiences to acknowledge culpability and its intersections with national interests is by no means an easy task, appeals to national security, identity, and values may provide productive starting points to motivate action.

#### NOTES

- <sup>1</sup> See Alex J. Bellamy, “The Responsibility to Protect Turns Ten,” *Ethics & International Affairs* 29, no. 2 (2015), p. 182; and Derek Averre and Lance Davies, “Russia, Humanitarian Intervention and the Responsibility to Protect: The Case of Syria,” *International Affairs* 91, no. 4 (2015), p. 819.

- <sup>2</sup> Ban Ki-moon, "Responsibility to Protect: Timely and Decisive Response: Report of the Secretary-General," UN General Assembly/Security Council, document A/66/874-S/2012/578, July 25, 2012, [www.un.org/en/ga/search/view\\_doc.asp?symbol=A/66/874](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/66/874).
- <sup>3</sup> See Adrian Gallagher, "Syria and the Indicators of a 'Manifest Failing,'" *International Journal of Human Rights* 18, no. 1 (2014), pp. 1–19.
- <sup>4</sup> "The Responsibility to Protect," Office of the Special Adviser on the Prevention of Genocide, [www.un.org/en/preventgenocide/adviser/responsibility.shtml](http://www.un.org/en/preventgenocide/adviser/responsibility.shtml).
- <sup>5</sup> While this article bypasses a fuller discussion of the ways in which RtoP remains contested as an international norm, it is noteworthy that a great deal of its contestation is linked to "its association with humanitarian intervention and the pervasive belief that its principal aim is to create a pathway for the legitimization of unilateral military intervention." Alex J. Bellamy, "The Responsibility to Protect and the Problem of Military Intervention," *International Affairs* 84, no. 4 (2008), pp. 615–39.
- <sup>6</sup> See David Miller, "David Owen on Global Justice, National Responsibility and Transnational Power: A Reply," *Review of International Studies* 37, no. 4 (2011), p. 2033.
- <sup>7</sup> See James Souter, "Towards a Theory of Asylum as Reparation for Past Injustice," *Political Studies* 62, no. 2 (2014), pp. 326–42; and Jason Ralph and James Souter, "A Special Responsibility to Protect: the U.K., Australia and the Rise of Islamic State," *International Affairs* 91, no. 4 (2015), pp. 709–23.
- <sup>8</sup> In seeking to move away from the reification of refugees as unwanted "burdens," I opt to use the more neutral phrase of "responsibility-sharing" that recognizes refugees might also impart positive contributions to host societies. See Tally Kritzman-Amir, "Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law," *Brooklyn Journal of International Law* 34, no. 2 (2009), pp. 355–93.
- <sup>9</sup> Alexander Betts and Jean-François Durieux, "Convention Plus as a Norm-Setting Exercise," *Journal of Refugee Studies* 20, no. 3 (2007), p. 510.
- <sup>10</sup> Toni Erskine, "Coalitions of the Willing and Responsibilities to Protect: Informal Associations, Enhanced Capacities, and Shared Moral Burdens," *Ethics & International Affairs* 28, no. 1 (2014), pp. 137–38.
- <sup>11</sup> This principle obligates states not to return refugees to their place of persecution.
- <sup>12</sup> Matthew J. Gibney, "Refugees and Justice between States," *European Journal of Political Theory* 14, no. 4 (2015), p. 461.
- <sup>13</sup> UNHCR, "Global Trends: Forced Displacement in 2015," 2016, [www.unhcr.org/en-us/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html](http://www.unhcr.org/en-us/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html).
- <sup>14</sup> Alexander Betts, *Forced Migration and Global Politics* (Malden, Mass.: Wiley, 2009), p. 124.
- <sup>15</sup> Luara Ferracioli, "The Appeal and Danger of a New Refugee Convention," *Social Theory and Practice* 40, no. 1 (2014), pp. 130–31.
- <sup>16</sup> Gibney, "Refugees and Justice between States," p. 456.
- <sup>17</sup> Astri Suhrke, "Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action," *Journal of Refugee Studies* 11, no. 4 (1998), p. 410.
- <sup>18</sup> Gregor Aisch and Sarah Almurkhtar, "Seeking a Fair Distribution of Migrants in Europe," *New York Times*, September 22, 2015, [www.nytimes.com/interactive/2015/09/04/world/europe/europe-refugee-distribution.html?\\_r=0](http://www.nytimes.com/interactive/2015/09/04/world/europe/europe-refugee-distribution.html?_r=0).
- <sup>19</sup> Angeliki Dimitriadi, "Burden Sharing, Where Art Thou?" *European Council on Foreign Relations*, November 11, 2015, [www.ecfr.eu/article/commentary\\_burden\\_sharing\\_where\\_art\\_thou5003](http://www.ecfr.eu/article/commentary_burden_sharing_where_art_thou5003).
- <sup>20</sup> See Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Ithaca, N.Y.: Cornell University Press, 2009).
- <sup>21</sup> See, for example, Emma Haddad, *The Refugee in International Society: Between Sovereigns* (Cambridge: Cambridge University Press, 2008).
- <sup>22</sup> Mary Robinson, "Climate Justice: Challenge and Opportunity," *Irish Studies in International Affairs* 22 (2011), p. 68.
- <sup>23</sup> Caroline Deere-Birkbeck, "Global Governance in the Context of Climate Change: The Challenges of Increasingly Complex Risk Parameters," *International Affairs* 85, no. 6 (2009), p. 1192.
- <sup>24</sup> Daniel Bray, "Pragmatic Ethics and the Will to Believe in Cosmopolitanism," *International Theory* 5, no. 3 (2013), p. 449.
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- <sup>26</sup> Michael Barutciski and Astri Suhrke, "Lessons from the Kosovo Refugee Crisis: Innovations in Protection and Burden-Sharing," *Journal of Refugee Studies* 14, no. 2 (2001), pp. 109–10.
- <sup>27</sup> Souter, "Towards a Theory of Asylum as Reparation for Past Injustice," p. 326.
- <sup>28</sup> Ralph and Souter, "A Special Responsibility to Protect," p. 712.

- <sup>29</sup> Robyn Eckersley, "The Common but Differentiated Responsibilities of States to Assist and Receive 'Climate Refugees,'" *European Journal of Political Theory* 14, no. 4 (2015), pp. 481–500.
- <sup>30</sup> See Enzo Rossi and Matt Sleat, "Realism in Normative Political Theory," *Philosophy Compass* 9, no. 10 (2014), p. 697.
- <sup>31</sup> Edward Hall, "How to Do Realistic Political Theory (and Why You Might Want to)," *European Journal of Political Theory*, DOI: 1474885115577820 (2015), pp. 10–11.
- <sup>32</sup> Enzo Rossi, "Justice, Legitimacy and (Normative) Authority for Political Realists," *Critical Review of International Social and Political Philosophy* 15, no. 2 (2012), p. 149.
- <sup>33</sup> Bray, "Pragmatic Ethics and the Will to Believe in Cosmopolitanism," p. 451.
- <sup>34</sup> Joseph E. Stiglitz, "Sharing the Burden of Saving the Planet: Global Social Justice for Sustainable Development: Lessons from the Theory of Public Finance," in Joseph E. Stiglitz and Mary Kaldor, eds., *The Quest for Security: Protection without Protectionism and the Challenge of Global Governance* (New York: Columbia University Press, 2013), p. 171.
- <sup>35</sup> Daniel C. Esty, "Revitalizing Global Environmental Governance for Climate Change," *Global Governance* 15, no. 4 (2009), p. 429.
- <sup>36</sup> Kathryn Hochstetler, "Climate Rights and Obligations for Emerging States: The Cases of Brazil and South Africa," *Social Research* 79, no. 4 (2012), p. 967.
- <sup>37</sup> Steve Vanderheiden, "Globalizing Responsibility for Climate Change," *Ethics & International Affairs* 25, no. 1 (2011), p. 80.
- <sup>38</sup> Ralph and Souter, "A Special Responsibility to Protect," p. 717.
- <sup>39</sup> Henry Shue, "Face Reality? After You!—A Call for Leadership on Climate Change," *Ethics & International Affairs* 25, no. 1 (2011), p. 22.
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- <sup>41</sup> Erskine, "Coalitions of the Willing and Responsibilities to Protect," p. 134.
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- <sup>44</sup> International Rescue Committee, "International Rescue Committee: US Commitment to Accept Up to 8,000 Syrians Not Enough," Press Release, September 2, 2015, [www.rescue.org/press-releases/international-rescue-committee-us-commitment-accept-8000-syrians-not-enough-26191](http://www.rescue.org/press-releases/international-rescue-committee-us-commitment-accept-8000-syrians-not-enough-26191).
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- <sup>46</sup> Vanderheiden, "Globalizing Responsibility for Climate Change," p. 76.
- <sup>47</sup> Souter, "Towards a Theory of Asylum as Reparation for Past Injustice," p. 338.
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- <sup>50</sup> Benjamin Isakhan, "The De-Baathification of Post-2003 Iraq: Purging the Past for Political Power," in Isakhan, *The Legacy of Iraq*, p. 22.
- <sup>51</sup> See Benjamin R. Banta, "Just War Theory and the 2003 Iraq War Forced Displacement," *Journal of Refugee Studies* 21, no. 3 (2008), pp. 261–84; and Howard Adelman, "Ethnic Cleansing in Iraq: Internal and External Displacement," in Isakhan, *The Legacy of Iraq*, p. 180.
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- <sup>54</sup> See, for example, Ronan O'Callaghan, *Walzer, Just War and Iraq: Ethics as Response* (New York: Routledge, 2016).
- <sup>55</sup> Adelman, "Ethnic Cleansing in Iraq," pp. 177–78.
- <sup>56</sup> Colin P. Kelley et al., "Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought," *PNAS* 112, no. 11 (2015), p. 3245.
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- <sup>62</sup> Anne Barnard and Karam Shoumali, "U.S. Weaponry is Turning Syria into Proxy War with Russia," *New York Times*, October 12, 2015, [www.nytimes.com/2015/10/13/world/middleeast/syria-russia-airstrikes.html](http://www.nytimes.com/2015/10/13/world/middleeast/syria-russia-airstrikes.html).
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- <sup>69</sup> David Lesch, "The Uprising that Wasn't Supposed to Happen: Syria and Arab Spring," in Haas and Lesch, *The Arab Spring*, p. 85.
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- <sup>72</sup> See Hall, "How to Do Realistic Political Theory," pp. 4–5.
- <sup>73</sup> Barutciski and Suhrke, "Lessons from the Kosovo Refugee Crisis," p. 109.
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