



THE AMERICAN  
UNIVERSITY IN CAIRO

SCHOOL OF  
GLOBAL AFFAIRS  
AND PUBLIC POLICY

CENTER FOR MIGRATION AND REFUGEE STUDIES

Seminar Series

## "The Ethics of Refugee Policy: An Overview"



**Georg Meggle**

Professor Emeritus in Philosophy, Leipzig University, Germany



THE AMERICAN  
UNIVERSITY IN CAIRO

SCHOOL OF  
HUMANITIES AND  
SOCIAL SCIENCES

# The Ethics of Refugee Policy: Famine, Wars and Migration

*A Workshop in Practical Ethics*

**Georg Meggle**

Professor Emeritus, Leipzig University, Germany

**Alessandro Topa**

Assistant Professor of Philosophy, The American University in Cairo



Confronted with the present refugee crisis, humans on all sides seem to be torn between utopian optimism and utmost despair. This holds for philosophers too. The references to the duties of humanity are confronted with the rights of collective self-determination. Programs of inclusion are being blocked due to fears of strengthening the forces of exclusion.

Many take the situation's extreme complexity as an excuse for avoiding any intellectual engagement, and thus implicitly refuse serious, sustained, rational and moral discussion. This workshop, however, takes the opposite route: Based on a selection of seminal papers on the ethics of refugee policy, we want to look at the facts, the involved values and norms as well as the logicity of the arguments proposed. It is high time to start this moral project, as the present crisis will probably turn out to be just the beginning.

**October 19, November 2, 23, 30 and December 7, 2016**

**6:45 - 8:45 pm**

**Prince Alwaleed Bin Talal Bin Abdulaziz Alsaud Hall, Room CP75**

**AUC New Cairo**

For sources of readings and more information contact  
the Department of Philosophy  
tel: 20.2.2615.1615  
a.topa@aucegypt.edu

PART I

ETHICS

PART II

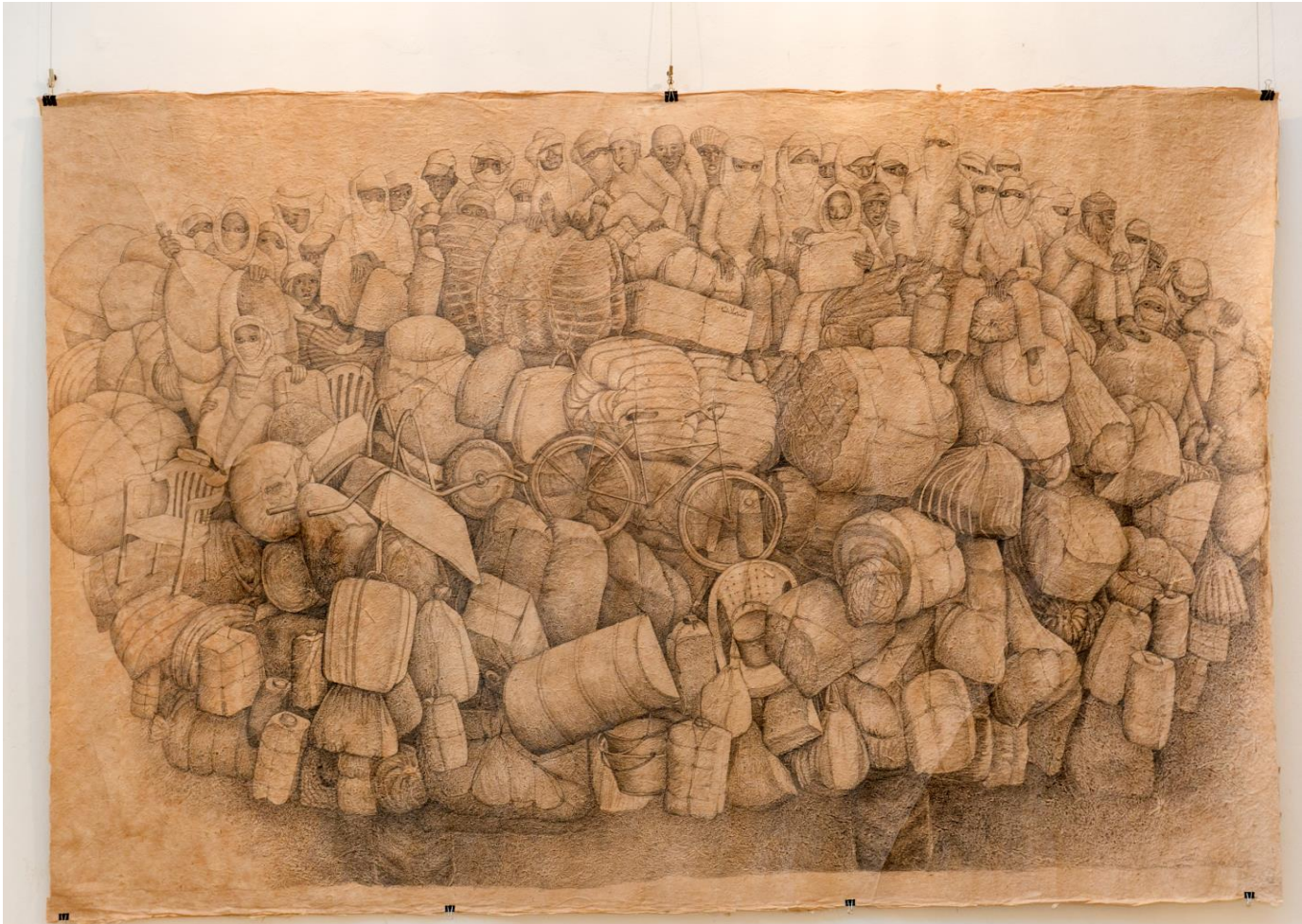
REFUGEE ETHICS – In General

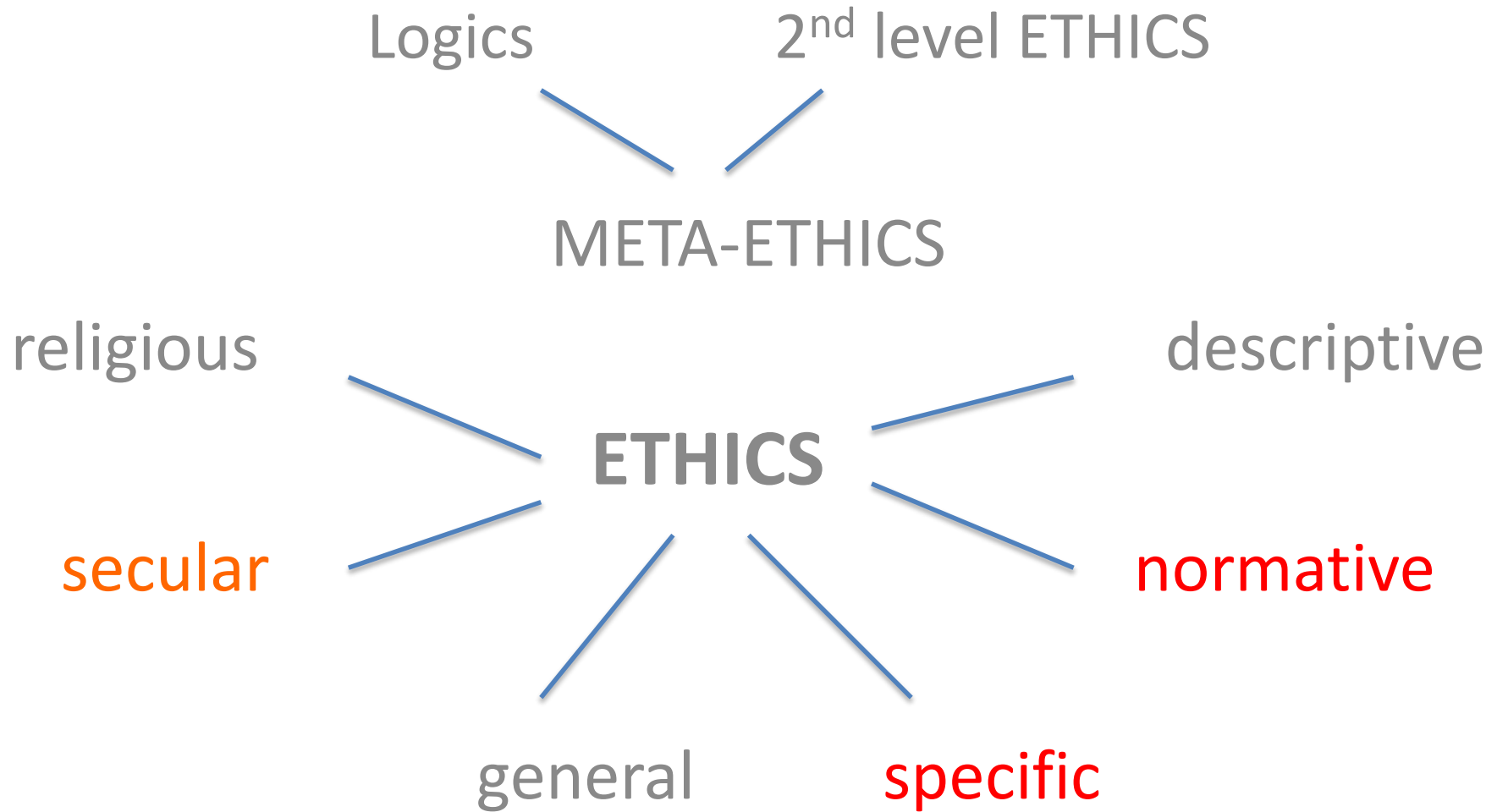
PART III

RE – The Central Problem

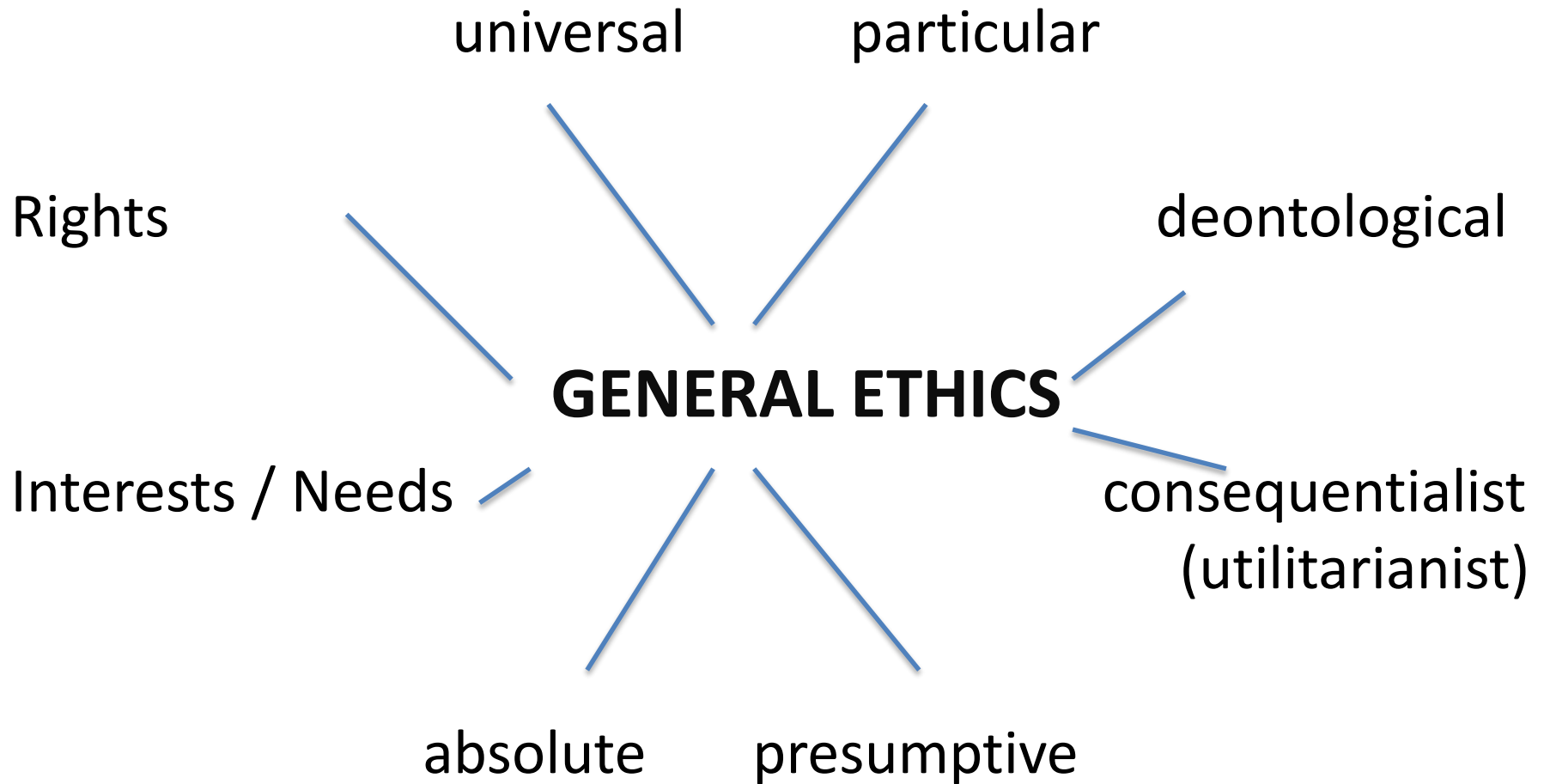
# PART I

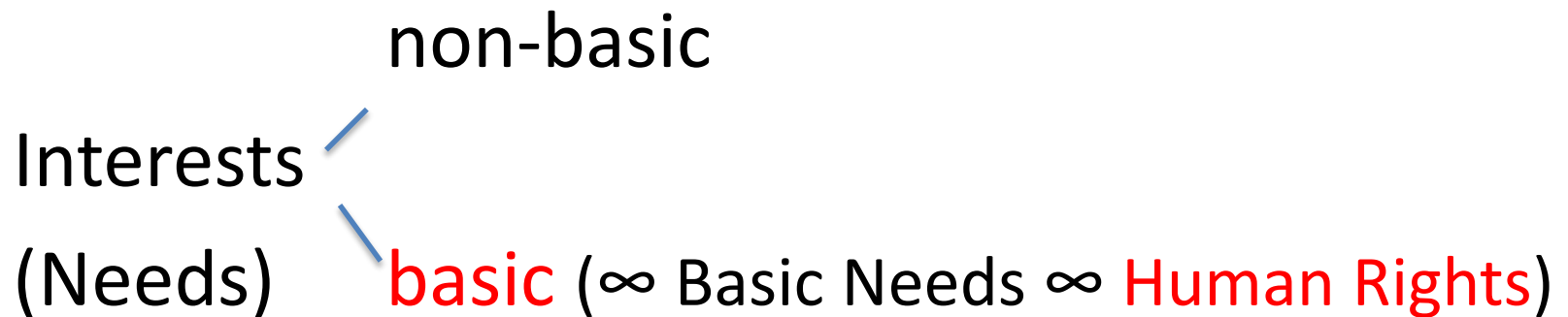
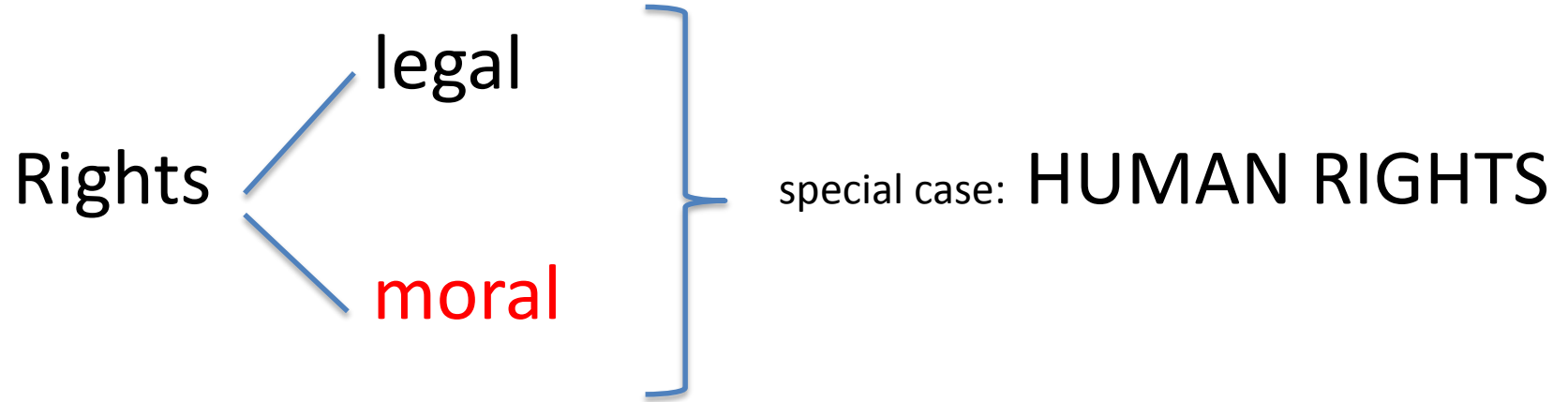
## ETHICS





e.g. **ETHICS of REFUGEE-POLICY**





# General Principles

## Golden Rule

- Positive version: Do to others what you would want them to do to you.
- Negative version: Do not to others what you would want them not to do to you.

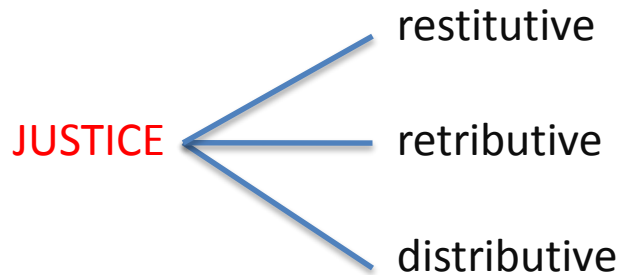
Neminem laedere      Do not harm anybody

Respice finem      Look at the Consequences

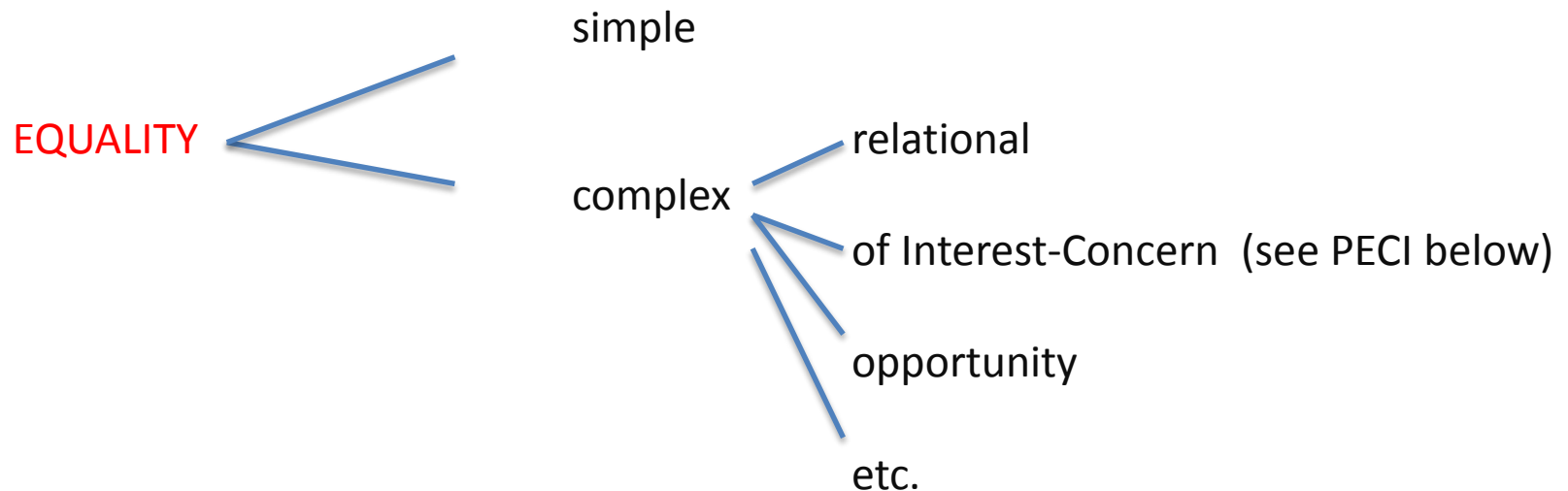
## Mutual Aid Principle (MAP)

- Positive Assistance is obligatory, if
- (i) it is (urgently) needed and
  - (ii) it's risks and costs are relatively low.

# JUSTICE & EQUALITY

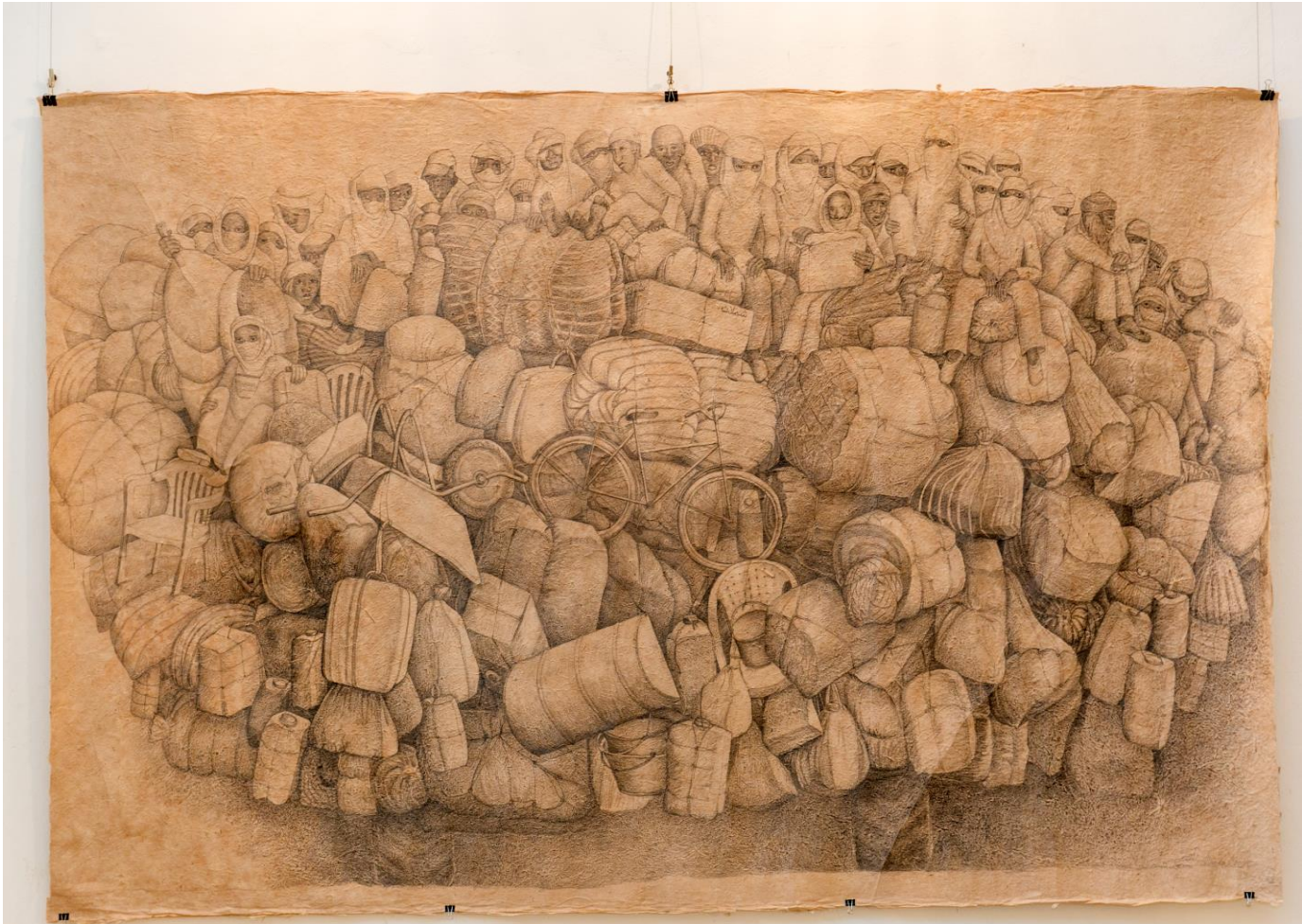


## No Justice without EQUALITY



## PART II

### REFUGEE ETHICS - In General



## PART II      REFUGEE ETHICS - In General

### II.1            META-ETHICAL PREMILINARIES

A Grammar

B Semantics

### II.2            Normative REFUGEE ETHICS

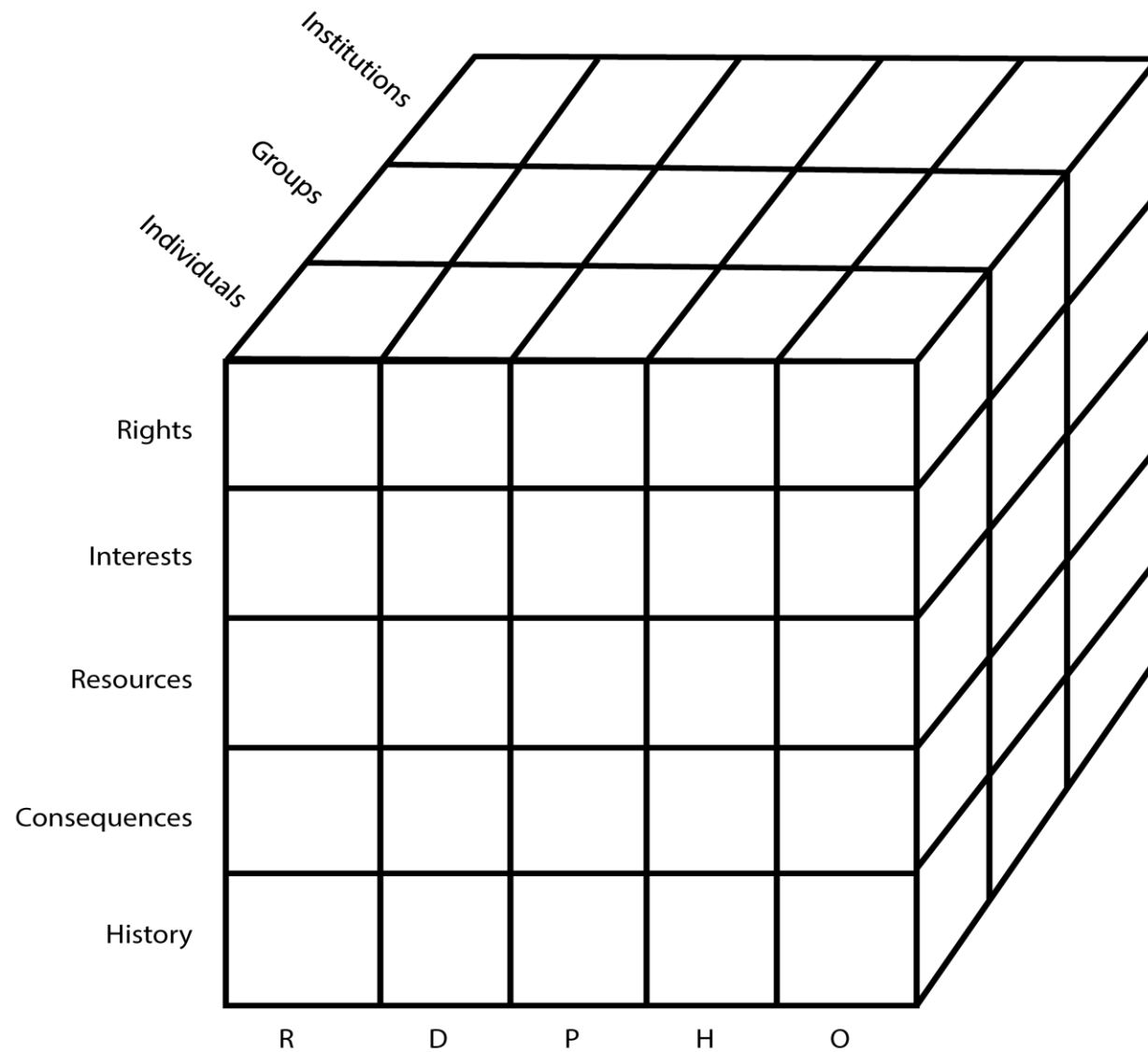
Logical GRAMMAR of Refugee Policing (RP)

Aspects of & Agents in RP:

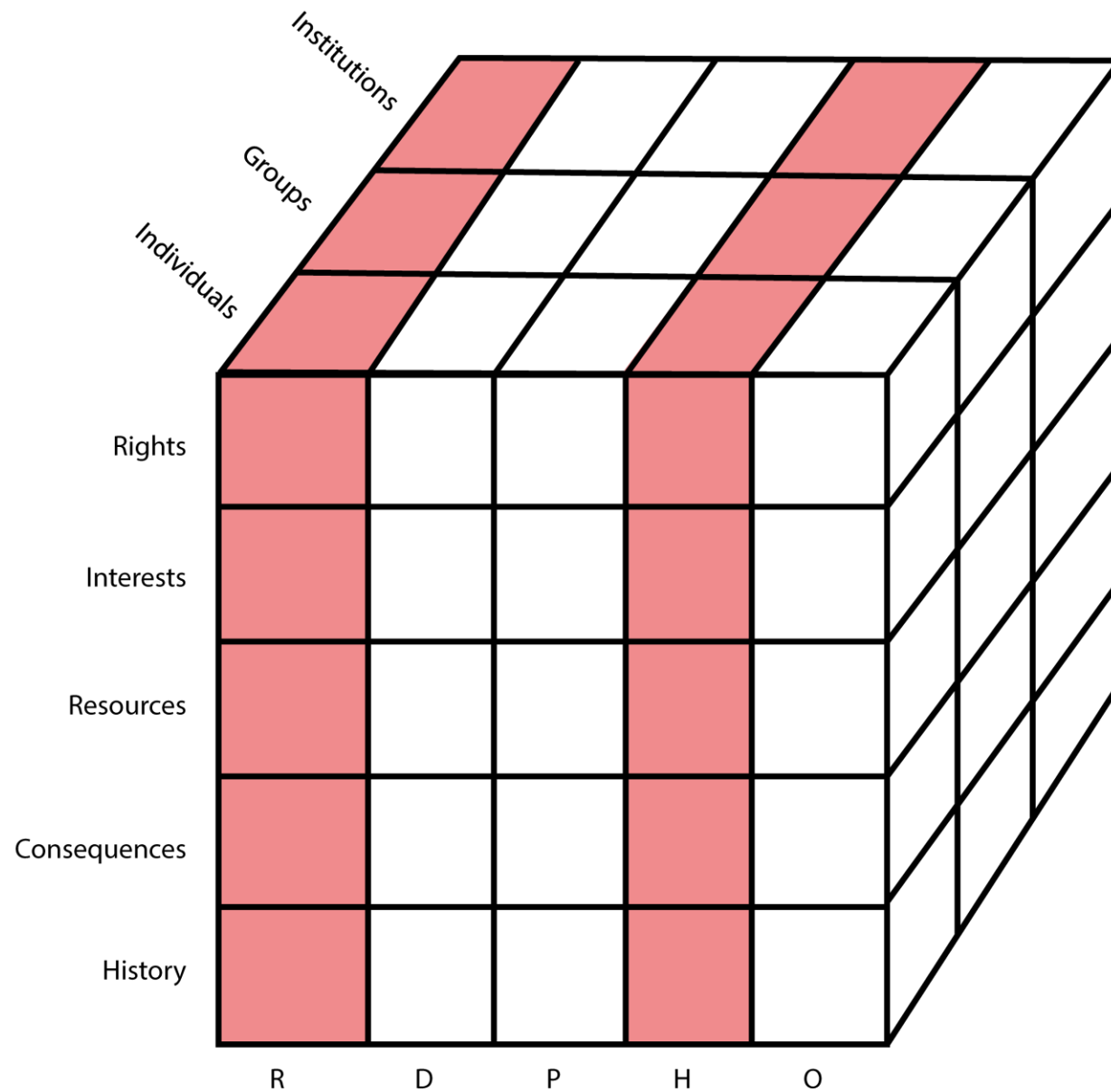
RIGHTS / INTERESTS / RESOURCES / CONSEQUENCES and HISTORY of  
INDIVIDUALS / GROUPS / INSTITUTIONS of

EXAMPLE		
I	the <b>R</b> s (Refugees) themselves	<b>R</b> (LEILA HOMSY)
II	R's Home / <b>D</b> eparture State:	<b>D</b> (SYRIA)
III	R's <b>P</b> resent Residence State:	<b>P</b> (TURKEY)
IV	R's (intended) <b>H</b> ost State:	<b>H</b> (NORWAY)
V	<b>O</b> thers:	<b>O</b> (You / UN)

## LOGICAL SPACE OF REFUGEE THEORIES



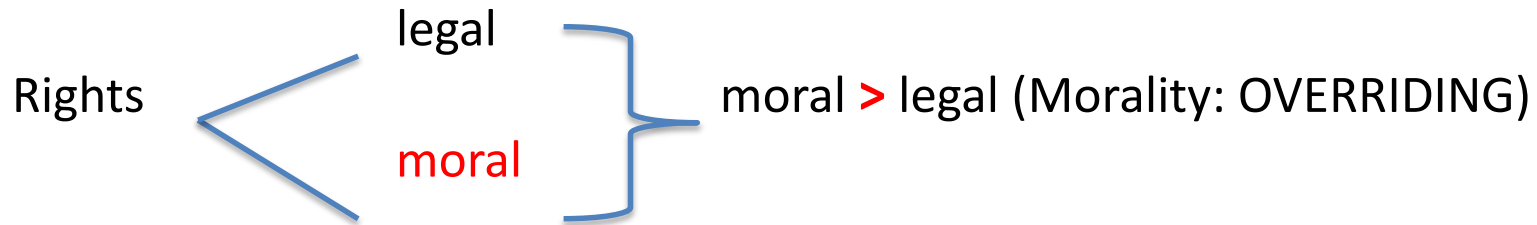
## LOGICAL SPACE OF REFUGEE THEORIES



My Gift  
To  
CMS  
😊

## SOME SHORT COMMENTS

On **Rights & Interests**, see above PART I



On **Resources**, see usual classification (natural, Human, intellectual ... )

Most relevant (and most often used and mis-used) here:

**Principle**

**Ultra posse nemo obligatur**

Ought implies Can

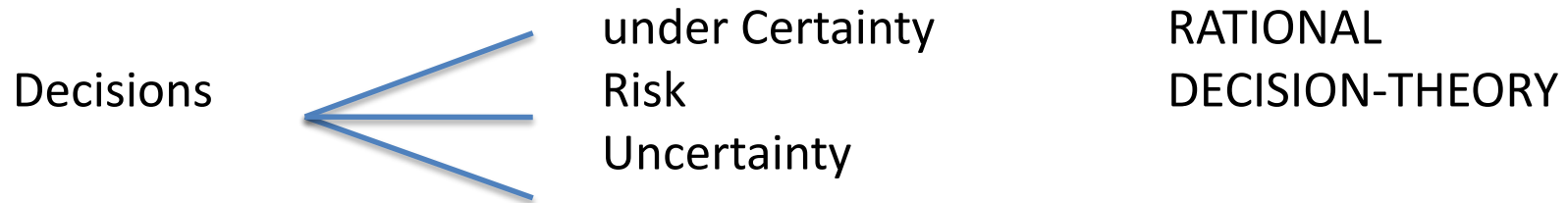
You must not, if you can't

Slogan      „The boat is full“

see **PRAGMATICS** – Section Anti-Immigration Propaganda

## On Consequences:

economic, cultural, political (Effectiveness, Stability, Security)



Consequential Arguments – „the **most difficult** to discuss due to the **complexity of the evidence**“ (Cole, 261).

With regards to the economic consequences of open Refugee Policies, there are „**polar opposite positions**“ claiming either **catastrophe** or the **paradise** of unleashing unrealized market potential (ibid.)

## GENERAL POINT

**Ethical assessments** do depend on **FACTS** !

# Discrepancy between Empirical Sciences vs. Politics and Propaganda

## Highly Relevant:

„Conventional xenophobic wisdom has argued that the consequences ... are uniformly negative for the host welfare state ... However the (empirical) evidence ... does not support this position“ (Cole, 262)

R-ETHICS, as ETHICS in general, should rely on the FACTS, not on Propaganda.

# On History

Most relevant: Causal Responsibility

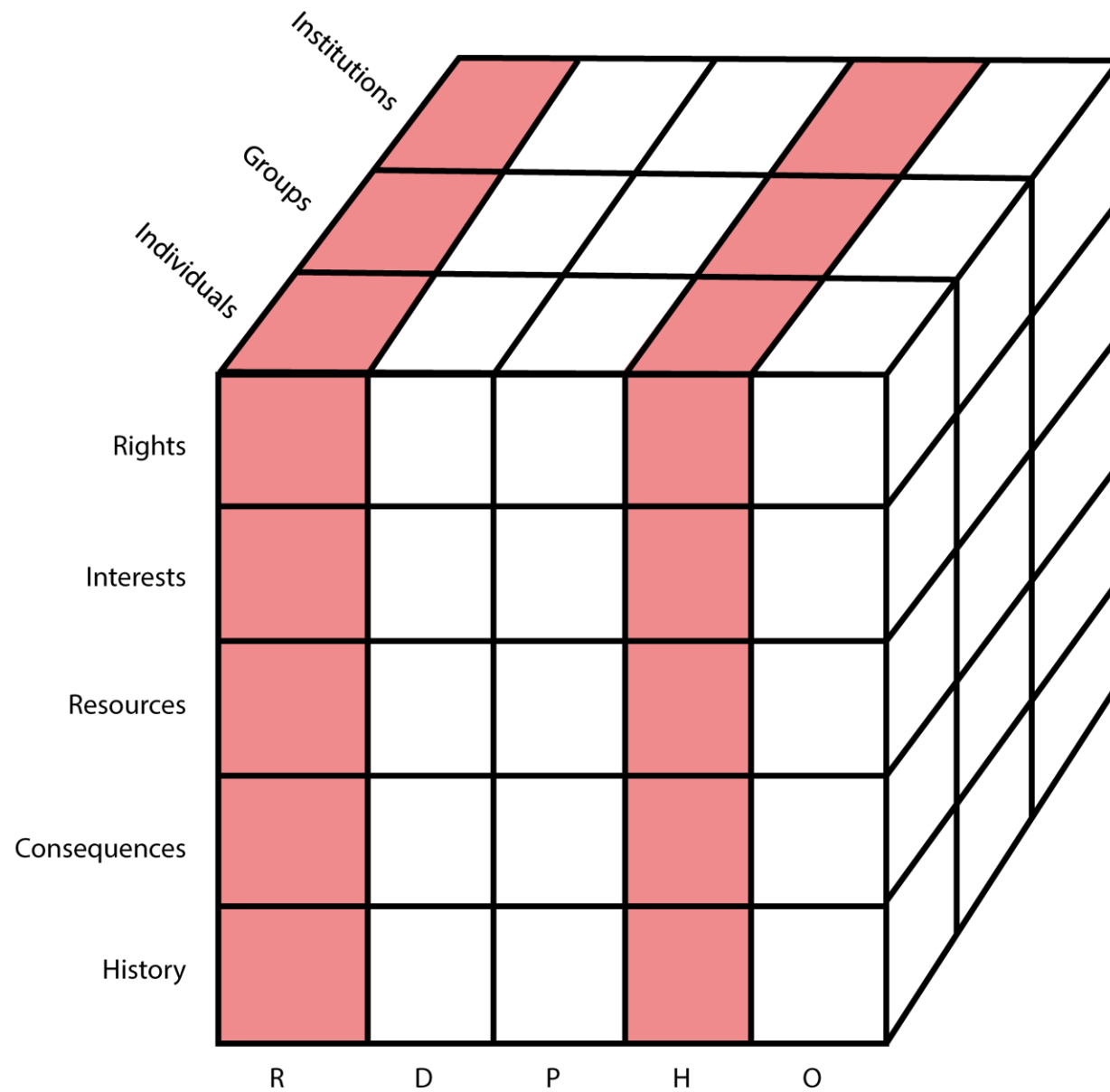
PRINCIPLE of Restitution-Duty for the Parties  
involved in Causing Harm

## Responsibility

In particular with regards to Colonialism, World  
Poverty and Global Destruction

Big Topic for GLOBAL JUSTICE.

## LOGICAL SPACE OF REFUGEE THEORIES



# Individuals / Groups / Institutions

2 radically different Paradigms: Individualism / Collectivism

Program of methodological Individualism  
(MAX WEBER)  $\infty$  Universalism

Program of Prioritizing Concepts of Collectives  
(EMIL DURKHEIM)  $\infty$  Particularism, Communitarianism

New Branch of Philosophical Research: Social Ontology

DEUTSCHE BIBLIOTHEK DER WISSENSCHAFTEN  
German Library of Sciences

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PHILOSOPHISCHE FORSCHUNG / PHILOSOPHICAL RESEARCH

Herausgegeben von / Edited by  
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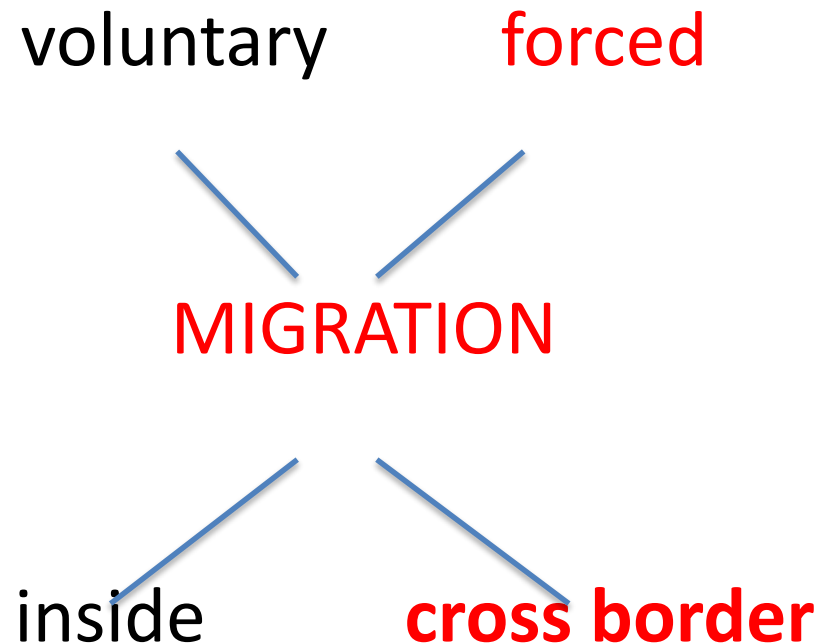
Social Facts  
&  
Collective Intentionality



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DR. HÄNSEL-HOHENHAUSEN AG

FRANKFURT A.M. • MÜNCHEN • LONDON • MIAMI • NEW YORK



Refugee (normal usage)

R = red simple

Refugee (Geneva 51)

R<sub>51</sub> = red + **red bold**

## Who is a Refugee ?

### **Geneva UN-Convention (1951)**

Any Person, who (i) „owing to a wellfounded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is (ii) outside the country of his nationality and (iii) is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country.“ (Article 1A (2))

- **Convention of the OAU (Organization of African Unity) (1969)**

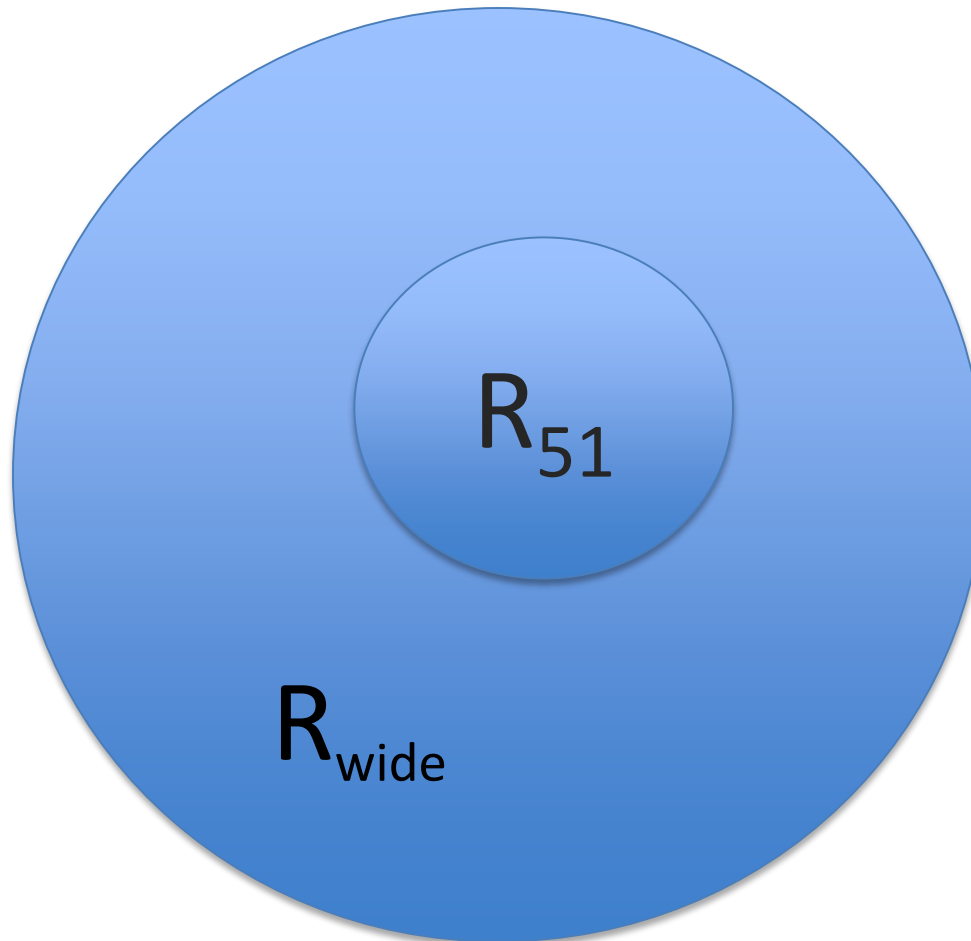
## Article 1 Definition

= Geneva Convention (1951)

- + „The term ‚refugee‘ shall **also** apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of nationality.“

- **Andrew Shacknove: „Who Is a Refugee?“, Ethics 95, 1985, 284:**

Refugee status should only be granted to persons (i) whose government fails to protect their **basic needs**, (ii) who have no remaining recourse other than to seek international restitution of these needs, and (iii) who are so situated that international assistance is possible.



## Why Restriction to $R_{51}$ ?

Geneva-1951 Definition is „the product of real-world **political pressure** from leaders who worry about the **international legal demands** entailed by a more expansive definition“  
(WELLMAN, 119)

(Type of) Political Community

State

National State

Liberal Democracy

Territory

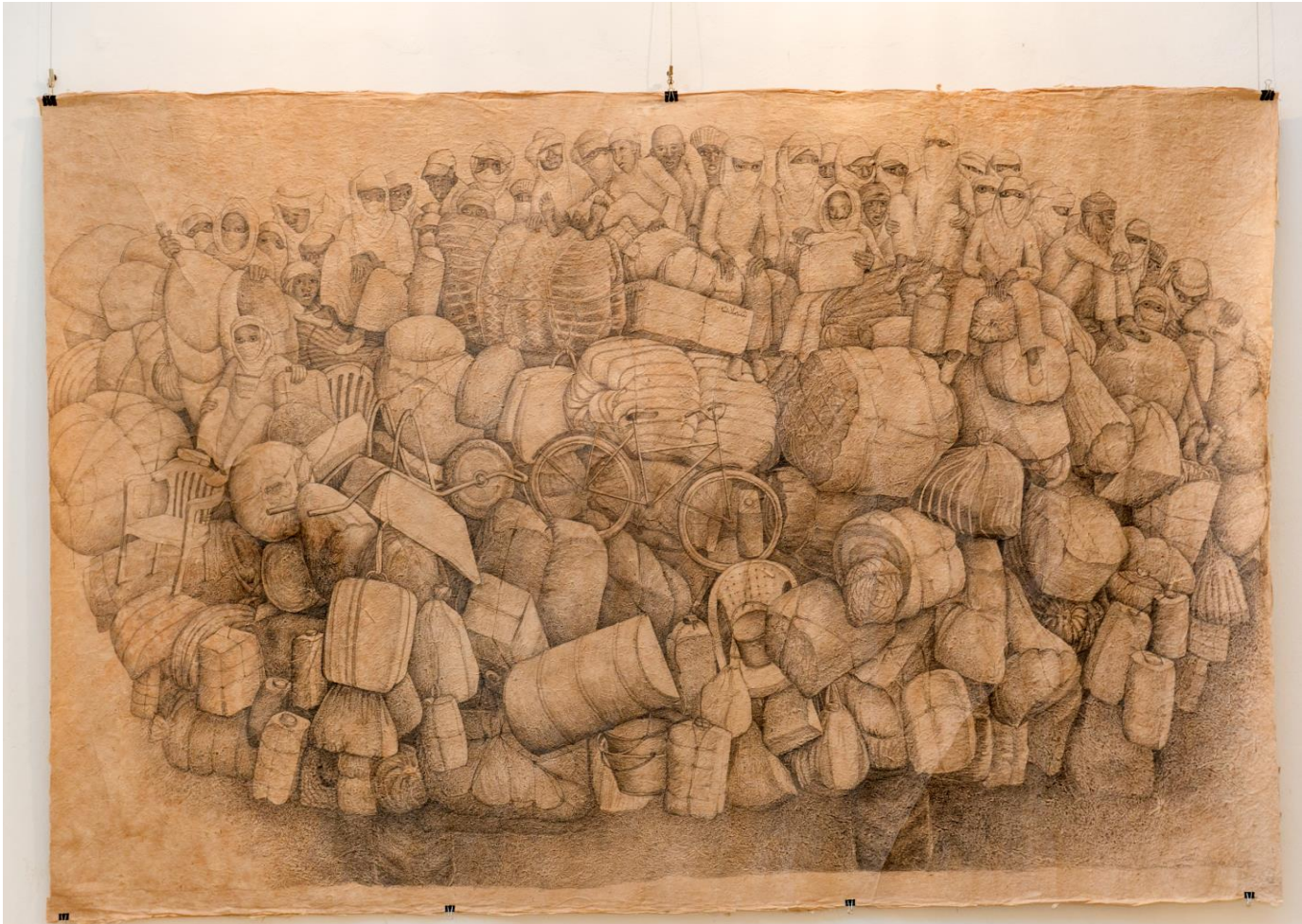
State-Border

Sovereignty

Legitimacy

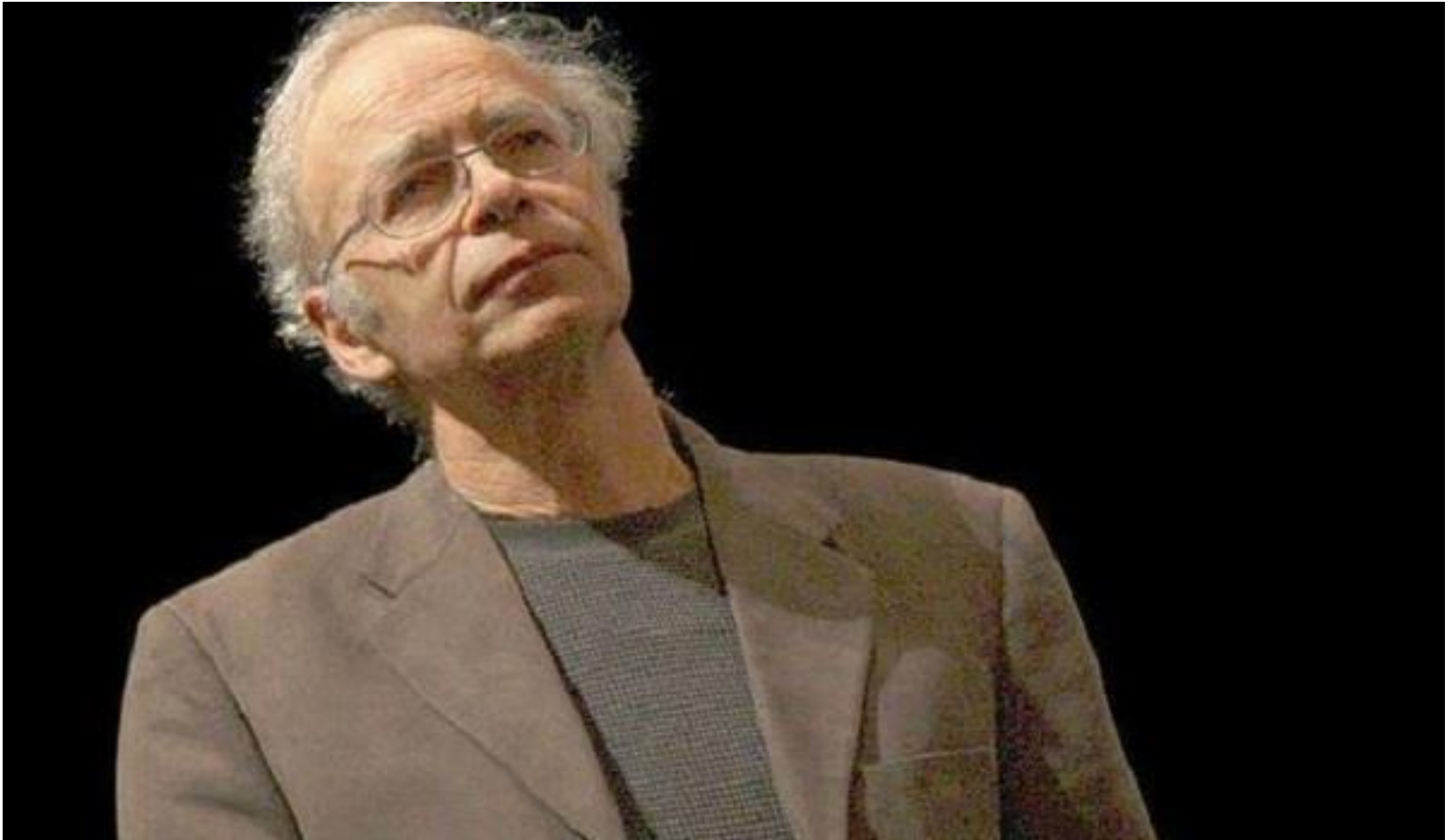
## II.2

# NORMATIVE REFUGEE ETHICS



## II.2      NORMATIVE REFUGEE ETHICS

Peter Singer, \* 1946



PETER & RENATA SINGER

„The Ethics of Refugee Policy “

In: MARK GIBNEY (ed), *Open Borders? Closed Societies? The Ethical and Political Issues*, 1988.

*This Lecture's and our AUC's-Workshop's Title: HOMMAGE to P & R.*

PETER SINGER, *Practical Ethics*, Cambridge, 1979.

Ch. 9, „Insiders and Outsiders“.

## II.2 Normative RE

„**Very few philosophers** have given **any attention** to the issue of refugees, even though it is clearly one of the **major moral issues of our time** and raises significant moral questions about **who is a member** of our **moral community**“ (PS, *Insiders*, 252 f.)

- Harsh critique of **JOHN RAWLS *Theory of Justice*, 1971**. (For RAWLS, „who is a member?“ - no relevant question at all.)

PS ***did*** pay this attention. By

(a) embedding the issue into the wider context of questions of global poverty and inequalities (in *Famine, Affluence and Morality*, 1972); and by

(b) rigorously applying his PECl-Principle.

# PECI: Principle of Equal Consideration of (equal) Interests

Minimal Ethics = No Discrimination

- No Egoism (individual / collective)
- No Sexism
- No Tribalism
- No Nationalism
- No Racism

Instead of Egoismus:

PECI → **EFFECTIVE ALTRUISM**

Applied to Refugee Ethics:

Refugees = members of Our Moral Community

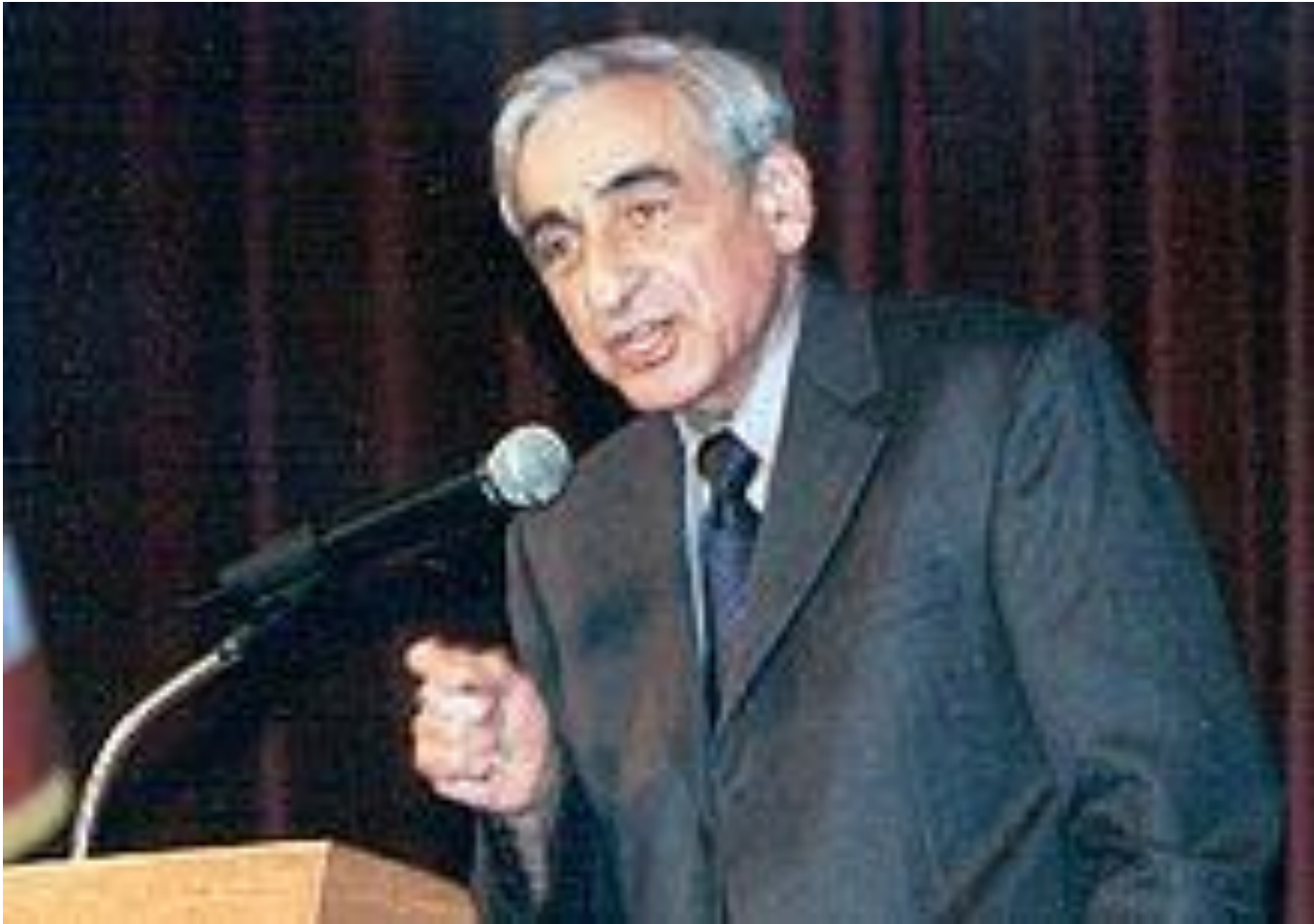
Refugees NEEDS > Insiders' Luxury Interests

# Main Points of SINGER's RE

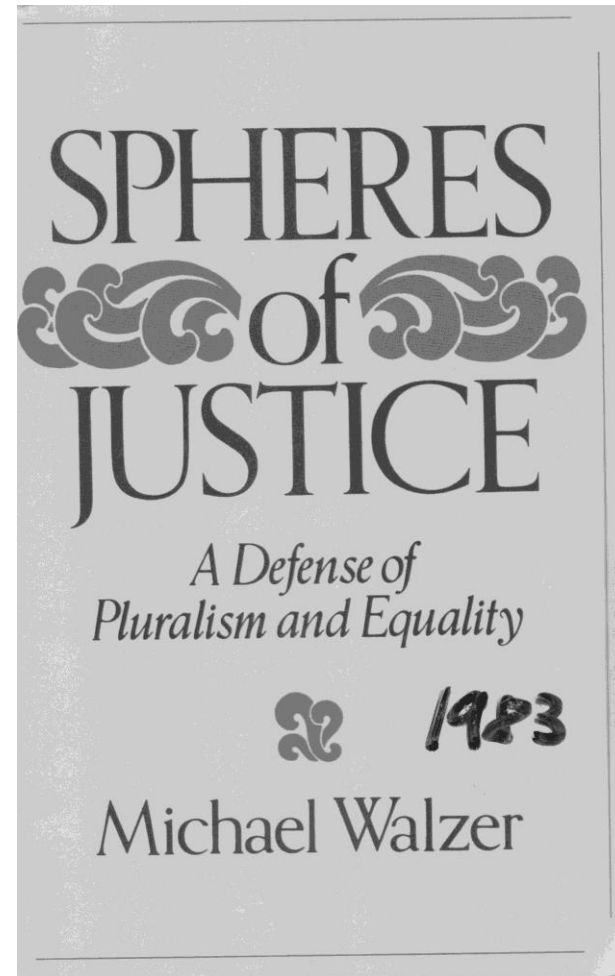
- 1) Critique of  $R_{51}$ -Definition: It „fails to cover the large-scale movements of people in time of war, famine, or civil disturbance ... who are **in equal need** of a refuge“ (PE 250).
- 2) Critique of the „Current Orthodoxy“ (**Ex Gratia** Approach), „that we are under **no moral** or legal **obligation** to accept any refugees at all“ (252).
- 3) Critique of MICHAEL WALZERS „most sophisticated recent attempt to defend“ this Orthodoxy. (Critique only partly justified – as our Workshop suggested.)
- 4) Critique of Australia's R-Policy „as surely morally outrageous“ (260). (Peter engagement in Australia's Parliament)
- 5) „The status quo ... the outcome of a **system of national selfishness** and political expediency, and not the result of a considered attempt to work out the moral obligations of the developed world in a world with 15 million refugees“ (261 – note: reference to 90-ties).

## II.2 Normative RE

Michael Walzer, \* 1935



MICHAEL WALZER  
*Just and Unjust Wars*  
1977



MW – „the only political theorist systematically to apply the **Shared Understandings (= SOCIAL MEANINGS = Communitarian) Approach** to /Immigration-/ Entrance Decisions“ (GIBNEY, 34).

Social Meanings are **STRICTLY SOCIAL FACTS (SSF)** with Respect to a particular *Population (P)*.

DEFINITION:  $SSF_P(A) := A_P$  is true iff it is Common Belief in *P* that *A*

Paradigms: MONEY, LINGUISTIC MEANING

# Theorems

- T1: All Goods in  $P$  are Social Goods in  $P$ .
- T2: In every  $P$  there are Multiple Spheres / Dimensions of Social Goods. (Plurality of SGs)
- T3: **MEMBERSHIP in  $P$**  is itself a Primary SG in  $P$ .
- T4: No Political Community without a **Distinctive Culture**.
- T5: No Distinctive Culture without (potential) Closure.
- T6: No political Community without Closure.**

DEFINITION    **Closure of  $P$**  :=  $P$  has (enforceable) Authority to its own Admissions Policy

# WALZER'S PROXIMITY-PRINCIPLE

P1: *Ps* Admission Decisions may be (rightfully) determined by Proximities.

*This „rightfully“ strongly criticized by SINGER.*

*Remember our descriptive/normative Distinction from the very beginning.*

*In our WORKSHOP: Good Reasons for Application of this distinction to the whole Communitarian Approach of WALZER'S (and maybe others) ?*

# Moral Relevance of PROXIMITY (INTIMACY / COLLECTIVE IDENTITY)

The RE-relevant Characteristics of Political Communities (States) are ‚proved‘ by **Analogies** (Similarities)

= one of the most disputed topics in RE-Discourse

Rights of Associations      →      Rights of STATES ?

like

Neighborhoods

Marriage

Family

Friendship

Clubs

Business Corporations

# MAIN PROBLEM OF ARGUMENTS BY ANALOGY

Analogies may be (heuristically) good as intuition pumps, but (methodologically) endangered by the fallacy of OVER-GENERALIZATIONS.

As noticed explicitly by COLE (see below PART III) in his Arguments against WELLMAN.

# WALZER'S RESTRICTION-PRINCIPLE

P2: *Ps* Admission-Authority has to be  
**restricted** by MAP.

Mutual Aid Principle (MAP)

Positive **Assistance**

is **obligatory**, if

needed and

are relatively low.

*Consequence of P2:*

(i) it is (urgently)

(ii) it's risks and costs

*W's **particularist** Position (re Social Goods, including Membership) restricted by the **Universalistic MAP**.*

# The most central Question in REFUGEE-ETHICS !

WALZER, (p. 44):

„Can a political community **exclude** destitute and hungry, persecuted and stateless – in a word, necessitous – men and women **simply because they are foreigners?**“

# WALZER's Stance re REFUGEE-Admission:

- (1) „Communities must have boundaries; ... They depend with regard to population on a sense of relatedness and mutuality. Refugees must appeal to that sense. One wishes them success; but in particular cases, with reference to a particular state, they may well have **no right to be successful**“. So we have a „**cruel dilemma**“: “Everyone must have a place to live“. But „this is not a right that can be enforced against particular host states“ (50).
- (2) „The right can't be enforced ... until an **international authority** /is/ capable of enforcing it: /but/ such an authority would ... do better to intervene against the states whose brutal policies had driven their own citizens into exile, and so enable them all to go home“ (50) (cf. **Humanitarian Interventions**; and R2P)
- (3) „Actually to take in large numbers of refugees is often **morally necessary**; but the **right to restrain** the flow remains a feature of communal self-Determination“ (51).

Again

„Can a political community **exclude** ...  
necessitous – men and women **simply because**  
**they are foreigners?**“

WALZER:       **Yes, it can !**

## Question for your homework:

Is this **YES-It Can-Conclusion**  
really **COMPATIBLE**  
with his Restriction-Principle? **Why (not) ?**

P2:        *Ps* Admission-Authority has to be **restricted** by MAP.

**Mutual Aid Principle (MAP)**

Positive **Assistance** is **obligatory**, if

- (i) it is (urgently) needed and
- (ii) it's risks and costs are relatively low.

Correspondence Welcome:    [meggle@uni-leipzig.de](mailto:meggle@uni-leipzig.de)

Pro

EXCLUSION

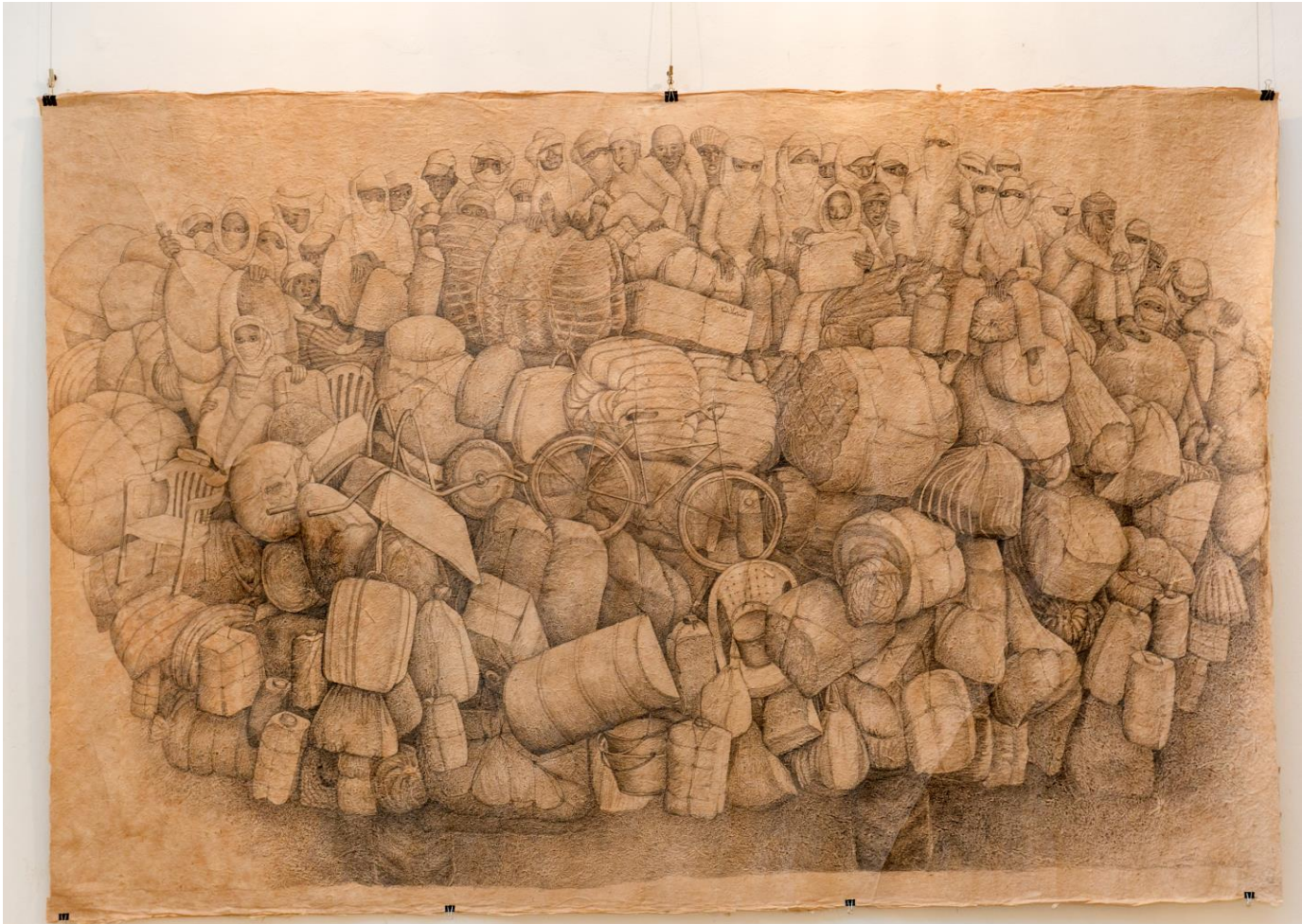
?

morally o.k.

Contra

# PART III

## REFUGEE ETHICS - CENTRAL PROBLEM



Pro

EXCLUSION

?

Life or Death

morally o.k.

Contra

Pro

EXCLUSION

?

Your Stance?

morally o.k.

Contra

Pro

Many

M. WALZER

DAVID MILLER\*

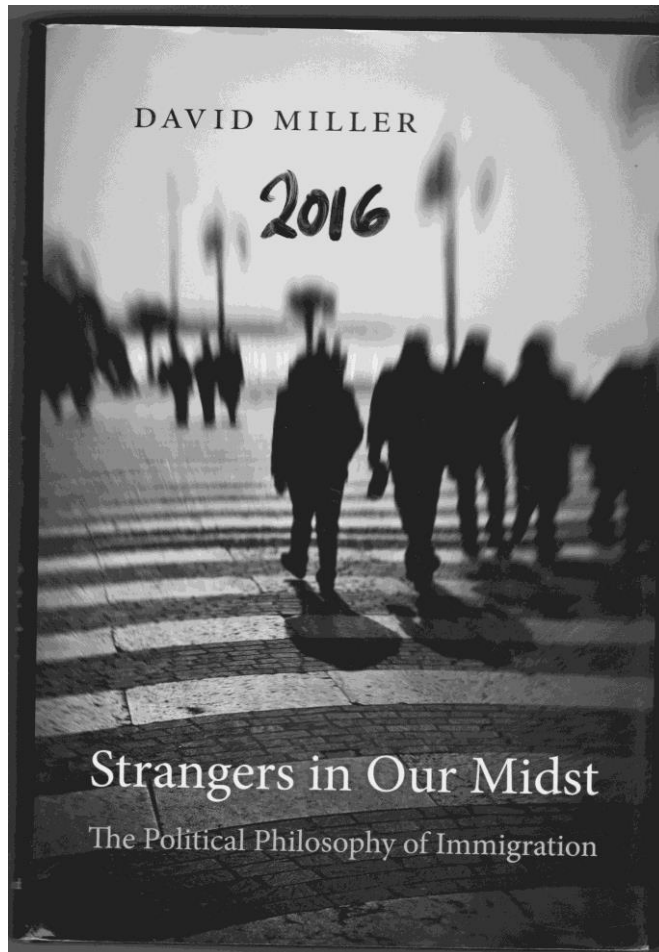
CH. WELLMAN

EXCLUSION ?  
morally o.k.

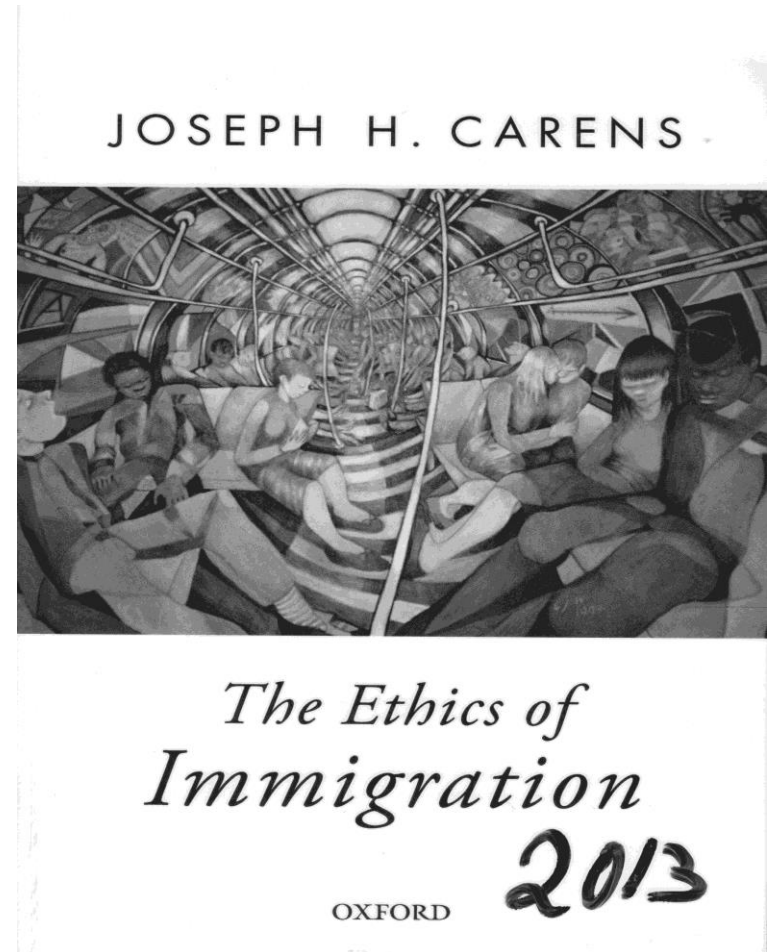
AUC-WORKSHOP DEVIDED

Contra

J. CARENS\*  
PHILIPP COLE  
Many



Chapter 5 **REFUGEES**



Chapter 10 **REFUGEES**

DAVID MILLER: Liberal Nationalist

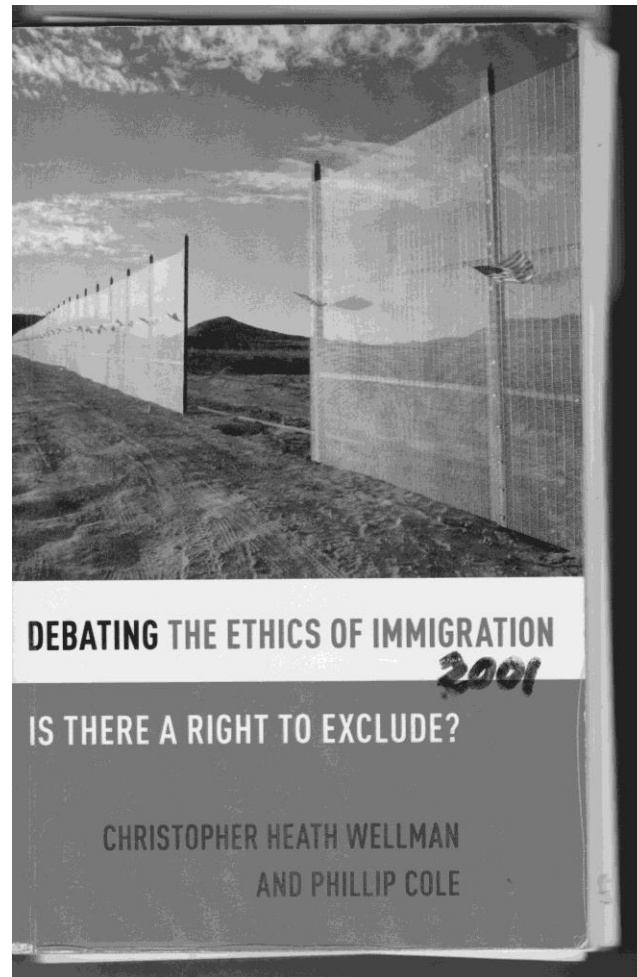
JOSEPH CARENS: New Analogy: Moral Relevance of Insider/Outsider-Distinction (in Correlation with Affluent / Poor Countries – cf. Norway vs Chad) as unjustified as Feudal Birthrights in former times.

*Undeserved (good luck-) Advantages unjustified = unjust.*

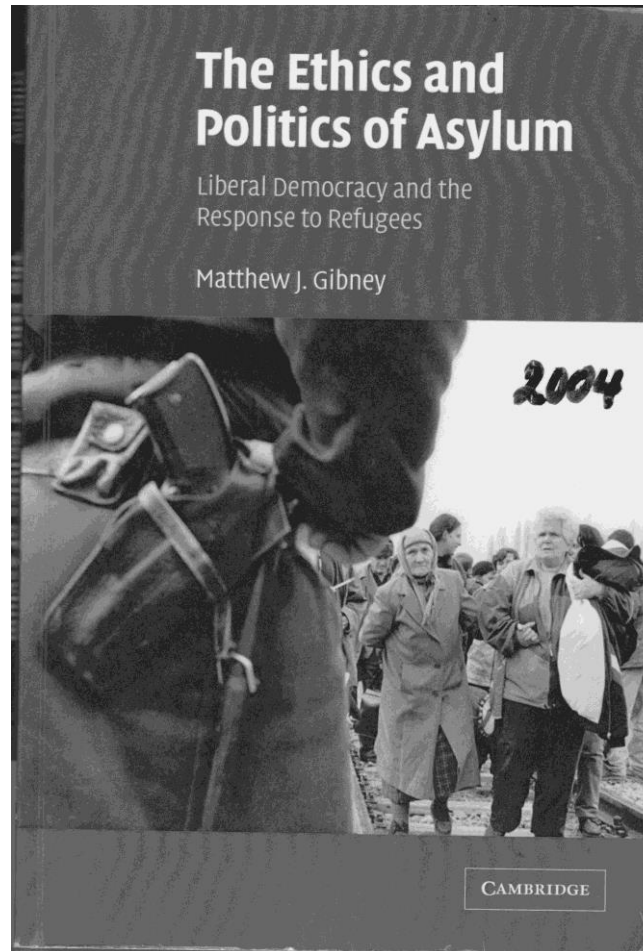
# WELLMAN versus CARENS

BEST INTRODUCTION INTO PHILOSOPHICAL R-ETHICS

Basic Textbook of our AUC-Workshop

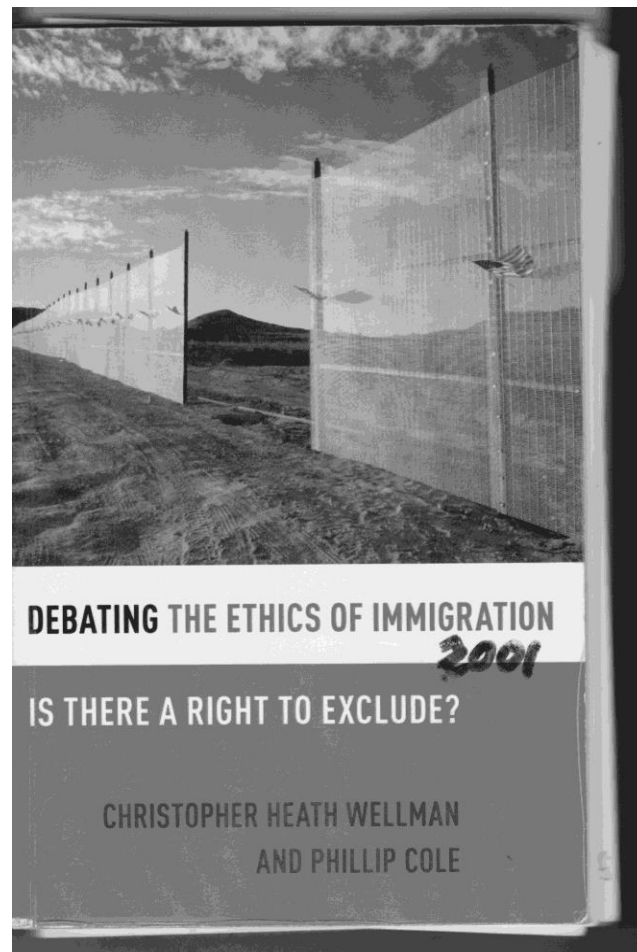


## Best Book on Refugee Ethics and Politics



# WELLMAN versus CARENS

## IS THERE A RIGHT TO EXCLUDE?



# IS THERE A RIGHT TO EXCLUDE ?

WELLMAN: Definitely Yes

COLE: No

NOTICE: To be distinguished:

- (1) Who has the legal / **moral Right** to Decide?
- (2) Is the Decision made morally o.k.?

## WELLMAN's (logically sound) ARGUMENT

- P1 Legitimate States do have Political Self-Determination (PSD).
  - P2 No PSD without (the Right to) Freedom of Association (FA).
  - P3: No FA without the Right of Exclusion.
- 
- C: Legitimate States do have the Right of Exclusion.

## DEFINITION OF LEGITIMACY

A State is **Legitimate** only if it is abiding by the **Human Rights**.

## LOGICAL CONSEQUENCE

If a state is violating Human Rights, it is not legitimate – and so **WELLMANS Argument** for Exclusion would not apply. (See his PREMISE 1)

# COLE's (logically sound) COUNTER

(1) Freedom of (international) Movement is a Human Right.

(2) Unilateral Exclusion blocks this Human Right.

So

( C ) s is not legitimate.

Notice that (2) leaves open the possibility of legitimate MULTILATERAL / INTERNATIONAL Exclusion.

Clash between States' **RIGHT TO EXCLUDE** and  
Refugees **RIGHT TO MOVE IN**.

**FREEDOM OF ASSOCIATION**  
**incompatible with**  
**FREEDOM OF MOVEMENT**

\*

„The central tension in political theory and  
practice in our time is between the tradition of  
**Nation-State Sovereignty** and the authority of  
**Human Rights**“ (COLE, 245).

Reminder: FA and FM **not absolute**, only presumptive **Rights**. So, 2 Ways out of this Contradiction:

FA > FM = WELLMAN

FM > FA = COLE

You can't have it both ways!

**What is Your Choice?**

## 2nd Thoughts

### On WELLMAN / COLE

For  $R_{51}$ , there is no disagreement. In this case, the **Right to Exclude** (and so to Sovereignty) is **already restricted by International Law**.

Weak Version:      **No refoulement.**

Stronger Version:   **Right to Asylum.**

And in this case, WELLMAN, too, would (have to – and does) subscribe to

**FM > FA**

## What about Rs?

R = Refugee in a wide sense = e.g. „Anybody whose Human Rights are in /DEEPEST/ jeopardy“ (WELLMAN, 119) *(Too wide? Needs much more Discussion.)*

Does a State have a Right to Exclude Rs ?

Notice, that WELLMAN's NO is based on his Insistence on MAP's being applied (to Rs). And he rightly insists on also that:

MAP does **not** imply that the state has to give up its Right to Exclude even needy Rs.

BECAUSE: Help does **not** imply Help by INCLUSION.

## DISTINCTION:

Rs who **CAN** be helped (rescued) without letting them in.

## VERSUS

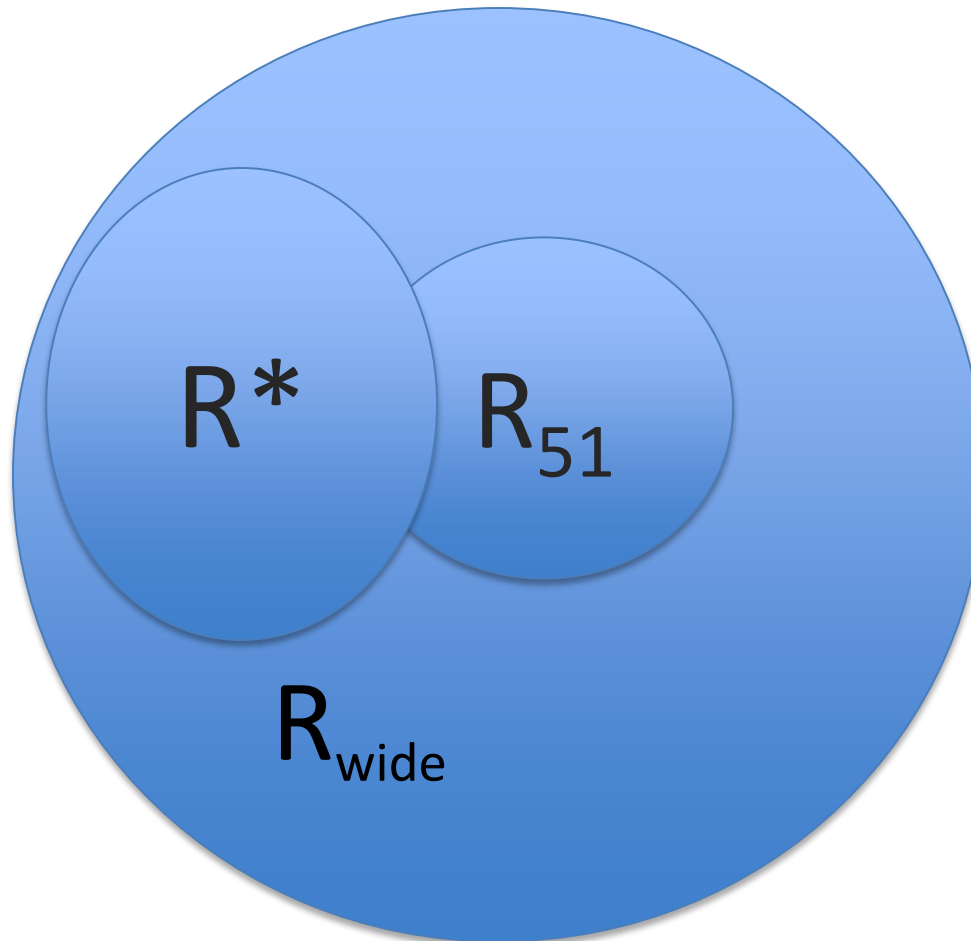
Rs who **CANNOT** be helped without letting them in ( = **R\*** for short, i.e. **Refugees in Need of Inclusion**).

\*

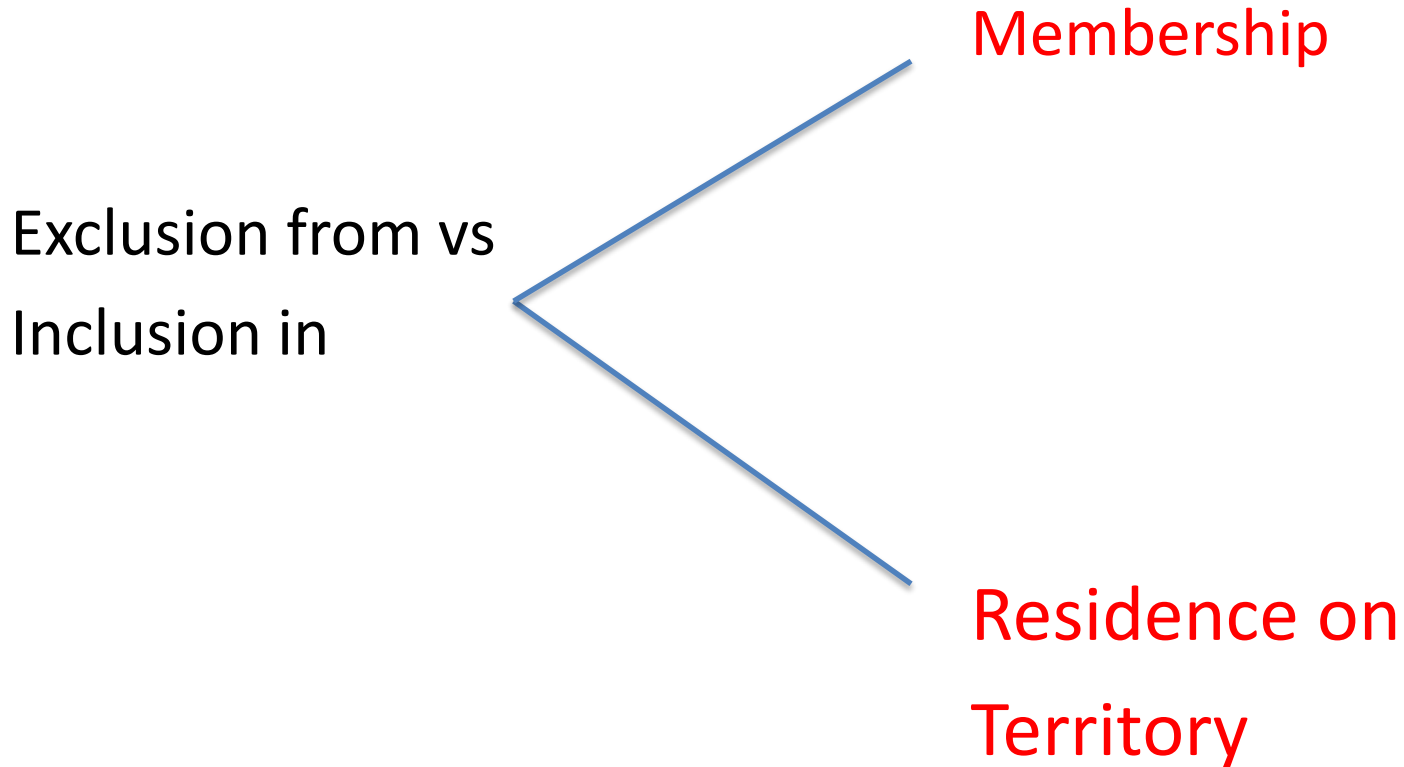
In the first case, it could be better to help „by **exporting resources** rather than **importing needy people**“ (68). (And this ‚Export‘, says WELLMAN, may even include Military Intervention.)

Now, the **CENTRAL QUESTION** is:

Does **WELLMAN's Right to Exclude** enclose  
even the **Exclusion of  $R^*$**  ?



## On Exclusion / Inclusion



***Let's focus our discussion now on Terr-RESIDENCE !***

Main Question left is

Not, whether Wellman himself actually **does**, re  $R^*$ , subscribe to

Freedom of Movement > Freedom of Association

Terr-Inclusion of  $R^*$  > Terr-Exclusion of  $R^*$

But whether he – and **We** – **ought** to do so.

Is **TERRITORIAL INCLUSION** of **R\***  
a **moral Obligation** for us?

MY POSITION: **YES**, definitely !

REASON: (By Application of MAP it follows that:)

We do have a general **Responsibility to Protect (R2P)**

– and this R2P ought to hold not only when we (think we) can follow this Responsibility by **dropping bombs** on other countries.

But also re **R\***.

