

The institutionalised other: the path from natural law to positivist exclusion

A case study of the Syrian refugee crisis

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Abstract:

The on-going Syrian migrant crisis has sparked numerous debates in legal-political philosophy. The liberal, European media has applied significant pressure on its governments to accept and care for any Syrian refugees who seek entry. Due to the unique circumstances of the migrant crisis, particularly the unprecedented numbers of refugees, some European governments have taken concrete steps to curb the influx of asylum seekers, often at the expense of United Nations refugee laws and conventions which are based on the principles of natural law.

This thesis aims to investigate whether states are beginning to shift from a natural law perspective to a legal positivist position, in dealing with refugees. While refugee and human rights law is based on natural law tenets, which guarantee that people have unalienable rights, there is now a shift towards a more legal positivist position that requires asylum seekers to define themselves according to ever-changing laws which govern migration and in some cases, circumvent natural rights.

This thesis will show that the United Kingdom has undertaken a process to distance itself from international conventions, legislature and ethics that afford refugees their natural rights, and instead pursue a programme that strengthens domestic institutions such as the Home Office in order to reduce immigration through narrowly conceived legal and bureaucratic interventions. Germany on the other hand has taken extreme steps to guarantee the safety and prosperity of Syrian refugees. While recognising potential to further refugee protection still, Germany has made a commitment to both international and domestic legislature that ensures refugees' rights are safeguarded.