



# REFUGEE CRISIS IN EUROPE: THE MARCH TO CLAIM RIGHTS

Ali Emre Benli

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**Refugee crisis in Europe: the march to claim rights**

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On the 4<sup>th</sup> of September 2015, asylum seekers who had been stranded in Hungary's Keleti train station started marching on foot towards the Austrian border under live media coverage. Their aim was to show to the world that they do not accept their predicament and demand passage to Germany and Sweden. How should we understand the march of the refugees and the events surrounding it? In what ways has the march altered the European public's perception of asylum seekers and the institutions that govern European asylum policy? This article argues that the march of refugees can be characterized as an act of civil disobedience. It aims to show that asylum seekers, with the help of European institutions and activist European citizens, have emerged as novel political agents instigating change in the European political landscape.

*Keywords:* Civil disobedience, European asylum policy, asylum seekers, political agency

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**Crisi dei rifugiati in Europa: la marcia per rivendicare i propri diritti**

Ali Emre Benli

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Il 4 Settembre 2015 a Budapest, Ungheria, i richiedenti asilo accampati nella stazione ferroviaria di Keleti intraprendono una marcia a piedi verso il confine austriaco sotto gli occhi dei media internazionali. Il loro messaggio al mondo è il rifiuto della loro condizione disagiata, e la richiesta di raggiungere la Germania e la Svezia. Come possiamo interpretare la loro marcia e tutti gli eventi che l'hanno accompagnata? Come questo evento ha cambiato la figura dei richiedenti asilo agli occhi del pubblico europeo e delle istituzioni responsabili delle politiche di asilo? Questo articolo sostiene che la marcia dei rifugiati può essere inquadrata come un atto di disobbedienza civile. L'obiettivo dell'articolo è dimostrare che i richiedenti asilo, con l'aiuto degli attivisti e delle istituzioni europee, si sono caratterizzati come un nuovo agente politico, catalizzatore di cambiamento all'interno del panorama politico dell'Unione Europea.

*Parole chiave:* Disobbedienza civile; politiche di asilo europee; rifugiati; richiedenti asilo; agency politica.

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## 1. Introduction

On the 31<sup>st</sup> of August 2015, Hungarian authorities closed down the Budapest's Keleti train station to asylum seekers who were making their way to northern European countries. Riot police blocked entrance to trains. The trains already heading to the Austrian border were intercepted and the asylum seekers were ordered off. As a result, thousands got stranded in the already overpopulated make-shift refugee camp surrounding Keleti. In the following days the living conditions at Keleti got worse. On September 4, with no foreseeable solutions to their problems, refugees took action. Under live media coverage, hundreds started marching on foot towards the Austrian border 150 km away<sup>1</sup>. Their aim was to show to the world that they do not accept their predicament and cross the Austrian border towards reaching Germany and Sweden, where they believed their claims of asylum would be better received.

Two factors played a key role for refugees to take action. First, there was increasing attention by the European public to the plight of refugees. On the 27th of August more than 70 migrants were found dead inside a lorry left by the side of an Austrian motorway<sup>2</sup>. On the 2nd of September the dead body of Aylan Kurdi, a Syrian boy who drowned after a boat was turned over while attempting to reach Greece, was found on the coast of Turkey<sup>3</sup>. As disturbing images of these tragic events hit the media, solidarity campaigns across Europe got major support. Networks such as the Airbnb for refugees group was overwhelmed by offers of help<sup>4</sup>. People took to the street to raise awareness of the problems of asylum seekers. Second, between the 31st of August and the 1st of September, asylum seekers have seen what public opinion is able to achieve. For that period of two days, pressure from European citizens lead Hungarian and Austrian authorities to waive visa checks<sup>5</sup>.

The march resulted in another brief period between the 4th and the 5th of September where the border controls were waived. The Hungarian authorities provided transportation to the Austrian border for those who were on the march as well as those who remained back. Both in Austria and Germany, cheering crowds greeted the refugees, solidarity networks provided food, water, supplies and accommodation. The period ended when, on the 5th of September, Hungarian authorities declared that there were no more buses for marching refugees. Austria closed its borders with Hungary as Germany reinstated controls at the Austrian border. Within two weeks, the European Union announced plans for new detention measures. Hungary completed its wall at its border with Serbia, not letting in any more asylum seekers.

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<sup>1</sup> Emma Graham – Harrison, “At Keleti station in Budapest, the refugees could wait no longer”. *Guardian* September 6, 2015.

<sup>2</sup> Luke Harding, “Police fear as many as 50 migrants dead inside lorry left by Austrian motorway”. *Guardian* August 28, 2015.

<sup>3</sup> Helena Smith, “Shocking images of drowned Syrian boy show tragic plight of refugees”. *Guardian* September 2, 2015.

<sup>4</sup> Jessica Elgot, “‘Airbnb for refugees’ group overwhelmed by offers of help”. *Guardian* September 1, 2015.

<sup>5</sup> Guardian, “Packed trains reach Germany as refugee visa checks are waived”. *Guardian* September 1, 2015.

How should we understand the march of the refugees and the events surrounding it? In what ways has the refugee's traversing the borders altered the European public's perception of asylum seekers and the institutions that are in place to govern asylum policy<sup>6</sup>? In this article, I aim to show that the march of refugees should be characterized as an act of civil disobedience. I argue that asylum seekers, with the help of European institutions and activist European citizens, have emerged as novel political agents instigating change in the European system of asylum. This claim may seem in contrast with common convictions regarding both acts of civil disobedience and asylum seekers. Acts of civil disobedience that essentially involve breaking the law are not easily legitimized. The most common justification is that the act furthers the interests of the public. Asylum seekers are not members of the European public. How can they know where the interest of the public lies or claim to further it? How can they be entitled to break the law?

I provide an answer to these questions by responding to the body of literature that has flourished after John Rawls' account of civil disobedience in *A Theory of Justice* (1971). In Section Two, I discuss the features of the march. I show that it was conscientious and communicative as any paradigmatic case of civil disobedience. In Section Three, I explore its moral aspects. My aim is to offer a justification for an act of civil disobedience that is available also to non-members without diverging from the idea that it is the exclusive right of the European citizens to participate in determining the policies that govern the European institutions. Instead of the conventional grounding of the right to civil disobedience on the right to political participation, my approach is consequentialist. I emphasize that acts of civil disobedience are epistemically valuable tools for societies to reconsider their set of values that might be grounded in local parochialism. If European citizens take into consideration the points of view of asylum seekers advanced by acts of civil disobediences such as the march of refugees, they will better realize their right to govern themselves. In addition, I show that the epistemic value can only be sustained by recognizing a moral right to civil disobedience to non-members. In Section Four, I conclude by emphasizing that conceptualizing the march as an act of civil disobedience is significant in recognizing asylum seekers as novel political agents that demand redress of an injustice, rather than plea for humanitarian aid.

## **2. Features of the march as a paradigmatic case of civil disobedience**

The notion of civil disobedience is not easy to pinpoint. Despite various attempts in the literature, there is no consensus on a clear cut definition of civil disobedience in virtue of which we can distinguish it from other kinds of political action that involve breaching the law. Nevertheless, it is generally recognized that two features, conscientiousness and communication, are shared in paradigm cases of civil disobedience (Brownlee 2004, 338-340). In this Section I explore to what degree the march was a conscientious and communicative act. This investigation also allows us to delineate what makes the march worthy of special attention

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<sup>6</sup> Here 'refugees traversing borders' invokes Engin Isin's conceptualization of acts that traverse "not only actual frontiers (borders, boundaries, zones) but also virtual (or symbolic) frontiers by acting in place of or against how they are supposed to act". (Isin 2012, 14).

among the series of events that both asylum seekers and the European public experienced since 2015.

### *2.1 Was the march conscientious?*

Kimberly Brownlee maintains that conscientiousness in an act of civil disobedience “takes the form of a sincere and serious belief that a law or policy warrants revision and that the values that underpin that belief are sufficiently weighty to require a breach of law in their defense” (Brownlee 2004, 341). Some characteristics of a sincere and serious belief for Brownlee are “constancy, a degree of self-sacrifice, a willingness to take risks, a spontaneous response to opposition, and a capacity to defend the reasons for engaging in the pursuit”. Were asylum seekers sincere and serious in their beliefs that their predicament at Keleti station was unacceptable and the policy required revision? It is important to give a convincing answer to this question, for sincerity and seriousness play a major role in the eyes of the public as much as the social scientist. If asylum seekers were not sincere in their beliefs, then they were exploiting the European public to achieve their own aims. If they were not serious, then their beliefs could not have constituted any incentive to tolerate their breaking of the law.

We can suggest that the asylum seekers were serious in their beliefs by pointing at the kind of risks that they were willing to accept when they acted based on their beliefs. The march, which involved more than a 150 km. walk to the Austrian border without any infrastructure available to support them, was laborious for families that included children, elderly and injured that needed medical attention<sup>7</sup>. Moreover, it implied legal and political consequences that asylum seekers were ready to face. The memories of the week previous to the march, when Hungarian authorities intercepted and sent all asylum seekers leaving Keleti station to refugee camps, were still vivid in their minds<sup>8</sup>. The fact that such hardship and risk did not hold them back is a clear sign of seriousness.

Making the case that asylum seekers were sincere is trickier. The march was spontaneous, and in many instances, asylum seekers defended their reasons for engaging in the march. Yet, these two aspects are not enough to establish sincerity. There is a common conviction usually voiced by political groups against the reception of asylum seekers in EU territory that those who have marched out of the Keleti station were acting on behalf of their vested interests, rather than on moral considerations. Acting on vested interests is then assumed to undermine the sincerity of the march. It is very hard to determine what were the true reasons behind asylum seekers to take action, as they are attributes too closely associated with the subjective states of the agents. At least, it is beyond the scope of the kind of investigation I want to pursue here. Alternatively, my strategy is to put to question the assumption that vested interests undermine the sincerity of the march.

Crossing the border to Austria would actually serve the interests of asylum seekers not only in reaching better living conditions compared to their life at Keleti train station but also in being

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<sup>7</sup> Matthew Weaver, Mark Rice-Oxley and Nadia Khomami, “Hundreds set off from Budapest on foot”. *Guardian* September 4, 2015.

<sup>8</sup> Daniel Nolan and Emma Graham-Harrison, “Hungarian police order refugees off train heading to Austrian border”. *Guardian* September 3, 2015.

able to travel to countries where they believed their asylum application would be better received. The common conviction is far from being pointless. The existence of vested interests in taking part in an act should surely lead us to approach the professed reasons with caution. It should lead us to scrutinize more carefully the reasons for the asylum seekers' belief that the law needs revision and the weight of that belief compared to a case where agents do not have interests. Nevertheless, the mere existence of interests does not necessarily undermine the sincerity or the seriousness of asylum seeker's beliefs. The coexistence of interests and a sincere and serious belief that the law is unjust does not undermine the degree of conscientiousness of the act. Otherwise, we would have the unintuitive conclusion that no agent with vested interests can be conscientious.

Even if we accept that the existence of interests do not rule out the sincerity of the act, it may still be necessary for sincerity to determine whether it was the asylum seeker's belief that the law was unjust or their intention to further their interests that lead them to act. The former would be an impartial reason to act towards changing an unjust policy, while the latter a partial reason for saving merely themselves from its bad implications<sup>9</sup>. It is also the case that acting on impartial reasons usually have more currency in legitimizing an act of civil disobedience in the eyes of the public. Yet, before we prioritize one kind of reasons over another, we need to see how closely the two are tied in cases such as the march. The asylum seekers' belief that the policy warrants revision first and foremost originates from their perception of the great extent that their interests are undermined. Their claim on the European public is exactly that their conditions are unacceptable and need to be improved. Acting on the intention to further their interests is corollary of acting on the belief that the policy was unjust<sup>10</sup>.

We should not be surprised to see such a close relationship between partial and impartial reasons in acts of civil disobedience in general. The reason is that acts of civil disobedience are very demanding compared to other forms of political action that do not involve breaking the law. When a civil disobedient breaks the law, she needs to confront not only the law enforcers, but also the disapproval of society for breaking the law. For an agent to carry out an act of civil disobedience her reasons should be sufficiently weighty to face its consequences. It is natural that such reasons primarily emerge from our concern of things that happen around us and for those who are closer to us. When our interests are undermined unjustly we have first hand experience of the extent of the injustices. Moreover, we have more at stake in the perpetuation of an injustice that we are the victims of. Partial reasons, which ultimately motivate agents to acts, are an integral part of acts of civil disobedience that cannot be put aside.

Contrary to the common conviction on the role of partials reasons, it is the lack of impartial reasons that should lead us to doubt the sincerity and seriousness of an act of civil disobedience. The impartial reasons, in this case, refer to the moral grounds of asylum seekers' beliefs that led them to take action. If there are no impartial reasons to believe that the situation of asylum seekers in Keleti station needs revision and that the law should be breached to improve it, then

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<sup>9</sup> In a similar way, since the act was conveyed by a group of asylum seekers, there might be those who act upon the former reason and others upon the latter.

<sup>10</sup> There are of course other cases where the two kinds of reasons are not so intertwined and acting on the partial reasons would undermine the sincerity of act of civil disobedience.

we cannot call the march conscientious. Were there such impartial reasons available for asylum seekers? This requires a closer look at the circumstances at the Keleti station and the policy that has led to it.

Let me first specify briefly the policies that the march of refugees has violated. The immediate object was the established border between Austria and Hungary, visa procedures that regulate border crossing and efforts of the Hungarian authorities to block the passage of asylum seekers. Nevertheless, by means of the direct act, they also violated the Common European Asylum System (CEAS); and more specifically, a particular clause of the Dublin III Regulations that requires asylum seekers to claim asylum in the first county of entry. Do the implications of Dublin III regulations imply an injustice? If they do, are they extensive enough that it requires a breach of law?

The Dublin III Regulations establish the ground rules for determining which Member State of the European Union is responsible for an asylum application. It establishes a hierarchy of criteria from the most important family unity, to respectively, legal presence of the asylum seeker, country of first entry and country of first asylum application (Fratzke 2015, 5). In addition, it provides the legal mechanisms that facilitate communication between Member States for the criteria to be effectively implemented. (UNHCR 2006, 10) The ultimate aim of Dublin III is to prevent the abuse of the asylum systems in the form of multiple applications by the same person in several Member States and ensure that asylum seekers have effective access to procedures for determining refugee status in line with the 1951 Refugee Convention commitments of the EU Member States (UNHCR 2006, 4). Since its first implementation, theorists have brought to attention two major problems with the Dublin III. The first problem is the misplaced assumption that asylum systems of each Member State are similarly sufficient with regards to the protection of the 1951 Refugee Convention rights of refugees. As Evangelia Tsourdi and Philippe De Bruycker point out, recognition rates and reception conditions vary significantly depending of differences of economic development and investment in social assistance systems (2015, 4). Practices in Greece, Bulgaria, Italy and Hungary have been repeatedly challenged by the UNHCR and other rights advocates (Fratzke 2015, 16). Specifically, there are problems regarding poor reception conditions and dysfunctional asylum procedures, subjection of the illegal entrees to prolonged detention periods, inhumane treatments, and inadequate respect for the criterion of family unity (Fratzke 2015, 11, 17, 19). In addition to assessment reports by the European Commission, a significant number of cases have been brought up to national courts as well as European Court of Justice and European Court of Human Rights, leading to decisions that implied reform of national practices in the implementation of the Dublin III. The second problem is that Dublin III places unfair burdens on the bordering states of the EU such as Greece, Bulgaria and Hungary where the asylum seekers from the Middle East region usually make first entry. According to the last two criteria established by Dublin III, these countries are responsible for the asylum applications of those who have irregularly entered the EU territory and who do not have family members residing in any of the member states. It is also true that the border countries such as Greece, Bulgaria and Hungary are relatively less affluent than are the rest of EU member states, which contributes to the malfunctioning of asylum systems.

These two problems have reached a considerable extent in the face of the great number of asylum seekers arriving at the borders of Europe since 2015. In accordance with Dublin III, hundreds of thousands of asylum seekers entering the EU through the Balkan route are to be assessed by border countries like Hungary, which do not have the resources to sustain an adequate response. When Hungarian authorities blocked all means of transportation out of the country to implement the Dublin criteria, thousands accumulated in the Keleti train station crystallizing the foreseen problems. The train station was turned into a makeshift refugee camp where asylum seekers including children and elderly lived in tents during a heat wave without any infrastructure, adequate fresh water, sanitation or health care. Their living conditions and inability to access the Hungarian system of asylum were far from their rights specified by 1951 Refugee Convention. The reasons for asylum seekers to believe that the policy needs revision are in this sense impartial. The impartiality is also implied by the assessments of European institutions and decisions by the European courts that have found previous malfunctionings of the Dublin III unacceptable. Moreover, the asylum seekers' predicament was unjust also because it was caused by the implementation of a particular clause of the Dublin III that can actually be revised. By illegally crossing the border between Austria and Hungary and demanding that they should be allowed to travel to Germany and Sweden, the asylum seekers pointed at one possible way to enhance their circumstances and relieve the causes of the injustice.

The last aspect regarding sincerity of the march concerns the impartiality of asylum seekers reasons to break the law instead of choosing another kind of political action. Even if there were impartial reasons to believe that the policy needed to be changed, were there impartial reasons to breach the law? The most salient reason for breaking the law as an act of civil disobedience is the belief that it is the right way to convey what the agent believes to be unjust. As David Lefkowitz emphasizes, it "must be reasonable for those who commit such acts to believe that by doing so they will be able to communicate to (some of) their political leaders and fellow citizens their beliefs regarding the moral acceptability of the state's current exercise of authority" (Lefkowitz 2007, 215-216). In answering this question we need to look more closely to the circumstances in which the act took place as well as the way it was carried out<sup>11</sup>. This discussion takes us already to the second feature of a paradigm case of civil disobedience, namely its communicative aspect.

## *2.2 Was the march communicative?*

Let me begin by introducing a number of distinctions useful to highlight the communicative aspects of the march. First, an act of civil disobedience has both backward and forward looking aims. In addition, communication has diverse audiences such as the victims of the injustice, society at large and third parties. Brownlee states that the backward-looking aims are "to communicate both a disavowal of, and dissociation from, a given law or policy and the reasons for that disavowal" (Brownlee 2012, 531). The march of refugees, in this sense, conveys to both the European public and other asylum seekers that not everyone accepts the current predicament

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<sup>11</sup> Here we see the link between conscientiousness and communication: an act is conscientious only if it is communicative to an adequate degree.

of asylum seekers. The forward-looking aims, on the other hand, are “to draw attention to the issue and to the reasons for the protest so as to persuade the relevant audience to accept the disobedient’s position and, thereby, to instigate a lasting change in law or policy” (Brownlee 2012, 531). The main audience here is the European public at large with the hope of building support for policy change. The march of refugees was carried out in the midst of an ongoing situation where thousands of asylum seekers were daily landing on the EU territory and following the same route as the asylum seekers in Keleti. By bringing into attention that their current predicament, asylum seekers called for support from the European public towards reform of the policy. Such a reform would apply not only to current situation of asylum seekers in the Keleti station, but also to those who are following in their path<sup>12</sup>. Another audience of the forward-looking aim is the third parties such as other communities, governments or transnational organizations with similar policies of asylum. Brownlee observes that the aim of addressing third parties is to make them “realise that the kind of dissent they observe elsewhere could arise within their own borders” (Brownlee 2004, 347-348). Since the 1951 Refugee Convention, there has been a number of interpretation of the rights of refugees recognized in different parts of the globe. Organizations such as African Union (AU) have drafted conventions to address asylum situations by building on past experience. In this sense, the march of refugees has a further communicative aspect for contributing to reforms on other parts of the world today and in the future.

Such transformative aims, nevertheless, are hard to achieve. As Brownlee points out, policy change consists in leading “policymakers not only to reform existing law, but also to internalise the reasons behind the dissenter’s condemnation and disavowal of that law” (Brownlee 2004, 347). This is only possible by engaging society as well as policy makers through moral dialogue. How can a breach of law even initiate a moral dialogue or convince others of the reasons for the act towards gaining their support? If an act of civil disobedience has any prospects of transforming public opinion, it needs to be tailored in the right way. Was the march of refugees such an act?

To begin with, an act is a suitable address to society at large when it is employed as a last resort. If there are alternative routes to bring the issue on public discussion that do not require a breach of law, then there is a presumption to choose that course of action rather than the breach of law<sup>13</sup>. This condition might be too strong, for in many cases such as the march the extent of the injustice require the swiftest response possible to deter further harm. Yet it is still relevant to ask if the asylum seekers have “sought to play any role in society’s deliberations about the law at issue” (Brownlee 2012, 533). If they have not previously sought to engage society through legal ways, then the breach of law may be an obstacle to initiate moral dialogue. Although, being non-members, asylum seekers do not have any right to directly participate in the deliberations for shaping the EU asylum policy, decision making mechanisms of the EU are open to civil society participation. Indeed, various advocate groups including UNHCR have

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<sup>12</sup> Even if the result was an exemption from the Dublin Regulation, those that follow can also benefit from the exemption so far as they are in similar circumstances.

<sup>13</sup> This point is commonly presupposed by most theorists except for philosophical anarchists who refuse the presumption to obey the authority of the state in the first place.

repeatedly pointed to the problems with the Dublin III regulations at the EU level<sup>14</sup>. The outcome was not satisfactory. As the reasons behind the predicament of asylum seekers were not adequately addressed, circumstances deteriorated daily. One instance among many was the makeshift refugee camp around the Keleti station. Rather than an obstacle, the breach of law surfaces as a necessary choice for initiating moral dialogue towards a swift response.

Another condition of a communicative act is the existence of a significant potential of achieving its aim. The benefits of the act should always outweigh the damage done by breaching the law. If the circumstances at the time are not favorable, then there are no good reasons for breaching the law. Whether the act has the potential to fulfill its aims primarily depends on the means and mode of communication, which I will discuss as the third condition. Yet, it also depends on the conditions of the audience. In Brownlee's words, "the success of communication depends as much upon the hearer as it does upon the speaker" (Brownlee 2004, 343). Were the conditions at the time of the march suitable enough for the breach of law to start a moral dialogue? I think they were for two reasons. First, at the time of the act, the attention of the European public was significantly focused on the plight of asylum seekers due to media images of the tragic events that took place in the previous week of the march. Solidarity campaigns and demonstrations were organized in cities across Europe in order to raise awareness on the problems surrounding the asylum seekers<sup>15</sup>. Networks such as Berlin Based Refugees Welcome that aim to meet the needs of refugees were gaining major support<sup>16</sup>. Second, asylum seekers had witnessed that the policy makers were responsive to public demands. The public pressure that had built up in the previous week led Austrian and Hungarian authorities to waive visa checks as an emergency response to what they took to be a humanitarian situation<sup>17</sup>. The conditions were in place both for the act to gain support by the society in general and such a support to materialize into concrete policy change.

Last but not least, for an act to be communicative the means and mode of communication should be suitable for initiating moral dialogue. The means and mode of an act vary: it may be direct or indirect, public or non-public, violent or non-violent, or it may or may not respect the law. What are the proper means and mode of an act has been a matter of extensive debate in the literature<sup>18</sup>. The scope of disagreement suggests that for each case we need to look at the

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<sup>14</sup> The revision of the Dublin Regulations in 2013 (Dublin III) is the latest step in the development of the CEAS. Although it has built on the experiences of two previous legal frameworks that have been established by the Dublin Convention in 1990 and the Dublin Regulation in 2003 (Dublin II), the outcome of the reform did not suffice to resolve the problems associated with the great number of arrivals from the beginning of 2015.

<sup>15</sup> Guardian, "Vienna stages protest welcoming refugees" *Guardian*, September 1, 2015.

<sup>16</sup> Jessica Elgot, "Airbnb for refugees' group overwhelmed by offers of help" *Guardian*, September 1, 2015.

<sup>17</sup> Guardian "Packed trains reach Germany as refugee visa checks are waived" *Guardian*, September 1, 2015.

<sup>18</sup> Rawls, for example, has offered an account of civil disobedience with a specific form. He argued that civil disobedience should be public. It should never be covert or secretive. The actors should engage with the act openly with fair notice to the authorities. Moreover, the act should be non-violent. The actors should shy away from any use of violence, especially against persons. Finally, they should be respectful

particular act and judge whether there are good reasons to believe that the choice of the mode and means of communication serves to initiate moral dialogue. The march of the refugees was public: asylum seekers have made their intentions of crossing the border between Austria and Hungary explicit long before they could actually carry out the act. This choice has reinforced the communicative aspect of the act in comparison with an alternative course of action of crossing the border discreetly and making an *ex ante* announcement. In fact, the marching of the asylum seekers during day under live media coverage has played a big role in the act reaching a positive outcome. Many European citizens that witnessed the march tried to aid the asylum seekers by bringing supplies or assisting them with their vehicles. Moreover, the march was not violent. The Hungarian authorities responded by waiving visa controls and providing transportation for those who were on the march as well as those who were still at the Keleti station. In the end, asylum seekers never had to confront the border authorities. Had the authorities responded differently, there could have taken place minor clashes with the border police or forcing of the fences. Since the beginning of 2015 there has been such confrontations between asylum seekers and authorities in a number of occasions. These instances, nevertheless, did not impede the communicative aspect of the act. The asymmetry between the means of the border police and asylum seekers have, on the contrary, fueled the sympathy of the public for the plight of asylum seekers. Lastly, crossing the border between Austrian and Hungary without registration or possession of a visa, was a direct act in breaching of the Dublin III regulations. It was designed as performative in highlighting the problems with the border policy and also creating a symbol for the future acts.

The march was a direct non-violent public act that respected the law. It was carried out as a last resort with significant potential for success at a time when there was considerable attention from the European public. If the arguments so far are convincing, the march was communicative enough to initiate moral dialogue. It was also conscientious, for the belief that the predicament of asylum seekers is unjust and requires a breach of law was serious and sincere. These two features give us ample reasons to consider the march of refugees as a paradigmatic case of civil disobedience. Yet, this does not conclude our case. We also need to

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of the law, ready to face the legal consequences of their actions, including punishment (Rawls 1999, 319-323). Yet, each aspect of Rawls account has been challenged. Among others, Brian Smart pointed out that publicity might put in danger the act to be performed at all. For legal authorities and those who politically oppose the cause of the civil disobedient might take preventive measure against the act. Rather, it should be enough for the actors to announce the act as well as the reasons for the act after the act has taken place (Smart 1999, 206). Brownlee emphasized that a common sense conception of violence would consider a number of acts that risk but do not necessarily cause injury or damage as violent such as “catapulting stuffed animals at the police or shooting into the sky” (Brownlee 2012, 530). Thus overemphasis on violence would exclude a number of acts that would nevertheless be a good way to address society. Joseph Raz argued that non-violent acts “may well have much more severe consequences than many an act of violence: consider the possible effects of a strike by ambulance drivers” (Raz 1976, 267). John Simmons pointed out that a violent act can be an appropriate political act if it “is carefully presented to the public as protest, if it is isolated (an unusual act in an otherwise non-violent life), if it has been preceded by passive political efforts, and if it is followed by non-evasion and acceptance of punishment” (Simmons 2010, 1808). Finally, it is not clear why in all cases it should be more communicative if the civil disobedient should be ready to accept punishment.

show that asylum seekers had a moral right to engage in an act of civil disobedience; that they were entitled to break the law. Otherwise, as non-members, the claims asylum seekers aim to bring into deliberation in European public would significantly be undermined.

### **3. Refugees' right to civil disobedience**

Let me begin by emphasizing with Joseph Raz the distinction between cases where one is morally justified to carry out an act and where one has a moral right to do so. Raz writes that

“It is an essential element of rights to action that they entitle one to do that which one should not. To say this is not, of course, to say that the purpose or justification of rights of action is to increase wrongdoing. Their purpose is to develop and protect the autonomy of the agent. They entitle him to choose for himself rightly or wrongly. But they cannot do that unless they entitle him to choose wrongly”. (1979, 266-267).

If we grant the right to civil disobedience to asylum seekers, then the march can be morally justified in virtue of such a right, rather than the content of the claims of asylum seekers. In other words, asylum seekers would be morally entitled to breach the law whether or not their claims are justified. In practice, this would imply that those who do not agree with the act should still tolerate it. Moreover, public authorities would have no claim to prevent the act from happening or punish the asylum seekers who carried it out (Raz 1979, 274). In what grounds can we establish the right to civil disobedience of asylum seekers?

The moral right to civil disobedience is usually discussed with reference to citizens' right to political participation. The main assumption is that a liberal democracy, which has a justified claim to political authority, guarantees citizens' participation in collective decision making procedures. When decisions are made by a liberal democratic state, citizens have a prima facie duty to obey the law. An act of civil disobedience conflicts with this duty so far as it is a breach of law that has been implemented by a legitimate process.

For Raz, this conflict can never be resolved in favor of a right to civil disobedience in liberal democracies. He points out that the right to political participation is not absolute, but limited. Such a limitation does not arise due to the political objectives that agents seek, but due to other agents' right to political participation (Raz 1979, 271). What is at issue here is the rightful means of citizens to put forth their political objectives in public deliberation. If the aim of the agent is to instigate political change, given that the right to political participation is protected by a state, the agent is required to choose legal means. Thus, there can be no right to civil disobedience derivable from the right to political participation in liberal societies. (Raz 1979, 273).

David Lefkowitz, on the contrary, argues that the moral right to political participation implies two correlative rights: “one a right to participate in the decision process itself, say by casting a vote in a majority rule procedure, and one a right to continue to contest the decision reached by such a process after the fact by a variety of means, including suitably constrained civil disobedience” (2007, 213). Lefkowitz's argues for the latter right based on the observation that actual functionings of decision-making mechanisms are not as effective as Raz hopes them

to be. Mechanisms such as parliamentary democracies are designed for citizens to make collective decisions in the context of reasonable disagreements regarding political objectives. Yet, the unbalance of power between groups create persistent and vulnerable minorities who are not able to adequately voice and advocate their points of view. The discrepancy of power coupled with constraints of time and resources lead to outcomes different than what might have turned out if there were equal means and more time. In such cases, those groups who have not been able to make their cases sufficiently have the right to continue detesting the law. (Lefkowitz 2007, 213-214).

According to Lefkowitz “the best understanding of the moral right to political participation is one that reduces as much as possible the degree to which it is a matter of luck whether one attracts majority support for one’s reasonable views regarding what justice requires” (Lefkowitz 2007, 215), Civil disobedience is a good way to attract majority support. As Brownlee notes “It can often better engage with society and the state than legal protest can since the added sensationalism of civil disobedience, even when suitably constrained and modest in form, tends to garner greater publicity than do lawful defenses of minority views” (Brownlee 2012, 531). Although Raz might be right in an ideal world, we still need a right to civil disobedience in non-ideal circumstances. If societies aim to treat each citizen equally, civil disobedience is an integral part of political participation.

Even if we can argue for the right to civil disobedience on the right to political participation as Lefkowitz does, it is not clear if such a path is available for us in establishing the right to civil disobedience to asylum seekers who are non-members. The obvious problem is that liberal democratic states of today are nation states accountable only to its members. They are under no obligation to guarantee non-members a voice in the decision-making processes. The citizens of the state determine the criteria of membership in virtue of their membership interests. There are various, and commonly acknowledged, reasons against accepting outsiders as members such as protections of society’s culture, democratic commitments and so on<sup>19</sup>. If the benefits of including a non-member do not significantly outweigh such reasons, then the way to inclusion is sealed. The same is true also for the EU, which is ultimately accountable only to the citizens of its Member States. Although asylum seekers are within the territory of the EU and under it’s the political authority, they are not members. They have no right to participate in the decision-making mechanisms in the first place.

A number of cosmopolitan accounts aim to expand the members’ right of political participation to non-members. They argue that such an expansion is necessary to address particular problems where “a democratic state contains no representatives of the communities that suffer the – direct or indirect – consequences of the policies it employs” (Archibugi 2003, 9). The predicament of asylum seekers is of a similar issue. The conditions and means through which asylum seekers are able to enjoy their Convention rights are determined by governing bodies where they are not represented. According to cosmopolitans, the expansion of the right to political participation can be facilitated by the development of global democratic institutions that involve citizens’ of the world in the decision-making procedures. In these institutions of global scale, nevertheless, the imbalances of power and limitations of time and resources would

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<sup>19</sup> For a comprehensive discussion of such reasons, see David Miller (2016).

even be larger than national or regional context. There would inevitably be some groups that voice their views better than others. In turn, a right to political participation in global institutions would also have to include a correlative right to civil disobedience at the global level.

Although such a cosmopolitan project might be the right way to go, it is still at its infancy. I for one believe that extending political participation beyond national or regional context for issues such as migration will bring more justice. Yet, until the time such a global right to political participation is consolidated politically, we still need to find some alternative grounding for non-member's right to civil disobedience. Moreover, this grounding needs to be ecumenical: It has to be reasonable to both cosmopolitans and non-cosmopolitans within a framework of political participation based on nation states. To this end, in the rest of the section, I will first offer a consequentialist justification of the march and then point out why it needs to be established as a right.

The consequentialist justification I propose, following Amartya Sen, takes into account comprehensive outcomes of acts. Comprehensive outcomes refer not only to outcomes, but also to how these outcomes have come to be, including agencies, relations and processes (Sen 2009, 219). The moral justification is based on both aspects. In other words, the march is morally justifiable, first, if the role of asylum seekers, their relations to others and the means they have used are justifiable; and second, if the act leads to a more preferable social state. I believe the previous discussion on the conscientiousness and communicative aspects of the march suffice to justify the agencies, relations and processes that are involved. Does the social state the march lead to is morally preferable?

My contention is that acts of civil disobedience by non-members are valuable tools for societies to reconsider their set of values towards discarding those that might be grounded on local parochialism rather than reflection. Brownlee notes that there "is a distinctive social value in conscientious dissent and disobedience. These practices contribute centrally to the democratic exchange of ideas by forcing the champions of dominant opinion to reflect upon and defend their views" (Brownlee 2012, 538). In addition to the non-instrumental right of minorities to continue dissent, there is an epistemic value of their acts in taking moral reasoning further and enabling the public to reach more informed decisions. This epistemic value is independent of the non-instrumental justification of the right to civil disobedience. Why not benefit from such instrumental and epistemic value that can be gained by contestation of non-members? Why stop at the borders of the EU?

Amartya Sen maintains that including in the deliberation only the viewpoints of those dissenters that are members have important limitations. He points out that "If we live in a local world of fixed beliefs and specific practices, parochialism may be an unrecognized and unquestioned result" (Sen 2009, 130). A particular focal group such as the European public may be prone to containing local prejudices that cannot be revealed by scrutiny of the same focal group. The remedy consists in including the views and experiences of those who are distant as they are useful in identifying the limitations by bringing in new experiences (Sen 2009, 130). The experiences of non-members bring out new ways the questions can be assessed from novel social positions. They reflect what can be seen from their unique social experiences. The

perceptions of asylum seekers produce distinct reasonings that may not be available to majorities within the EU. In addition, limits of resources and time may prevent the European public to reach out and incorporate such experiences into their deliberations of political objectives. In such cases, acts of civil disobedience by non-members are beneficial to convey the information that enhances political deliberation. The communicative aspect of the march serves this purpose well by getting the attention of the public swiftly and initiating a moral dialogue.

For example, there are at least two entrenched opinions regarding the current situation of asylum seekers in the European public that has been put to question by the march of refugees. First, it is commonly assumed that the intentions of asylum seekers who attempt to reach Germany and Sweden are inconsistent with the idea of being a refugee. Their actions are interpreted as pursuing better lives in more affluent countries, rather than overcoming problems of statelessness and inadequate basic needs. The march, nevertheless, contested this contention. Asylum seekers brought to the fore their own experiences of malfunctioning Dublin III. They compelled the European public to reflect on what it means to be an asylum seeker in the current situation. They brought to light the circumstances in Keleti where they are not able to effectively enjoy both their Convention and Human Rights and what they are willing to risk overcoming it.

Second, it is commonly assumed that asylum seekers who are coming from the Middle East Region do not share the democratic culture that binds people of Europe together. They lack a commitment to toleration and respect, which is essential to sustain the institutions of Europe. The way the march was designed and carried out contests this opinion. As I have emphasized, it was carried out as a last resort by appropriate mode and means designed to initiate moral dialogue. The asylum seekers demanded toleration and respect by a democratically recognized means of political action. They have made themselves visible to the European public as political agents ready to engage with the rest of the population<sup>20</sup>.

Both entrenched opinions figure an important role in the European public's perception of the European asylum policy and the response of the institutions to the novel circumstances since 2015. Political groups that campaigned against the reception of the asylum seekers within the EU territory have frequently invoked both beliefs. The march has a significant epistemic value for both creating a juncture and providing a novel perspective to reconsidering them. In accordance with the consequentialist approach I propose, this value can provide a moral justification for the act of civil disobedience. Can it also ground a moral right to civil disobedience?

In the beginning of this section, I have emphasized with Raz that what distinguishes a moral right to act is that it entitles the actor to the act whether or not the act is right or wrong. This implied that asylum seekers would be entitled to breach the law independently of the content of their claim, in this case, whether or not their predicament is unjust. I have also pointed out that the reform of the Dublin III has been a matter of intensive debate. Competing proposals have

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<sup>20</sup> In the words of Isin, although they are not European citizens they have *enacted* European citizenship (Isin 2013).

been raised as a response to asylum seekers arriving from the Middle East region<sup>21</sup>. It is not clear whether allowing asylum seekers to claim asylum in whichever country they demand leads to long-term solutions<sup>22</sup>. Yet, this does not undermine its epistemic value of the march. The unique experience asylum seekers bring into the deliberation is valuable so far as it initiates reflection on the values of society, not in virtue of their belief being correct. The European public may decide, in the end, that an alternative reform suits better with the overall values of society and bring more justice. It is the exclusive right of the European citizens to participate in determining the policies that govern the European institutions. The part played by the act of civil disobedience by non-members is to ignite the discussion and enlarge the information pool available to public uses in making political decisions. Moreover, the best use of the epistemic value can be achieved by allowing all conscientious and communicative acts of civil disobedience to be carried out regardless of the correctness of their beliefs. In this sense, act of civil disobedience by non-members should be protected by a right to civil disobedience.

#### **4. Conclusion: Refugees as political agents**

Since 2015, the plight of asylum seekers has been perceived solely as a humanitarian crisis where asylum seekers desperately wait to receive aid and protection. The march from the Keleti Station to the Austrian borders was a step towards disrupting this perception. When asylum seekers took action, they not only claimed the effective implementation of their rights but also a political agency that so far has been held back from them.

Lea Ypi describes political agency as obtaining when,

“it is both feasible, that is, relevant political, legal and social mechanisms are in place to operate the necessary changes in the system, and when the outcome of political action is sustainable, that is, it has a chance to survive without disrupting existing social ties, and it generates a sense of the collective that is likely to endure throughout time” (Ypi 2012, 131).

In this article, I provide a way to think about the struggle of asylum seekers as feasible in both senses Ypi describes.

In Section Two, I argue that the march is both conscientious and communicative and therefore displays to an adequate degree the features of a paradigm case of civil disobedience. These features gain substance in the context of an already existing framework of European institutions including the CEAS, the ECHR and the ECJ that govern and monitor European asylum policy. In this sense, the political and legal mechanisms were in place to initiate the necessary changes in the European asylum system. In addition, I point out that a significant part of the European public has been involved with the predicament of asylum seekers that make the journey through Europe. Activist European citizens were not only receptive to the claims of asylum seekers, but have also undertaken initiatives to assist them in many instances. This shows that the social mechanisms for a substantial change were also in place.

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<sup>21</sup> For example, see the discussion around the new EU plan on migration policy (Cellini 2016).

<sup>22</sup> Specifically, there is an ongoing debate around pull factors of more welcoming asylum policies. For example, see the discussion by Philippe Fargues. (2015, 3-4).

In Section Three, I delineate a distinct epistemic value of the march that enables the European public to better realize their right to political participation in determining the policies that govern European institutions. The epistemic value as the outcome of the march, rather than disrupting the existing social ties, reinforces them. Moreover, the proposed right to civil disobedience to asylum seekers, which I argue is essential to sustain such epistemic value, builds a connection between the asylum seekers and the European public towards generating a collective that is likely to endure.

Articulating refugees as novel political agents in the European political landscape and the march as an act of civil disobedience has important implications. It calls for toleration by those who do not agree with the claims and beliefs of asylum seekers. It also gives the authorities a reason to refrain from preventive measures as well as punishments. But more importantly, it establishes the moral status of refugees as any other citizen and compels the European public to take their claims for justice as seriously as any other political agent.

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