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Centrum för tillämpad etik
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**” Do we have moral duty to offer severely ill asylum- seeking
children residence permits? ”**

- Jenny BJörck -

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Supervisor: Prof. Göran Collste, Linköpings universitet

ABSTRACT

Do we have a moral duty to offer severely ill asylum- seeking children permanent residence permits?

This thesis analyses our moral duty to offer 410 severely ill asylum- seeking children permanent residence permits. During 2004 an emotionally charged debate started in Sweden. The debate concerned the deportation of 410 severely ill asylum- seeking children and their families. For this and other reasons Sweden was criticized by the United Nations commission along with human rights organizations for being too restrictive in its migration and asylum politics. My thesis outlines the migration and asylum debate and the refugee situation in the world at present together with facts about how the asylum procedure takes place in Sweden. Further I draw upon medical research connected to the asylum procedure along with how the Swedish Government and Save the Children respond to the migration and asylum debate. I also explore which rights, in terms of legal implications and ethical principles, these children have. Additional I outline theories in political philosophy from the utilitarian and communitarian tradition. The two philosophers I refer to are Michael Walzer and Peter Singer to apply their views to my primary question. Finally, I reach a critical analysis where I summarize and discuss my research. In the end I offer my final reflections in order to further debate on migration and asylum issues.

*Key words: children, asylum seekers, migration and asylum debate, ethical principles
Utilitarianism, Communitarianism*

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Chapter 1

Introduction

For refugee's coming from war zones it can be a positive life transition to receive a residence permit in the western world where standard of living is higher and solid welfare systems are well formed to protect the individual from inhumane treatment.

The Swedish Migration Board is the central social institution where refugees send their asylum applications for assessment. This governmental institution receives approximately 20 000 – 80 000 asylum applications every year, depending on the war situation in our world. Asylum- seekers who obtain a positive reply on their asylum applications can reduce the stress of waiting and start to lead a life in Sweden. Asylum- seekers who receive a negative reply from the Migration Board can appeal within three weeks to the Aliens Appeal Board. If their appeal is rejected they need to undertake a journey back to their country of origin.¹ During 2004 an extensive public debate started in the Swedish political community. It concerned the deportation of 410 severely ill asylum- seeking children and their families. These refugee children had regressed into a lifeless health condition, a state of entire paralysis, looking intently at the ceiling and being fed through a tube surrounded by their troubled parents. Regardless of their health condition they were going to be deported and not be granted permanent residence permit in accordance with the principle of asylum.

In March 2005 media wrote about the restricted migration and asylum politics in Sweden where they, for example, revealing that nine out of ten asylum applications are rejected in the primary round at the Migration Board.

A comparable tendency can be found in the rest of the European Union Nations. The United Nations commission together with organizations for human rights criticizes Sweden for the asylum procedure, for leaving asylum-seekers waiting too long for the decision to be made. In April 2005 the parliament voted in opposition to give 150 of the asylum seeking children permanent residence permits. While voting the parliament leaders were encouraged by the children's organization Save the Children, to vote with their ethical principles and not according to a party position.

¹ <http://www.migrationsverket.se>

In May 2005 Swedish church leaders submitted a formal request to the responsible minister for Migration and Asylum policy, Barbro Holmberg, with 160.000 names on a list.

This petition proposed an amnesty that would apply for a total number of 20813 asylum seekers. These figures included asylum- seekers who had been rejected a permanent residence permit but who could not safely travel back to their home countries and therefore were hiding somewhere inside the Swedish territory.

The amnesty would be given to those asylum- seekers who sought for asylum by 1st of December 2004 and who did not get any permanent residence permit until 1st of December 2005. Holmberg and the governments answer to the amnesty was no.

In the beginning of June 2005 the Alien's appeal board gave a thirteen year old asylum-seeker who suffers from the "apathetic" syndrome a permanent residence permit granted on humanitarian grounds. The decision gives hope to similar asylum cases. ²

M.D Bodegård has contributed research in the medical field connected to the 410 severely ill asylum seeking children. He inspired me to move on with the important questions of how we treat asylum seeking children and their families in Sweden.

My own questions will not focus on the health or medical conditions of the 410 severely ill asylum-seeking children, as M.D Bodegård accomplish in his research.

My interest is to emphasize an important ethical topic and in addition discuss which rights these children have in accordance with internal alien's law and ethical principles in ratified conventions. Western ethics and political philosophy have discussed the character and meaning of the political community and related questions such as justice, rights, equality and moral values.

I will analyze and discuss the communitarian philosopher Michael Walzer along with the utilitarian philosopher Peter Singer in order to see what answer they can contribute to my primary analytical question.

² <http://www.thelocal.se/>

1.1 Method and content

My method is to analyze and search for inter-related connections and structures from the literature that I have chosen for this thesis to see if I can find a closer answer to my primary question, before arriving at the critical analysis and the final reflection that is intended to stimulate the discussion about refugee issues.

While I am dealing with a sensitive subject, I will try to be objective and not involve too many feelings, but rather focus on the scientific value of the subject.

Chapter one is a general introduction to a previous highlighted debate in Sweden concerning migration and asylum questions and our treatment of humans who are not ethnically from Sweden.

In chapter two I will start to sketch a picture of the refugee situation in the world at present and some interacting factors that stipulate under what conditions that refugees come all the way to the Scandinavian continent. Moreover, I will in chapter two continue by giving a short summary of M.D Bodegård's research on how 410 severely ill asylum seeking children's existence can take shape in the Swedish political community.

In chapter three, I will explore how the government and the human right's organization Save the Children's respond to the refugee debate.

In the following chapter four I outline ethical principles and applicable laws in internationally binding documents connected to the 410 severely ill asylum-seeking children and their families.

In chapter five I will move on to political philosophy and here explore what the communitarian Michael Walzer and the utilitarian Peter Singer can contribute to my primary analytical question. The final chapter will outline the critical analysis and discuss what the literature has given and in the end come to my final reflections.

1.2 Material

Philosophical projects written about refugee's situation in the world are limited in the social and political tradition. The primary philosophical authors for this thesis were therefore chosen, in principal, because they can contribute with views on morality to the subject. Peter Singer and Michael Walzer, respectively, represent the utilitarian and communitarian tradition in political philosophy which gave me a possibility to compare their thoughts on the subject and apply them to the primary ethical analytical question for this thesis. The authors each gave me various ways of dealing with a moral and political analysis. When applied to the migration and asylum debate their opinion makes the critical analysis more interesting and fruitful and challenges our perceptions.

Background material for the thesis accords with my general introduction which emphasizes a morally charged debate concerned with the refugee situation in Sweden.

Barbro Holmberg, minister for asylum and migration policies give the reader one view of the politics and is in many various ways a contrast to M.D Bodegård's medical research and the human right's organization Save the Children's respond to the migration and asylum debate.

The material with ethical principles and regulations outlined in the UN Conventions and Protocol-related to the status of refugees and UN Convention on the rights of the Child together with Swedish Aliens Act and Dublin Regulation along with facts enhance and offer a deeper understanding of the subject. They widen the panorama on the asylum-seekers situation and life in our world. All together this material is a good way to get a wide perspective on how severely ill asylum- seeking children can and should be treated. It serves as a background material and assists as an analytical material foundation which makes it possible to give balance to the arguments and facts in the critical analysis.

1.3 Demarcation

In this essay I will bring out parts of the UN Convention on the Rights of the Child so as UN Convention and Protocol- relating to the status of refugees.

Demarcation in these declarations are essential since The UN Convention on the Rights of the Child are 54 all together, hence I will point to the most relevant articles that are corresponding to asylum seekers and refugees.

While writing this thesis I decided to bring out parts of the Swedish Aliens Act, to demonstrate parts of the law that correlate to asylum seekers. During the time with my creative work with this thesis, the Swedish Government made changes in the law that is probably significant for the thesis design.

I have chosen to refer to parts of the old law from 1997 into my thesis, since the new law, at present, isn't printed on paper, nor translated to English.

The parts of the law that I have chosen to use in this thesis are the most important segments connected to the definitions of refugees and asylum seekers.

I could have added the Aliens Act and the international conventions so as the Dublin Regulation in an appendix as an alternative to outlining parts of the law in the thesis.

However, my choice was to in greater parts summarize most as quotations which made the design of the thesis more flexible.

1.4 Aim

My aim with this thesis is to explore if we have a moral duty to offer 410 severely ill asylum-seeking children permanent residence permits. Moral analysis will therefore be contributed to by philosophers from the utilitarian and communitarian tradition. A further aim is to examine which rights the 410 severely ill asylum seeking children have in accordance to some of the relevant laws and ethical principles in the ratified conventions that Sweden has signed over the years. I will in my critical analysis discuss the force of the ethical principles which has significance for the migration and asylum debate as a whole.

The topic is very interesting since it is a debate that is on the Swedish political agenda presently and it wakens our intuitions and our deepest moral concerns for these children. My outlook is an analytical ethical question articulating “Do we have a moral duty to offer 410 severely ill asylum-seeking children permanent residence permits? “

This is connected to the public debate that was recently published in the Swedish media. The public debate has stated several important questions i.e. how the Swedish migration and asylum politics is formulated and the international critics that have profoundly been pointed towards Sweden’s migration and asylum politics.

However, I find it important to extend our consciousness by widening the picture and the context that surrounds these 410 severely ill asylum-seeking children and their families. Additionally I should like to share these thoughts with all those interested in the field of applied ethics and more specifically social and political ethics.

I have created the following analytical questions to gain a deeper understanding of the primary question for this thesis;

- * Do we have a moral duty to offer 410 severely ill asylum-seeking children permanent residence permits?
- * How does the asylum procedure take place in Sweden?
- * How can asylum-seekers existence take shape in Sweden?
- * What are the definitions of refugees, immigrants and asylum- seekers and what is a stateless person?
- * What are the ethical principles that regulate how we shall treat the 410 asylum- seeking children and their families?
- * How do the Swedish Government and Save the children express their opinion in the migration and asylum debate?
- * Do Michael Walzer and Peter Singer agree to offer the 410 severely ill asylum-seeking children and their families' permanent residence permits?

Chapter 2 Asylum-seekers existence in Sweden

2.0 Introduction

In this chapter I outline facts associated to asylum-seekers and how the asylum procedure in Sweden takes place. I will also review medical research connected to how asylum-seekers existence can take form in Sweden.

2.1 Asylum- seekers, immigrants and refugees - who are these humans?

90 % of all human being killed in wars since the 1980's have been civilians and at present there are approximately 40 armed conflicts in the world and the majority takes place in the Middle East, Asia, Latin America and Africa. About one million people flee to Europe or North America to seek asylum every year, but the vast majority of the world's refugees flee to nearby countries and gather around refugee camps. Virtually 25 million people are defined as refugees in the world today and the numbers of refugee's world-wide continue to increase. Shockingly 80% of these refugees are women and children.³

What is the definition of asylum- seekers and who is a refugee? How many of the asylum-seekers get residence permits in Sweden? Who is a quota refugee and what are a stateless person and an immigrant? How does the selection process work when asylum applications are evaluated?

Figures from 1992 demonstrated that Sweden had over 84000 asylum- seekers, whereas in 2004 the numbers were a total of 23000 persons.⁴ Conflicts affect the amount of refugees that do come to Sweden. During the Second World War the number of refugees in Sweden swelled to 200.000. The figures from 1992 demonstrate the consequences of the Balkan war and during the rest of the 1990's the situation in Balkan continued to dominate Sweden's effort with migration issues.

Refugees are persons that have fled their country of origin in order to seek asylum in Sweden and will be considered and granted asylum in accordance to the UN Convention and Protocol

³ Information material, Save the Children, Art nr: 2000-2389

⁴ Government offices of Sweden- To seek asylum – a human right- Swedish refugee policy p.9

- relating to the status of refugees, from 1951, along with the internal law for asylum- seekers. Persecution can have different faces but the Swedish grounds to gain protection are connected to a person's nationality, social group or by description of his or her religious or political opinion along with corporal punishment. The difference between a refugee and an asylum-seeker is with the sole purpose of formality, the refugee becomes an asylum seeker at the moment of filling in the application for asylum at the Migration Board. In many aspects asylum- seekers have the same right as someone who is allowed to remain in Sweden as a refugee, but for the asylum seekers the recognition as a refugee (in accordance with the refugee convention) will possibly, at least for psychological grounds, be of enormous importance.

Refugee immigration to Sweden can additionally go via the Swedish parliament who reaches a decision every year on a supposed refugee quota which promotes resettlement of refugees. This means that the Migration Board has a sum of money to transit refugees to Sweden on grounds that cohere with the UN Convention and Protocol-relating to the status of refugees. During 2004 Sweden transited 1659 persons either from a refugee camp or from special circumstances for private individuals in acute need of sanctuary.

A qualifying period for Swedish citizenship is shorter for refugees than for other aliens and the rules on grants for family reunification only apply to refugees.⁵ In many aspects asylum-seekers have the same right as someone who is allowed to remain in Sweden as a refugee, but for the asylum- seekers the recognition as a refugee (in accordance with the refugee convention) will possibly, at least for psychological grounds, be of enormous importance. Immigrants are persons that do come to Sweden for work, studies or marriage.

About 9 million people globally are defined as stateless persons. This means someone who is not officially a citizen and doesn't have the benefit of citizenship. This is the legal bond between a person and a government that is important for a person to be able to call a country as his or her own.⁶

Humanitarian ground is a paragraph in the Swedish Aliens Act that is used when there are strong indications that an asylum seeker has dependent family members in the country who need assistance of the asylum- seeker. This paragraph can also be applied when for example there is a notion that an asylum- seeker suffers from life-threatening physical and mental

⁵ [http/ www.regeringen.se](http://www.regeringen.se)

conditions.

The normal routines for the asylum procedure are to investigate refugee's claims on spot, but there can also be dossier assortment examined from refugees having sent their applications via the post-service to Sweden. The staff at the Migration Board will meet the asylum-seeker several times and an interpreter will be provided if necessary during the meeting. While waiting for the decision the asylum-seeker will have the opportunity to live with friends or relatives or reside at the Migration Board's apartments. Medical treatment such as dental health and other health care will be offered while waiting. Schooling is arranged for the younger registered asylum-seekers in collaboration with the local authorities along with different activities, such as computer lessons for their parents to ensure their mental wellbeing while waiting.

These activities are often available because of generous work from church communities along with voluntary organizations such as the Red Cross and Save the Children.⁷

With these background facts about refugees I will move over to reconnect to the migration and asylum debate that was described initially.

⁶ Government offices of Sweden, to seek asylum-a human right, Swedish refugee policy

2.2 Severely ill asylum- seeking children and their families in medical research

Lately there has been an extensive debate in Sweden where participants from the government, the church of Sweden, children's organizations and others involved in refugee politics have expressed their opinions.

The focus has been on a group of 410 severely ill asylum seeking children and their families who have been diagnosed in medical terms as "depressive devitalized".

Göran Bodegård, M. D and chief physician at the children and youth psychiatric clinic at the University hospital in Stockholm has completed the first and new research that focus on the prevailing group of children.

The central theme in the report are described in medical terms as depressive devitalization which is a health-condition where the child stops eating, walking, talking and loses the ability to take care of their hygiene. Physical medical treatment strategies are discussed in the research report to be able to help these children and their life-threatening health condition.

Bodegård refers to a documented case with five asylum- seeking children, three boys and two girls between 7 and 10 years old that were treated and permitted at the district of child psychiatry in Stockholm. Two of them originate from former Soviet countries and the other three belonged to Asian ethnic minorities.

The children and their families had escaped from their home countries for the reason of persecution from authorities and they had been threatened directly with corporal punishment. Their illness was due to unsympathetic traumatic experiences in their mother country. These children had confirmed symptoms such as suicide attempts, speech impediments and children neurotic symptoms in their country of origin, before they developed devitalized depression symptoms in Sweden.

The Migration Board had tried to help the families with permanent addresses. But the families rejected the help and had been moving around a great deal which did not provide them a chance to establish a social contact network in Sweden.

Communication within the families was structured in negative way- with a hopelessness and rigid way of thinking about their life situation in addition to other self- destructive behavior.

⁷ [www. migrationsverket. se](http://www.migrationsverket.se)

This harmful behavior became massively life- threatening to these children since their closest relations surrounded them with a negative atmosphere.

The Migration Board had valued the cases differently and some of the families had received a negative decision on their applications. Others waited more than 8 months for their cases to be handled in the asylum process while they were under care at the psychiatric clinic.

During their time at the psychiatric clinic all of the families received their residence permits on humanitarian grounds and the study proves that their health condition continued to improve after they received their permanent residence permit. ⁸

Health workers at the psychiatric clinic had to concentrate on developing effective activation tools in opposition to regression and passivity within the family's behavior structure.

The energetic activation should step by step break the family member's feelings of mistrust and aggressive behaviors towards each other.

Activation to revitalize the health conditions became exceptionally important when starting a new life at the psychiatric clinic and moreover in the Swedish society.

Bodegård points to the time limits for the family to get a residence permit which is directly connected to treatment results. The social service interaction in the process was also important for the family's integration in the society.

Bodegård closes the report with the question; "Is the diagnosis depressive devitalization overrepresented within the medical treatment group of refugee children?"

If this is the truth we need to have a better and more constructive way to treat these refugee children and their relatives in the asylum process at the Migration Board. " ⁹

The medical research leads us to consider the moral aspects of how we treat or should treat severely ill asylum seeking children and their families in Sweden.

Now I will move over to explore how the Swedish Government and Save the Children outline their views in the debate that are concerned with these particular asylum-seekers.

2.3 Summary

Refugees are coming to Sweden to be protected under the UN Convention and Protocol relating to the status of refugees. The refugee becomes an asylum seeker when filling in an application at the Migration Board. Immigrants are persons coming to Sweden for study, work, to get married or to have a relationship with someone already settled in Sweden.

Bodegård's research describes the asylum-seeking refugee children and their family's health process from disease to wellbeing and the intervening medical factors.

Bodegård's research strengthens the psychosocial functions for the growth of the physical conditions. Decisions from the Migration Board and the social service are important interacting factors for the health process.

3 Swedish migration and asylum debate

3.1 Introduction

In this chapter I will outline how the Swedish Governments and the human rights organization Save the Children respond to the migration and asylum debate.

3.2 The Swedish Government on migration and asylum politics

Barbro Holmberg, responsible Minister for the migration and asylum politics in Sweden responded in various ways to the debate about the 410 asylum- seeking children and their families.

Her answer to give amnesty to the 410 severely ill asylum- seeking children is a clear no and the reason for that is that she emphasizes that amnesty as a collective decision does not belong in Swedish refugee politics. She says;

“....asylum- seeking humans are not a homogenous group of people. Every human has different reasons for seeking asylum in Sweden and therefore has the right to apply for asylum individually. This is the inner and most important core in the principle of asylum....”¹⁰

In April 2005 Holmberg votes against granting residence permits for 150 of the severely ill asylum seeking children. She says;

“.....Refugee policy is to focus on the need for protection.

We want to make it clear that asylum is a question of the risk of persecution in one's country of origin, not illness or other problems that might arise in Sweden.”¹¹

Bodegård's research demonstrated that the time limits to receive a permanent residence permit is one factor that is connected to positive treatment result of the severely ill asylum-seeking children and their families.

¹⁰ <http://svt.se/svt/jsp/Crosslink.jsp?d=23993&a=459804>

¹¹ <http://www.sweden.gov.se>

In line with Bodegård's medical research United Nations commission criticizes Sweden for being too restricted in its time limits when granting residence permits.

Holmberg responds;

"....that we have long waiting time when evaluating asylum applications is the biggest myth in Swedish migration politics. She believes that 6 months is an appropriate time line and if it sometimes takes longer time it is because refugees don't have identity papers in order to be able to fill in the application correctly. To have no identity papers is one of the biggest problems with the asylum politics at present."¹²

Holmberg also refers to the positive development of the Alien's act and the achievement of implementing the best interest of the child in the law, which offers children greater possibilities in the asylum process than in the past. She also speaks warmly about the new asylum procedure and a different kind of system for appeals.

Holmberg says;

"This is the biggest reform in the area of migration ever undertaken. The Alien's Appeal Board will be replaced by court proceedings as of January 2006. This will lead to a more transparent and open process in which people seeking asylum will have greater opportunities to present their cases orally". "It will add to greater confidence in the way decisions are made," says Holmberg. "At the same time, we are submitting a draft for a new Alien's Act in which grounds for seeking protection are expanded. Sweden will also contribute with approximately 430 million SEK to UNHCR's work for international co-ordination of resettlement which is very positive, says Holmberg."¹³

Holmberg concludes the discussion by saying that Sweden has a generous refugee politics and is among the most generous countries in the world when it comes to take responsibility in various kinds of refugee situations. She also thinks that Sweden needs to have a regulated migration and asylum politics.¹⁴

Save The Children has different opinions in the debate and I will now give the reader a wider perspective on the debate by outlining their views.

¹² <http://svt.se/svt/jsp/Crosslink.jsp?d=23993&a=459804>

¹³ Ibid.

¹⁴ Ibid

3.3 Save the Children's opinion in the migration and asylum debate

Save the Children is an organization with a non-governmental democratic character whose aim is to work for children's rights and in the best interest of the child. A further intention is to enhance the knowledge about the UN Convention on the Rights of the Child in Sweden. Save the Children contribution to the migration and asylum debate is;

"... that the government needs to understand that children can have their own reasons for asylum and that an application for asylum and humanitarian reasons for a child always need to be interpreted in the best interest of the child.

The government must in their decision consider the child's health, the related family situation, parent's ability to take care of the child, the relation to Sweden and the circumstances in the home-country. What must be separated from that decision is Sweden's need to regulate the migration. Today it is common that the child receive a negative decision even if the assessment demonstrates that the best for the child should be to stay in Sweden. The decision needs to be motivated by "the best interest of the child", and must be in relation to the interest of regulated migration." ¹⁵

Save the children writes further;

"...children must be granted residence permit if it can be shown that the child will be permanently damaged in its psychosocial development whilst returning to their country of origins. Today it is common that apathetic refugee children are rejected residence permits because health care can be provided in the home country. Since the apathetic children suffer from very serious and complex health conditions the majority should be entitled residence permits. Even if they can be provided with intubations in their home country, this is not enough health care" ¹⁶

Additionally Save the Children refers to a study about children in the asylum procedure to see whether asylum seeking children had the right to express their opinions.

A total number of 87 asylum- seeking cases were studied and the research showed that in only 13 cases out of 66 was the child questioned about his or her opinion.

In 9 cases of the 87 the parents were consulted for the child's point of view instead of requesting for the child's opinion.

¹⁵ www.rb.se

Interestingly, all 87 asylum cases were rejected both in the first round at the Migration Board and secondly at the Aliens Appeal Board.

In addition, the study demonstrated that the administrators who supervised the asylum procedure expressed that they thought it was pointless to ask for the child's opinion since children rarely have their own reason to seek for asylum. Save the Children's perspective is that every child should have the right to be heard in cases that have an influence on their lives based on her or his individual life situation.¹⁷

Save the Children writes;

“Save the Children Centre for Children in Crisis have for several years treated severely ill traumatized refugee-children. We can now see that the children show much more severe symptoms than in years past. They have experienced physical violence and both girls and boys are sexually abused. Also many children are harmed by being a victim to family abuse. These children's experiences are not being seriously considered in the asylum procedure. Children's own reasons for asylum are not investigated adequately. Nor are serious signs of psychological disorders being investigated properly, which causes greater suffering for the children.....Based upon our experience of direct contact with traumatized refugee children we are very upset about the lack of empathy and the incomplete investigations that sometimes the government has performed. We are very sad that children in apathetic situations – even on humanitarian grounds – are rejected residence permits. Since October 2004 until April 2005 the Migration Board has rejected residence permits in more than four cases out of five.”¹⁸

Save the Children and Minister Holmberg gave their different views and respond in the refugee debate and in my critical analysis and in the final reflection, I will implement these views when discussing whether we have a moral duty to give 410 severely ill asylum seeking children residence permits. To widen the picture further I will next give an introduction to International conventions containing ethical principles along with Swedish internal legal regulations which builds a ground for how we should treat refugees and their families in Sweden.

3.4 Summary

¹⁶ www.rb.se

¹⁷ Ibid. p.24

¹⁸ www.rb.se

Holmberg speaks positively about the reformation of the Alien's Appeals Board that will transform and expand the old system to a regular court proceeding. Holmberg makes a clarification concerning the migration and asylum policy and the health reports regarding the 410 asylum seeking children refugee's. Holmberg argues that the issue about the asylum-seeking children's health condition are separate from the question that are concerned with the principle of asylum and the asylum procedure, these two distinct issues have to be dealt with separately.

Save The Children describes Sweden's limitations in implementing the UN Convention on the Rights of the Child in the refugee debate along with their view on deporting the 410 severely ill refugee children and their family's. Save the Children refer to their report which shows that asylum-seeking children's rights to be heard in the asylum process rarely contribute to their own chances to be granted a residence permit on grounds that cohere with the principle of asylum. Save the Children recommends a larger and deeper picture when the Migration Board assessing their asylum applications a picture that takes into account, for example, the circumstances in the asylum-seekers home country together with how the parental situation relates to the ability to take care of the child.

4 Ethical principles and legal implications

4.0 Introduction

In this chapter I will present an introduction to ethical principles in international declarations. These conventions are ratified by Sweden and clarify the rights and obligations that refugees have when seeking asylum. Further I will present some parts of Swedish law which are applied when refugee's seek asylum in Sweden

4.1 UN Convention and Protocol - relating to the status of refugees

A government routinely safeguards the safety net around their citizens, but when humans loose their homes or are persecuted within their home countries for some reason, the safety net loses its strength.

UN Convention and Protocol – relating to the status of refugees is co-ordinated by the office of the United Nations High Commissioner for Refugees (UNHCR) and the agency is authorized to guide and safeguard the world's refugees and their well-being.

The document serves as an international instrument established for the fortification of refugees and particular articles in the Convention are deemed to be so important that no changes will be made to them. The Convention emphasizes refugee's rights and obligations to a host government and also defines the term refugee along with the ethical principles on how refugee's can claim the right to seek asylum.¹⁹

In 1966 the Convention was updated by a protocol which aimed to remove geographical and temporal restrictions from the convention and to better incorporate stateless persons.

The Office of High Commissioner is responsible for supervising governments which have agreed to co-operate and implement the Convention as a cornerstone in the protection of the world's refugees in their countries²⁰

Refugees are required to respect the asylum law in the receiving country and will be evaluated individually in accordance to the internal law.

¹⁹ [http:// www.unhcr.ch](http://www.unhcr.ch)

When there is a mass exodus of refugees, such as during the Second World War, refugees can be granted and declared asylum in accordance to group fortitude. Together with UN Convention and Protocol-related to the status of refugee stands the UN Convention on the Rights of the Child act as a core document in protecting children's rights.

4.2 UN Convention on the Rights of the Child

In 1924, Eglantyne Jebb from England, founder of the volunteer organization Save the Children, formulated 5 main principles whose central theme was children's welfare and protection. Jebb's writings can be seen as a first attempt towards what would be a long fight for children's rights all over the world.

The UN Convention on the Rights of the Child and all its articles was ratified by the UN General Assembly in November 1989, and by the Swedish government in 1990.

In addition the convention is recognized by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

States have accountability to report to the United Nations Committee on the Rights of the Child and Sweden has so far submitted three reports. The Swedish state has ratified the convention and therefore must ensure that the ethical principles in the convention are applied throughout the whole country.

The child convention is not legally binding and part of Swedish law, such as the Swedish Social service act or the Aliens act. Rather the Swedish laws are adjusted to the convention.

No authority has the responsibility to control if the articles are conformed to, but it is still important to understand its recognition for all people who works in relation to child issues.²¹

The UN Convention on the Rights of the Child is divided into three parts. These sections are political and civil rights in addition with economic rights plus social and cultural rights.

Further protections against exploitation and other forms of crucial acts are provided.

Although historical and international comparisons show that children in Sweden are well off, considerable inadequacies can be found and numerous children are still mistreated.

²⁰ UN Convention and protocol - relating to the status of refugees, p. 7

The convention serves as an active instrument within Sweden and its most central aim currently is to extend the awareness throughout Sweden about children's rights. Hence there are some articles that we can recognize as specifically applicable when considering the 410 severely ill asylum- seeking children and their family's right to health and life;

“Article 5

Parental guidance and the child's evolving capacities

The state must respect the rights and responsibilities of parents and the extended family to provide guidance for what is appropriate to his or her evolving capacities.

Article 6

Survival and development

Every child has the inherent right to life, and the State has an obligation to ensure the child's survival and development

Article 20

A child temporarily or permanently deprived of his or her family's environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.

Article 27

State parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 39

State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of; any form of neglect, exploitation, or abuse; torture or any other form of cruel inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and the dignity of the child. “²²

²¹ Save the Children's information material, art nr: 2000-2161

The implementation of the child convention is an ongoing process in Sweden. The responsible governmental authority for the development is the Ministry of Social Affairs. Their responsibility is to coordinate activities related to the convention and represent Sweden abroad in matters concerned with children and their rights. The convention shall influence assessments in every organisation in Sweden that are working closely to children and efforts ought to be made to work in the best interest of the child.²³

All of the 54 ethical principles support children's rights and recognition of the inherent dignity to live a life of justice and peace throughout the world.

I will reconnect to the conventions in the last part of the thesis to insert them as an important piece in the migration and asylum debate.

The Migration Board are considered to be among governmental offices that are aware of the Convention, but when refugee's seek for asylum the legal documents which are most often referred to are the Swedish Aliens Act together with the Dublin Regulation.

²² Sweden's third report to the committee on the rights of the child; p. 203-209

4.3 Swedish Alien's Act (1989:529)

Immigration to Sweden is regulated under the Swedish Aliens Act. The law gives restrictions for aliens in need of protection and their legal right to stay in Sweden with a permanent residence permit. Additionally the law expresses the right of asylum and further how children shall be paid extraordinary attention with regard to their growth and physical well being. The best interests of the child are of particular importance when children are involved for investigation.²⁴

Chapter three in the Aliens Act pays extraordinary consideration to refugees and comprises how the Swedish law defines humans that have arrived in Sweden with a wish to be sheltered;

“Section 1

The term *asylum* as used in this Act refers to a residence permit awarded to an alien because he is a refugee.

An application for a residence permit in accordance with Section 2 shall be processed as an application for asylum.

Section 2

The term refugee as used in his Act refers to an alien who is outside the country of his nationality owing to a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. This applies irrespective of whether persecution is at the hands of the authorities of the country or these cannot be expected to offer protection against persecution by private individuals.

A stateless person who for the same reason is outside the country of his former habitual residence and who is unable or, owing to such fear, is unwilling to return to that country, shall also be deemed a refugee.

Section 3

The term *alien in need of protection* otherwise used in this Act refers to an Alien who in cases other than those referred to in Section 2 has left the country of his nationality because he

1. has a well-founded fear of being sentenced to death or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment,
2. Due to an external or internal armed conflict he needs protection or, on account of an environmental disaster, he cannot return to his country of origin, or

²³ Ibid. p. 12-13

²⁴ Aliens Act, (1989:529) with amendments, October 1997.

3. Because of his/her sex or homosexuality, he/she has a well-grounded fear of persecution.

A stateless person who for the same reason is outside the country of his former habitual residence and for the reasons given in paragraph 1 cannot return to that country or, owing to fear, is unwilling to return, and shall also be deemed to be an alien in need of protection. “²⁵

These paragraphs are aligned with the UN Convention and Protocol relating to the status of refugees and its definition of refugees rights, and include everybody housed within the Swedish state's borders as a refugee.

Frequent reasons for refusal of entry are, for example, that the alien has no economy for his stay and for the travel back home or that he or she lacks a passport and therefore a proper identity. Another reason can be that the person has sought asylum but has been rejected by the Migration Board to have manifest grounds for asylum.²⁶

We will now look further into Dublin Regulation II, the second important legal document which is another important law which the Migration Board will refer to when assessing asylum applications.

²⁵ Ibid. p. 6

²⁶ Government offices of Sweden, To seek asylum-a human right-Swedish refugee policy

4.4 Dublin Regulation II

Dublin regulation was reinforced in Sweden 1997 and the directive clarifies which EU country is responsible for the asylum application.

The decree is an attempt to have a shared asylum policy within the European Union. Countries in the EU member states in cooperation with Iceland and Norway are enclosed by the Dublin Regulation.

The document is not an international law, but the Member states within the EU are bound by the EU legislation which is bound to the Geneva Convention, 1951. When the Migration Board assesses an asylum applications there are questions that need to be reflected on. If a refugee already has entered a country within the European Union this country is responsible for the asylum application, because this is the first country being crossed. Additionally if the refugee has family who has previously received residence permits in an EU Member state, other than the state he has applied to, he can be transferred to the state where his relatives are settled.

The intention of the regulation is furthermore to prevent asylum seekers from “asylum shopping”, which prevents a refugee to requests for asylum in several countries in EU. The anticipation of “asylum-shopping” is also a method used to stop asylum seekers from choosing a state which is enhanced in a sense of social security. A further purpose is to prohibit states from relocating an asylum-seeker on the grounds that the state does not want to take responsibility for the asylum application.

Applications directed under the regulation have time limits, i.e. a transfer of a refugee to another member state must occur within three months after the application’s arrival at the Migration board.²⁷ An application is to be assessed within two months after the submission has been received, and if the answer is negative, transportation will take place inside a time restriction of six months.

Asylum seekers are allowed to go into compensated employment if the application evaluation extends beyond four months.

²⁷ [http:// www.sweden.gov. se](http://www.sweden.gov.se)

Asylum-seekers have the right to appeal their case to the Migration Board but during the appeal procedure the asylum-seeker will be required to leave Sweden.

It is exceedingly common for asylum-seekers in Sweden to appeal the decision from the Migration Board. All countries within the EU apart from Denmark are connected to the Eurodac electronic database and if the applicant is older than 14, finger prints will be checked in the database. The aim of the database is to have control over humans traveling and transferring within the EU and as a lead in prohibiting illegal actions.²⁸

The conventions and laws presented are examples of core documents that control the migration and asylum politics in Sweden.

In the final part of the essay I will reconnect to the ethical principles and legal implications when I discuss the migration and asylum debate. Western ethics and political philosophy have contributed to our moral duty towards humans who do not have their ethnic roots originally attached in a political community. I will now explore if two authors in the utilitarian and communitarian tradition can give me a closer answer on my primary analytical question; if we have a moral duty to offer 410 severely ill asylum- seeking children permanent residence permits.

²⁸ Save the Children, Unaccompanied children, and page. 7

4.5 Summary

Our moral duties towards the children and refugee's are written down in these documents and are moreover ratified by the Swedish state. Even though Sweden is a country with a secure safety net for children, serious shortcomings in the treatment of children through neglect or exploitations can be found which must be taken seriously.

UN Convention and Protocol-relating to the status of refugees is a central convention that defines who is a refugee and what rights and obligations that a refugee particularly has to their host country. The convention is coordinated by the UNHCR whose responsibility is to cooperate with countries that have ratified the convention and support them in implementing the ethical principles.

UN Convention on the Rights of the Child stipulates the ethical principles for children's rights. Sweden ratified the convention in 1990 and state parties are required to submit frequent reports to the United Nations Committee on the Rights of the Child.

Dublin Regulation II establishes which country in the European Union is responsible for refugees that have fled to Europe in order to seek for asylum. The intention with the regulation is to prohibit asylum seekers from seeking asylum in a great number of states within EU as well as stop European countries from escaping their responsibilities towards asylum seekers.

The Swedish Alien Act establishes the rules for immigration to Sweden and defines refugees as they are recognized within the UN Convention and Protocol-relating to the status of refugee. The act further confirms the set of laws and on what grounds an alien can receive a Swedish residence permit which is granted on the principle of asylum.

The ethics of migration

5.0 Introduction

In this chapter I will outline the political philosophers Michael Walzer and Peter Singer from the communitarian and utilitarian tradition and explore their responses to my primary analytical question. Firstly, I will sketch their general idea about how an equal and moral society should be formed and secondly, how their moral implications connect to refugee matters.

5.1 Michael Walzer and the community sphere

Michael Walzer represents communitarianism which is a secular position in western ethics who emphasizes shared consideration and traditions along with psychosocial issues within every society. Community has a special meaning for communitarians and for them the idea of a morally good society incorporates two components;

“(1) individuals belonging to a community have ends that are in a robust sense *common*, not merely congruent private ends, and that are conceived of and valued as common ends by the members of the group; and

(2) for the individuals involved, their awareness as belonging to the group is a significant constituent of their identity, their sense of who they are.”²⁹

To be able to understand how Walzer thinks of issues related to refugees I will say something about his idea of a just and equal society. As a critical liberal thinker Walzer develops his arguments towards what he thinks is the liberal's failure to acknowledge the value of preserving inner culture and human social roles and identities within the society. What is the rationale of his theory and how does he construct the arguments for his ideal society?

Walzer writes in his book, *"Spheres of Justice – A defence of Pluralism & Equality"* about the importance of the reduction of domination in the society and describes his arguments as radically particularistic. His theory of a just society is not an abstract idea that leaves individuals standing on the earth and looking for something untouchable "over there", (the human self is so to speak "disconnected from the end)", writes Walzer.³⁰

Walzer presents the lives of particular diverse communities which includes humans as parts of their ends with a shared history.

Human lives are shaped by an already existent society of humans, creating their activities that are constituted by their social context. Human beings are, according to Walzer, inseparable from this context, since their identities are *per se* shaped by the process of the sharing of these creative activities.

Walzer stipulates his theory of a just and equal society around the idea of "Complex equality". That is the allocation of social goods between the members in the political community. Explicitly, social goods represent culture, friendship, status, bravery, capital strength, welfare and love, health care, membership et cetera.

These elements are ingredients with an historical life in a unique political community and superiority is at all times reconciled by these ingredients.

Walzer writes;

"Distributive justice is a large idea. It draws the entire world of goods within the reach of philosophical reflection. Nothing can be omitted; no feature of our common life can escape scrutiny. Human society is a distributive community. That's not all it is, but it is importantly that we come together to share, divide, and exchange. We also come together to make the things that are shared, divided, and exchanged; but that very making – work itself – is distributed among us in a division of labour"³¹

Walzer's intention is to try to explain what these elements mean to us and how they appear in our lives as an art of differentiation.³²

²⁹ Concise Routledge encyclopaedia of philosophy, p 155

³⁰ Ibid, p. XIV

³¹ Ibid. p.3

³² Ibid. p.xvi

Complex equality stipulates that all inequalities in a specific sphere will be preserved in that particular sphere. And hence any particular sphere does not have any bad effects, such as domination, over other distinctive spheres.

The autonomy within the spheres is maintained by the specific sharing and relatedness between the people who are associated with that sphere and illustrates the fairness.

Walzer writes;

“ Thus, Citizen X may be chosen over citizen Y for political office, and then the two of them will be unequal in the spheres of politics. But they will not be unequal generally so long as X’s office gives him no advantages over Y in any other sphere – superior medical care, access to better schools for his children, entrepreneurial opportunities, and so on. So long as office is not a dominant good, is not generally convertible, office holders will stand, or at least can stand, in a relation of equality to the men and women they govern. “³³

Distribution of social goods creates a relationship but can also generate conflicts between the participants. This reflects the act of distributive justice within the autonomous sphere as a socially important meaning for the members.

Hence social goods have meaning for the members (within the spheres) and can not be graded or assessed better than any other social goods, as long as the social goods create meaning for the specific sphere.

Humans create moral values and reside in diverse cultural worlds and within these worlds justice will be the first virtue of requirement.³⁴

What does Walzer’s philosophy indicates about refugees who don’t belong to a national sphere?

Who should be the lucky one to be a member of the welfare state and what ought to be the criteria to choose among the hopeful aspirants? Is it required for a state to have exposed admission policies? With whom do we want to share our social goods, i.e. the membership in the community?

Michael Walzer designates political membership as a central aim when talking about a community’s setting and its inhabitants. As I have mentioned before, Walzer discusses the ethics of the market in the political community as a space with members sharing social goods

³³ Ibid. p.20

³⁴ Ibid. p.314

and where cultural values and social roles are encapsulated to support and nourish human identities. Walzer's interest is to see how members are bound and organized to the market at present and for the future generations. Redistribution of membership in the political community can serve as the most important social good to distribute.

Walzer writes;

“The primary good that we distribute to one another is membership in some human community. And what we do with regard to membership structures all our other distributive choices: it determines with whom we make those choices, from whom we require obedience and collect taxes, to whom we allocate goods and services. “³⁵

Walzer deduces that we have two different groups, one that is outside the border and the welfare system and another that is inside, where the first assembly is unprotected. Stateless persons or refugees aren't linked to the provision of shared goods because they are outside the communal welfare system. How can these humans become political members? Which criteria or norm can be used for behaving morally towards humans that are strangers to us?

Walzer discusses mutual aid as the norm for acting morally towards strangers who want to become a member in the given community.

Let us imagine for a moment the mutual aid situation where two strangers run into each other in the mountains one of whom is injured because of a broken leg and a bleeding elbow.

Our intuition tells us that we have an obligation to help this person but we cannot have this as the measure when we shall choose who should be a member of the political community.

According to Walzer immigration policies are the gateway for distribution of political membership and members inside the market have opportunities to distribute the political membership via these policies.

The mutual aid principle is working as a global socialist or a global libertarian norm where the political community shouldn't need any entrance policies at all, since all evaluations ought to be made and depend upon individualistic choices.³⁶

³⁵ Ibid. p.31

³⁶ Ibid. p.34

However, Walzer suggests that members inside an autonomous sphere likely avoid sharing the membership if they can; merely they distribute power between one another.³⁷

Walzer asks us to imagine the community as the political terrain equivalent with families, neighbourhood and clubs. This is to illustrate the meaning of what a political membership specifically is and what it means for the state to prohibit and provide to strangers who want to become members. Humans are the ones which originate and bestow character to the community (the state) and without them there should be nothing to share. Walzer writes;

“ For it is only as members somewhere that men and women can hope to share all the other social goods - security, wealth, honour, office, and power- that communal life makes possible.”³⁸

Firstly, features of families are structured and interconnected with moral bonds, mothers and fathers and their children are like small associations. Members in the family sphere can live outside the sphere and still be welcomed unconditionally back to the family circle. Members in the family sphere are not strangers towards each others in fact they are highly familiar with each other.

The state should use these beneficial principals to give refugees and stateless persons a part in its autonomous sphere. The state can do this in accordance with sympathetic moral principles. These are principles that allow relatives that are travelling all the way from the other side of the world to rejoin with their families, writes Walzer.

Secondly, families are an assembly with persons moving into a neighbourhood because they have a longing to live in the environment. Yet families make the choice to transfer themselves into the neighbourhood for many different motives.³⁹

Some families arrive because they have found their dream-job and a forward-thinking coming career, others move for the beautiful surroundings and the architecture of the old houses.

Others come to the neighbourhood to gather round their relatives and their fellows or to enjoy the last days in their lives, like older people on retirement.

³⁷ Ibid. p.31-32

³⁸ Ibid. p.63

A neighbourhood is an arbitrary organization but without legal restrictions, stateless persons or refugees as well as a country's natives are equally welcome to choose to move in or not. People move to the neighbourhood because they have made a choice from their own personal preferences.

Neighbourhoods are in this sense a free organization that operates *per se* from the market place.⁴⁰

To sustain the neighbourhood as a free establishment where people can move in and move out, the neighbourhood needs to be separate from the country's border that is restricted by immigration policies and controlled by the country's authority.

Thirdly, we have clubs which feature restrictions on admission.

A person has to apply for membership and be accepted before they are allowed to enter the club.

Contrary to neighbourhoods, club members can move freely about and leave the club whenever he or she wishes to be withdrawn but non-members on the outside have no right to be inside the club.

Clubs work independently of the state as long as the club is working appropriately in manner of the country's law and as a flourishing and desirable place for the club-members. Persons with membership in those clubs are autonomous persons and are free from the authorities' intervention.

A state's border that is closed for immigrants is equivalent to the club; persons are restricted to come in but free to emigrate with the ethical thread between immigration and emigration being unbalanced, according to Walzer.⁴¹

Do the inhabitants in that political community have a moral duty to consider the needy unfamiliar persons that are knocking on the door, with a desperate expression in their face, articulating their backgrounds filled with tragic life-stories?

More precisely, do the inhabitants in that political community have a moral responsibility to re-distribute the political community as a social good to people from the poorer areas of the world?

³⁹ Walzer. p.41

⁴⁰ Ibid. p.38

⁴¹ Ibid. p.40

Walzer's opinion is that the political community at some point needs to be closed for some people (immigrants or refugees) to conserve the moral value of the internal atmosphere. A democratic state needs to guarantee and keep its resources and items for consumptions to be able to remain wealthy and therefore restricted immigration is preferred. This is how the internal atmosphere and independent democratic state can flourish and take good shape so its members can lead a life in a comfortable community. The opposite to this kind of political community would be an unstable community with little resources and materialistic things to share.

Walzer argues further that limitations of the population are required because the citizens who live there have already formed a shared life with hopes and prospects for the lives they intend to lead there. This is a kind of collective synchronized mind set.

Sovereign states have with their governments, by means of political decisions, a legal and moral right to close the border for immigrants.

Further, states have a responsibility to recognize refugees within their legal systems, in correspondence with the principle of asylum.⁴² Walzer adds that citizens (members) in a country are bonded to the state which gives liberty and welfare a potential to grow.⁴³

Walzer writes;

“Initially, at least, the sphere of membership is given: the men and women who determine what membership means, and who shape the admissions policies of the political community, are simply the men and women who are already there. New states and governments must make their peace with the old inhabitants of the land they rule. And countries are likely to take shape as closed territories dominated, perhaps, by particular nations (clubs and families), but always including aliens of one sort or another- whose expulsion would be unjust. “⁴⁴

The country as a territory is a secluded area, consisting of rich resources such as clean water, a safe health system and a place without war and conflicts. This territory is working at least for citizens that are settled inside the territory and therefore have the opportunity to benefit from the fruit of the welfare.

⁴² Ibid. p.42

⁴³ Ibid. p.39

⁴⁴ Ibid. p.43

Refugees on the other hand have an opposite relation to this resource, for them the rich possessions can be re-distributed to them, in most cases only for life-threatening reasons. Walzer argues that refugees are not a social good that can easily be re-distributed. Rather refugees are of intrinsic value and this calls for membership itself. Walzer argues that refugees have a certain claim for membership, often for the reason of persecution or for other degrading treatments, and that the state in some cases has a moral responsibility to protect these humans.⁴⁵ A refugee's claim for a place in the welfare system shall be judged as a person that is already living inside the country. Walzer writes;

“ Perhaps every victim of authoritarianism and bigotry is the moral comrade of a liberal citizen: that is the argument I would like to make. But that would press affinity too hard, and it is in any case unnecessary. So long as the number of victims are small, mutual aid will generate practical results: and when the number increases, and we are forced to choose among the victims, we will look, rightfully, for some more direct connection with our own way of life. If, on the other hand, there is no connection at all with particular victims, antipathy, rather than affinity, there can't be a requirement to choose them over other people equally in need. “⁴⁶

Consequently Walzer argues again that states need to be closed and restrictions ought to be made, otherwise the enriched welfare state and its territory will be a depleted of its resources. Walzer views the society and the prevailing citizens as a collective and harmonized mind set and with inner intimate boundaries.

On the one hand states have a moral and legal right to restrict its states borders even for asylum seekers and their families. On the other hand Walzer argues that the territory can have more than is needed in terms of wealth and enriched properties. There will be refugees knocking on the door again even after the sharing of justice has been completed.

Consider that the state should have exposed immigration policies along with the principle of mutual aid as the first virtue as a kind of a global open community.

⁴⁵ Ibid. p.49

⁴⁶ Ibid. p.50

This open global community would be analogous to losing all that a democratic welfare system stands for and the real meaning of a democratic society would in the end be abandoned ⁴⁷ After bringing out Walzer's moral reflections of a just and equal society and his argument how we shall treat refugees I will at this point move over to a different system of moral thought. We will now accompany the utilitarianist Peter Singer.

⁴⁷ Ibid. p.48

5:2 Utilitarian philosophies in the company of Peter Singer

The political philosopher Peter Singer can be found in the utilitarian tradition.

Utilitarianism is an ethical system which in its most uncomplicated and naked formulation can be expressed as “The greatest good to the greatest number “.

Explicitly this is a way of maximizing the good, defined in its original form as happiness (pleasure), for the utmost number of humans.⁴⁸

Good can in its later, more modern form of utilitarianism, be characterized as well-being, utility, welfare or best interests. In Singers book, “*Practical Ethics*” he collects his utilitarian thoughts on controversial moral issues.

Singers ethical concept is structured from a method that investigates whether a moral action create consequences that produces wellness for humans.

How the moral act is being pursued is less interesting as long as the consequences produce wellbeing. An action with moral implication, such as killing can be right in some circumstances whereas the same act can be wrong in other situations.

Singers own method stipulates universality as the overruling principle when seeking for the right or wrong moral act.

A particular ethical evaluation in a specific context does not necessitate becoming universally appropriate. The ethical evaluation needs to go further than “you “and “I” to the universal formula, to the position of the unbiased eyewitness.

Good moral acts, such as loving your children or helping a poor person have inherent value. Moral actions are not relative to their character. Singer argues that if a moral act should be judged as relative, there would be no universal guiding principle to refer to when to assess a human behaviour.⁴⁹

Singer diverges from the classical utilitarian when he defines utility and he instead repositions it to a “best interest approach”.

Assessing a morally good act shall work in the best interest of all humans involved. No interest shall be judged with less weight than the other interests; interests shall be evaluated on an equal balance that in the future has the best consequences for all.⁵⁰

⁴⁸ Kymlicka. p.11

⁴⁹ Ibid. p.6

⁵⁰ Ibid. p.13

This is the background in Singer's theory when he deals with the more complicated questions. Before I depart into Singer's reflections about refugee's I will glance into what Singer considers as a just and equal society.

Singer questions the concept of equality and asks what we exactly want to declare when we say that all humans are equal in terms of gender, race et cetera.

Singer argues that all humans aren't equal, because some humans are born handicapped and some humans have a strong and healthy body when they are born.

What is equality then and how can we reason for the nature of equality and its consequences for the society, according to Singer?

Foremost is the principle of equal consideration of interests for all. This principle bestows us with a ground to stand on when assessing moral actions.

The principle considers and forbids racism and sexism to the same degree as it forbids discrimination against handicapped persons in the society. Secondly we can look into the varying interests people have. Interests diverge along with all the different capacities and characteristics that individuals are equipped with.

Individuals are different in these features but humans are not morally divergent when it comes to gender or races and that is a very crucial point that the principle of equality postulates. This is crucial since human ancestry or gender does not make us sketch an assumption about his or her brainpower.⁵¹

Since human interests are of intrinsic value they shall be equally measured when the moral act shall be assessed. Singer grades interests as equal when they are, so to speak in balance, no matter whose interest has significance for the ethical evaluation.⁵²

By considering Singer's principle of equal consideration of interests, I will at this moment outline his moral philosophy about refugees.

Singer starts his argument with a metaphor of the health conditions in the world after a nuclear confrontation and its reverberations for the society's inhabitants.

As a result of the war, the percentage of cancer has increased and the possibility that children will be abnormal is fifty times more than in the past.

⁵¹ Ibid. p.19

⁵² Ibid. p.21

A great number of humans had the opportunity to buy a part in a fallout sanctuary with extravagance facilities as a life insurance before the war and could therefore protect themselves during the upcoming eight years from the dangerous health situation.

A number of persons lack the financial ability to buy a part in the fallout sanctuary.

Hence they are victims standing outside with a hope to be part of its safe settings. Indeed they want to be free from the disastrous climate changes that the nuclear war has given the atmosphere and which causes multiple cancer diseases.

The fallout sanctuary called Fairhaven is situated as an underground community that is governed in accordance with democratic principles. Fairhaven has plenty of space left after lodging the persons with pre-booked places; in fact there are possibilities for housing a huge number of people.

To rearrange Fairhaven as a less luxurious underground community would give a reasonable, but not fashionable life, in fact less fashionable in terms of food and facilities. But it would indeed house more people.

A democratic referendum is held with three different suggestions; to give access to a huge number, to give permission to some, or to exclude all.⁵³

Singer outlines the ethical dilemma as a metaphor of the welfare state and invites the reader to choose which amount of outsiders that should be admitted to the imaginary Fairhaven.

Singer moves on to talk about the solutions of the world's refugees at present and finds three potential ways to deal with the problem.

The three alternatives are resettlement, voluntary repatriation or local integration in the country that they originally flee to. Singer argues that the most ethical answer on these alternatives should be for refugees go back to their country of origin.

Number one, refugees most often reach countries that are underprivileged in terms of unbalanced economy and politics. That makes refugees a burden to the host country in view of the fact that these countries already have a tight integration policy and few resources to share. These countries are usually trying to prevent refugees from entering their borders because they are a burden so they make refugee camps as uninviting as they can.

Resettlement in some countries is fortunate if tribal and ethnic associations traverse national borders. However, in principal resettlement is not a solution to the problems that make

⁵³ Ibid., p.248

refugees escape from their country of origin.⁵⁴

Number two, voluntary repatriation is in most circumstances not an option, since refugees often made their escape for some reason, on grounds that usually correlate to UN Conventions. Number three, refugees are often rejected by the western welfare states because of immigration policies that give only a small percentage of applicants the alternative to be resettled.

Singer asks if it is morally right to exclude refugees on the principle of equal consideration of interests along with the principles that demonstrate prejudices on the basis of race or national roots, whereas existing citizens have a moral right to be included on the basis of the principles.

Singer argues that a widespread belief among persons belonging to western welfare states estimates that moral duties towards refugees are of no value. These persons purely accept refugees as a reflection of their sympathetic and kind hearted natures.

The utilitarian principle of equal consideration of interests is the primary principle for Singer and when applied in this case, the refugees themselves have interests to first be considered. Refugees reside on the other side of the western world in refugee camps that are a temporary solution, while waiting for a life of stability.

The second group to be considered is the inhabitants in the beneficiary western country. Refugees would mainly have an influence on the welfare economy that is shared by the previously rooted inhabitants in the receiving country.

Refugees are, on one hand, a possible burden for the unemployment statistics. On the other hand they can become a contribution to prosperous new businesses.

Other potential solutions for solving refugee's situation could be on one hand that western welfare states decided to take a considerable amount of refugees. On the other hand the states morally good act could give confidence to a great number of other refugees that are having a difficult time in their home countries to make their way towards the western welfare states and overwhelm the receiver states with asylum applications.

Overpopulated poor countries could, as a result, be relieved from its burden of overpopulation and could deal with the foundational causes of the suffering in their countries.

⁵⁴ Ibid. p.250

Global trust between the countries in the world is also an interest to be considered.

If the western welfare states do not even attempt to make a good solution for the world's refugees, there would be a tension between the poor and the rich world whose consequences we could not anticipate.⁵⁵

Singer argues that the western countries have a moral obligation to consider doubling the intake number of refugees because the effects would on the whole result in positive consequences for the receiving country.

The recipient country's economy and environment should not be affected in a destructive way rather the refugee's presence should be beneficial for the country in the long run.

The primary force of the principle of equal interests to be considered is to reduce the conflicting interests to a balanced level.

Indeed, Singer argues, the western states' population would have to reduce their standard of living to be able to strengthen the poor countries to an equal standard. To increase the intake of refugees gradually would allow politicians to establish different priorities on their agenda; they would have to focus on the more serious problems in the world, not for example, drinking and driving issues.⁵⁶

The two political philosophers have different approaches to examine our moral duties towards asylum-seekers. Singer and Walzers reflections and argument will now be summarized and discussed in my critical analysis where the asylum and migration debate also will be outlined.

⁵⁵ Ibid. p. 257

Summary

Mutual similarity such as affinity between the members in the political community is important factors for constructing an ethical and equal society, writes Walzer.

States have a moral responsibility to consider asylum applications in accordance with the countries legal immigration policies; this is the best solution to deal with asylum-seekers. In some cases asylum- seekers can be granted residence permits that stem from beneficial moral principals if asylum- seekers have family members in the host country, writes the communitarian Michael Walzer.

Peter Singer's utilitarian approach is primarily concerned with the principles of equal consideration of interests as the measure for ethical evaluations. Singer argues that doubling the intake and granting of residence permits for asylum-seekers would not affect the developed countries in a negative way rather would they be positively influenced. To double the intake and offer residence permits to asylum-seekers would in the long run create a greater justice in the world and less inequalities.

Walzer and Singer provide us with moral arguments for accepting asylum- seekers in a political community. These arguments are mainly rooted on the utilitarian foundational principle of equal interest and the communitarian approach where an ethical society treats asylum- seekers in accordance with their immigration policies.

⁵⁶ Ibid. p. 262

Chapter 6 Synopsis

6.0 Introduction

In this final chapter I will present the reader with my critical analysis where I discuss and summarize my research. I will collect the governments and Save the Children's response to the migration and asylum debate and discuss their opinions in relation to the philosopher's answer to my primary analytical question. I will also discuss the force of the ethical principles which have significance for the migration and asylum debate as a whole.

6.1 Critical Analysis

The migration and asylum debate about the deportation of 410 severely ill asylum-seeking children and their families have confronted the Swedish nation and their inhabitants with evidence that give rise to strong feelings on how we treat asylum-seekers.

Serious health facts among these children were confirmed by the statements of the research reports that M.D. Bodegård completed in 2004. The United Nations commission along with human rights organizations criticizes Sweden for being too restrictive in their migration and asylum politics. For example asylum-seekers wait too long for their applications to be evaluated by the Migration board and this has direct influence on asylum-seekers health as we read in M.D Bodegård's research.

I got an interesting response on my primary analytical question from the political philosophers and I will begin to summarize and discuss Michael Walzer's answers.

Walzer's reply on my primary analytical question is that yes, in some cases and in small amounts, we do have a moral duty to offer asylum-seekers permanent residence permits.

He argues that asylum-seekers have intrinsic value and can be granted permanent residence permits in line with beneficial moral principles (mutual aid) especially if asylum-seekers for example have family members in Sweden (Walzer's analogy for unconditional family bonds).

Walzer would on one hand argue that a small amount of asylum applications can be considered for beneficial reasons since a country like Sweden has more resources than needed in terms of welfare, clean water etc.

On the other hand to offer too many residence permits, which goes hand in hand with exposed admission policies, could lead to the destruction of the democratic political community, which further loses all qualities of welfare and cultural historical distinctiveness.

Walzer argues that asylum-seekers have specific claims for a membership, but asylum-seekers should be judged equally to someone that is a victim of intolerance and oppression anywhere in the world. Victims for oppression are always victims regardless of nationality or economic situation or where the victim is situated on the globe.

Asylum-seekers requests stems from the principle of asylum and are in line with the Swedish legal immigration policies and this is the best way, according to Walzer, to assess asylum applications. Walzer argues that we cannot have exposed admission policies in Sweden and maintain a democratic country with its culture distinctiveness. It requires regulated immigration in order to be able to build and keep a welfare system intact.

What consequence does Walzer's morally based rationale has for the 410 severely ill asylum-seeking children and their families?

Sweden's Minister for asylum and migration policy argues that we need to have a regulated migration in Sweden and that each and every asylum-seeker need to be evaluated individually in accordance with the principle of asylum. Therefore amnesty for the 410 severely ill asylum-seeking children and their families would be negative since that is a pure collective decision. She says that this goes against the inner core of the principle of asylum. Holmberg refuses to compromise with the principle of asylum and she refers to the asylum principle as an unbending rule in the migration and asylum debate. I think that Walzer probably would not agree with Holmberg since he would argue that a regulated immigration is preferred but an asylum application can be judged in accordance with beneficial principles. Walzer would therefore agree to a prima facie principle, since a beneficial principle would be a stronger ethical choice to make than the (absolute) principle of asylum.

Save the Children argued in the migration and asylum debate that the question of regulated immigration and the question if we should offer the 410 severely ill asylum-seeking children and their families a permanent residence permit should be discussed separately.

In the evaluation should the Migration Board take into account, for example, the parents ability to take care of their children and also questions that were related to the situation in the

home country, not if we need to receive a certain amount of refugees in Sweden every year. Walzer would probably agree to a wider and deeper evaluation where other aspects of the 410 severely ill asylum-seeking children and their families were taken into account and where an absolute principle, as Holmberg chose to refer to the principle of asylum, could be negotiated for a more human assessment. Walzer would agree to offer 410 permanent residence permits in line with beneficial principles (amnesty) since these particular asylum-seeking children are so sick (they have intrinsic value) and that 410 extra asylum applications is a very small amount. Walzer would probably suggest that the welfare in Sweden could stay intact even if 410 severely ill children and their families were welcomed unconditionally in line with a *prima facie* rule.

On the other hand it seems like communitarians are troubled that the social unity will be shaken by cultural diversity and in that case refugees can have a negative impact on the Swedish political community, since they contribute with different cultures.⁵⁷ Walzer's communitarianists would be willing to give a small amount of severely ill asylum-seekers permanent residence permits but are concerned with opening the door too much for humans with diverse lifestyles and value-systems.

If Walzer's theory aims to protect the welfare state to be diluted from its resources and its social unity Singer emphasize a rational calculating which leads us to a very different response on my primary question. So what answer does Singer offer in the asylum and migration debate?

The utilitarian philosopher Peter Singer presents a theory that is focused on comparisons between interest achievements and the suffering of different people.

Singer would agree that we have a moral duty to consider the 410 applications because first and foremost is to value interests equally and to see what consequences they will lead to in the long run that will maximize the most equal consequences for all (universal) interests involved. When we have evaluated all the interests equally we shall see which moral act that will give most equality for all interests involved.

On one hand we have the severely ill asylum-seekers and their families' interests to be considered. Their interest is to get a permanent residence permit that will give them a place in the Swedish welfare system and further a life in peace and protection.

⁵⁷ Ibid. p.271

On the other hand we have the liberal democratic state of Sweden as the beneficiary country that is neither overcrowded with its neither 9 million people nor poor.

Presuming all 410 severely ill asylum- seekers got a positive reply on their applications they would then, in the long run, have an effect on the Swedish economy and environment and the whole Swedish culture. Some of the asylum- seekers will, in the long run, establish themselves as successful in businesses and bring in a lot of taxes to feed the Swedish welfare system where others would go back to their home countries when they possibly could.

Singer would recommend saying yes to all the 20.000- 80.000 asylum applications that arrive every year to the Migration Board, for the reason of the wealth and richness that Sweden has in terms of high living standard. He further argues that refugees would enrich the Swedish society with their talents and would therefore have a positive effect on the culture and economy as a whole.

Singer would likely argue that people in Sweden should make a place in their spare (living) rooms along with offer access to their wealthy well-filled fridges, as in the example with Fairhaven, so asylum- seekers could have housing during their first months in Sweden.

Singer's argument for our moral duties to 410 asylum- seeking children is radically formed and his idea goes beyond the restricted Swedish migration and asylum politics where 9 out of 10 applications at the Migration Board are rejected in the first round.

His thoughts goes beyond Minister Holmberg's idea to restrict and regulate the immigration to Sweden with absolute principles where not even severely ill asylum-seekers can be compromised for more human principles (Prima facie principle).

The Swedish citizens should reduce their high living standard, according to Singer, and share their "spare living standard " and an absolute principle can never be invoked when calculating interests.

What can we say about Singer's theory which looks so simple and generous?

The utilitarian system of reasoning for moral right actions is at first glance a realistic way of reasoning for peoples' well-being and equality in a secular society.

This rational reasoning appeals to our intuitions and feelings about the discrepancy between morality and alternative spheres such as religious philosophy.

Utilitarianism gives a comprehensive, rational way of reasoning because most of us think that human beings are of equal importance.⁵⁸

Moral relationships between persons are equally considered when Singer judges a moral act, no matter if there were previously tight moral bonds between the people involved.

The nature and feature of moral relationships such as the promises between a married man and a woman and the deeper meaning of the interests is of less importance for Singer.

Neither past actions nor contract agreements have significance in the evaluation process.⁵⁹

We can not only give priority to rational forward looking calculations that are solely accumulating new oversimplified aspects to the decision making procedure as Singer suggest.

The 410 severely ill asylum-seeking children in the aforementioned illustration are a good example.

M. D Bodegård describes the health perspective in his research report showing severely ill asylum-seeking children that have lost contact with the world after having arrived to Sweden. Save the Children suggested that a wider outlook, such as the children's physical health perspective, would be ethical to consider when evaluating the 410 severely ill asylum-seeking children and their families case. This could be a moral decision which takes into account why these children have lost contact with the world and what they have been through before arriving to the border of Sweden. Refugees are human beings that have histories which incorporate their past life experiences which probably are linked to persecution or other degrading treatment in their country of origin.

Backward-looking aspects need to be included in the evaluation. Singer's utilitarian theory excludes this by outlining an oversimplified calculating procedure without deeper meaning.⁶⁰

Migration minister Holmberg argues that we need to distinguish different kind of interest in the decision making procedure. She says that the principle of asylum is a core principle concerned with the question of the possibility of persecution in one's country of origin and not to be intermixed with the health conditions that might evolve in Sweden. This is also a way of oversimplify humans and their ends in a moral decision that are concerned with severely ill human beings.

⁵⁸ Kymlicka, p. 11

⁵⁹ Ibid. p. 24

M.D Bodegård's health research shows the different medical factors which are a result of past cruel traumatic experiences in the asylum seeking children's native countries as well as from their time in Sweden when waiting for their permanent residence permit.

This is a health condition that is part of the reason for escaping their country of origin even if the health condition might arise in Sweden. Save the Children emphasizes this in their plea to the Swedish government.

Can we evaluate asylum-seekers applications without taken into account the more complex and deeper picture, which offers a wider explanation on the nature of their interests?

Save the Children also emphasized that the government should vote for a general amnesty in line with their ethical principles instead of just focusing on the regulated immigration.

These children have rights and interests that need to be considered in accordance with the UN Convention and Protocol relating to the status of refugees along with UN Convention on the rights of the Child. This is an internationally ratified document that offers hope for the 25 million of the world refugee's. The human rights documents are important when evaluating our moral duty to offer permanent residence permits to 410 asylum- seeking refugee and their families.

As established documents, the UN Convention and Protocol - relating to the status of refugees together with UN Convention on the Rights of the Child indeed reflects the political core commitments towards refugees around the world.

These documents include ethical principles which are creating promises to give refugees an opportunity and right to lead a life without suffering.

Common sense morality tells us that these promises are of major importance, especially when we have fragile human beings right to live in our hands. Utilitarian theory fails to include these important aspects nor is a regulated migration considered by Singer, rather is exposed admission policies invoked by him.

Refugee's trust and hope for having an opportunity to be taken seriously in their asylum applications are partly based on the previously ratified conventions. These conventions and the receiving countries law serve in many cases as the only life line for them.

Is it morally responsible to exclude these conventions if the evaluation in the end turns out to give priority to other oversimplified interests rather than to follow our deepest concerns and commitments?

6.2 Final Reflections

In the introduction of this thesis I wrote that western countries such as Sweden compared to other countries in our world are places where people have a high standard of living and where people have the opportunity to make their dreams come true.

The welfare system is well built to be able to serve the countries inhabitants in every part of life and on the whole the country can be seen as one of the richest in our world. Humans do not need to starve in Sweden because of the safety net that catches humans in need for help. Considering this I was faced with the emotionally charged migration and asylum debate in media that were concerned with the deportation of 410 severely ill asylum- seeking children and their families.

The debate made me wonder how the migration and asylum situation in Sweden is at present. I wanted to see how conventions and laws together with the migration and asylum debate could be interpreted and puzzled together. The medical research was interesting to take on board so we definitely could understand the whole health aspect of these children.

Additionally I searched for an answer on my primary question and I hoped to find closer responses on that question in moral philosophy and I explored the political philosophers Michael Walzer and Peter Singer.

While collecting data and evidence for this essay I realized that about 1 million out of 25 million refugees flee to the European continent every year. 20.000-80.000 refugees send their application to the Swedish Migration Board yearly to seek for asylum in accordance to the ethical and legal principles that are outlined in the UN Convention and Protocol- relating to the status of refugees and in the Swedish Aliens Act.

M. D Bodegård's research supports that the asylum-seeking children and their family's medical treatment and their well being are closely connected to the asylum procedure at the Migration Board. His research also demonstrate that waiting time for asylum-seekers to get a positive or negative answer on their asylum applications affect their health conditions as well. This is not in line with our ratified human rights conventions that we have signed which articulates children's right to health and life. (5, 6, 20, 27, 39)

Initially, I outlined article 39 from the UN Convention on the Rights of The Child which specifically focus on health;

“State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of;

Any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self respect and dignity of the child.”⁶¹

The force of these ethical and legal principles can have an absolute or prima facie character and of course these articles shall be seen as prima facie. Moral and legal rules need to be able to change and adjust if the moral consequences in the end become cruel or harmful for human beings.

We need to be better in implementing the ethical principles in UN Convention on the Rights of The Child in every part of the Swedish society, this is our common responsibility.

As we saw the Swedish Government voted in opposition to give 150 of the severely ill asylum seeking children permanent residence permits in April 2004 with the motivation that the principle of asylum is an unbending rule.

Figures showed that 9 out of 10 asylum applications are rejected in the primary round at the Migration Board. This fact speaks for itself. Unfortunately, this is the hard reality that we all have a responsibility to reconsider. My exploration further opens up Save the Children's report which, for example, demonstrated that asylum seeking children do not have the opportunity to express their own opinion in the asylum procedures.

This goes against article 12 and 13 in UN Convention on the Rights of the Child which operates to protect children's right to express their opinion and freedom of expression regardless of frontiers.

I do not understand why the Migration Board rejects so many asylum applications in the first round. Do the employees at the Migration Board have a cynical view on humans when evaluating applications or are there communication problems that surround the asylum procedure?

Refugees seek asylum because,

“ an alien who is outside the country of his nationality owing to a well founded fear of being persecuted for reasons of nationality, membership, race of a particular social group or religious or political opinion, and who is unable or, owing to such fear, is unwilling to avail himself of the protection of that country “. ⁶²

If a person seeks asylum that stems from this ethical principle this person probably has well grounded arguments to do so. There has to be something wrong with the asylum system in Sweden. I think that Sweden could very well offer permanent residence permits to children, in line with beneficial principles, that have lost their health as in the case with the 410 severely ill asylum- seeking children and their families.

These humans need especially to be taken care of since they are even more vulnerable than other refugees that seek asylum in Sweden.

The principle which defines humanitarian ground in the Aliens Act should fill their purpose for permanent residence permit easily so is our moral duty to follow the articles in the UN Conventions. Barbro Holmberg who is the Minister for migration and asylum policy in Sweden discusses the migration and asylum politics from a positive perspective. She says that the time restrictions are a myth in Swedish migration and asylum politics. Maybe it is easy to say so when she never has been in these asylum-seekers shoes.

I do look forward to seeing this positive change so that we can be proud of our treatment of asylum- seekers. Holmberg separates the health aspects from the asylum aspects when she talks about the 410 severely ill asylum- seeking children and their families.

I do not agree with Minister Holmberg. Humans have parts and ends. These different perspectives should be worked out in a more gentle and human way and can never be judged in line with absolute legal or ethical principles, rather from prima facie principles.

All humans have a longing to belong somewhere and if you are a refugee there is an even greater need, so let us follow the ethical guidelines that sets out how we shall treat humans with that wish. We can open our gate to the 410 severely ill asylum-seeking children and their families for beneficial reasons that stems from prima facie principles.

⁶¹ Sweden's third report to the Committee on the Rights of the child; 2002,p 213

⁶² UN Convention and Protocol-relating to the status of refugees

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