

Immigration:
Does Justice or Politics drive Asylum?

Introduction

Justice and politics have conflicted since the rise of civilization. They represent two different standards of value or for determining worth. Justice is other-regarding and community-building. Politics, by contrast, is based on the accumulation and retention of power. Power is fueled by and in turn fuels self-interest.

Immigration epitomizes this conflict. The ancient fear of the stranger may have been replaced in pluralist societies by a fear of differences, but eligibility requirements for refugees largely abate that concern. When immigration policies break down or prove inadequate to the demand, those fears return.

Eligibility Requirements for Refugee Status

(Source: *The 2022 Refugees and Asylees Annual Flow Report* of the Office of Homeland Security Statistics)

A person is eligible for refugee status if:

1. He or she is unable or unwilling to return to their home country due to persecution or a well-founded fear of persecution related to their race, religion, nationality, social group membership, political opinion or (more recently), fear of forced abortion or sterilization or of coercive population controls.
2. Refuge can be granted to someone outside the U.S. Asylum can be granted to someone inside the U.S. or arriving at a U.S. port of entry.

To be granted refugee status applicants must:

1. Be of special humanitarian concern to the U.S.
2. Meet the refugee status definition
3. Be admissible under the INA (or granted a waiver)
4. Not be firmly resettled elsewhere
5. Merit a favorable exercise of discretion

Once asylum is granted:

1. The asylee can apply a year later for a Lawful Permanent Residence (LPR).
2. If approved, LPRs can apply for naturalization five years after their "resident since" date (their initial asylum approval date).

Misc. Data Points

In 2020 President Trump set the Refugee Admissions ceiling at 18,000. In 2021 he set it at the lowest it had ever been, at 15,000 and reduced staff and resettlement initiatives accordingly. Fewer than 2,000 interviews were granted in 2020 (as opposed to 45,000 the previous year) and admissions ceilings were based on *categories* rather than *regional allotments*.

For 2022 President Biden restored the *regional allotments* and set the admissions ceiling at 125,000.

From 2021 to 2022, affirmative asylum applications quadrupled to 238,841, the highest number on record. Close to half were from Cuba and Venezuela, with Haiti providing the third largest number. In the same year defensive applications also quadrupled to 253,524, again the highest number on record. Those granted asylum doubled to 36,615.

Backlogs occur. 1% of 2013 applications are still pending, 54% of 2016 applications and 48% of 2019 applications are still pending. 91% of 2022 applications are pending.

The Ethics of Asylum: Two Arguments

Pro: Justice drives Asylum

Justice establishes the norm for cooperativeness among people
Cooperation requires that all people have the right to have rights (Arendt)
Immigration means stateless until resettled elsewhere
To be stateless is to be without rights
Asylum confers rights
Hence a just society must recognize asylum as a moral principle

Con: Politics drives Asylum

Politics is necessary to preserve a state's self-identity
Justice is not universal but particular (cooperation is among particulars)
Asylum is a privilege conferred by the state in its rightful self-interest, not a right
Moreover, not all humans are equal or equally deserving
Hence asylum can only be driven through politics on the basis the state's interests