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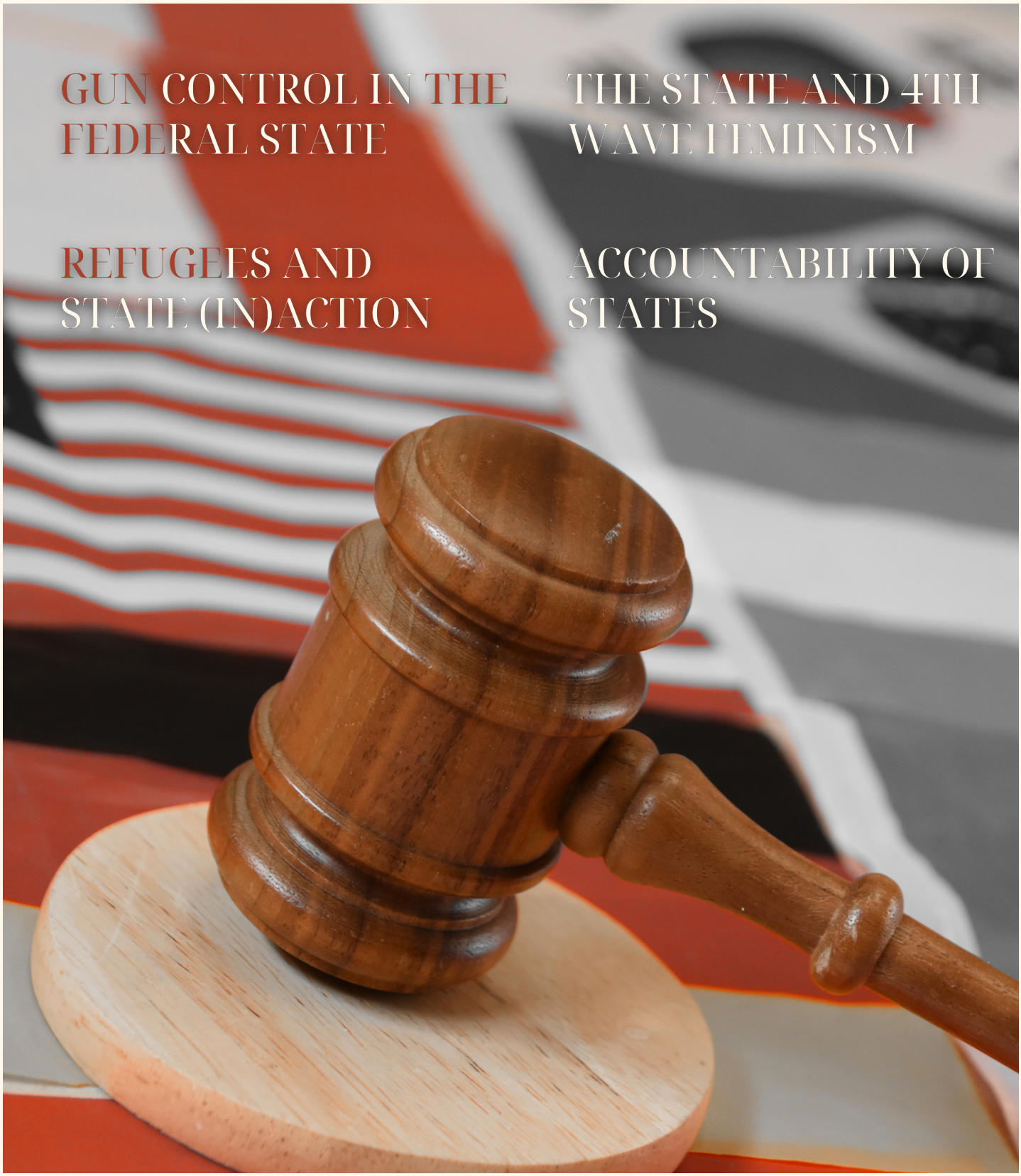
STATE AS A LEGAL ACTOR



GUN CONTROL IN THE FEDERAL STATE

THE STATE AND 4TH WAVE FEMINISM

REFUGEES AND STATE (IN)ACTION

ACCOUNTABILITY OF STATES

OUR TEAM

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EDITOR'S NOTE

In an increasingly globalised world, is there any room left for the self-determination of the States? Bound by an array of regional and international agreements, is any State truly independent anymore? Or perhaps it is the governments themselves that fail to exercise the full potential of their powers, leaving the most urgent problems to be solved at the regional or, conversely, supranational level?

This issue will examine the ups and downs of the State's law-making power against the backdrop of the modern legal and political climate. It will recount how the States' largely unfettered autonomy has been limited by the relatively young notions of state responsibility and liability which emerged in response to increasing environmental damage. It will tackle the topic of the struggles of the US to intervene in the pressing matters of gun control, and the moral need for States to step up in their efforts to ensure gender equality in society. Finally, it will examine one of the most controversial yet pressing issues of modern times, often mentioned when examining the States' action (or rather, more often, *inaction*) - the refugee crisis.

As inhabitants of a number of countries, we want this issue to lead our readers to think twice about what their own States are - or aren't - doing in the dynamic, ever-changing world of today. And maybe, just maybe, they can soon lead the wave of the change as conscious young citizens.

Martyna Hanak, Editor-in-Chief

STATE INTERVENTION IN A FEDERAL SYSTEM

THE U.S. FEDERAL GOVERNMENT AND GUN CONTROL IN RESPONSE TO SCHOOL SHOOTINGS

BY ABIGAIL SHANAHAN

FOREWORD

The idea for the article came to me after the tragic shooting at Michigan State University on 13 February 2023. I felt personally touched, as with other previous shootings, since my high school classmates attend MSU. The difference now is there is an ocean between me and the threat of being gunned down at an educational institution where I should feel safe. I was a sophomore in high school when Parkland occurred, and there too I knew friends who were personally affected; just one person between the victim and myself. After the MSU shooting, I felt it appropriate to write this piece on State intervention, in the context of the federal system of the U.S., and when/why it is necessary for the federal government to intervene in the context of school shootings.

As I was researching and writing this article.

This dialogue about gun control and school shootings seems never-ending. It ebbs and flows: conversation spikes when more innocent children are murdered, and flows as the news cycle moves on. The information overload experienced by American citizens is partly to blame for why there is not constant dialogue on this ever-pressing issue. But at the end of the day, federal intervention is long overdue and is the focus of this article. The States cannot be trusted to address these issues, as more lives are lost in the midst of partisan struggle and greedy politicians.

I am giving you a fair warning, this piece is biased. But not biased because of party affiliation or hate for the political institutions of the United States. This piece is biased because I am so angry, so tired, so frustrated, and so absolutely ***terrified.***

My entire life has been filled with shooting after shooting, with drills every month of the school year preparing me for a day that we are taught to feel is inevitable. The government needs to take accountability and take action immediately, pushing aside pathetic concerns for 'Big Government' and loss of State power. The sides should not be 'Democrat vs Republican', or 'Pro-guns vs Anti-guns'. The issue boils down to 'Life vs Death', which should be of bipartisan concern.

INTRODUCTION

The number of school shootings in the United States has skyrocketed. From 1966 to 2008 there were 44 school shootings (about 1 a year), but from 2013 to 2015 there were 154 school shootings (roughly 1 a week).[1] Americans have become so numb to school shootings.

The day after Parkland (15 February 2018) it was shown that in the first month and a half of 2018, there had already been 18 school shootings.[2] The sheer amount means that only the 'big ones' will make national news; shootings with either no deaths or maybe a couple and some injuries are not important enough to broadcast. The shooting in Nashville made the national cycle, but I know I definitely did not hear much uproar about the two occurring 5 days prior (one in Colorado and one in Alabama). In any normal country, ANY school shooting would make the news, regardless of casualties. But as we know, the U.S. is not a normal country.

Opponents of gun control often argue that 'guns don't kill people, people kill people'. While this is true to some extent, there is a huge hole in this line of thinking.

Yes, it is true that people are the ones killing people, but without a gun, the capacity to kill may be greatly diminished.[3] The instrumentality effect is the idea that the type of weapon affects the outcome of an attack.[4] This logic, when applied to school shootings, would mean that these mass attacks would be less effective without guns. An assailant with an automatic rifle is able to do a lot more damage in a shorter amount of time than if they had a knife or another weapon.

Setting moral concerns aside, this paper aims to explain the federal system and how and why the federal government should step in to regulate firearms.

THE FEDERAL SYSTEM

In General

A federation is defined by sub-units that derive their power from a constitution. There are usually at least three tiers of government, i.e. central, regional, and local. The United States of America qualifies as a federal system, with the sub-units being the 50 states.

The powers enumerated in the Constitution lie with the federal government, and topics not mentioned belong to the powers of the States.[5] The U.S. is also a symmetrical federation, meaning that the States shall be each other's equals and enjoy the same powers. It should be noted that asymmetrical federations do exist (e.g. province of Quebec in Canada; former state of Prussia in Germany), but this is not relevant for discussing the U.S.

The gun laws in the United States greatly reflect federalism. This is seen in the limited role of the federal government in matters of law and order, leaving broad policy-making discretion to the States.[6]

THE US CONSTITUTION

The Second Amendment and its extent

The interpretation of the Second Amendment is arguably the most controversial debate about the Constitution.[7] The debate has become divided into two distinct factions: the "states' rights" view and the "individual rights" view.[8] The former is consistently upheld by the judiciary and claims that the Second protects the right of individual states to maintain their own militias barring interference from the federal government.[9] This means that, in theory, the State of New York can maintain its own state militia without the federal government's disarmament of the citizens of a state. The latter, the "individual rights" view, interprets the Second as ensuring that virtually all citizens have the right to possess firearms for any purpose they desire.[10] This differs from the states' rights view in the sense that the guns could be used for hunting, part of a collection, etc., instead of solely forming part of a state militia. From this point of view, the federal government cannot prevent the citizens' possession of firearms absolutely. Some scholars argue there is a third sub-faction: the "hybrid view". In this theory, the Second protects an individual (civic) right that is bound to a collective (civic) responsibility for bearing arms for the common defense.[11]

The Tenth Amendment

The Tenth Amendment essentially limits the powers of the federal government by reserving certain powers and rights to the states and the people. For regulating firearms, the Tenth means that the federal government only has the power to regulate guns to the extent that it is explicitly granted by the Constitution. Gun regulation is primarily the responsibility of the states, and the federal government can only intervene in specific circumstances (e.g. interstate commerce or categories of prohibited firearms). When the central government can act will be explored further in the following sections.

The Tenth works hand-in-hand with the Second. They attempt to balance between the federal government and individual states concerning gun rights and reform. Again, the federal government has limited powers and the states are primarily responsible for such regulation.

The Commerce Clause

The Commerce Clause in the Constitution gives Congress the power 'to regulate commerce [...] among the several states [...]'.[12] In the context of gun control, Congress has used this power to enact federal regulations concerning the manufacture, sale, and transportation of firearms. Examples include the Gun Control Act of 1968 and the Gun-Free School Zones Act of 1990 (GFSZA).

The former is still one of the primary federal gun control laws, regulating the interstate commerce of firearms by requiring federally licensed dealers to maintain records of all firearm transactions and prohibiting the sale of firearms to certain individuals (i.e. felons or people with a history of mental illness. On the other hand, Congress introduced the GFZA to regulate the possession of firearms in certain locations (i.e. schools or federal buildings): this act makes it a federal offense to possess a firearm in a school zone (NB the SCOTUS holding in *Lopez*).

In principle, and as seen through practice, the Commerce Clause is used to provide a legal basis for Congress to implement gun control measures at the federal level. In spite of that, the use of the Commerce Clause to regulate firearms is heavily debated especially when the ever-coveted Second Amendment is involved and infringement is suspected.

SCHOOL SHOOTINGS: AN EPIDEMIC

How can the federal government step in?

Despite the primary responsibility belonging to the states, Congress can regulate firearms in a number of ways: it has authority to legislate on matters of interstate commerce, taxation & spending, and enjoys power to enact laws that are necessary and proper for carrying out the powers granted to the federal government under the Constitution. As previously mentioned, the Commerce Clause authorizes Congress to regulate firearms involved in interstate commerce (e.g. guns being sold over state lines).[13] This also allows Congress to regulate when there is a substantial effect on interstate commerce, even without firearms crossing state lines. Additionally, Congress can regulate through its power to tax and spend through using its spending power to incentivize states to enact certain gun control measures. And finally, Congress can pass laws that are necessary and proper for carrying out its other constitutional powers (i.e. protection of public safety and welfare).[14] For gun control, this means Congress can pass laws regulating the manufacture, sale, and possession of guns, with the motive of promoting public safety and prevention of gun violence.

However, due to the sensitivity of the issue, most efforts to regulate firearms at the federal level will be highly contested by the states.

Scholars argue that there is little hope for significant progress on gun control at the federal level due to the deadlocked Congress and the limited ability of the executive branch to act without legislative cooperation.[15] This view leads to a state-centered approach to policymaking, which entails a level of trust that states, regardless of political leaning (‘red’ or ‘blue’), will make decisions to benefit their people. However, it became quite evident that trusting the states may not be a viable option anymore.

Why should the federal government step in?

The federal government should step in because, in the 24 years since Columbine, more and more children are murdered each year in school. Obviously, the states cannot be trusted to protect the lives of their citizens. If they could be trusted, after Columbine there would have been reform. After each massacre at schools in different states, we should be able to see change. Change so that parents do not have to send their children to school in fear they will not return. Change so the news does not have to display the same story time and time again “Shooter in elementary/middle/high school/college, X dead and X injured”. Change so that the United States is not an embarrassment on the global stage. Everyone else can see the solution; everyone but us. The federal government needs to take action, regardless of pushback about states' rights, simply because children cannot keep dying, just so you can have a gun.

POSSIBLE SOLUTIONS

International Law?

When discussing school shootings in the U.S., it may come to mind that international law could be a solution for regulation due to violations of human rights or the rights of the child.

The United States ratified the International Covenant on Civil & Political Rights (ICCPR) in 1992. Due to the Supremacy Clause in the U.S. Constitution, this means the ICCPR became the ‘supreme law of the land’ after ratification.[16] The ICCPR recognizes the right to life as a fundamental right, and it obliges its signatories to protect this right.[17] However, it should be noted that the ICCPR does not directly address gun control. As previously stated, the issue of gun control is a matter of domestic law and policy: the Second Amendment protects the right to bear arms and usually regulation is within the jurisdiction of the states.

Nevertheless, the U.S. government has an obligation under the ICCPR, and international law in general, to protect the right to life, which may require it to take measures to regulate firearms to prevent gun violence that results in mass casualties.

The U.S. signed the Convention on the Rights of the Child (CRC) in 1995 but has yet to ratify it. This means that the U.S. is not bound by the provisions of the convention. However, the Vienna Convention on the Law of Treaties (VCLT) states that '[a] State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty (...) until it shall have made its intention clear not to become a party to the treaty; (...)'.[18] This obligation not to defeat the object and purpose of a treaty applies to the United States in this case.

By not ratifying the CRC, it has not accepted the obligations of the treaty, but by signing, it has agreed not to act in a way that defeats the object and purpose of the treaty. The CRC also sets out a right to life specifically for children.[19] I argue that this provision could apply to the arbitrary deprivation of the lives of children in the United States due to school shootings and rampant gun violence. Even without ratification, the U.S. has implemented some provisions in domestic law in the areas of child labor, education, and healthcare. However, the failure to ratify the convention undermines the commitment to protecting children, especially in regard to the hundreds of young lives lost due to gun violence in schools. So it is my argument that by engaging in practices of not regulating firearms leading to the arbitrary deprivation of childrens' lives, the U.S. is in violation

of its obligations under Article 18 of the VCLT. Be that as it may, this does not necessarily mean that the US is automatically required to comply with all provisions of the CRC. The obligations depend on their ratification status and the interpretation of the treaty by the relevant treaty monitoring body (the Committee on the Rights of the Child).

It should be noted that it is highly unlikely that international law instruments and bodies will swoop in and try and solve the epidemic of school shootings. However, the obligations of the U.S. are interesting to point out and could possibly be used by politicians, lawmakers, or even lobbyists to push for gun control.

Combining gun control and gun rights

There is a need for school shooting-specific gun laws in America. Scholars have made a distinction between guns laws to address school shootings and other laws to reduce gun violence as a whole.[20] This push for specific laws stems from the fact that at the point in time when these massacres occurred, there were already existing laws that made it illegal for some of these shooters/students to possess guns.[21] It is not productive to simply pass more generic laws prohibiting teenagers from owning guns.

There is no reason for non-military personnel to own assault weapons. They are not needed for hunting, personal protection, collecting, etc. They should not be in the hands of civilians. In the past, the U.S. has had bans on assault weapons, so there is no reason for this to not be accomplished again.[22] School shootings become deadlier when the assailant has an automatic or semi-automatic gun. . For example, in the Parkland shooting, Cruz used a semi-automatic gun and opened fire killing 17 and injuring an additional 17.[23] The high-capacity ‘firearm magazine’ on his AR-15 enabled him to shoot as many

students as he could in the shortest possible time. Many school shootings could have had fewer casualties if there existed a ban on assault weapons. While it would not per se reduce the number of occurrences of school shootings, it would likely reduce the number of casualties.

Another possibility is combining gun control and gun rights: a 'win-win' strategy for both sides of the debate. This theory suggests laws to keep guns out of the wrong hands (i.e. stronger background checks) proposed alongside laws that expand opportunities for citizens who play by the rules to carry guns for defensive purposes.[24] This was suggested during the Obama administration, but the proposal never made it to the Oval Office or the Floor of the House or Senate. However, it would be interesting to see this proposal before the Biden administration today.

CONCLUSION

Comparative Analysis: International Responses to Mass Shootings

So, how do gun laws in the United States compare to those in other countries? The system of legislating on firearms in the U.S. starts with the premise that citizens are entitled to own a gun unless there is a compelling reason for them not to (i.e. a convicted felon or mentally ill), while other countries operate the other way with severely restricting or banning ownership unless there is a good reason to allow it.[25]

Call to Action

At this point, the school shooters themselves are not to fully blame. The government and the states, the greedy and power-hungry politicians, the outdated judiciary, the soulless gun lobbyists also share part of responsibility. The federal government has a duty to uphold the Constitution and the principles this country was built on. Sitting and watching as states continue to fail their children is no longer acceptable. Guns should not be valued higher than lives. Enough is enough.

Footnotes

[1] William H. Jeynes, *Reducing School Shootings* (1st edn, Springer Cham 2021) 3.

[2] ibid Jeynes 7.

[3] Philip J. Cook, Kristin A. Goss, T*he Gun Debate: What Everyone Needs to Know* (OUP 2014) 38.

[4] ibid 42.

[5] 10th Amendment US Constitution: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

[6] Cook (n 3) 89.

[7] 2nd Amendment US Constitution: 'A well regulated militia, being necessary to the security of a free State, the right of the People to keep and bear arms, shall not be infringed.'

[8] Kevin T. Streit, 'Can Congress Regulate Firearms?: Printz v. United States and the Intersection of the Commerce Clause, the Tenth Amendment, and the Second Amendment' (1999) 7 Wm. & Mary Bill Rts. J. 645, 661.

[9] ibid 661.

[10] ibid 661.

[11] Cook (n 3) 92.

[12] Article 1, Section 8, Clause 3 of the U.S. Constitution (Commerce Clause)

[13] ibid

[14] Article 1, Section 8 of the U.S. Constitution (Necessary and Proper Clause/Elastic Clause)

[15] Allen Rostron, 'A New State Ice Age for Gun Policy' (2016) 10 Harv L & Pol'y Rev 327, 340.

[16] Article VI, Paragraph 2 of the U.S. Constitution is colloquially known as the Supremacy Clause: 'This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.'

[17] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 6.

[18] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) art. 18.

[19] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art. 6.

[20] Jeynes (n 1) 41.

[21] ibid 44.

[22] See the Firearm Owners Protection Act of 1986 under Reagan, and the temporary Federal Assault Weapons Ban under Clinton in 1984).

[23] Jeynes (n 1) 61.

[24] Rostron (n 15) 328.

[25] Cook (n 3) 118.

STATE RESPONSIBILITY AND THE 4TH WAVE OF FEMINISM

HOW THE NETHERLANDS IS ATTEMPTING TO ACHIEVE GENDER EQUALITY

BY MARIA HADJIIONA

Introduction

Living in the midst of the 4th wave of feminism may give the illusion that society has progressed to a stage where women get justice for being treated unequally. Unfortunately that is nowhere near the truth. Although it is true that circumstances have improved immensely since the first wave of the movement, which emerged in the mid-1800s, over a century later there are still cases of unfair treatment stemming from the misogyny that is deeply rooted in not only societal norms, but also national laws.

It is alarming how even in some of the most progressive countries worldwide, such as the Netherlands, there is still a long way to go to achieve true equality. This includes equal treatment as well as equal opportunities for people of any gender. This article will discuss the way in which the Dutch state is taking and has taken measures to further the progress of just and fair treatment to all its citizens no matter their gender.

The fight for the right to vote and the first three waves of feminism

To begin with, it is necessary to note how far the country has come in terms of abolishing systematic sexism and ensuring that women's rights are enforced. The first wave of feminism (1850s-1920s), originating from England and the USA, heavily impacted the European state, causing the movement to set a foundation in the wealthier families of the country. This led to demands such as the right to education, the right to civil service, and the right to vote. This era of feminism achieved what back then was viewed as absurd and ahead of its time: it gave women the right to vote. Namely, although the Dutch constitution of 1883 did not discriminate against women, Aletta Jacobs, a Dutch physician and women's suffrage activist, was rejected when she tried to put herself on the electoral register.[1] Following the outrage caused by that, the constitutional law of 1887 was altered to address exclusively men, thus ensuring that women could not vote by law. As a result, in 1889 Aletta Jacobs started to lead organizations campaigning for women's suffrage.[2] All these efforts culminated in 1917 when women were granted the "passive right to vote", and then later on in 1919 - the "active right to vote".

The second wave of feminism (1960s-1970s) gave rise to an increase in women in the labor force of the country, growing from 7% to 17% by the end of 1971. Moreover, more women and girls began to catch up with their male equivalents in the field of education. Despite that, the idea of marriage being a women's main focus was still prevalent during that time. Lastly, the third wave (1990s-2010s) exposed the unrealistic beauty standards set for women, and allowed them to form healthier relationships with their bodies by encouraging them to stop trying to appeal to the "male gaze" and instead try to appeal to themselves.[3]

Sexism in modern times

However, the Netherlands is nowhere near the end of its journey when it comes to equalizing women and men's rights and opportunities. The Institute on Gender Equality and Women's History[4] discovered that Dutch women in the workforce are currently being paid approximately 13,7% less than men. It is also noteworthy that the country is currently in the 20th place on the glass-ceiling index, a measurement calculating the environment for working women created by the Economist.[5]

n addition, the strike organized by students of our university on Women's Day this year, has unearthed the fact that a lot of women whom are survivors of sexual assault often do not get the justice they deserve,

I as it is more than common for the people in power to conceal such cases instead of holding the people responsible accountable. Such occurrences are still frequent in the Dutch society, begging the question of what the state is doing to ensure a better tomorrow for its citizens.

The State's efforts to promote gender equality

Although equal treatment is promoted in the Dutch constitution itself, with Article 1 stating that "All persons in the Netherlands shall be treated equally in equal circumstances",[6] the country is still in the process of trying to succeed in this.

The Ministry of Foreign Affairs has been dedicating time and effort into making sure that their new policies in cases of diplomacy and grant awards have a positive impact on women. Additionally, the Netherlands is trying to promote gender equality, reproductive health, and women's rights through the funding of programs dedicated to such causes. Namely, the Netherlands' SDG Fund is said to be one of the largest in the world designed to advocate and fight for gender equality on a national, as well as an international level.

The Ministry's plans to better the state's feminist policies were laid out in a letter addressed to the House of Representatives of the Netherlands, where they claimed to be planning on implementing gender analysis in their policy-making process, as well as consulting with women's organizations in an impactful way to ensure that their policies and decisions take into consideration how they will affect women, LGBTQ+ people, and other minorities living in the Netherlands. While it is true that all these intentions are quite vague, over the course of the next year they will be reiterated in more detail, and hopefully put in action as soon as possible. The Netherlands will also be the host of an international conference centered around feminist foreign policy which is set to be taking place in the fall of 2023 to encourage the discussion of this topic.[7]

Conclusion

Even though the Netherlands represent rather progressive efforts in areas of gender equality in comparison with other European countries, this should not be enough to satisfy anyone concerned with improving the conditions women are under because of the current political and societal climate.

A number of actions need to be taken to ensure a safer and more just environment for the people of the next generation, regardless of anyone's gender identity and sex. Instances of women being paid unfairly, being disrespected, and even being harassed or assaulted are not uncommon in this country, and the solution to all of these injustices begins with changing the system that we are all raised into.

Therefore, even though it is important that we as individuals advocate for this change, at the core of it the state is responsible for intervening in cases of sexism in the workplace and outside of it, for implementing laws and policies set to ensure that such issues are minimized, for holding other states accountable, and for raising awareness on the topic through conferences designed to bring forth such innovative, but necessary ideas. The only way to change an issue that is so deeply systematic is to abolish it from the system, and it all begins with the actions of the state itself.

Sources

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STATE AS A DEFENDANT

THE ACCOUNTABILITY OF STATE ACTORS

BY MARTYNA HANAK

For centuries, a dispute between two countries was usually solved with swords and cannons. Now, in the age of relative peace, a State can answer before the court. State accountability has developed primarily within the framework of environmental law. Its precise extent, however, remained marred in controversies. The traditional notion of State responsibility has recently been challenged by the emerging doctrine of State liability. The two will now be examined in turn.

State responsibility

State responsibility in its current iteration emerged in the previous century as the industrial progress began to lead to transboundary dispute. The famous case of Trail Smelter was a watershed moment, whereby an arbitral tribunal found Canada responsible for damage caused by a Canadian company to American crops and forests by emitting toxic fumes over the border,[1] laying a building block for the principle of no harm.

The International Law Commission attempted to codify State responsibility for several decades, to no avail. Finally, in 2001, its efforts crystallised in the form of the Articles on the Responsibility of States for Internationally Wrongful Acts ('ARSIWA'). While not legally binding, it is nonetheless highly influential and considered a fundamental part of the world's legal order as customary international law.[2]

According to ARSIWA, to be found responsible for a damage, the State needs to commit a wrongful act which cause or threatens to cause harm. A 'wrongful act' is rather limited in scope and encompasses exclusively breaches of international obligations. Further, the act needs to be attributable to the State, therefore, the State must have enjoyed a certain level of authority thereof.[3]

The fast-paced development of the world around exposed the cracks in the ARSIWA-based system, which wasn't designed to face the very modern challenges.

The prerequisite of an existing international obligation as well as the difficulties in proving causality are among the greatest obstacles, leading to a number of international actors escaping the sword of justice.[4] To fill these lacunae, a new concept began to slowly emerge in the accountability discussion – State liability.

State liability

Traditionally, the notion of State liability was understood as a type of responsibility which gave rise to financial compensation as a result of wrongful act.

Later, it evolved into a notion akin to strict liability, otherwise known liability without fault. It concerns responsibility for acts otherwise lawful which nonetheless resulted in harm. Known and accepted in the realm of private law, it was virtually absent from the international legal architecture.[5]

The ILC approached the issue of State accountability for transboundary harm brought about by lawful acts in the late 1990s. The efforts materialised in 2004 in the form of draft principles on the Allocation of Loss in the Case of Transboundary Harm Arising Out of Hazardous Activities. However, remained in line with the generally accepted trend to place the responsibility on the operators. Only if the State itself is the operator, will it be subject to strict liability. A small caveat places a financial burden on the State if compensation measures for a liable private entity are insufficient.[6]

However, in the face of a looming climate disaster, a broader framework for State liability may be developed. Indeed, the Stockholm Declaration acknowledges that 'States shall cooperate in further developing international law on liability and compensation for victims of pollution and other environmental damage caused by the activities of those States under their jurisdiction or control over areas outside their jurisdiction'.[7]

The race for space

The only area of international activity which currently allows for a rather well-rounded strict State liability regime can be found around 100 kilometers above our heads – in space. The mid-XXth century saw one of the fastest technological revolutions as the US and Russia battled for supremacy in the celestial sphere. The law struggled to keep up. The first codification approach resulted in 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, which was followed by the 1972 Convention on International Liability for Damage Caused by Space Objects. Article II of the Convention establishes absolute liability for any 'damage caused by its space object on the surface of the earth or to aircraft in flight.

The cutting-edge legal framework, however, is not devoid of shortcomings. In trying to avoid the limitations of ARSIWA, it compromised the issue of causation.

Well-suited to the traditional race for space dominated by State actors, it might be outdated for present space conquest where private companies became important participants. Unconceivable 60 years ago, the commercialisation of space activities is now becoming a reality, and accidents involving private actors are bound to multiply. Under the Convention, the States will be found liable when their contribution amounts to merely launching the object in question.[8]

To date, the Convention hasn't been successful. Only one claim was brought under Article II when a Soviet spy satellite crashed into Canadian woods, creating nuclear danger, but the case was ultimately settled outside of the courtroom.[9]

But as the sheer mass of space debris grows at a worrying pace, the relative space peace may soon come to an end.

The future of liability

Whether there really exists a need for a State liability regime has often been put into question. Many commentators argue that the better-tested concept of due diligence exercises its role more effectively. Due diligence is part of the broader framework of State responsibility and establishes that a State may be held liable if it failed to react to reasonably preventable harmful activities by private actors located within its territory.[10] It has developed in particular in relation to transboundary harm, where it is connected to the principle of no harm.

The Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities confirm the customary understanding that States should 'take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof'[11] and, additionally, undertake an assessment of any such possible harm.[12]

Recently, the precautionary principle emerged as part of due diligence, according to some scholars. Imposing a higher threshold than prevention,

it concerns activities whose results cannot be assessed with great certainty due to scientific constraints. While it was contained in a few international treaties, its precise content hasn't been agreed upon, therefore its customary nature is still debatable. If it successfully evolves into custom, it may provide an alternative to the controversial absolute liability while reaching beyond the traditional limits of State responsibility. Indeed, this solution seems to be favoured by the ILC, which doesn't see any place for strict liability in the foreseeable future of international law outside of the existing space regime. [13]

We may never see a well-formed State liability framework to accompany the existing State responsibility regime. However, as technological development accelerates with every passing year, traditional solutions may become increasingly outdated. The human potential to harm the planet appears, unfortunately, without bounds. International law needs to evolve further to strike the right balance between the accountability of States and private actors.

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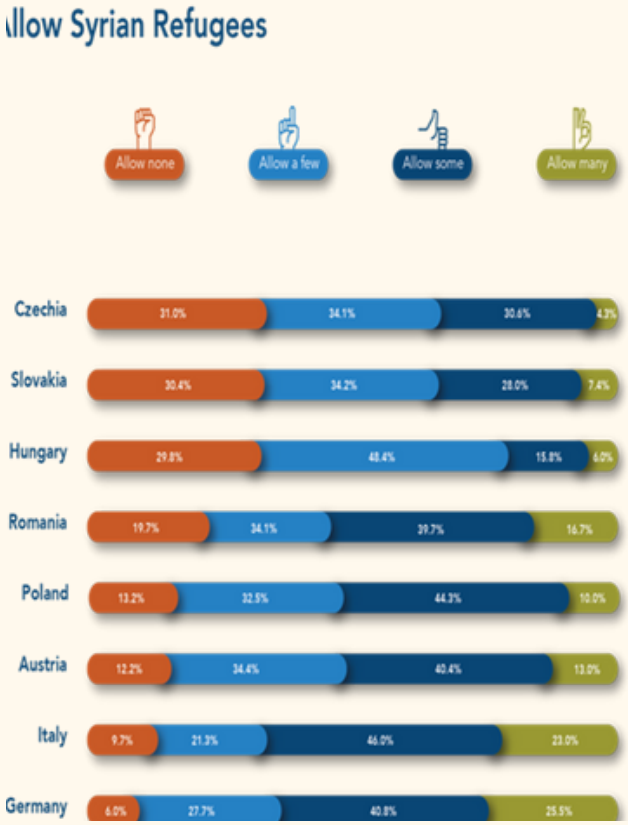
EU MEMBER STATES AND THE REGUFEE CRISIS

BY FROUKE MINKEMA AND LIA SURU

"Syrian and Ukrainian refugees should receive 'same treatment"
- UN Commission chair [1]

Background

Starting with the illegal annexation of Crimea in 2014, which later led to an unjustified war of aggression against Ukraine, Russia's actions have given rise to a severe humanitarian crisis. Through their actions against Ukraine, the people of Russia have violated the principles laid down in the Charter of the United Nations and forced approximately eight million people to flee their own country. Almost a decade of heightened political turmoil has caused the need for human interventionism, however, should this crisis be prioritized over similar cases or even state needs?



Syrian vs Ukrainian Refugees

It has recently become common knowledge that Syrian refugees do not receive the same treatment and government attention as Ukrainian refugees. After conducting a study on European attitudes toward receiving different immigrants, ASILE writers found that people had a pronounced negative view concerning Muslim ethnic groups and similar minorities.[2] This factor is very relevant to the discussion as it plays a crucial role in the constraint of government action.

Several statistics containing data compiled from 8 European countries confirm reluctance not only due to religious differences but also overlooking how some ethnic minorities turned into majorities. For insurance, in some Austrian towns Arab descent population reaches almost 80%. Furthermore, the data also displayed gender disparities as male refugees were seen as more threatening, and prone to crime or radicalization.

Human Rights Violations

For a long time, people have expressed deep misgivings concerning immigrants as well as refugees of the Islamic religion due to common views of society and key events in world history which are thus very difficult to change. However, regardless of the relationship between attitudes and policy, people need to acknowledge that this is an issue of the greater good and that discrimination should not play a part.

Articles 2, 3, and 7 of the Universal Declaration of Human Rights, to which all European countries receiving refugees are signatories, clearly mention that “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs”, that “everyone has the right to life, liberty and security of person” and that “all are equal before the law and are entitled without any discrimination to equal protection of the law”.[3]

In a country like Syria, where these rights are denied, these violations are even more prominent.

Financial Aid Controversy

Moreover, when it comes to state responsibility concerning Ukrainian refugees, the government favors them over their own fellow citizens. According to HotNews, Romania offers refugees financial assistance per month of greater value than the minimum wage salary by one-third.[4] On top of this, refugees also receive financial aid from UNHCR. [5] This data substantiates the discrimination claim once again. Nevertheless, solving this issue does not imply denying help to Ukrainians, but taking into consideration the impact on both Syrians and citizens of the host country. It is common knowledge that Ukrainians also come from a better environment than Syrians and the majority had the opportunity to take some of their possessions and savings with them when fleeing, which accentuates the unfairness of the situation even more.

Legal solutions

According to the 1951 Refugee Convention, a person is a refugee if they are unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. When one is fleeing and seeking protection, they must prove that they fall under this definition. This can take a long time and become a burden on the refugee system. Especially if a lot of people are fleeing because of the same reason at the same time. The European Union has come up with an instrument that enables to protect the people fleeing due to a well-founded fear of being persecuted without putting too much stress on the asylum system - the 2001 Temporary Protection Directive (TPD).

What is the TPD?

According to the European commission the TPD is measure activated in the exceptional event of a mass influx of refugees.[6] Enacted in 2001, it is part of the Common European asylum system. It was enforced as a result of the former Yugoslavia conflict.[7]

According to Article 2 of the Directive, a mass influx means arrival within the EU of al large number of displaced persons from a specific country or geographical area either spontaneous or through an evacuation programme.[8] Article 5 states that it is activated through a council decision upon a proposal from the commission. The TPD enables to relieve stress from the asylum system as a well-founded fear of persecution does not need to be investigated. It is presumed that if someone is fleeing from the situation that caused the mass influx they fall under the refugee convention and qualify for protection.

When was the TPD activated?

The TPD was activated on the 24th of February 2022 for the first time to offer protection to those fleeing from the conflict in Ukraine. According to the TPD, the EU countries must grant the refugees people protection on their territory for as long as the TPD is activated.[9] This is at least a year, as per Article 4 of the TPD.

If the TPD is activated, it is not necessary to make a personal assessment of each refugee. The fact that they are from the country or region causing the mass influx is sufficient. [10] This ensures it easier to process the refugees and stop the refugee systems from becoming overburdened. Also, If one country is dealing with too many refugees the burden sharing goal of the TPD ensures refugees will be spread evenly over the EU states.

It seems logical that the TPD was activated to help those fleeing the war in Ukraine. There was a spontaneous mass influx of people that had a legitimate reason to flee from the same geographical area. This article does not criticize that. The question that remains is - why was the TPD was not activated earlier following the events of the conflict in the Middle East? Thousands of people fled in boats, on foot and in other ways to escape danger.[11] It would seem there was a mass influx as a large group of people fled for a legitimate reason, namely fear of their lives. Also, it was too much for the European refugee system to handle but the TPD was not activated. Is there a legitimate reason for this?

Arguments in favour of activating the TPD earlier

Approved arguments for activating the TPD would be that of responsibility sharing. This would spread out the refugees over Europe. This means the costs and burdens would be evenly spread.[12] Additionally, by spreading the responsibility of taking on refugees human rights can be guaranteed more efficiently.[13] There have been multiple cases in the European Union of refugees awaiting their status under horrible conditions. Not being fed adequately and having no roof over their head.[14]. This can be prevented by spreading the refugees over countries in which these rights can be effectuated. Moreover, protection is limited to the time of the mass influx so the country providing protection know it will be temporary.[15] In 2015 it was clear that Greece and Italy could not deal with massive influx of refugees.[16] The whole idea behind the TPD is that of responsibility sharing. Hence, it is peculiar that the TPD was not implemented to deal with the crisis in 2015.

Explanations for the TPD not having been implemented earlier

Scholars argue there that are malfunctions when it comes to the process of activating the Directive. First of all, its text can be described as vague. Its applicability is based on politics. States are not inclined to make a statement by applying the TPD.

If they can handle it themselves, they are reluctant to work together. This explains why it was activated for the Ukraine crises and not the Middle east influx.[17] It is a clear political statement against Russia to help the people fleeing the Ukraine conflict. In regards to matters concerning the Middle East, it may be more controversial to take sides. States might have avoided making a political statement. If a clear list of criteria for activation would be established, it would make it easier to implement the TPD based on objective criteria instead of political objectives.

Conclusion

All in all, the 2015 influx of refugees is seen as a crisis. People fleeing in boats were not able to make it to Europe and many lived in huge human rights violations while awaiting their status. Despite this, the TPD was not implemented by EU States.

However, it was activated with regards to the conflict in Ukraine. The explanation for this is that the criteria for activating the TPD are vague. Implementation depends on the interpretation of states. This allows states to make its implementation a political statement.

This might describe the discrepancy between responses to the refugees from Ukraine and the Middle East. Hopefully in the future clear and objective criteria for the TPD implementation will be establishes allowing for an easier implementation.

While the personal perceptions of the people, highly influenced by the media, may, unfortunately, not portray all refugees in the same light, the governments need to rise above the illusionary divisions and see them all, simply, as humans who deserve a helping hand.

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