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The Right to International
Protection

From cleavages to facts on the ground: A
conceptualisation of the work of civil society
organisations on matters of refugee and
migration policy



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From cleavages to facts on the ground: A conceptualisation of the work of civil society organisations on matters of refugee and migration policy

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Abstract:

Civil society organisations (CSOs) represent a key part of the political landscape surrounding refugee policy: as highly flexible bodies, they are able to fill more effectively the gap between the formal political institutions of the state and international society and the lived experience of refugees on the ground. However, despite growing interest in these organisations, there has not been an attempt to model a comprehensive framework of how the wider political and social debate about refugee policy has translated into the pattern and nature of CSOs. This paper offers such a framework, drawing on Sicakkan's (2021) cleavage model, as operationalised through political opportunity structures. It highlights a number of expected elements in both transnational and national CSO activity that will form the basis for on-going research.

1. Introduction

Refugee policy has been a central concern of the European Union (EU) since the events of 2015, when very large numbers of refugees entered its territory with relatively little control, placing the post-Cold War framework of managing asylum and integration under considerable duress. This so-called refugee crisis not only resulted in radical overhauls of EU policy, but also brought the issue to the political foreground in many countries. In many cases, the crisis represented a moment when the formal structures of the state found that they were ill-adapted to dealing with the situation, either in terms of managing those refugees or of managing the public debate that their arrival prompted: this applied not only to government ministries and agencies, but also to the party political system.

The outcome of this gap was to stimulate a considerable growth in the role of civil society organisations (CSOs). This broad, heterogenous group included not only those working to provide direct humanitarian support to refugees or trying to deal with the challenges that refugees faced in finding secure and constructive situations within their host countries, but also organisations trying to shape media and political debates to suit their preferred model of refugee policy and those whose interest might be driven by secondary concerns. Put differently, while much work has focused on CSOs as agents of pro-refugee activity (e.g. Feischmidt *et al* 2019; Larruina *et al* 2019; Pries 2016), this paper considers CSOs as reflections of wider social currents and divisions around refugees and refugee policy, as capable of seeking to limit or remove refugees from a country as they are of trying to help them become part of it. In so doing, it highlights the potential of CSOs to be enabling or constraining agents in the general development and practice of refugee and migration policy.

CSOs have evidently played a role within and around refugee policy prior to 2015, but the latest period has underlined the need to have an understanding of how and why such organisations work in the way that they do. To showcase just two major examples, most of the support infrastructure for the big growth of informal camps near Calais in northern France was provided by a broad coalition of international, and hyper-local CSOs (Refugees Rights Europe 2018), while an extensive roster of rescue ships and aircraft run by CSOs have operated in the Mediterranean since 2015 (EUFRA 2020). In particular, it is important to consider how the general cleavages of political and social attitudes towards refugees translated into organised action beyond the state or the international system, for the simple reason that CSOs are – by their nature – more likely to be pure expressions of such cleavages, given the relative lack of constraints about their form or purpose. If state bodies are products of - and agents in perpetuating - the social compromises needed to govern, then CSOs operate in the spaces

around these bodies as (relatively) specialised and narrow expressions of the different voices that form society. That narrowness of outlook is coupled to the possibility of highly specialised actions and a relative lack of need to consider the interests of those beyond the immediate constituency to generate a landscape of organised individuals that marries their bottom-up interests with the incentives generated by the formal political system.

This intermediary role of CSOs – between society and the formal political sphere – requires a framework of analysis that allows for the integration of both sides of this equation. The solution proposed here is a combination of a parsimonious model of social cleavages, as articulated by Sicakkan (2021: also Sicakkan & Atak 2021), with a conventional reading of political opportunity structures. The former provides the initial impetus to individuals to mobilise and then organise into groups, while the latter conditions their choices about how best to achieve their objectives. Their combination offers not only a testable set of predictions for future research, but also demonstrates the potential of the cleavage model to improve understanding of refugee policy development and the politics of refugee policy more generally. Equally importantly, it offers an approach to the development of CSOs in other areas that allows researchers to consider the totality of civil society action, rather than just that of hyper-partisan advocates. Such a holistic model is of value not only to academics but also to practitioners and politicians who might otherwise see only part of the environment in which they have to operate, so missing opportunities of their own to achieve their policy objectives: better understanding can be a pathway to better policy-making and -implementation.

The paper starts with an overview of both political opportunity structures and the cleavage model, before elaborating a model of CSO group formation, objectives and activity at both the transnational and the national level.

2. Political opportunities, cleavages and civil society organisations

Civil society organisations are usefully understood through the prism for political opportunity structures for a number of reasons. Most importantly among these is the notion underpinning civil society itself; as a relatively unstructured space for inter-personal activity. Its boundaries are defined by their opposition to both the personal world of the individual and the formal architecture of political and social institutions, rather than by any intrinsic and internal form. This tableau is one on which individuals can choose whether and how to perform collective activities, including those of a political nature. As such, it becomes necessary to consider what motivations, incentives and barriers these individuals face as they turn their sensitisation into mobilisation and action.

If we treat CSOs therefore as organic expressions of individual and collective interests, then we also have to recognise that the relevant factors can be either exogenous or endogenous. Kitschelt's work on protest movements (1986) drew primarily on exogenous factors, relating to the political and party systems and the degree of 'openness' to new actors and inputs, pointing out the need to place groups within wider contexts. However, this did not properly accommodate a second school that worked from the exogenous understandings and preferences of individuals and groups (e.g Tarrow 1998). Despite the obvious connection between the two – namely that exogenous opportunity structures need to be recognised as such (cf. Princen & Kerremans 2008) – there remains a tension between the two approaches that persists (see Benford and Snow 2000 for a useful overview).

Equally problematic has been the concept-stretching that opportunity structure approaches have undergone, not least as both schools tended to confound structural and contingent factors: at some level, everything risks been characterised as an opportunity structure or a structured representation of interest, reducing the ability to draw out what is most salient (Rootes 1999). It has only been more recently that researchers have managed to rein in this problem, as with Arzheimer & Carter's (2006, 2009) work mixing individual-level data and political opportunity structures: these latter variables are further broken down into long-term institutional, medium-term party political and short-term contextual dimensions, in order to try and discern their relative weights and impacts. Aware of the challenges that are present, this paper takes a circumscribed approach to the political opportunity structures that will be used to generate the model.

2.1 Endogenous factors: A cleavage model of the right to international protection

The conceptualisation of cleavages around attitudes towards international protection works from the basis of the existence of a wider set of "structural, resilient, and mutually reinforcing conflicts, contestations, and collaborations between political actors over a web of global political issues" (Sicakkan 2021: p5). These high-level cleavages mark out the dimensions of political and policy debate and argument through their articulation of profoundly different world views, grounded in their varying understandings of the relative position of the nation-state with social and political life (see also Hooghe & Marks 2018).

As much as such cleavages operate in general terms, so too do they translate down into more specific areas of policy: indeed, it could be argued that it is in their manifestation at such levels that cleavages gain the substance and tractability that truly embeds them within the political sphere. This is nowhere more obvious than in the field of international migration,

given the conjoining of states' territoriality and the status of individuals as they cross borders. The relationship between states and individuals speaks both to the nature of national community and identity and to the extent to which states hold obligations to an international order or norms.

In practical terms, this points to four main groups that cleavages separate out (Sicakkan 2021, Sicakkan & Atak 2021). *Nativists* focus exclusively on the protection of existing members of their national community and see no role – or even need – for international protection, since obligations stop at the metaphorical water's edge. *Nation-statists* are potentially more open to notions of universal human rights and/or the protection of refugees, but still place primacy on their own state's freedom to operationalise those as they see best: international protection is at most an idea, rather than a set of obligatory requirements. A third group, *regionalists*, are willing to work beyond national borders to create local systems of governance, often reflecting an understanding of the limits of what any one state can achieve: in part this is about sincere concern for human rights but is also a vehicle of *realpolitik*. Even the final group – *globalists* – with their desire for an internationalised and globalised system of protection are not always driven by a reification of human rights as an inescapable and fundamental duty for all (although that view is also present): it can also be a function of a failure of alternative policies to manage particular situations, such as massive inflows of refugees.

What is most relevant here is the conceptualisation of refugees (and migrants more generally) relative to whatever *status quo* applies and the imperatives that it creates for action. If we accept that these cleavages apply as much to individuals and organisations as much as they do to states, then we might expect there to be a differentiation in the salience of international protection between the four groups. Whereas globalists might be expected to treat this as a core issue and manifestation of their understanding of the world, and so to see action as a moral duty, the more pragmatic approach of regionalists and nation-statists would not create the same imperatives to action. By contrast, nativists might only consider action necessary to the extent that it defends the integrity of the domestic community.

This also carries potential implications for the object of action. The othering of refugees by nativists suggests that those holding such views will seek to concentrate their defensive work on those social and political structures that might be affected by refugees, rather than the refugees themselves. Likewise, the duty of globalists will produce an incentive to work with and support refugees, wherever they might be located, as well as working to adjust local, national and international structures of governance to embed the imperatives that they consider

so central. Nation-statists and regionalists sit between these two positions, respectively looking to shape national and regional responses and the support of refugees within them, albeit with less moral obligation than found in globalists.

The pattern that the cleavages approach opens up is one of a diverse set of incentives to action for individuals and organisations, underpinned by deeply contrasting understandings of the nature of refugees and the obligations of others towards them. In the current context of CSO action, this is an essential first step in building a model, since it is such understandings that inform the formation and operation of all groups within civil society. The second step is to then marry this to the matter of opportunity structures.

2.2 Exogenous factors: the formal political system of states

As a second stage of the political opportunity structure approach, the focus moves outside of CSOs to the structure of the relevant formal political system, coming back to Kitschelt's original ideas. The logic for this exogenous focus is grounded in three main factors. Firstly, the formal political systems of states play a central role in migration policy generally and refugee policy specifically. The connection of these domains to fundamental questions of state preference and operation means that whatever the ideological disposition of that state there will be a resultant programme of policy and a political and legal labelling of those individuals moving across borders. Seen in this light, state structures and their actions become unavoidable elements for those within civil society seeking to translate their own preferences or dispositions into action. Secondly, and running on from the previous point, the necessity of effective interaction with formal state structures means that the impact of the latter's degree of openness to civil society activity will have a significant impact. Openness here is understood to relate to the extent to which the formal political system reflects social interests or public demands (for example, through a proportional electoral system or a parliamentary form of government). Finally, the unavoidably transnational nature of migration and refugees means that CSOs working in this area are liable to be exposed to an international system that is often misaligned or even opposed to individual state actions. However, that system is still poorly defined and mainly driven by states' work, either unilaterally or in international fora (see Betts & Milner 2019), thus paradoxically reinforcing the centrality of national political systems in the operation of CSOs.

This suggests that the formal political system(s) that a CSO encounters will create a number of incentives or disincentives. Most obviously, the higher the density of such formal systems, the greater the chance of crowding out civil society activity: even if a structure does

not quite meet the needs of a putative CSO grouping, its very existence will act as more of a barrier to mobilisation than would an equivalent situation where no structure existed. As noted above, if we assume that cleavages generate clear incentives to act, then inaction by others can be a strong rationale for mobilising. As more political actors become active – especially if they have the weight of the state behind them – so the opportunity to pick easy successes is reduced.

Likewise, the degree of formal state activity will also likely have an impact on the nature of CSO activity. Broadly speaking, there will be a differentiation in that activity between working directly with migrants and refugees (e.g. to provide emergency support) and working to change national public policy on migration and refugees. While the latter will be a constant opportunity, given the previously-discussed necessity of such policy to all states, the former is likely to be much more conditional: state policy might be very minimal in its effects on refugees and migrants, either by preference or by capacity, leaving much more space for CSOs to operate. Note, this distinction might become more blurred at local levels, when CSOs engage with local authorities who will typically have a much closer connection between their policy choices and their material actions.

Finally, the responsiveness of formal systems to changing situations will impact CSO mobilisation and activity. The grounding of state structures in legal and political frameworks potentially makes them less able to adapt to novel requirements, such as marked changes in the volume and nature of migrants and/or refugees. Where that adaptability produces gaps in state provision, then CSOs will have opportunity to step in as they make use of their more specialised and narrow focus.

The interaction of the exogenous preferences linked to cleavages and the endogenous constraints and opportunities created by national formal political systems produces a parsimonious set of factors that allow for a theoretical modelling of CSO mobilisation and activity in the field of refugee and migration policy. The former points up what groups might want to achieve, while the latter conditions how (and indeed whether) they attempt this. This offers up a number of anticipated patterns of CSO activity at both the national and the transnational level.

3. A model of the pattern of CSO activity

There are three main clusters to the model of the pattern of CSO activity regarding migration and refugee policy: the space for the existence of CSOs; the profile of the preferences they will exhibit, and; the range of activities they will undertake. In each case, there is a necessary

blending of the exogenous and endogenous factors, which should be seen a co-constitutive, rather than as hierarchical. This matters insofar as the specific and individual interactions between political opportunities and cleavage-based preferences will be unique: circumstance might produce outcomes that diverge from the general pattern suggested here. As a result, the model outlined here focuses on making relative predictions, rather than absolute ones.

The starting point for the model has to be the space within which CSOs can form and operate: by definition, without such spaces the capacity for CSOs to overcome barriers to formation is very limited, especially when the CSO's resources are in a latent state. Therefore, a first anticipation of the model is that *CSOs will be relatively more common in political spaces when formal political structures are less present*. This can be operationalised in a number of ways, starting with the expectation that CSOs will be disproportionately found in transnational spaces than national ones, given the previously-discuss weakness of the international order in this field. Again, we underline the observation that migration and refugee policy necessarily involve activity across national borders, but that in absence of a highly formalised system for managing that activity, the opportunity for CSOs to fill the gap will be substantial. Even in the case of the EU, as the world's only regionalised system of international management, the capacity limitations of that body as compared to its member states will still result in a differential incentive, and may even increase it if CSOs consider the EU more amenable to lobbying activity.

Similarly, those states with relatively thin formal political systems in place for migration and/or refugee work would be expected to have more CSOs present than those states with more articulated infrastructures. The reason for thin formal systems might vary but the outcome would be the same: a state with a generally low capacity for formal activity would be functionally equivalent to one where the requirements for formal activity on migration and/or refugees has changed markedly, albeit the latter case would be more temporary than the former. In the former case, CSOs might become semi-permanent fixtures in the broader institutional landscape – as found in various countries of transmission or transit – while in the latter, they may only exist in the window of a mismatch between supply and demand. Such mismatches should be generally considered to be triggers for CSO mobilisation and provide a more temporal focus for understanding the overall CSO pattern of operation. To take an obvious example, the events of 2015 provided a significant shock to the formal system of European management, creating multiple points of opportunity for CSO mobilisation across the continent, some more long-standing than others. Likewise, the Covid pandemic has been a significant drain on state resources, opening up potential for CSOs to (re)occupy meaningful

positions in handling matters relating to refugees and migration. Pre-existing transnational CSOs might be better placed to pick up some of the immediate mismatch, and generally to respond to crisis points, but there will be more local mobilisation over time.

More open to discussion is the effect of general state openness to civil society. Pluralist systems might be expected to operate within a relative rich environment of CSOs, pulling them into relationships with the formal architecture at various points and to differing degrees. Those states with authoritarian tendencies would stand in distinction to this, being willing to control the extent of civil society action, especially if it goes against state policy. However, it is in the intermediate category between these poles that uncertainty operates: weak pluralist systems might dislike CSO activity, but lack the means or desire to act on closing down their formation or operation. Therefore, while there should be a *negative correlation between openness and the extent of CSO activity*, this might only be robustly so at the extremes of the openness scale.

The anticipations around the relative opportunity space for mobilisation also play into the second element of the model: preferences. Those *CSOs operating at the transnational level will be overwhelmingly characterised by globalist and regionalist policy positions*, reflecting their belief that action at the transnational level is a moral or legal imperative: by definition, nation-statists or nativists will see minimal reason to concern themselves with activity beyond their borders, expect in certain very specific and bounded cases (such as the support of diasporas): as long as migration is managing up to and including national borders, then there is little need to develop standing arrangements with other parts of the world.

At the national level, the picture is more mixed. *In states where the formal political discourse around migration and refugees tends towards the nativist or nation-statist, then CSOs that act in these domains might tend towards being more regionalist or globalist*, for the reason that the state discourse will translate into less formal political activity. More particularly, while such states might have management systems at borders to reduce or block those entering the country, they may do little to meet the needs of those who are successful in gaining access, so providing space for CSOs to step in. This is somewhat different from the capacity point made above, in that it reflects a set of preferences rather than one of objective ability to provide formal activity. As a result, it might also occur that in states that have strongly globalist or regionalist discourses and policies, those CSOs that concern themselves with migration will be more likely to represent nativist or nation-statist views. In all cases, the presence or absence of sympathetic and resonant voices within formal political spaces – party politics, parliaments, the media – should not have clear impact on the relative weight of preferences: CSOs can be

both substitutes for, and reinforcers of, formal political action so any *a priori* assumption about the effect of CSO mobilisation or preference structure cannot be made on that basis.

Evidently, CSO preferences will also shape the activities they undertake. In the most general terms, *globalist and regionalist CSOs will be much more likely to undertake work directly with migrants and refugees than nativists*. Globalists and regionalists will have a particular focus on helping those in vulnerable positions, in line with their moral or legal obligations (respectively) towards refugees and migrants: the strength of such obligations will be relatively unaffected by events such as Covid. On the other side, nation-statist groups will be somewhat differentiated from nativists, given the non-exclusive notion of community that the former hold, with its attendant sense of charity (Sicakkan 2021). Nativist CSOs will see little or no reason to work to address migrants' personal needs, except in the context of returning diasporas (who would not be seen as migrants in any case), so instead they will focus on lobbying public policy within their state. Indeed, it is possible to go beyond this and argue that *nativist CSOs will embed migration and refugee work within wider projects, and so be much less likely to place those activities as their central focus*. The logic here is that if nativists treat migration and refugees as problems for the national community, then it is the national community that is their prime focus: their interest is in defending and promoting the latter, so migrants and refugees only matter as a function of that work. By contrast, CSOs characterised by the other cleavages – and especially globalists and regionalists – will have preferences that place migrants and refugees at positions of varying degrees of obligation to be respected and worked for in their own right.

This will be most obvious at the transnational level, where the relative weakness of the international regime further incentivises CSOs working here to press for the shaping of public policy and more general norms of behaviour. The relative concentration of CSO activity transnationally also provides more opportunities for coordination with other groups and creates more weight to mould discourse. As a practical expression of this, transnational CSOs might be expected to have been relatively over-represented in the process of formulating and agreeing the recent UN Global Compacts on Migration and on Refugees, as compared to national CSOs.

4. Conclusions:

CSOs act as a translation of social preferences: when presented with particular opportunity structures, individuals turn their personal preferences into collective ones and act upon the world around them. In the case of migration and refugees, this operates in a way that often transcends the boundaries of much political life, and indeed calls into question many of the

fundamentals of the system of state organisation. The role of the migrant and of the refugee in relation to the communities of their source and of their destination and the extent of the moral, political or legal obligations they might deserve are topics that have generated increasing levels of public and political interest across the world in recent years.

By understanding the pattern of CSO activity in these fields we not only gain insights into an important level of social and political activity, but we also stand to better understand the ways in which societies more generally constitute and understand themselves: CSOs are as much mirrors to social preferences as they are translators. The model outlined in this paper establishes a number of testable expectations about the existence, volume, preferences and activities of CSOs within and across states, in a way that also allows for us to make more sense of the global ecosystem of migration and refugee policy. In so doing, it also opens up the possibility of better understanding how CSOs might be influential – on migrants and refugees directly, on national policy, or on the international order – and how that might be used to advance improved outcomes for all.

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