International Journal of Law in Context (2025), **21**, 58–79
doi:10.1017/S1744552324000387

ARTICLE

Populism, backlash morality and immigrants

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(Received 25 July 2023; revised 17 June 2024; accepted 26 September 2024; first published online 04 December 2024)

Abstract

The social and political contexts in many countries are affected by dangerous trends and forces of populism. Populist hostility is most observable in connection with issues of immigration, where it functions as a pretext for scrapping legal protections in increasingly hostile immigration laws. What is particularly insidious about these developments is the claim, articulated by some theorists, that the popular resentment and backlash against immigrants and refugees are justified. That populists are hostile towards immigrants and human rights laws, the claim seems to go, is the fault of the legal norms and institutions that allow in the immigrants and protect them. This article challenges those approaches and argues that legal constraints on popular biases towards immigrants are necessary and need to be defended against popular moralism. It is also argued that although community values are important, they should not be considered as trumps against the rights of immigrants and refugees.

Keywords: human rights; law; morality; populism; backlash; immigrants

1 Introduction

Questions of how open or closed borders should be and whether migrants should be allowed to stay with equal rights to the national residents are of course not new. Political philosophers have long debated this topic and hold diverse views on it including, for example, the egalitarian pro-migration stance of Joseph Carens, who argues that justice in migration requires open borders (Carens 1987), and the nationalist position of David Miller, who defends the right of the receiving state to exclude immigrants to protect citizens' national identity and interests (Miller 2016). But we have been witnessing renewed waves of hostility towards immigrants and rise of right-wing populist forces with staunchly anti-immigration agendas.[1] In many places, levels of opposition to immigration are high and those favouring an increase in the number of immigrants are a minority.[2] In different ways and to varying degrees, populist forces have arguably been shaping not only social attitudes, but also laws and, perhaps, normative and moral understandings. They have specifically paved the way for gradually taking away migrants' rights and adopting increasingly restrictive migration laws and policies in a wide range of countries.[3]

[1]The most recent examples of this could be seen in the surge of far-right parties in EU member states in the 2024 European elections (European Parliament 2024). See also: Halikiopoulou and Vlandas (2022) and Rooduijn *et al.* (2023).

[2]For example, 52 per cent of people in the UK in 2023 believed that migration should be reduced, while only 14 per cent believed that it should be increased (The Migration Observatory 2023).

[3]For example, the Conservative government in the UK has adopted a series of legislations that have increasingly eroded access to refugee protection, most recently the adoption of the Safety of Rwanda (Asylum and Immigration) Act 2024 under

These developments have attracted attention from not only human rights and immigration law scholars but also, among others, moral and political philosophers. Sophisticated and refined theoretical accounts are put forward with important implications for the questions of migration. However, a distinctly sceptical approach that is emerging from some of these theoretical accounts has been increasingly contesting the legitimacy and moral foundation of the human rights standards and legal norms regarding migrants and refugees. What is particularly insidious about some of these narratives is the causal and justificatory relation they have suggested with populist agendas. That populists are hostile towards immigrants or human rights law, the claim seems to go, is the fault of the legal norms and institutions, supposedly by allowing in the migrants and refugees and protecting them.

Such narratives, however, have rarely been challenged. The engagement of migration law scholars has been limited mostly to pointing out the risks and developments such as the adoption of hostile laws and policies, or arguing that populist attacks on human rights law and rules governing immigrants are baseless since in many respects the restrictions advocated by populists are already accommodated by international law (Stoyanova and Smet 2022, 15). However, by focusing primarily on the populist impact and the erosion of immigrants' rights, they have overlooked the underlying philosophical accounts and justificatory theories that claim such populist reactions are legitimate and morally right. My aim, and the hoped-for contribution of this article, is to enhance the existing literature by providing a closer engagement with these approaches and offering a more cogent critique of them. In doing so, the article seeks to identify populist tendencies and normative support for populism within the theoretical frameworks, while drawing on and connecting multiple areas of scholarship such as populism, the moral and political philosophy of migration, international migration and refugee law, and human rights law and philosophy. The article argues against moralist accounts that rely on popular values and backlash morality. It also rejects ideological anti-individualist theories that seem to take values such as belonging and community as trumps against the rights of immigrants and refugees. The counter-argument emerging here seeks to emphasise the value of human rights law and advocates for a normative approach that promotes solidarity and responsibility sharing. Before we start, some important clarifications and caveats must be made.

First, the term 'immigrant' is used throughout this article as a broad term to primarily describe individuals who are not citizens of their host country, and includes specific legal categories recognised under international law such as refugees and migrant workers which otherwise have separate needs and should not be mixed. However, it is also intended to include the foreign born, regardless of whether they have subsequently become citizens of their host country, for in the eyes of populists they may still be perceived and treated as immigrants.

Second, throughout this article I will engage with several theoretical views that seem conducive to populist narratives and provide justifications for them. However, I do not make assumptions about the motivations behind those views, nor do I claim that they are necessarily populist as such.

Third, the debates advanced in this article primarily reflect the perspective of scholars from developed countries which host relatively few refugees and have historically benefited from immigration. It is important to recognise the diverse experiences, positions and capacities of both developed and developing countries regarding global mobility. Similarly, the impact of colonialism varies greatly among different nations, with some former colonisers experiencing privileges while others grapple with the enduring legacies of colonialism. These disparities require thorough attention, though due to space constraints they cannot be fully explored here.

This article begins by exploring the concept of populism in Section 2. As will become evident, populism is a contested and chameleonic term that can take various forms. It can also incorporate conflicting ideologies, which has allowed it to take left- or right-wing forms. Some, typically those

which asylum seekers in the UK would be transferred to Rwanda before their claims for asylum are heard. The Act was heavily criticised by the United Nations High Commissioner for Refugees (UNHCR 2024).

https://doi.org/10.1017/S1744552324000387 Published online by Cambridge University Press

leaning towards the right side of the political spectrum, tend to see populism as the outcome of a moral deficit of human rights law and a (justifiable) backlash caused by the disconnect from popular and nationalistic demands; while others, typically located on the left of the spectrum, blame the failure of individualistic and liberal human rights law to protect shared values such as community and belonging.

Sections 3 and 4 will critically engage with two such accounts that despite their political and philosophical differences are united in their appeal to popular values and in blaming legal norms for populist hostility. I have chosen these two accounts because they are recent illustrations of distinct approaches on both sides of the political spectrum that have explicitly shared scepticism about the legal norms and institutions that protect the human rights of immigrants and refugees. I have engaged with the views of only a small group of theorists who represent these approaches, because they are rather unique in publicly putting forward clear philosophical claims undeterred by potential repercussions.

I will seek to address these narratives partly by putting them in the broader theoretical context of scepticism about human rights law which is far-reaching and goes beyond, but has significant bearings on, the rights of immigrants. Regardless of their inadequacy, such approaches risk legitimising populism which can lead to more erosion of immigrants' rights. I will conclude by arguing that we should not passively accept populism, nor should we too readily revise our moral values or capitulate on our hard-won international legal protections. Legal constraints on majoritarian biases towards immigrants are necessary and need to be defended against populist moralism. In addition, although community values are important, they should not be considered as trumps against the human rights of immigrants and refugees.

2 Populism

Populism is an essentially contested concept (Mudde and Kaltwasser 2017, 2), but it is often understood as a form of politics that adopts an exclusionary approach to people, purporting to rule on behalf of the 'real' – as opposed to unfavoured and unworthy – people. It also often includes a claim of being the embodiment of a popular will and turns politics into a competition with the so-called 'elite'. One of the most widely endorsed conceptions of populism understands it as an ideology that splits society 'into two homogeneous and antagonistic camps', 'the pure people' versus 'the corrupt elite', and 'argues that politics should be an expression of the *volonté générale* (general will) of the people' (Mudde and Kaltwasser 2017, 6). As is evident from this conception, populists tend to heavily rely on the notion of 'the people' which they construe as a 'bounded collectivity' that is being threatened by the 'other'. They then pitch this as an insider–outsider dichotomy: 'them' versus 'us', for example depicting immigrants as threats to the homogeneous collective of true citizens (Stoyanova and Smet 2022, 9).

However, like any heterogeneous collective, there are always going to be conflicts of values and interests. As a result, 'the people' can never truly rule, and some voices always prevail (Lacey 2019, 89). These tensions are 'inherent to liberal democracy which tries to find a harmonious equilibrium between majority rule and minority rights' (Mudde and Kaltwasser 2017, 82). The problem is, this equilibrium is almost impossible to achieve, which gives populism an almost infinite resource to exploit. In addition, and as a consequence, instead of being a construct of a political system that gives equal weight to the preferences of all people as separate individuals, populism takes the majority rule to be a reflection of the supposed will of a single homogeneous body with one view (Bellamy 2023; Weale 2018). This explains their strong preference for exercises of *direct*, overrepresentative democracy in order to determine the supposed popular will. Their failure to secure on demand such majority support has convinced nationalist populists that they need to work instead on creating a pure and homogeneous people that will deliver the 'broken promise' of democracy (Norberto Bobbio, quoted in Lacey 2019, 89).

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This also seems to explain their hostility towards legal constraints which prevent them from achieving their pure nation. This is particularly true about human rights norms which were created following the Second World War to provide protection against the resurgence of dangerous populism, particularly through norms such as the prohibition of genocide and crimes against humanity and the protection of the rights of minorities. More generally, such narratives may turn their attention inwards and challenge the validity of the domestic political mechanisms and legal norms, notably those put in place to protect the rights of national minorities. They may also turn outwards against immigration and international agreements and institutions that provide protection and impose limitations. These are all portrayed as unjustified constraints on the will of the 'people' (Bellamy 2023, 13).

The points made above are reiterated by Umberto Eco, who noted that from a populist perspective – which in its stronger forms may transform to fascism – 'the people' is often conceived as a quality, a 'monolithic entity' with one view that expresses the 'common will' (Eco 1995). Because it is impossible for a large group of people to share a common will, the 'leader' steps in who will act as their interpreter and claim exclusive authority to act on their behalf. Having already delegated their power, citizens then only play the role of 'the people'. Thus, 'the people', Eco argues, is 'only a theatrical fiction', which he predicted would be performed through TV and internet populism, where 'the emotional response of a selected group of citizens can be presented and accepted as the Voice of the People' (Eco 1995).

It must be noted, however, that as an ideology populism is too thin and tends to be combined with other ideologies, for example from the right or left ends of the political spectrum. Socialist and anti-liberalist ideologies may rise to left-wing populism; whereas nationalism and xenophobia may take the form of right-wing or nativist populism (Stoyanova and Smet 2022, 8–9). The latter largely operates by feeding on the anxieties and frustration of citizens who feel forgotten and fear that their communities are being transformed by immigrants who are depicted by populists as the dangerous 'other'. Nativist populists then exacerbate these tensions by blaming 'the corrupt elite' for failing to protect 'the pure people' from the threat posed by immigrants (Council of Europe 2017).

Similar sensibilities against foreigners and immigrants may be prompted by 'xenophobia' which is usually conceived as individual prejudice or irrational dislike of foreigners. Some scholars, however, have argued that we should not see xenophobia merely as an individual phenomenon; instead, they argue, we must also understand it 'as political – motivated and informed by collective sensibilities regarding who belongs to the nation and may permissibly enjoy its benefits' (Achiume 2021, 47). Xenophobia may not remain only in the mind of its beholder; it may result in 'xenophobic discrimination' which is discrimination on the basis of actual or perceived 'foreignness' (Achiume 2021, 47). It is also intimately related to 'racism' which shares similar, although distinct and separate, 'processes of othering and exclusion' (Achiume 2021, 47). Xenophobic or racist sensibilities in relation to immigrants seem to be a 'direct reaction against the inclusion' of immigrants, and 'against their enjoyment of the benefits of national membership' (Achiume 2021, 47).

In many countries, nationalist and xenophobic actors have been closely following the rulebook of populism to make political gains by stirring up and exploiting public anxieties about immigration. Observing the powerful forces of populism and the gains to be made, many politicians and state officials have moved towards a tougher position and increasingly hard-line policies and rhetoric on issues of immigration and refugees (Council of Europe 2017). They may also achieve the same result indirectly by omission, that is by deliberately refraining from timely interventions such as the adoption of effective policies and allocating extra resources. They then wait to see the consequences of their inaction in the form of popular discontent and backlash, which they will then be able to further exploit. It is also important to note that populism is not only relevant to elections and the rising to power of populist figures, but also in 'the ability to put topics on the agenda', and 'the capacity to shape public policies' (Mudde and Kaltwasser 2017, 24) and

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influence political discourse (Lacey 2019, 91). In any case, the result is 'a race to the bottom' (Council of Europe 2017) that results in democratic backsliding and taking away immigrants' rights, and ultimately undermines the legitimacy of legal institutions, causes division, adversely affects political discourse, damages public trust, incites intolerance and stretches the social fabric of the society.

Populism can also, but not necessarily, be *authoritarian*, which describes a variety of populism that aims at undermining democratic foundations to secure the populist's hold on power (Stoyanova and Smet 2022, 11). Authoritarian populism can in turn take various forms such as 'authoritarian nationalist populism' which has essentially taken a leaf out of Carl Schmitt's rulebook by relying on 'an indispensable, unitary sovereign, who, at the moment of an unpredictable crisis, can break free of the rule of law and assert his pre-legal authority' (Kovács and Nagy 2022, 215). An important factor central for populism, particularly for authoritarian populists as it is clear from the above quote, is *crisis*. Whether real or perceived, and whether natural or manufactured, crisis serves as a fertile ground for populism and a useful tool for populists to unite 'the people' against a threatening 'other' (Stoyanova and Smet 2022, 10). For example the 'migration crisis' of 2015 has been widely used by populist leaders to depict a wave of migration that threatens the culture and population of the majority of citizens (Stoyanova and Smet 2022, 10).

What often gets overlooked here is that not everyone is equally susceptible to this kind of populism. Research suggests that those most prone to nationalism and xenophobia are those sectors of the working and middle classes who have been on a downward trajectory for decades (e.g. Fenton 2012, 465). Their 'nation' or 'homeland', as they conceive it, no longer exists, and they link the losses – mostly (although perhaps not entirely) inflicted by domestic bad politics and underinvestment – exclusively to outsiders. This takes us to another line of analysis which sees the rise of populism as being caused by globalisation – with its preference for open societies: openness to the flow of goods, people and ideas.

The argument is typically explained as follows: as people moved from villages to the cities, they lost many of their social bonds which had protected them from demagogues. This was changed when they became part of a mass society composed of individuals who had lost many of their social moorings. This is particularly said to be linked to deterioration of their economic conditions which resulted in unemployment and (hyper)inflation. Nationalism is then seen by some as an effective tool to provide people who lost most from globalisation with a new sense of community and anchoring (Etzioni 2019, 5). If we apply this analysis to contemporary nationalist populism, it is suggested (Etzioni 2019, 5) that it is a reaction to the rise of globalisation:

> 'Large segments of the population are reported to have experienced job loss (partly because freer trade led to jobs moving to developing countries), most of those who are employed have gained little or no increases in real income, all involved have experienced growing income insecurity and inequality, as well as a loss of dignity (associated with the loss of traditional jobs such as coal mining).'

A similar argument is used to explain the nationalist reaction to non-economic developments and cultural changes. The universalist human rights movement that extended individual rights and promoted diversity, for example by protecting the rights of minorities and immigrants, was seen by some people as 'undermining their social standing and as a loss of shared core values and habits' and made them feel 'they are snubbed by globalist elites' (Etzioni 2019, 6). Globalists on the other hand tend to see these views as 'the pathological reactions of people seeking to hold on to the past and to traditional social structures that were discriminatory and authoritarian, and are historically indefensible' (Etzioni 2019, 6). They may even view the corrosion of traditional commitments to local communities as 'liberating' (Etzioni 2019, 7).

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3 Ordinary virtues and backlash moralism

The first theoretical approach that I am going to engage with, one that has offered arguments against legal protections for immigrants, can be identified in conservative moral theories that criticise human rights law for being insufficiently responsive to morality and causing popular backlash. This scepticism about human rights and the impact of populism is broad and far-reaching, and one important aspect of it concerns the rights of immigrants and refugees. In order to better understand and more effectively respond to this argument, it is helpful to put it from the outset in the broader context of philosophical scepticism about human rights law, although I must stress this is a limited enquiry and does by no means claim to be able to resolve a long-standing debate over the role of morality in law.

The scepticism about human rights law has been a common theme for decades and comes from various directions. However, while most of the scepticism and critical approaches focus on what can be generally described as scepticism about the praxis of human rights (e.g. Posner 2014; Hopgood 2015), a distinct line of scepticism is emerging where theorists such as John Tasioulas argue that human rights law is fundamentally flawed and out of order, because it has fallen out of tune with morality. A simplified version of the latter scepticism about human rights law runs as follows.

> 'The validity of human rights law depends on morality, and its aim is to give effect to the background moral values. Human rights law has fallen out of tune with morality. Therefore, human rights law is flawed and out of order.'

Once the elements of popular morality and backlash are added to the above propositions, the updated version of the scepticism seems to be something like this:

> 'The validity of human rights law depends on morality, and its aim is to give effect to the background moral values. Morality should be extended to ordinary virtues and ordinary people's moral values. Human rights law has fallen out of tune with the morality and virtues of ordinary people, which has caused popular backlash. Therefore, human rights law is (a) flawed and out of order; and (b) to be blamed for the popular backlash that itself has caused.'

In this section I am going to expand on and examine these claims and respond to them. I will focus on two closely connected and provocative articles by John Tasioulas entitled: 'Making Human Rights Ordinary Again' (Tasioulas 2019a) and 'Saving Human Rights from Human Rights Law' (Tasioulas 2019b). In these articles he has advanced a refined and powerful sceptical position as roughly sketched above. His core claim is that human rights are 'fundamentally moral norms', and human rights law is 'subservient' to them (Tasioulas 2019b, 1178). It is morality, he argues, that 'ought to regulate the development of' human rights law (Tasioulas 2019b, 1189). Moral human rights, he contends, are of a higher status than human rights law, and as such they should not be 'hindered' by it. For him, human rights, understood as moral rights possessed by all human beings simply by virtue of their humanity, should be determined not by entrenched legal norms (either constitutional or international) that are given a higher legal status, but by moral norms. Legal norms and institutions, in his view, are 'fallible human creations established by flawed human beings' and, thus, inferior to extra-positive norms and 'objective ethical ends' that we can discover by ordinary reasoning (Tasioulas 2019b, 1172).

This philosophical view explains why he is fundamentally opposed to what he describes as 'the assimilation of human rights to international law' (Tasioulas 2019a, 344). He is also not convinced that it is sufficient to admit that human rights 'also constitute a set of moral concerns beyond their presence in law' (Tasioulas 2019a, 344). For him, the supposed link between human rights and

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moral theory is significantly stronger; that is, the latter grounds the former and its purpose is simply to give effect to it (Tasioulas 2017, 73; 2019a):

> '[I]nternational human rights law itself is properly understood as governed by the formative aim of giving effect to a background morality of human rights, insofar as it is appropriate to do so, through the legal technique of assigning a set of individual legal rights to all human beings.'

However, this is not, in his view, what is currently happening. Human rights law, he argues, 'has transgressed its proper bounds' (Tasioulas 2019b, 1173). In the two articles cited above, he seeks to make a case for principled constraints on human rights law by connecting it with popular morality and ordinary virtues. Here ordinary means 'local, contextual, nonideological, antitheoretical' (Ignatieff 2017, 28; Tasioulas 2019a, 342). Ordinary virtues, in this sense, refer to, and are part of, the 'moral operating systems' of ordinary people (Ignatieff 2017, 204; Tasioulas 2019a, 341). Such virtues include generosity, resilience, trust, courage, charity, mercy and so on, which are accompanied by a language of 'national pride, local tradition, religious vernacular' (Tasioulas 2019a, 342). This is the notion that Tasioulas has relied on to make a further theoretical move. The precise relationship that he assumes between abstract moral norms and popular virtues is unclear, but he apparently argues that the determination process of the moral human rights norms is not entirely insulated from those popular views and ordinary virtues; the former can be informed by the latter. To make that argument, he argues that these ordinary virtues are part of the moral operating systems of a 'vast majority of ordinary people' (Tasioulas 2019a, 342) who have an 'intuitive grasp of human rights morality' (Tasioulas 2019b, 1178). The relevant moral norms can, therefore, be discerned from popular morality (too) (Tasioulas 2019b, 1178).

> 'Interpreted as moral norms, we can more readily discern human rights embedded in the "moral operating systems" of a striking number of people throughout the world.'

I do not suppose that Tasioulas has abandoned his orthodox philosophical view that it is abstract moral norms and values that prevail over social norms and values (Tasioulas 2012, 26). But in any case, he seems to assume that popular moral virtues, even though they are not usually articulated in the language of moral philosophy, generally converge with, or at least do not 'deviate' from, those moral norms. However, it is not the convergence of these moral operating systems that can be problematic. Of course, so long as moral views of ordinary people converge with Tasioulas's conception of morality, his position is coherent. Issues arise when popular views diverge from moral norms, or from human rights law. He does not seem to be concerned about either of those divergences. His main concern is, instead, on a triangular situation where legal norms of human rights law are 'commonly perceived to deviate excessively' from the norms of abstract morality. It is this perceived 'deviation' which he finds problematic that he suggests influences the attitudes of people towards human rights law, often manifesting itself in 'common expressions of suspicion or incredulity' (Tasioulas 2019b, 1178). He attributes the popular discontent with human rights law to the fact that people 'feel' it is failing to comply with morality. People feel so, Tasioulas tells us (Tasioulas 2019b, 1189), because they 'believe' human rights law ought to be regulated by morality, a belief that does not match the reality.

> 'It is not difficult to see how continual gnawing away at the connection between IHRL and human rights morality can lead to general disaffection with the former.'

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Similarly, and more concretely, he suggests (Tasioulas 2019a, 347):

> '[P]erhaps one reason why some UK citizens are sceptical about the European Court of Human Rights is not that they reject the moral idea of human rights, but that they believe that the Court's jurisprudence has not done a good job of giving legal effect to the demands of that idea.'

This is indeed the explanation he suggests for 'the "external" resistance human rights law has encountered', in the form of 'populist backlash' (Tasioulas 2019b, 1167). If the popular perception is that human rights law is deviating from morality, he argues, then the 'popular backlash' should not surprise anyone. He tries to make this less blunt by distinguishing what he calls 'novel' from 'paradigmatic' human rights (Tasioulas 2019b, 1189). This is consistent with his broader philosophical view, where certain human rights (e.g. freedom from slavery and torture) are *true* human rights because they can be morally justified under his orthodox moralist account of human rights; whereas rights such as access to healthcare, annual paid leave and same-sex marriage are *novel* and cannot be grounded in this conception of morality and therefore are not *true* human rights.

But as illuminating as the above distinction is, the fact remains that for Tasioulas, human rights law, albeit partially, is failing – and rightly perceived to be failing by many people – to give effect to moral norms. This makes human rights law morally flawed and liable for the popular backlash. 'Shortcomings within the human rights movement', caused essentially by the alleged non-conformity with morality, he claims, are 'responsible for triggering or exacerbating some of the external pressures' and 'populist backlash' against human rights law (Tasioulas 2019b, 1170). The external frustrations with human rights law often ascribed to a 'populist backlash', he stresses (Tasioulas 2019b, 1206),

> 'may themselves be partly explicable as responses to these internal failures [... including] the uncritical enthusiasm for legalisation and judicialisation – relates to the institutional embodiment of human rights norms'.

Tasioulas also questions the former UN High Commissioner for Human Rights Prince Zeid's approach in locating the origins of the populist backlash against human rights in the actions of politicians who would take advantage of fears among the public, such as xenophobia and fear of terrorism, to justify violating human rights (Tasioulas 2019b, 1170). Tasioulas accuses advocates of human rights law of overlooking the possibility that 'some of the most serious pressures on human rights law are internally generated, arising from serious defects' (Tasioulas 2019b, 1171). They are also guilty in Tasioulas's view of mischaracterising the populist backlash by portraying it 'in unremittingly negative terms as "xenophobic, misogynistic, and explicitly antagonistic to all or much of the human rights agenda"', even though he admits that 'such strands are present within it' (Tasioulas 2019b, 1171). It is from the same perspective that Tasioulas claims human rights have to be *saved* 'from the way in which they have been distorted by human rights law' (Tasioulas 2019b, 1173). Tasioulas's view exemplifies the fundamental problems of adopting an orthodox moralist approach to human rights and has serious adverse implications for the moral status and legitimacy of legal norms regarding treatment of immigrants and refugees. In the remainder of this section, I shall suggest several reasons to resist this approach.

First, it is clear that such arguments are struggling to normatively explain and account for some parts of human rights law, for instance the recognition of certain human rights or provision of legal protection of certain groups of human right-holders such as immigrants and refugees. But that is not a sufficient reason why human rights law should be reformed in order to give effect to those theories. As Joseph Raz has put it (Raz 2010, 327–28),

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> '[t]here is no point in criticising current human rights practice on the ground that it does not fit the traditional human rights ethical doctrine. Why should it?'

Second, popular moralistic approaches, with their emphasis on ordinary virtues and values, seem to have much in common with populism. For instance, in 2016 the populist Five Star Movement (5SM) in Italy launched the 'Rousseau platform', a digital tool designed to enhance direct democracy, which emphasised personal moral attributes such as 'honesty, sincerity, transparency, and ordinariness' (Cozzaglio 2022, 282). The declared aim of 5SM was to transform these private virtues into politicised qualities deemed essential for the political system's operation. In this sense, populists resemble moralists, as they intend to impose the same moral criteria on both private and political relationships (Cozzaglio 2022, 282). As Müller has suggested, it is such a moralistic view of politics that is embodied in populism (Müller 2017a, 19–20).

In addition, such approaches also suffer from the same issues that were explained in Section 2. In order to normatively explain the moral reasoning of ordinary people, the conception of 'ordinary people' is conceived as an inclusive and homogeneous entity with its members sharing common values and virtues. At the same time, the role of demagogues and populist agendas in stirring up emotions and shaping popular views is ignored. The main problem is then that the virtues of ordinary people and the processes of ordinary moral reasoning and intuitions are not neutral and benign. Portraying them in a purely positive light ignores the moral prejudices of many, if not the vast majority, of people that result in and perpetuate 'othering' and hostility towards immigrants.

The problem should become clearer when we put this approach in the contemporary context where populations are rising, for instance, against falling wages, the rise of unemployment, declining public services, and in some places against demographic changes in predominantly white or Christian communities. Populism in such situations is often manifested in articulation of the nationalist demand 'to take back control' from the elites who have supposedly caused all those problems. In doing so, ordinary people may not extend their ordinary virtues, such as generosity and trust, to immigrants, or may even set their 'love of one's own, loyalty to one's tribe or locality' (Ignatieff 2019, 375) directly against the outsiders as well as the legal norms and institutions that protect them. A recent manifestation of this was articulated by the UK Home Secretary when commenting on the contentious Illegal Immigration Bill introduced in March 2023: 'the British people have had enough of this situation of thousands of people coming here illegally at huge cost to the taxpayer and undermining our laws, and, in fact, British generosity' (The Guardian, 8 March 2023). This raises serious doubts about any attempt to explain human rights as a reflection of ordinary virtues.

As discussed, Tasioulas argues that there is a justificatory relationship between morality and human rights law. From this perspective, human rights law is morally justified if it reflects what ordinary people feel they owe to others, and that is why the law must not undermine the social conditions that enable such virtuous behaviour (Tasioulas 2019a). This bears some similarity to Oliver Wendell Holmes's famous remark that '[t]he first requirement of a sound body of law is, that it should correspond with the actual *feelings* and demands of the community, whether right or wrong' [emphasis added] (Wendell Holmes 1881, 28). However, while Wendell Holmes was upfront and explicit that popular demands might be 'wrong', there is no explicit contemplation of that possibility in Tasioulas's theory.

Thus, it is not difficult to see that the popular moralist narrative with its unquestioning emphasis on ordinary virtues collapses when the said virtues turn into, or in any case are influenced by, prejudices of individuals which can be further manipulated or exploited by populist figures, and when virtuous commitments to fellow citizens are not extended to immigrants and refugees. Michael Ignatieff has raised the same concern (Ignatieff 2019, 376):

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> '[M]ajoritarian moral prejudice[s] [. . .] are often justified in the language of ordinary virtue, the intuitions of a local "we" against a "them", composed of hostile and fearful strangers at the gates.'

Tasioulas has responded to this by denying that 'commitments to human rights, on the one hand, and according a priority to one's fellow citizens, are mutually exclusive postures' (Tasioulas 2019a, 347). His argument seems to be that it is possible to be committed to human rights while treating fellow citizens more favourably than immigrants. I do not think that anyone denies that possibility for human rights law certainly allows differential treatments and not every such case is considered discriminatory and unlawful.[4] The trouble is that this by no means justifies a normative claim of requiring human rights law to be giving effect to ordinary virtues, certainly not without a significant qualifier that ordinary virtues can be taken into account on the condition that and so long as they are compatible with human rights law. The reason such a condition is missing from Tasioulas's theory is that it would confirm superiority of legal norms and create a huge gap in his moralist scepticism of human rights law, rendering his theory pointless.

My third objection, which is related to the previous point, concerns the possibility that ordinary people's moral operating systems may be grounded in values and virtues that conflict with internationally recognised norms. Tasioulas has considered the possibility but has blamed human rights law for it (Tasioulas 2019a, 346):

> '[S]ometimes human rights law may conflict with the ordinary virtues because it is not properly fulfilling its function. It's a familiar theme that human rights legal norms can proliferate in number and content without being suitably constrained by the idea that they ought to reflect a background morality of human rights.'

The question here is that if such a conflict arises, which one should prevail, and which one should be blamed? Ordinary virtues or legal norms of human rights law? There is no reason why human rights law should be subordinate to local and particular cultures or traditions beyond the rights and obligations considered for them under human rights law. There is also no reason that the blame must fall only on human rights law, or that it must be the prime suspect.

When it comes to a society that persecutes minorities and discriminates against immigrants based, for example, on their nationality, ethnicity or religion, some may attempt to rely on a version of moral relativism to argue that it is only proceeding on different cultural premises, but others may be of the view that what is being done is objectively and profoundly wrong and also in contradiction of international human rights and refugee standards. For Tasioulas, however, the only question that needs answering is whether the existing human rights law that protects the rights of minorities and foreigners is 'seriously flawed' (Tasioulas 2019b, 1172). As is clear from the above quote, he does not at all question the validity of the ordinary virtues; for him the suspicion falls squarely on human rights law. Similarly, when the legal entitlements of refugees come into conflict with the demands of ordinary morality, Tasioulas does not ask whether the ordinary demands regarding them are morally justified (e.g. are not xenophobic or racist). As he puts it, 'the first recourse of the human rights defender' is to question the validity of the law that gives refugees those entitlements, that is, 'to ask whether that law is acceptable as it stands' – which by the way is doubly problematic for its implicit self-appointment as the *real* human rights defender (Tasioulas 2019a, 346).

[4]For example, according to the Human Rights Committee's General Comment on non-discrimination, 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant' (Human Rights Committee 1998, para. 13). For further details see: Moeckli *et al.* (2022), 161–62.

https://doi.org/10.1017/S1744552324000387 Published online by Cambridge University Press

This is also surprising given his professed distrust of social norms and flawed human beings which he deploys to question the status of human rights law and institutions (Tasioulas 2019b, 1172–73):

> 'Human rights laws and institutions, [. . .] are fallible human creations, established by flawed human beings, relying on their inevitably limited reasoning powers against the countervailing influence of non-rational factors, such as egoism and fear.'

Interestingly, he does not seem to think that the virtues of ordinary people may suffer from the same flows and be hindered by irrational reasoning. But apart from that, his shifting of the blame from populist forces by exclusively questioning the validity of the law looks more like an indictment against defenders of human rights law for allegedly 'rounding up the usual suspects' and scapegoating populists. This, however, is misplaced. Any objective and impartial investigation would start by looking for the main suspect among those who have the means, access to the scene and motivation. Forces of populism, with their direct attacks against immigrants and human rights norms and institutions, are often caught in the scene. They also benefit most from the resentment and backlash that they can further exploit. Tasioulas is too quick to point the finger only at human rights law and accuse it of shooting itself in the foot (or alternatively committing suicide, depending on how serious the injury is) while ignoring all the evidence to the contrary that point to populist forces.

To further support his claim, Tasioulas then resorts to a hypothetical scenario (Tasioulas 2019a, 346) that is not only legally disputable but also beside the point and diverts from the more fundamental questions here.

> 'If there is absolutely no limit to the refugees that a country is required to take, then this seems an infeasible demand and, to this extent, its claim to reflect a genuine human right is diminished.'

What Tasioulas seems to ignore is that various constraints are already taken into account in the design of the international legal framework for the protection of human rights, and this does not affect the 'genuineness' of any of the recognised rights. Grounds for permissible breaches and principles such as proportionality are integrated into legal requirements and capable of effectively taking into account legitimate concerns of states.[5] The rights to entry and free movement are qualified and typically subject to the traditional limitations and safeguards, for example for protecting public order, health and security,[6] while customary rules of international law give the states a significant margin of appreciation in the implementation of those rules (Chetail, 119). Even under the EU regime with free movement of people as one of its core principles, any Member State may reintroduce border controls on an exceptional basis for a limited period of time, where 'there is a serious threat to public policy or internal security'.[7] This may be invoked in 'exceptional circumstances where the overall functioning of the area without internal borders control is put at risk as a result of persistent deficiencies relating to external border control'.[8] From a legal

[5]For example, as long as the actions of the state are reasonable, objective and proportionate, it would not be precluded by the prohibition of discrimination which is acknowledged by the Human Rights Committee (1998, para. 13) and the Committee on Economic, Social and Cultural Rights (2009, para. 13).

[6]For example, EU Member States may restrict freedom of movement and residence rights of EU citizens and their family members 'on grounds of public policy, public security or public health'. See: Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 157/77, Art. 27(1).

[7]Article 25 of the Regulation (EU) 2016/399 the European Parliament and the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) [2016] OJ L 77/1.

[8]Ibid., Art. 29.

https://doi.org/10.1017/S1744552324000387 Published online by Cambridge University Press

perspective, therefore, it can be argued that universal and regional frameworks and regimes of admission of immigrants are generally apt to address the concerns of host states through various balancing acts and limitations and exceptions (Chetail, 104).

However, the extreme scenario outlined in Tasioulas's statement involves an influx of refugees protected by, among others, a hard international legal norm, namely the principle of *non-refoulement*, recognised across various domains of international law including international human rights law (IHRL) and refugee law. The core content of the principle consists of prohibiting removal of anyone to a country where they will be at risk of serious violations of human rights or persecution (Chetail, 119). It is widely considered an absolute and non-derogable prohibition (Chetail, 124) making border closures in the face of a mass influx simply illegal, as insisted by the UNHCR (Long 2010, at 7). Nonetheless, there are ongoing debates as to whether emergency and exceptional situations could legally justify derogating from the non-refoulement principle, or alternatively whether a less drastic approach of suspending some rights for refugees in cases of mass influxes is permissible.

Some authors have argued that Articles 8 and 9 of the Refugee Convention can serve as derogation clauses (see: Edwards 2012), whereas others have explored alternative avenues in international legal doctrines to argue that the principle is qualified in cases of mass influx. For instance, the doctrine of necessity is suggested by some authors as a legal basis capable of providing an appropriate framework for dealing with such cases. The necessity doctrine refers to situations where a country is threatened by a grave and imminent peril and has no means of safeguarding an essential interest but to adopt a conduct inconsistent with its international legal obligations (Crawford 2002, 178). In such a situation no internationally wrongful act is committed provided that the conduct adopted is 'the only way' to protect an essential interest and the state has 'not contributed to the situation of necessity' (International Law Commission 2002, at Art. 25(1)(a) and (b)).

Hathaway has argued that the doctrine of necessity could potentially provide an implied exception to the non-refoulement principle and enable asylum states to preserve their vital interests 'in an extreme and truly unavoidable situation' (Hathaway 2021, 433–35). The states would therefore be able to close their borders in the case of mass influx, though that is, Hathaway emphasises, genuinely exceptional and tightly constrained, while also being conditional on the absence of international solidarity and any effective burden-sharing mechanism (Hathaway 2021, 435). He considers the border closings by Zaïre and Tanzania to refugees fleeing Rwanda and Burundi in 1994 as an example of this, where both Zaïre and Tanzania were already overwhelmed by hundreds of thousands of refugees and expecting additional flows (Hathaway 2021, 435).

So, it is doubtful that it is *ever* the case that 'there is absolutely no limit to the refugees that a country is required to take'. At least in extreme cases where there is an influx of refugees, there are potential limitations in relation to international legal norms. Admittedly, however, this is not an entirely satisfactory answer, not only because it is the type of response I criticised at the beginning of this article, but also Tasioulas does not appear to be concerned solely with exceptionally extreme scenarios typically seen in Global South countries. Instead, he aims to highlight the issue of legal interference with the state's absolute sovereignty to control the admission of refugees, even in far less extreme situations – the types of refugee numbers that developed countries tend to (mis) label as a 'crisis'.

Nevertheless, and crucially, the demands of ordinary morality are not confined to an extreme scenario of an infinite number of refugees who are to be taken in by a state. Popular views can become sensitive over even small numbers of refugees, especially if they do not share the same characteristics (colour of skin, language, religion, etc.) as the population of the host state. For instance, over the past two decades the UK has received between 17,000 and 84,000 asylum claims

https://doi.org/10.1017/S1744552324000387 Published online by Cambridge University Press

per year which at its height made up just over 0.1 per cent of the total population.[9] These are small numbers and refugees constitute only a small fraction of total immigration,[10] yet we have seen a high level of populist hostility in the UK towards refugee protection and human rights norms. The contrast with countries with a significantly higher intake of refugees makes it even starker, for example when compared with Iran and Turkey each hosting 3.4 million refugees, Germany hosting 2.5 million, Colombia hosting just under 2.5 million, and Pakistan hosting 2.1 million (UNHCR 2023a). It is worth noting that 75 per cent of the world's refugees and those needing international protection are hosted not by developed Western countries, but by low- and middle-income countries who take a disproportionately large share of the global refugee population, both in terms of their population size and the resources available to them. High-income countries, which account for nearly two-thirds of the global wealth, hosted only 25 per cent of refugees in 2023 (UNHCR 2023b). In addition, 69 per cent of refugees and those needing international protection reside in countries neighbouring their countries of origin, mostly among low- and middle-income countries (UNHCR 2023b).

Similarly, there is a general tendency to say that such hostilities towards immigrants and refugees is not xenophobic or racist but a response to desperate day-to-day experience produced by mass migration. But experience seems to have little to do with it. Most British people, for example, have been hostile to immigration for decades and long before the recent migration crisis.[11] Moreover, popular hostility towards immigrants is shaped by the perceived big picture, which most people including many politicians get badly wrong. For instance, people tend to greatly overestimate the proportion of immigrants and refugees in their countries, and particularly in comparison to other countries. According to a 2018 study, EU citizens on average estimated that the non-EU migrant population was over 16 per cent, whereas the actual figure was 7.2 per cent (Council of the European Union 2018).

Many of these anxieties are indeed based on prejudices and false assumptions that are further escalated and solidified by populist figures. The UK Home Secretary Suella Braverman, for example, warned in 2023 about a 'hurricane of mass migration' that is coming to the UK, posing 'an existential threat' (BBC 2023). She further suggested that 'there are 100 million people around the world who could qualify for protection under our current laws, and they are coming here' (House of Commons 2023). People can also become sensitive and make anti-immigrant demands purely based on hostile media propaganda and fake news. It must be stressed that understanding why popular sensitivities rise is complex and cannot be explored in this paper. It would involve the study of social attitudes and using reliable facts and data in order to debunk myths and errors, although facts do not seem to work against beliefs. Much of the said hostility is based on hard-wired misunderstandings and biased beliefs, which do not make them easy to counter.

A further issue here, and a potential defence from Tasioulas, might be that widespread anti-immigrant sentiments and popular backlash indeed make the adoption and implementation of favourable immigration laws more challenging or even impossible. Therefore, populist anti-immigrant sentiments should be taken seriously and recognised as *feasibility constraints*. I agree that in exceptionally extreme cases such as widespread public revolt and violence, this can be true. However, like economic limitations, such constraints are 'soft' rather than 'hard', meaning that

[9]The number of asylum applications to the UK peaked in 2002 at 84,132. After that the number fell sharply to reach a twenty-year low point of 17,916 in 2010, before rising slowly to reach 32,733 in 2015. It then rose to 81,130 in 2022, followed by 67,337 in 2023 (House of Commons 2024).

[10]For example, asylum seekers made up around 6 per cent of immigrants to the UK in 2019, which rose to 16 per cent in the year ending June 2023 (House of Commons 2024).

[11]Opposition to immigration was high in 1964, 1966 and 1979, with 85–86 per cent of people at each of those times reporting that there were too many immigrants in Britain (The Migration Observatory 2023); also, see: McLaren and Johnson (2007).

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they place limits on what actors are going to do, but with the proviso 'that the limits are neither permanent nor absolute' (Gilabert and Lawford-Smith 2012, 813). Anti-immigrant sentiments are a 'contingent' feature of liberal democratic societies, 'susceptible to amplification or reduction' (Amantini 2022, 112). This means that normative approaches to migration and refugees should not accept social facts such as popular sentiments as 'immutable', nor should they 'passively accept them' (Amantini 2022, 112). Instead, they should explore how these constraints can be 'loosened' by offering strategies to progressively address them (Amantini 2022, 113). Instead of simply assuming the popular sentiments as 'given' and too readily adjusting our normative values and principles, we need to discuss normative arguments in relation to policies and practices that can prevent, or bring about changes in, popular attitudes and sentiments (Amantini 2022, 113).

Some authors have also argued that dramatic moments of flux should instead serve as a reminder of more fundamental and systemic problems where states have been backpedalling from their international commitments and responsibilities (Farrall *et al.* 2020, 31; Ogg 2020, 230). One such issue, which need not be highlighted by the problematic resort to moralism and populist threats, is the serious shortcomings in the duty of international solidarity and responsibility sharing owed by other states to the receiving countries:

> 'A mass influx may place unduly heavy burdens on certain countries; a satisfactory solution of a problem, international in scope and nature, cannot be achieved without international cooperation. States shall, within the framework of international solidarity and burden-sharing, take all necessary measures to assist, at their request, States which have admitted asylum-seekers in large-scale influx situations.' (UNHCR Executive Committee 1981)

This is particularly relevant to states neighbouring refugee-producing countries which host a vast majority of refugees in the world.[12] These states are often among the poorer countries of the Global South and have fewer resources to support the refugees. The challenge is exacerbated when those countries face crises themselves, as seen during the 2017 droughts in Nigeria, South Sudan, Somalia and Yemen, which led to famine and starvation among both refugees and citizens (UNHCR 2017). This means even when those states are not attempting to derogate from their obligations and are willing to allow in and help refugees, the local economies already facing shortages of resources cannot accommodate the incoming refugees. I would, therefore, argue that refugee influxes should not be seen as a reason for regression and capitulation on our values. Instead, they underscore the need to consider normative arguments for implementing measures that address the root causes and for ensuring the rhetoric on international solidarity and responsibility sharing genuinely translates into tangible support from the international community (UNHCR Executive Committee 1999, para. 2). Importantly, that is regardless of whether or not there is a limit on the number of refugees a state is required to accommodate.

My final objection to Tasioulas's approach pertains to the charge of self-inflicted populist attacks against human rights law and the attempt to exonerate populism by shifting the blame back on to the target of the popular backlash. To define the parameters of what constitutes a 'popular backlash', we can adopt the following definition, derived from Cass Sunstein's formulation (Sunstein 2007, 435) which he originally developed within the context of US constitutional law and his analysis of opposition to US Supreme Court judgments.[13] I have modified and adapted his definition to better suit the context of migration and human rights as follows:

[12]According to the UNHCR, in 2023, 69 per cent of refugees and other people in need of international protection lived in countries neighbouring their countries of origin (UNHCR 2023a).

[13]The original definition is as follows: 'Intense and sustained public disapproval of a judicial ruling, accompanied by aggressive steps to resist that ruling and to remove its legal force.' (Sunstein 2007, 435).

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> 'Intense and sustained public disapproval of any law, judgment or institution that allows migrants into the country and protects their rights, accompanied by aggressive steps to resist that law, judgment, or institution, and to repeal it or remove its force and authority.'

Similar to Sunstein's elaboration, the underlying assertion of the definition is that the implementation of such a law or judgment or the actions of such an institution could result in substantial public outrage, potentially impacting national politics and undermining the very purpose that the law, judgment or institution is striving to advance. It is conceivable that the law, judgment or institution might be, or perceived to be, ineffective or even detrimental, causing societal harm overall. It is also possible that the law or judgment or actions of the institution could trigger dynamics that ultimately lead to its own downfall (Sunstein 2007, 435).

As explained earlier, for Tasioulas the 'populist backlash' against human rights law is of its own making for falling out of tune with popular morality and failing to give effect to anti-immigrant demands, despite the fact that they may have their roots in nationalistic and often xenophobic agendas. That populists are antagonistic to human rights law, he suggests, is the fault of human rights law itself, and populists are not to be (entirely) blamed for it. While his narrative acknowledges populist hostility, for example against immigrants and favourable immigration laws and human rights protections, it treats it as a natural or even justified consequence of the intense outrage and resentment caused by the law and legal institutions. The idea that this is not only morally justified but also shapes our moral values is a deeply problematic view and reminiscent of Nietzsche's 'slave morality'.

A key concept deployed by Nietzsche that can shed light on the above discussion is '*ressentiment*', which played a significant role in Nietzsche's reconstruction of the genealogy of morality (see: Nietzsche 1997; Poellner 2011, 120). He believed that morality was stamped with features that made its claims doubtful and that the roots of morality could be found in *ressentiment*, understood as a complex psychological condition which has at its core 'the experience of frustration or anguish' that comes from 'feeling dominated, inferior or powerless' (Nietzsche 1997, First Essay at 10–14, Third Essay at 14; Poellner 2011, 123; Marks 2014, 323). *Ressentiment* arises from this frustration and is often transformed into hostility and resentment – in a non-technical, everyday sense which Nietzsche calls hatred (Poellner 2011, 123) – towards *others* who are identified as the causes of the problem. This ultimately leads to the creation of a framework of values (morality) that enables the resentful ones to affirm themselves and gain the upper hand over the resented others by claiming virtues which those others lack. Nietzsche called this 'slave morality' which runs like this: 'from a purported frustration comes resentment, from resentment comes morality, and from morality comes moralism' (Marks 2014, 323).

We do not have to subscribe to Nietzsche's preoccupation with masters and slaves or his broader account of morality to agree with his argument that the outcome of this is not only a platform for the resentful to stand on but also a posture of moral superiority and righteousness (Marks 2014, 323). Resentment then generates a particular attitude – a 'self-righteous' and 'moralistic' attitude that tends to judge others and often finds them falling short compared to oneself. As Müller has explained, populism is the embodiment of such an attitude: 'a particular moralistic imagination of politics, a way of perceiving the political world that sets a morally pure and fully unified [. . .] people against elites who are deemed corrupt or in some other way morally inferior' (Müller 2017a, 19–20).

This pattern can also be seen in moralist theories of human rights that claim that human rights law, its institutions and advocates do not measure up to some of the moralistic standards, and therefore are presented with a choice between conforming to the moral norms or taking the path of moral deficit and illegitimacy. Any legal norm or institution that does not fit such moralist theories can be labelled as morally flawed and illegitimate. Human rights law is then blamed for producing 'the very conditions they purport to remedy', that is, 'subjection, insecurity, unfreedom', resulting in resentment and popular backlash (Marks 2014, 324). This seems to

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provide sufficient justification to the self-proclaimed *real* defenders of human rights to come to the rescue of human rights and supposedly *save* it from human rights law that in their view is bent on rights inflation and judicial overreach (Marks 2014, 323). Far from a rescue mission, it looks more like an 'undeclared war' on human rights law (Marks 2014).

It may be objected that such views are well intended and have the best interests of human rights at heart; what they do is simply raise alarms against overt legalisation of human rights that would encourage an anti-establishment politics of a populist character. If we want to prevent populism, they might claim, we had better follow their advice, or else it will be in our peril as we will cause popular backlash. It is, however, difficult to reconcile these with their ideological antagonism against human rights law. In addition, such claims are countered by the argument that human rights law is precisely needed to protect individuals even if, and especially if, they are subject to such resentments. Undermining human rights law and justifying attacks against it, only for its alleged non-conformity to a moralist theory, is hardly constructive.

4 Belonging and community as trumps

The second theoretical approach that I am going to engage with is illustrated by an article by Adam Seligman and David Montgomery entitled 'The Tragedy of Human Rights: Liberalism and the Loss of Belonging' (Seligman and Montgomery 2019). It is a critique of the rights-based approach in law and morality and emphasises the importance of shared values. This is an approach that criticises human rights law in general, and legal protections for immigrants in particular, for their liberalist and individualistic nature and their lack of sensitivity towards 'community' and 'belonging'. They point out long-term social and political consequences of decades of advocating human rights which, they complain, has been 'to the exclusion of other components of human good and fulfilment' (Seligman and Montgomery 2019, 203). For them, 'human rights are as much the problem as they are the solution to the contemporary challenge of constructing civil society' (Seligman and Montgomery 2019, 203).

Their underlying claim is that human rights, as a normative framework, 'do not really work'; why? The classic anti-liberalist, anti-individualist answer: because 'they obscure people's sense of belonging to a given community, substituting those cherished shared values [. . .] with abstract individualism' (Zanetti 2020). Their further complaint is that by prioritising human rights law we have ignored 'seemingly cognate ideas as constitutional rights or natural rights', which strangely bears resemblance to conservative voices in the UK that wish to prioritise common law tradition and replace the Human Rights Act (which has incorporated ECHR into the UK law) with a home-grown Bill of Rights.[14] I suspect that this may have been added to support their claim that they have advanced a 'nonpartisan' argument. Otherwise, their main quarrel is with the rights-based approaches – manifested in their explicit reference to 'belonging contra rights' – which typically objects to both domestic *and* international rights frameworks and legal constraints. In any case, their overarching criticism is directed towards the 'liberal international order' and their approach falls clearly on the left of the political spectrum – closer to the left end compared to what they call the 'liberal left' (Seligman and Montgomery 2019, 204).

They have tried to distinguish their approach from rival accounts and make some disclaimers by setting out from the beginning what they do *not* intend to do: argue that human rights are a 'bad' idea; or question the legitimacy of human rights in a philosophical or political sense. They have also

[14]In recent years, some conservative figures in the UK have advocated for curtailing the authority of UK courts and the European Court of Human Rights, which they believe frustrate the policies of the UK government, among others, on issues of immigration and refugees. Right-wing Conservative MPs, including former Home Secretary Suella Braverman, have argued that the only effective way to achieve this goal is through withdrawing from the ECHR. Recently, UK Prime Minister Rishi Sunak also suggested that the UK could leave the ECHR if court rulings blocked the plan to send asylum seekers to Rwanda (The Independent 2024).

https://doi.org/10.1017/S1744552324000387 Published online by Cambridge University Press

attributed the less-desirable effects of human rights law to its 'unintended consequences', although they make it no secret that they blame human rights law for such consequences and the destruction 'of the very communities they purport to protect' (Seligman and Montgomery 2019, 203).

They have attempted to make a case for the need for 'human belonging' and 'participation in the life of a community' based on Simone Weil's view from 70 years ago as 'the most important and least recognised need of the human soul' (Seligman and Montgomery 2019, 204). Notably, they claim this to be 'an inescapable truth' which invites criticism for their failure to account for individuals who have a happy and fulfilling life without participating in a traditional sense in any community so conceived. But they do not stop there. They make an even stronger claim (Seligman and Montgomery 2019, 204) by elevating membership in community to an essential component of any shared vision of the good:

> '[I]t is precisely within these bounded communities [. . .] that human actors are born, thrive, live, die, and make sense (or do not) of their worlds and the worlds of others. We cannot live without these communities and, despite all the dangers that arise from them, we submit that there is no possibility of human life or achievement outside of them.'

The potential criticism becomes more forceful when one considers their chosen conceptions of belonging and community (Seligman and Montgomery 2019, 204):

> 'To be rooted is to belong and to belong is to be a member of a community, a community with its own past, its own traditions, stories, smells, tastes, jokes, obligations, recipes, holidays, moral judgments, boundaries of what is permissible and prohibited, basic frames of meanings, fears, and desires.'

Their further description of community with clear boundaries defined by religious and social elements (Seligman and Montgomery 2019, 204) is quite revealing and demonstrates a very strong and *thick* conception of community with a baked-in *us-versus-them* dichotomy:

> 'Attitudes of Jews toward Catholics are not comparable to those of Anglicans or Evangelicals. African American humour is different from Scottish humour and both again, from the jokes of China. Moreover, and critically, these communities are circumscribed entities. [. . . They] are not universal but are bounded [. . .] they do have boundaries which always define some "us" as against some "them".'

Their claim about the alleged 'impossibility of life outside community' forms the core of their criticism against the 'current liberal obsession with abstract, universal, and unencumbered human rights', which they complain 'continually fails to recognise' (Seligman and Montgomery 2019, 205). The element of *exclusion* also seems to play a key role in their approach. Communities, they contend, 'all are exclusive, as any group of people must be if it is to give full meaning to the terms of community' (Seligman and Montgomery 2019, 204). Another key element for them is *identity*. While from their perspective 'belonging' is important because it contributes to the construction of the 'identity', they have tried to distinguish the two concepts. For them individuals can claim or be attributed particular identities, but this does not necessarily mean they have a sense of belonging. The identity of a refugee, they claim, is often defined by struggle or plight rather than a sense of belonging. They also claim that while refugees may share experiences of displacement, their sense of belonging is rooted in different aspects of their past. While they accept that being a refugee can be a shared experience with general characteristics, they claim that the rights given to refugees do not necessarily create a sense of belonging, and often this does not even lead to belonging (Seligman and Montgomery 2019, 204).

Seligman and Montgomery show some awareness of the risks of rights-scepticism and implementing the claims of community which may lead to 'border walls, indifference to the fate of

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refugees and migrants, forced assimilation of immigrant communities, racist and ethnocentric policies that support authoritarian rulers, etc.' (Seligman and Montgomery 2019, 207). The solution they suggest is to develop 'a new politics of difference' which is rather vague and promotes 'living with difference', although their focus is on 'collective differences' which they try to move to allocated 'places for difference' that are to be constructed in places such as the military, in schools and workplaces (Seligman and Montgomery 2019, 208). What they seem to be trying to do is effectively push the differences out of sight and decoratively accommodate them, while downplaying individual differences and reproducing the same boundaries.

Despite the obvious difficulties in their account, it may not be clear straight away to some people why such views with their emphasis on seemingly benign moral values such as community and belonging may be in conflict with the rights of immigrants and human rights law. True, their approach is inherently anti-pluralist (Müller 2017b, 590; Bellamy 2023, 13), and thus fundamentally at odds with liberal democracy (Lacey 2019, 89). But their account does not share the same problematic views and scepticism of conservative approaches. Their appeals to values such as 'community' can also be regarded as reflecting an egalitarian concern that is in principle consistent with the rights of immigrants (Bellamy 2023, 5). But despite their main contention being with the liberal and individualistic aspect of human rights, their views are relevant to our discussion for two reasons: their conception of community and belonging as the ultimate values, and their claim that it is the undermining of community and belonging that pushes the far-right populists towards resentment and xenophobia. I shall respond in turn to both these claims.

First, as explained above, a core claim of their approach is that the rights-based legal orders such as laws protecting immigrants and refugees can be destructive to communities. Their suggested solution to this is to place human rights in a subordinate position to belonging and community. Belonging and community are the ultimate values for them which they think trump all other considerations. This, however, encounters multiple difficulties.

Belonging and membership are not easy to codify in a top-down approach, and its application can become quite complex and prone to easily breaking into a 'kaleidoscope of spirals, that do not quite overlap harmoniously' (Zanetti 2020). For example, a tolerant Iraqi Muslim may share a stronger sense of belonging with a kind British Christian neighbour than with a fellow-countryman who is a fanatic extremist Muslim. As Zanetti has noted, belonging and membership are 'contingent', that is, 'each "belonging" can be, in theory, different from any other'; however, Seligman and Montgomery essentially refer to only national and religious memberships (Zanetti 2020).

It must be also noted that community is not necessarily benign and harmless; as Etzioni has explained (2019, 9) it can be oppressive and overpowering. Some traditional communities are too strong and even today continue to be *thick*; however, more modern communities in democratic societies tend to be *thinner* because people have the option to leave a community that they find too thick. Additionally, people are usually members of more than one community, making them less attached to any single community (Etzioni 2019, 9). Similarly, it might be argued that certain traditional values and practices of communities ought to be confronted, for example due to their discriminatory nature. I am, therefore, not convinced that the solution now is to seek to revive the nostalgic past and build thick communities all over again with their outdated shared values. If someone is concerned about the increase of individualism and decline of communities, a more reasonable approach would be to encourage maintaining thin communities (Etzioni 2019, 9).

It is true, as Zanetti has pointed out, that 'belonging is important, that it represents an important factor in the construction of the identity of (not abstract but) situated individuals'; but this is not a good reason to undermine human rights (Zanetti 2020). What Seligman and Montgomery do not seem to fully consider are the implications and dark side of making community and belonging the supreme moral values. An exclusionary conception of people defined along cultural, religious or national lines excluding those who are not sharing the same characteristics and aiming at preserving values of community and belonging seems more of a problem than a solution. It risks becoming a normative framework that is rooted not in inclusion

https://doi.org/10.1017/S1744552324000387 Published online by Cambridge University Press

but exclusion (Zanetti 2020). In addition, it will rob human rights from one of its crucial features, which is to normatively criticise unacceptable and problematic customs and traditions such as racism, slavery, gender discrimination, homophobia and so on (Zanetti 2020).

Their second major claim that requires a response is where they lay the blame on legal norms for the current rise of xenophobic, often racist and populist policies, political parties and leaders in Europe and elsewhere. The laws protecting the rights of immigrants and the failure of liberalist rights-based movements to grasp the importance of belonging, they tell us, has enabled the far right to draw upon narratives of belonging which leaves societies at risk and prone to calls for the eradication of 'less-desirables' (Seligman and Montgomery 2019, 207). They also blame the rise of the far right and the politics of fear and xenophobia on claims of belonging 'as defined [. . .] in terms of rights-based claims'. By implication, they seem to be claiming that if the rights-based system had not emerged and if belonging and community were defined according to the thick and exclusive conceptions offered by Seligman and Montgomery, we would not have seen the rise of right-wing populism. But it is hard to take this argument seriously and not see it as an ideological reaction against liberalism and human rights. The reality is that white supremacists and neo-Nazis have been relying on almost identical and maximally thick and exclusive conceptions of belonging and community to those Seligman and Montgomery have advocated.

Seligman and Montgomery have tried to respond to this charge by claiming that their view and right-wing populism are two 'different problems' (Seligman and Montgomery 2019, 207). The extreme right, they stress, 'draws upon narratives of belonging to an exclusivist end which leaves a good deal of diverse societies at risk' (Seligman and Montgomery 2019, 207). That, they claim, is contrary to the left-wing approach (theirs) which 'is not about walled enclaves or ghettoisation, but quite often it fails to grasp the importance of belonging' (Seligman and Montgomery 2019, 207). Interestingly, they suggest that this is 'an insight the extreme right fully appreciates' (Seligman and Montgomery 2019, 207) which seems to imply that what the left has been unsuccessfully preaching is now taken on with tangible results by the right. It is plausible to think that the full implementation of the thick conception of community by the left and right would be 'different' from one another, but it is hard to have a preference. In other words, to try to sell the ideal of a thick conception of community and belonging by pointing, with apparent envy, at how successful white supremacists and neo-Nazis have been in embracing it is a non sequitur.

What Seligman and Montgomery seem to ignore are the dangers and far-reaching consequences of putting too much emphasis on the notion of belonging. Right-wing populism has obviously hijacked the ideas of belonging and common roots and exploited them to stir up confusion and fear. This has left many confused and fearful people who will then seek a sense of identity and belonging, which the far right has been able to provide them through its dangerous agenda. The far right has been particularly taking advantage of people's confusion and fear around issues such as immigration and refugees. Notably, far-right activists have deployed the same virtues attributed to community and the relevant narratives. These include the notions of friendship, hope, a better future and so on, which on a closer look all relate only to their own community, for instance the people they consider legitimate inhabitants of their countries or those who follow the same or certain religions. Foreigners, refugees, minority groups (whether religious, ethnic, sexual, etc.) are not only not considered as a part of the community but may be portrayed as a threat to it. Instead of holding an envious grudge and blaming the scarce tangible safeguards available to those groups, this should leave no doubt for anyone on either side of politics about the risks associated with the powerful language of belonging and treating it as trump.

5 Conclusion

Populism is antithetical to legal safeguards and protections for the rights of, among others, immigrants and refugees, and can, therefore, find normative support from both law-sceptic and rights-sceptic theories. Such sceptical theories can be found on both the right and left of politics.

https://doi.org/10.1017/S1744552324000387 Published online by Cambridge University Press

While advancement of human rights in the postwar era was made possible partly due to the efforts that presented them as non-ideological to make them maximally acceptable to a wider audience in the international community, the same baked-in feature has guaranteed that there will always be tensions between human rights standards and both sides of the political spectrum. The left and right tendencies may be strange bedfellows, but despite their differences, they seem united in appealing to problematic popular demands and values and forming a renewed wave of assault against human rights law and legal protections for immigrants and refugees. Arguably, this unity in opposition to human rights legal norms makes it harder to defend the rights of immigrants and refugees.

While such approaches have always been sceptical about human rights law, they have seized on populism as a pretext for a renewed and more forceful line of attack. This is where their 'backlash' argument follows and the 'blame game' begins. Their most problematic claim which risks legitimising and further enabling populism is that human rights standards and legal protections for immigrants and refugees are themselves responsible for triggering and exacerbating the populist backlash. In order to rescue human rights, it is claimed, human rights have to be *saved* from legal norms and institutions. Such theories need scrutiny, and the lack of substantive engagement with their arguments is problematic. The picture that emerges from engaging with such views shows that there is a case for tackling a theoretical emergency which, if it remains unaddressed, can function as a justification for populist agendas.

Drawing on the work of theorists who have offered arguments against some legal protections for immigrants and refugees, and without intending to undermine valid and legitimate criticisms that are made by many critical scholars, I challenged two such sceptical approaches and sought to highlight their dark sides. It cannot be denied that the legal obligations and human rights recognised under international law for immigrants and refugees are at odds with the popular demands, for example regarding national sovereignty and self-determination and belonging to a community. However, although good politics and promotion of tolerance can help reduce these conflicts (Ignatieff 2019) – which is the opposite of what some politicians are doing perhaps knowingly for future exploitation and political gain – the conflict has persisted. It is because of such conflicts that the law protecting immigrants and refugees should not be understood as a reflection of popular views and ordinary virtues, nor should it be subordinate to narrowly understood values of community and belonging, but rather, as Michael Ignatieff has put it, it should be a 'counter-weight' (Ignatieff 2019, 376) to popular moral reasoning and collective demands.

Popular morality and community demands that are formed along the lines of nationality, religion, ethnicity, etc. do not always, if at all, especially at a time of populism, want to hear the claims of strangers, foreigners, refugees, 'others', and that is the reason they become antagonistic to the laws and institutions that *do* hear and protect such claims. I argued that this is precisely the reason why legal protections for the rights of immigrants and refugees need to be defended against popular moralism and community claims, and why legal constraints on popular prejudices towards immigrants and refugees are necessary. Populism and popular backlash are realities, but the solution, I argued, is not to passively accept them or too readily revise our normative frameworks and capitulate on our legal and moral principles. Instead, we need to discuss normative arguments for ensuring solidarity and responsibility sharing from the international community, while implementing strategies and effective policies to promote tolerance and address populist agendas and anti-immigrant sentiments.

Acknowledgements. I would like to express my gratitude to Professor Alexandra Xanthaki, Dr Ermioni Xanthopoulou and Dr Elena Absrusci for their thoughtful discussions and constructive comments on various drafts of this article. Any errors or omissions remain solely my own responsibility. I am also thankful for the Forced Migration and Refugee Studies (FFVT) Fellowship at the Centre for Human Rights Erlangen-Nürnberg (CHREN), which provided me with the opportunity to work on and further develop this piece. I would also like to thank the editors and the anonymous reviewers for their comments and suggestions.

References

Achiume ET (2021) Race, refugees, and international law. In Costello C., *et al.* (eds.), *The Oxford Handbook of International Refugee Law*. Oxford: Oxford University Press, pp. 43–59.
Amantini LS (2022) Populist anti-immigrant sentiments taken seriously: A realistic approach. *Res Publica* **28**(1), 103–123.
BBC (2023) Suella Braverman: We've been too squeamish on migration', 3 October 2023. Available at https://www.bbc.com/news/uk-politics-66999209 (accessed 17 June 2024).
Bellamy R (2023) Political constitutionalism and populism. *Journal of Law and Society* **13**, 7–25.
Carens JH (1987) Aliens and citizens: The case for open borders. *The Review of Politics* **49**, 251–273.
Committee on Economic, Social and Cultural Rights (2009) General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights. UN Doc. E/C.12/GC/20.
Council of Europe (2017) State of Democracy, Human Rights and the Rule of Law: Populism - How Strong Are Europe's Checks and Balances? Available at https://edoc.coe.int/en/an-overview/7345-pdf-state-of-democracy-human-rights-and-the-rule-of-law.html (accessed 17 June 2024).
Council of Europe (2018) EU citizens overestimate migrant population. Available at https://www.consilium.europa.eu/en/infographics/migration-eurobarometer-2018/ (accessed 17 June 2024).
Cozzaglio I (2022) Can realism save us from populism? Rousseau in the digital age. *European Journal of Political Theory* **21**(2), 276–282.
Crawford J (2002) *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*. Cambridge: Cambridge University Press.
Eco U (1995) Ur-Fascism. The New York Review of Books.
Edwards A (2012) Temporary protection, derogation and the '1951 refugee convention'. *Melbourne Journal of International Law* **13**(2), 1–41.
Etzioni A (2019) *Law and Society in a Populist Age: Balancing Individual Rights and the Common Good*. Bristol: Bristol University Press.
European Parliament (2024) European election results. Available at https://results.elections.europa.eu/ (accessed 17 June 2024).
Farrall J, Ford J and Saunders I (2020) Introduction: The Backlash against International Law: Australian Perspectives. *Australian Yearbook of International Law* **38**, 29–32.
Fenton S (2012) Resentment, class and social sentiments about the nation: The ethnic majority in England. *Ethnicities* **12**(4), 465–483.
Gilabert P and Lawford-Smith H (2012) Political feasibility: A conceptual exploration. *Political Studies* **60**(4), 809–825.
Halikiopoulou D and Vlandas T (2022) Understanding right-wing populism and what to do about it. *IPPR Progressive Review* **29**, 138–146.
Hathaway JC (2021) *The Rights of Refugees under International Law*. Cambridge: Cambridge University Press.
Holmes OW (1881) *The Common Law*. Boston: Little, Brown and Co.
Hopgood S (2015) *The Endtimes of Human Rights*. Ithaca, NY: Cornell University Press.
House of Commons (2023) Debate, 7 March 2023, vol 729, col 152.
House of Commons (2024) *Asylum statistics*. Available at https://researchbriefings.files.parliament.uk/documents/SN01403/SN01403.pdf (accessed 17 June 2024).
Human Rights Committee (1998) General Comment No. 18: Non-discrimination. UN Doc. HRI/GEN/1/Rev.6.
Ignatieff M (2017) *The Ordinary Virtues: Moral Order in a Divided World*. Cambridge, MA: Harvard University Press.
Ignatieff M (2019) A reaction to four critics. *King's Law Journal* **30**(3), 368–376.
International Law Commission (2002) *Articles on the Responsibility of States for Internationally Wrongful Acts, annexed to UNGA Res*. 56/83.
Kovács K and Nagy B (2022) In the hands of a populist authoritarian: The agony of the hungarian asylum system and the possible ways of recovery. In Stoyanova V and Smet S (eds.), *Migrants' Rights, Populism and Legal Resilience in Europe*. Cambridge: Cambridge University Press.
Lacey N (2019) Populism and the rule of law. *Annual Review of Law and Social Science* **15**, 79–96.
Long K (2010) No Entry! A Review of UNHCR's Response to Border Closures in Situations of Mass Refugee Influx. UNHCR Policy Development and Evaluation Service. Available at https://migrationobservatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/ (accessed 17 June 2024).
Marks S (2014) Backlash: The undeclared war against human rights. *European Human Rights Law Review* **4**, 319–327.
McLaren L and Johnson M (2007) Resources, group conflict and symbols: Explaining anti-immigration hostility in Britain. *Political Studies* **55**(4), 709–732.
Miller D (2016) *Strangers in Our Midst: The Political Philosophy of Immigration*. Cambridge, MA: Harvard University Press.
Moeckli D, *et al.* (eds) (2022) *International Human Rights Law*. Oxford: Oxford University Press.
Mudde C and Kaltwasser CR (2017) *Populism: A Very Short Introduction*. Oxford: Oxford University Press.
Müller JW (2017a) *What Is Populism?* London: Penguin.

https://doi.org/10.1017/S1744552324000387 Published online by Cambridge University Press

Müller JW (2017b) Populism and constitutionalism. In Kaltwasser CR, *et al.* (eds.), *The Oxford Handbook of Populism*. Oxford: Oxford University Press, pp. 590–606.

Nietzsche F (Diethe C, trans., Ansell-Pearson K, ed.) (1997) *On the Genealogy of Morality*. Cambridge: Cambridge University Press.

Ogg K (2020) Backlashes against international commitments and organizations: Asylum as restorative justice. *Australian Yearbook of International Law* **38**, 230–249.

Poellner P (2011) Ressentiment and morality. In May S (ed.), *Nietzsche's On the Genealogy of Morality: A Critical Guide*. Cambridge: Cambridge University Press.

Posner E (2014) *Twilight of Human Rights*. Oxford: Oxford University Press.

Raz J (2010) Human rights without foundations. In Besson S and Tasioulas J (eds.), *The Philosophy of International Law*. Oxford: Oxford University Press, pp. 321–337.

Rooduijn M, ***et al.*** (2023) The PopuList: A database of populist, far-left, and far-right parties using Expert-Informed Qualitative Comparative Classification (EiQCC). *British Journal of Political Science* **1**, 969–978.

Seligman A and Montgomery DW (2019) The tragedy of human rights: Liberalism and the loss of belonging. *Society* **56**, 203–209.

Stoyanova V and Smet S (2022) Introduction. In Stoyanova V and Smet S (eds.), *Migrants' Rights, Populism and Legal Resilience in Europe*. Cambridge: Cambridge University Press, pp. 1–46.

Sunstein CR (2007) Backlash's travels. *Harvard Civil Rights–Civil Liberties Law Review* **42**(2), 435–449.

Tasioulas J (2012) On the nature of human rights. In Ernst G and Heilinger J-C (eds.), *The Philosophy of Human Rights: Contemporary Controversies: Justification and Universality*. Berlin, Boston: Walter de Gruyter, pp. 17–59.

Tasioulas J (2017) Exiting the hall of mirrors: Morality and law in human rights. In Bourne K and Campbell T (eds), *Political and Legal Approaches to Human Rights*. London: Routledge, pp. 73–89.

Tasioulas J (2019a) Making human rights ordinary again: A response to Ignatieff. *King's Law Journal* **30**(3), 341–348.

Tasioulas J (2019b) Saving human rights from human rights law. *Vanderbilt Journal of Transnational Law* **52**(5), 1167–1208.

The Guardian (2023) Braverman denies small boats plan breaks law and struggles with Mo Farah question, 8 March 2023. Available at https://www.theguardian.com/politics/2023/mar/08/braverman-small-boats-plan-law-mo-farah (accessed 17 June 2024).

The Independent (2024) Sunak hints that UK could leave ECHR if Rwanda plan blocked, 4 April 2024. Available at https://www.independent.co.uk/news/uk/politics/sunak-echr-rwanda-human-rights-b2523025.html (accessed 17 June 2024).

The Migration Observatory (2023) UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern. Available at https://migrationobservatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/ (accessed 17 June 2024).

UNHCR Executive Committee (1981) Conclusion No. 22: Protection of Asylum-Seekers in Situations of Large-Scale Influx. Available at https://www.unhcr.org/sites/default/files/legacy-pdf/578371524.pdf (accessed 17 June 2024).

UNHCR Executive Committee (1999) Social and Economic Impact of Massive Refugee Populations on Host Developing Countries, as well as Other Countries: Addressing the Gaps. UN Doc. EC/49/SC/CRP.24.

UNHCR (2017) Death Risk from Starvation in Horn of Africa, Yemen, Nigeria Growing, Displacement already Rising. Available at https://www.unhcr.org/news/briefing-notes/unhcr-says-death-risk-starvation-horn-africa-yemen-nigeria-growing-displacement (accessed 17 June 2024).

UNHCR (2023a) Refugee Data Finder. Available at https://www.unhcr.org/refugee-statistics/ (accessed 17 June 2024).

UNHCR (2023b) Refugee Data Finder: Key facts for countries hosting the world's refugees. Available at https://www.unhcr.org/refugee-statistics/insights/explainers/refugee-hosting-metrics.html (accessed 17 June 2024).

UNHCR (2024) Press Release on 23 April 2024. Available at https://www.unhcr.org/news/press-releases/uk-rwanda-asylum-law-un-leaders-warn-harmful-consequences (accessed 17 June 2024).

Weale A (2018) *The Will of the People: A Modern Myth*. Cambridge: Polity Press.

Zanetti G (2020) Human rights and the need for belonging. Reset dialogues on civilizations. Available at https://www.resetdoc.org/story/human-rights-need-belonging/ (accessed 17 June 2024).

Cite this article: Nayyeri M (2025). Populism, backlash morality and immigrants. *International Journal of Law in Context* **21**, 58–79. https://doi.org/10.1017/S1744552324000387