

Current Problems of the Penal Law and Criminology

Aktuelle Probleme des Strafrechts und der Kriminologie

*Individuals, society, and the state – from the perspective
of penal law and criminology*

*Liber Amicorum in Honour of Professor Emil W. Plywaczewski
on the occasion of his 70th birthday*

Scientific editors

Ewa M. Guzik-Makaruk

Katarzyna Laskowska

Wojciech Filipkowski



PROKURATURA
KRAJOWA

Pre-print from: Ewa M. Guzik-Makaruk, Katarzyna Laskowska, Wojciech Filipkowski, *Current Problems of the Penal Law and Criminology*, Prokuratura Krajowa, Warszawa 2023, pp. 393-402.

Sławomir Redo

ORCID ID: <https://orcid.org/0000-0003-2018-4217>

Criminological Reflections on the European House Rules and Freedom From Fear in the Age of Migration

Introduction

The purpose of this short essay is to throw fresh light on the evergreen question of duty ethics of social inclusion undermined by fear of immigrants. Since 2015 their wave into the European Union (EU) has stirred serious controversies and has become agitating because of the crime and justice challenges to orderly, safe and regular migration – the movement of people advocated by the United Nations (UN). The first section of this text contains a very brief review of the UN developments which led to the canonical now concept of social inclusion of refugees and migrants. The second section offers two examples of undocumented migration highlighting the foreboding challenges of entry into the European realm. The final section offers reflections on the *glocal* “house rules” including the revitalization of reciprocity in the depressive economically for the European Union labour market, as a part of social inclusion goals of the 2030 UN Sustainable Development Agenda.¹

Good Samaritan Rule and Golden Rule as elements of social inclusion

It goes without saying that past Good Samaritan Rule, i.e. the one sided regard of another person by helping her/him in self-preservation, reciprocity is the most peremptory/implicit standard of human interaction which logically precedes any other standard or formal mutual or international conduct or organizations with its rules and understandings that shape the expectations of their actors.² Good Samaritan rule is very well addressed transculturally in various maxims, stories, and parables (like the one in Luke 10:25-37). And so is the Golden Rule, alias mutual regard, “mutual benefits”, “win-win” or – simply – reciprocity.

Concerning both rules, moral authorities, theologians, other philosophers, cultural anthropologists, evolutionary theorists, political scientists, lawyers, journalists, policy-makers, development aid experts, and last but not least civil society activists have expressed their views often nuancing the sense of those rules. Many emphasized the rules’ foundational role in the humankind, while others have questioned their viability, and some opposed them.

¹ A/RES/70/1, *Transforming our world: the 2030 Agenda for sustainable development*. 25 September 2015.

²Cf. R. Keohane, *International Institutions And State Power: Essays In International Relations Theory*, Routledge London 2020, ch. I.

Perhaps the most encompassing understanding of the border positions involving reciprocity was embraced by Jesus Christ: "You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, Do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also." (Matthew 5:38–42).

While reciprocity is not a part of Good Samaritan Rule, social inclusion of migrants and refugees applies to both groups. Regarding the latter, according to the UN General Assembly/UNGA resolution A/319 (IV) of 3 December 1949 that mandated the work on the 1951 Convention on Refugees, all admitted refugees should be offered "assimilation within new national communities".³

"Assimilation" - essentially, the opposite of social inclusion - was not an incidental UNGA's term regarding refugees. It already had been a major problem in interwar Europe (1918-1939), as far as migrants were concerned. For them it was to mean "a process, for the most part conscious, by which individuals and groups come to have sentiments and attitudes similar to those held by other persons or groups in regard to a particular value at a given time",⁴ with the eventual aim of absorbing "second culture".⁵

The second part of 1940s and the 1950s had been the time of a huge work effort after the war whereby that form of assimilation promoting the ethos and ethics of work had been crucial. It enjoyed strong public and policy support worldwide.

Eventually, immigrants were to be assimilated and accept "a new social order ...[that-added] requires immigrants to change their language, dress, lifestyle and world view", complying with customs and practices, values and norms of the majority.⁶

In the next decade, and much stronger later (1970s), the assimilation policy has gradually been replaced in favour of acculturation (preservation of minority customs and traditions), then pluralism ("deliberative democracy" of Joseph M. Bessette (1980)), and cultural diversity ("social inclusion"). Several host countries of the Global North recognized cultural and religious rights and identities of immigrants. The acceptance and preservation of their rights and identities has become a part of those countries' domestic regulations involving the newcomers' residence permits and citizenship.

These domestic legal developments eventually led to recognizing internationally that not assimilation but "social integration" should be the eventual aim of social development prompted by immigration. Counterintuitively, and – perhaps – unwittingly, in the United Nations this drive for diversity and pluralism entered its agenda through its Crime Prevention and Criminal Justice Programme. In 1990, the United Nations General Assembly adopted two resolutions: one on the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and another one on

³ UNGA resolution *Refugees and stateless persons*, A/319 (IV), 3 December 1949.

⁴ H. G. Duncan, *A study in the process of assimilation*, Publications of the American Sociological Society 1943, No. XXIII, pp. 184-7, after: W. Hirsch, *Assimilation as concept and as process*, *Social Forces* 1943, Vol. 21, No. 1 p. 35.

⁵ J. D. Eller, *Cultural dynamics: Continuity and change. Cultural anthropology: Global forces, Local lives*, Routledge London 2009, p. 280.

⁶ A. Giddens, wsp. P. H. Sutton, *Socjologia*, Wydawnictwo Naukowe PWN Warszawa 2012, p. 643.

the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). Both addressed respective modes of social reintegration. Notably, this has also been the first alert about the limits to diversity for those in conflict with civil behaviour rules – the UN house rules.

Five years later, “social integration” was intergovernmentally defined by the World Summit for Social Development. In very progressive terms it is:

“the capacity of people to live together with full respect for the dignity of each individual, the common good, pluralism and diversity, non-violence and solidarity, as well as their ability to participate in social, cultural, economic and political life, incorporates all aspects of social development and all policies. It requires the protection of the weak, as well as the right to differ, to create and to innovate.”⁷ However, the Summit recognized that various forms of crime; other violence and corruption are the factors of “social disintegration”. Social cohesion was recommended as an antidote.

At the same event emerged the working definition of the now canonical in the UN term “social inclusion”. It means:

“to make efforts: ensure equal opportunities – that everyone, regardless of their background, can achieve their full potential in life. Such efforts include policies and actions that promote equal access to (public) services as well as enable citizen’s participation in the decision-making processes that affect their lives”.⁸

This decision-making should be with mechanisms which accommodate diversity, and facilitate/enable people’s active participation in their political, economic and social lives for well-being of each individual, mutual trust, sense of belonging and interconnectedness, so they realize their full life potential. Policies and actions that promote equal access to public services include equal access to welfare benefits as well as citizen’s participation in the decision-making processes that affect their lives. In the past decades of the 21st century two concomitant factors of South-North migration have become prominent: undocumented migrants’ flock to countries with attractive welfare benefits; such countries experience the increase in crime by non-native residents.

While seeking welfare benefits have become a strong driver of migration, some types of crime and victimization involving undocumented migrants emerged as social disintegrators in host countries (e.g., hate crime, femicide, female genital mutilation, ethnic organized crime, terrorism). As the side effect of the overly liberating approach, on either side inclusive development of own cultural identities was not mutually respected, hence the growth of “parallel societies”.

Push backs and social inclusion revisited

⁷ A/CONF. 169/9, *Report of the World Summit for Social Development*. United Nations New York 1995, §§ 65-67.

⁸ United Nations Department of Economic and Social Affairs. Social inclusion, <https://bit.ly/2YV8YY2>.

In 2020, the European Court of Human Rights (EtCHR) in the case *N.D. and N.T. v. Spain*⁹ considered United Nations and European human rights instruments regarding refugee rights. The case was prompted by the Spanish authorities' rush to carry out collective expulsions (pushbacks or "hot returns") to Morocco of illegal entrants to the Spanish territory of Melilla in North Africa. The Court, adjudicating the claim of two young asylum applicants, concluded that the practice of the Spanish authorities indiscriminately applying expulsion to every individual, irrespective of whether they sought asylum or not, did not amount to a violation of the prohibition of collective expulsions under Article 4 Protocol 4 of the European Convention of Human Rights (ECHR). The Court emphasized that an applicant seeking ECHR protection must first document concrete factual or legal grounds which, under international or national law, would have precluded the applicants' removal had they been registered individually. Finally, the Court requested that States provide genuine and effective access to legal entry mechanisms for the purposes of asylum and employment.¹⁰

At about the same time when the EtCHR deliberated and eventually handed down its verdict, across the Mediterranean and EU's land borders has continued the irregular influx of asylum seekers and other migrants. Their unauthorized entry into Bulgaria, Croatia, Estonia, Greece, France, Hungary, Latvia, Estonia, Romania, Spain have been analyzed and addressed by the various European Union human rights, policy making and law enforcement bodies and institutions – all centered on the scope of the principle of non-refoulement in contemporary border management v. push backs, i.e., summary return to a neighbouring country of an apprehended person after his/her irregular EU border trespassing, without assessing their individual circumstances on a case-by-case basis.¹¹ In bulk they are being sent back: deterred, dehumanized and dismissed by border guards.

More recently the same practice involved Poland. A case in point comes from the woods of its Podlasie Voivodship, bordering with Belarus, where a group of completely exhausted Middle East men and women found themselves stranded and trapped. "Monica" (volunteer's interview alias who met them) fed them, clothed and enabled to contact by mobile phone some other family members in Germany. She asked: "How much of empathy, strength and humanness one needs to demonstrate in a situation in which only the other party is in danger, by worrying about the others and sharing food"?

The other interviewed activist added:

"This is horrible to leave people in the forest whom we just got to know in a crisis situation. We hugged them, and assured them that they will be OK. But the question is: should we do nothing, if we do just so little? This is a work for years. One cannot stop helping. When I see people so

⁹ European Court of Human Rights, *Case of N.D. and N.T. v. Spain*, <https://bit.ly/3ldbhwG>.

¹⁰ See further; S. Redo, *On the dialogues in Hell between Machiavelli and Montesquieu from the perspective of climate change, migration and the Rule-of Law-Governance*, in S. Redo (ed.) *The retreat of the Rule of Law. Reflections on the challenges to justice in the United Nations world*, Lexington Books Lanham, MD 2022 (forthcoming).

¹¹ European Union Agency for Fundamental Human Rights, *Migration: Fundamental rights issues at land borders*. Publications Office of the European Union Luxembourg: 2020, pp. 4 and 10.

similar to me, in the same age and with the same education, I realize that I am fortunate, because I was born in Europe. I feel I owe them my assistance”.¹²

A Pole living in Germany reacted to Monica’s trepidations, as follows:

“Dear Monica, resident of Podlasie: Today these men whom you met on the border were exhausted, chilled and frightened. However, I guarantee you that when they rest, get dressed in the fancy cloth, sole their hair, then you will get out of their way. I live in a big city in Germany and a day before yesterday I had such a situation. I was walking on a sidewalk with my husband. Opposite, approached us a group of *Nafris* (North Africans). Loudly speaking in their own language, they kicked an empty beer can. Demonstratively they look at us and even a bit do not give way to let us pass. My husband and I moved away to bypass them. Still two of the opposite passers-by knocked us with their elbows. Have we responded and protested against their behaviour? Nope. We lowered our eyes and ears so not to provoke them. Monica from Podlasie, come to my city and walk at midday (not midnight) through its centre. You will see how much these poor unfortunate migrants changed, as soon as they get to the place they planned.”¹³

On its face value the above reaction is conundrumical. Every now and then is substantiated by more outspoken opposition of radicalized native residents (protests, arsons of refugee/migrant centres; lethal violence), and by the same by frustrated and radicalized newcomers.

Personally, as a UN retiree, I had a similar experience in my home city full of immigrants. A young immigrant seating on the park bench threw an empty beer can in front of me. I did not react. I passed by him troubled by that uncivil behaviour. After that anecdotic but mindful event, year after year I had been visiting the University of Białystok in Podlasie, the springboard of the “Białystok School of Criminology” at the Law Faculty, where I taught the United Nations Crime Prevention. Paraphrasing one advocate of multiculturalism, I wanted to continue there the “regime” of UN Crime Prevention rather than pursue just “an endless philosophy seminar.”¹⁴

Eight years of seminars, lectures, conferences, and workshops there and more abroad corroborated the UN approach to inculcate crime prevention into the audiences I served. As a teacher, I felt I was serving there as if I were a postman. I had the honour and authority to enlist attention of my students from various legal cultures to positive sides of intercultural cooperation and to attain with them viable crime prevention outcomes. Thanks to Professor Emil W. Pływaczewski, the Host of some of those events, I put my UN knowledge into the academic practice of teaching younger generations the progressive precepts for making crime prevention work, education and training.¹⁵

These progressive precepts read as follows¹⁶:

¹² K. Oprzędek, Zupa chlupocze w plecakach, gdy idą przez las, TOK FM, October 13, 2021, <https://bit.ly/3vjqqnC>.

¹³ Ibidem, <https://bit.ly/30n8ha2>.

¹⁴ S. Fish, *Mission impossible: Setting the just bounds between Church and State*, Columbia Law Review 1997, Vol. 97, No. 8, p. 2278.

¹⁵ E.g., see: S. Redo, *Is Socrates mortal? On the impact of Socratic logic on teaching and learning the United Nations Crime Prevention Law*, (in:) H. Kury and S. Redo (eds.), *Crime Prevention and Justice in 2030. The UN and the Universal Declaration of Human Rights*. Springer Cham 2021, pp. 623-636.

¹⁶ Inspired by Urszula Kurcewicz, *The evolution of British immigrant integration policy after World War II: a historical and political science perspective*, Rocznik Integracji Europejskiej 2014, pp. 357-365.

First, there is one simple condition under which human rights and crime prevention/safety go hand in hand: Crime prevention is a social resource. It works if and when the energy spent on its activation strongly motivates activities, projects and yields returns which legitimize the involvement of new partakers from other legal cultures;

Second, crime prevention is such a vast social resource that these partakers should not be afraid of undercutting their own life chances for a legitimate sustainable livelihood;

Third, one has to find common ground by respecting others' personal identities and joint goals;

Fourth, group identity wanes when the contacts with audience are personalized and based on common interests, hobbies, individual preferences;

Fifth, changing the roles among the audience and between instructor and the audience (flipped learning!) is extremely helpful in inculcating the precepts of critical thinking, active involvement and participatory learning;

Sixth, intergroup relations among people from various legal cultures work, if one finds a common denominator above the groups: saving succeeding generations from the scourge of wars and climate change undoubtedly does it.

In sum, crime prevention (including education and training) works when made sustainable. Crime prevention works only when its stakeholders return more energy than they absorb.

This is the United Nations understanding of the Golden Rule: "Do Unto Other as You Would Have Them Do Unto You."

Conclusion

One of the Polish EU parliamentarians from the Christian Democrat Party stated in the context of ongoing serious Rule-of-Law crisis involving the European Commission and her country:

"I guess humanely one can understand, that when you systematically are slapped on your face and finally one sets fire under the fundamentals of your house, it would be a clear masochism to throw him cash."¹⁷ Will the European Union survive with its Rule of Law drive against counter offensive membership ("*Polexit*")?

One of the Temple guards slapped Jesus in the face. "Is that the way to answer the high priest?" the guard asked. Jesus replied, "If I said anything wrong, you must prove it. But if I'm speaking the truth, why are you beating me?" (John 18:22-23). And this is the alternative to Matthew 5:38–42.

The truth is that the European Union will not survive without immigrants, especially those who may be qualified, either through the EU's education, training and other vocational efforts, or with

¹⁷ D. Hübner, *Polska znalazła się na bardzo niebezpiecznym wirażu*, Wyborcza.PL, October 13, 2021, <https://bit.ly/3mXEXyG>.

qualifications already at hand. Immigrant's labour market inclusion is such a must as obvious is the inevitable aging of world's population. Their assimilation through the European labour standards and norms is not moribund. Rather moribund for the future generations can be climate change and their inevitable aging.

Refugees' and other immigrants' work can contribute to preserve and contribute to social capital and people's welfare through inventions. Immigrants should and can learn through the European work ethos and ethics all EU's modern house rules, including how genuinely to contribute to legitimately enjoy welfare benefits – after all a common challenge in any welfare state regardless of anyone entitled to such benefits. Every cultural identity has parochial sides with different margins for self-criticism and readiness to overcome self-imposed limits of the freedom of thought to meet life chances in a constructive legitimate way for own sustainable livelihood.

One such a chance may be common and should be more evident: The EU will not survive without peoples and people striving for larger freedom. This is the fundamental task of the independent judiciary which not only implements but also animates the laws. Independence must be guaranteed, judges must be protected to hand down just and fair verdicts. Judiciary must demonstrate that there is no discrimination in upholding the Rule of Law, and that the European Union continues to promote emancipative values for larger freedom for natives and newcomers. Immigration is inevitable. Immigrants – men and women - should be welcomed to their “second house” (cf. Eller).

In every house, says Federico Fellini, “a different language is a different vision of life”.¹⁸ Hence the social inclusion pathways must not only be visualized and theorized but chartered and walked. The host country's language is a necessary key to inculcate that country's standards, norms, values and objectives, according to the new life vision.

For the ensuing cultural transformations, the commanding host country's language is the prerequisite to write into “the tabula of the mind”¹⁹ the UN crime prevention message imprinted above. And this is also my own message to anyone rightly concerned with breaking the European house rules who wants to bring into line others in the human family, so we all stay safe, do not fear one another and enjoy mutual respect. Dignity and safety, human rights and security should be worked out as inclusive progressive concepts.

When concluding this essay with the above recommendation, media informed about a container full of Haitian immigrants found on the roadside in Guatemala. Others were scaling the U.S. border walls or heading through the Rio Grande river for Texas. Media also informed about a drawn body of a Syrian refugee in the area where my own family members fled across Bug river (the Belorussian-Polish border since 1945) after the 1939 Molotov-Ribbentrop Treaty.

Hence the following final criminological reflection: In 1933, at the first inaugural session of the United States Congress, President F. D. Roosevelt said: “The only thing we have to fear is fear

¹⁸ In: B. Cardullo (ed.), *Federico Fellini. Interviews*, University of Mississippi Press Jackson 2006, p. 178.

¹⁹ M. Hülling, *Montesquieu and the old regime* (University of California Press Berkeley 1976, p. 117.

itself’.²⁰ With this reflection I dedicate my short essay to policy and decision-makers across the world wishing the UN 2030 sustainable developments goals to succeed on the very rough road to larger freedom. This is the UN objective. First emphasized in its Charter it has ignited its framers to pass the fire of the freedom from fear to succeeding generations. There is no doubt what is the role of the United Nations as a temple of larger freedom standing for orderly, safe and regular migration.

Bibliography

A/CONF. 169/9, *Report of the World Summit for Social Development*. United Nations New York 1995.

A/RES/70/1, *Transforming our world: the 2030 Agenda for sustainable development*. 25 September 2015, <https://bit.ly/3vggxEe>.

Cardullo, B. (ed.), *Federico Fellini. Interviews*, University of Mississippi Press Jackson 2006.

Eller, J. D., *Cultural dynamics: Continuity and change. Cultural anthropology: Global forces, Local lives*, Routledge London 2009.

Giddens, A., (wsp. P. H. Sutton), *Socjologia*, Wydawnictwo Naukowe PWN Warszawa 2012.

European Court of Human Rights, *Case of N.D. and N.T. v. Spain*, <https://bit.ly/3ldbhwG>.

European Union Agency for Fundamental Human Rights, *Migration: Fundamental rights issues at land borders*. Publications Office of the European Union Luxembourg 2020.

Fish, S. *Mission impossible: Setting the just bounds between Church and State*, Columbia Law Review 1997, Vol. 97, No. 8.

Hirsch, W., *Assimilation as concept and as process*, Social Forces 1943, Vol. 21, No. 1.

Hullington, M., *Montesquieu and the old regime*. University of California Press Berkeley 1976.

Hübner, D. *Polska znalazła się na bardzo niebezpiecznym wirażu*, Wyborcza.PL, October 13, 2021, <https://bit.ly/3mXEXyG>.

Keohane, R., *International Institutions And State Power: Essays In International Relations Theory*, Routledge London 2020.

Kurcewicz, U., *The evolution of British immigrant integration policy after World War II: a historical and political science perspective*, Rocznik Integracji Europejskiej 2014, doi: 10.14746/rie.2014.8.24.

Oprzędek, K., *Zupa chlupocze w plecakach, gdy idą przez las*, TOK FM, October 13, 2021, <https://bit.ly/3vjjqnC>.

Redo, S., *Is Socrates mortal? On the impact of Socratic logic on teaching and learning the United Nations Crime Prevention Law*, (in:) H. Kury and S. Redo (eds.) *Crime Prevention and Justice in 2030. The UN and the Universal Declaration of Human Rights*. Springer Cham 2021.

²⁰ F. D. Roosevelt, *Inaugural address of Franklin D. Roosevelt*, March 4, 1933 (The Gilder Lehrman Institute, GLC00675).

Redo, S., *On the dialogues in Hell between Machiavelli and Montesquieu from the perspective of climate change, migration and the Rule-of Law-Governance*, (in:) S. Redo (ed.) *The retreat of the Rule of Law. Reflections on the challenges to justice in the United Nations world*, Lexington Books Lanham, MD 2022 (forthcoming).

Roosevelt, F. D., *Inaugural address of Franklin D. Roosevelt*, March 4, 1933. The Gilder Lehrman Institute, GLC00675.

UNGA resolution *Refugees and stateless persons*, A/319 (IV), 3 December 1949, <https://bit.ly/2YY26Ja>.

United Nations Department of Economic and Social Affairs. *Social inclusion*, <https://bit.ly/2YV8YY2>.