

SYMPOSIUM ON TRANSDISCIPLINARY APPROACHES TO MIGRANT SOLIDARITY IN THEORY, LAW, AND PRAXIS

THE AMBIVALENCE OF SOLIDARITY AND THE LANGUAGE OF LAW

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Introduction

What is the relationship between solidarity and international migration law? For migrants facing a contemporary politics of nationalism and xenophobia, solidarity offers the potential to transcend borders, reshaping the popular imaginary and potentially the law. This essay presents a conversation between a legal scholar, a solidararian, and a social scientist, exploring the challenges that must be carefully navigated to avoid replicating prevailing power hierarchies and undermining existing humanitarian ethics. It engages with three questions: whether international law can further solidarity with migrants; whether human rights law can address the risk that solidarity will replicate existing power hierarchies; and whether solidarity downgrades existing international legal obligations toward migrants, rendering them optional benevolent acts toward “outsiders” rather than legal duties toward “insiders.” The essay contends that a viable path forward must recognize both the ambivalence of solidarity and international law’s shortcomings in enabling solidarity.

Can Law Speak the Language of Solidarity?

Can international law further solidarity with migrants? Though international treaties have obligated states to offer protection to many migrants over time, the law is increasingly ineffectual in the face of contemporary anti-migrant rhetoric and practice. Migrants cannot reliably turn to international law to protect their interests without a radical shift in the politics of migration. Solidarity might be capable of altering the politics that undermine legal protections.

Solidarity’s promise lies in its contrasts with international human rights law in terms of structure, content, and impact.¹ International treaties delineate a set of specific predetermined obligations, some of which may be claimed against the state by all humans regardless of migration status. The human rights of migrants are limited conceptually: international law offers a fixed set of protections that do not address the core needs of many migrants, such

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Authors are listed in alphabetical order to reflect the non-hierarchical solidaristic co-production of knowledge underpinning this essay, entailing a trans-disciplinary collaboration among scholars from different backgrounds and non-academics.

¹ Amy Chin-Arroyo & Jaya Ramji-Nogales, *Forging Solidarity*, in [RESEARCH HANDBOOK ON INTERNATIONAL SOLIDARITY AND THE LAW](#) (Cecilia M. Bailliet ed., 2024).

as territorial security.² Migrants' ability to access these rights is limited practically by their immigration status, language abilities, socioeconomic status, and other barriers. In contrast, solidarity asks that human beings recognize the obligations owed to each other by simple virtue of being human. The scope of solidarity with migrants is not predetermined; the obligations owed depend on the need of the migrant with whom another human sits in solidarity. This capaciousness enables a solidarity approach to foreground the perspective of migrants more effectively than human rights law, offering a flexible toolkit that prioritizes migrant preferences rather than a pre-set menu of options. This shift in mindset could present a path forward that is both more morally compelling, in that it prioritizes humility and humanity, and more practically effective, because it operates through the internalization of social norms.

Though solidarity is often understood as a positive phenomenon, in furtherance of human emancipation, the concept also has a dark side.³ Backlash, also known as “anti-solidarity,” is exemplified in the criminalization of humanitarian actors described below. Moreover, solidarity can manifest in a negative form, motivating anti-migrant sentiment into laws and policies that exclude migrants from legal protections, rendering them vulnerable to exploitation and abuse, and expel migrants from the territory of destination states.⁴ With these concerns in mind, given the potential of positive solidarity to shift anti-immigrant politics, this essay explores whether law can play a role in forging solidarity with migrants.

This is a skeptical inquiry, as law and solidarity appear to operate on different planes. Solidarity may be conceived as a form of sociological legitimacy, enabling and relying on norm internalization throughout society, and law as offering legal legitimacy based on individualized enforcement against the state. There is a vast chasm between the two; at its heart is the question of whether an enforcement-based approach can construct and encourage norm internalization. One answer might be that international human rights law is unable to further solidarity—or even worse, that an individual rights-based orientation undermines the flourishing of group-oriented solidarity discourses and actions.

Another route might explore whether human rights law can be expanded beyond an individual rights-based approach to capture some of the power of positive solidarity. Associational rights might be deployed, even if just as a framing device to persuade publics steeped in an individual-rights based approach of the merits of solidarity. This exogenous and relatively superficial approach risks furthering only a thin version of solidarity, and one that is dependent on the state to uphold.

Human rights law might play an enforcement function, enabling solidarity actors to engage in activities that manifest solidarity with migrants. This is also an imperfect match. It is not clear that the motivations underlying solidarity actions are susceptible to logics of enforcement. The substance of international law is also problematic in that it overcriminalizes the facilitation of migration and fails to protect core interests, such as labor rights for undocumented workers.⁵ Moreover, migrants face inequality in access to enforcement of human rights protections for solidarity actions. An enforcement function accessible only to one set of solidarity actors who benefit from greater “solidarity capital” seems the antithesis of solidarity.

Rights and solidarity can be deployed in parallel, but if they are not in conversation, the promise of solidarity could be undermined. The challenge ahead is whether solidarity can be put to work to expand imaginaries of rights, with the ultimate goal of restructuring law to speak the language of solidarity.

² Jaya Ramji-Nogales, *Undocumented Migrants and the Failures of Universal Individualism*, 47 VAND. J. INT'L L. 699 (2021).

³ Chin-Arroyo & Ramji-Nogales, *supra* note 1; Nermeen Arastu, Linda Bosniak, Barbara Buckinx, Amelia Frank-Vitale & Shannon Gleeson, *Distilling Solidarity*, 119 AJIL UNBOUND 7 (2025); Obiora Chinedu Okafor, Gabriella Sánchez & Sarah Soto, *The Solidarity Spectrum: De-Solidarity, Anti-solidarity, and Resistance*, 119 AJIL UNBOUND 13 (2025).

⁴ Obiora et al., *supra* note 3.

⁵ Jaya Ramji-Nogales, *Migration Emergencies*, 68 U. CAL. L.J. 609 (2017).

Solidarity's Ambivalence: Reproducing Power Hierarchies

Solidarity is the expression of a shared struggle across boundaries of class, race, gender, culture, and nationality,⁶ aiming to dismantle the hierarchies of power that exist across these boundaries. As solidarity can be contrasted with law, it can also be contrasted with humanitarianism.⁷ Humanitarianism does not necessarily seek to upend power hierarchies and may, arguably, perpetuate them. Indeed, humanitarian principles of neutrality and impartiality⁸ can be criticized as status quo and complicity.⁹

As detailed above, solidarity can also be contrasted with a rights-based approach, and in particular, the hierarchy of access to rights. Solidarians aim to engage with people in ways that “transgress power hierarchies.”¹⁰ Solidarity’s promise is in its recognition of our shared humanity, eschewing hierarchical distinctions based on legal status, such as “citizen” or “migrant.” That is solidarity’s promise, but what about its practice?

Solidarity occurs when a person becomes *convinced* that a shared struggle exists—a step contingent upon “solidarity capital.” Drawing on the concept of social capital,¹¹ solidarity capital is a resource derived from one’s social status that can be used to exert power. It is dependent on proximity. The more proximate a cause is to a would-be solidararian, whether geographically, ideologically, or otherwise, the more solidarity capital that cause enjoys. Hence, solidarity capital accrues depending on nationality, ethnicity, language, personal characteristics, networks, political worldview, and more.¹²

The concept of solidarity capital shows how solidarity is not inevitable; it is a discretionary power often wielded inequitably. Ironically, therefore, solidarity can (re)produce exclusionary practices. Since the arrest of one of the authors, and particularly during his pre-trial detention, he benefited from the immense solidarity rallied around him and his co-defendants.¹³ This solidarity was crucial in securing their release from prison. He was able to motivate solidarity because he is rich in solidarity capital: a relatively young, white-passing, able-bodied, English-speaking European citizen. He and his fellow defendants have strong networks and a favorable social background—privileges not enjoyed by many who similarly face criminalization. Many asylum-seekers he met in prison were convicted of the crimes with which he was charged. Yet their solidarity capital was often low. As newly arrived non-European asylum-seekers, many lacked social networks and language skills to generate solidarity. In solidarity campaigns that aim to support those with the least access to rights and resources, it is ironic that people who are comparatively rich in both occupy a privileged position.

⁶ Heath Cabot, *Solidarity in Greece and the Management of Difference*, in [DIGESTING DIFFERENCE: MIGRANT INCORPORATION AND MUTUAL BELONGING IN EUROPE](#) 227 (Kelly McKowen & John Borneman eds., 2020).

⁷ [Arastu et al.](#), *supra* note 3.

⁸ UN High Comm’r for Refugees, [Humanitarian Principles](#) (2024).

⁹ It is a dilemma one of the authors faced as he engaged in rescue efforts in cooperation with the Hellenic Coast Guard, which is accused of illegal activity. Council of Europe, Committee for the Prevention of Torture, [Report to the Greek Government on the Visit to Greece from 20 November to 1 December 2023](#) (2024).

¹⁰ [Arastu et al.](#), *supra* note 3; Ashley Witcher, *Greece’s Discriminatory Migrant Regime: Volunteers, Informal Street-Level Bureaucrats, and Moral Rationalities*, 34 *J. REFUGEE STUDS.* 1540 (2020).

¹¹ Pierre Bourdieu, *The Forms of Capital*, in [HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION](#) 241 (John G. Richardson ed., 1986).

¹² “Solidarity capital” has been described elsewhere as the capital gained by celebrities who engage in solidarity/humanitarian/environmental campaigns that is transferrable to economic capital. See Bruno Campanella, *Celebrity Activism and the Making of Solidarity Capital*, in [THE POLITICAL ECONOMY OF CELEBRITY ACTIVISM](#) (Nathan Farrell ed., 2019).

¹³ Seán Binder is one of twenty-four defendants in criminal proceedings in Lesvos, Greece, charged with several felonies, including the facilitation of illegal entry. At the time of writing, he faces twenty years imprisonment. Human Rights Watch, [Greece: Rescuers at Sea Face Baseless Accusations](#) (Nov. 5, 2018).

The author's time in prison drew his attention to the limits of solidarity. He shared a cell with a group of young men who sought asylum in Greece. Like all asylum-seekers, they needed support. These young men told the author that they were imprisoned because they had attacked someone due to religious differences. Their violent actions compounded their lack of solidarity capital. In speaking to campaigners and solidarians about these young men, none were convinced there was solidarity. Solidarity did not benefit these men. The language of rights could.

In this context, the rights-based approach can address the limitations of solidarity. While the rights-based approach has failed to offer universal protections in practice, the *language* of rights, i.e., focusing on the rhetorical power of ostensibly universal rights, remains valuable. The uneven distribution of solidarity capital demonstrates the need for universal and inalienable rights. Accordingly, we can and must operationalize the apparent universality of rights. Yet, solidarians' apprehension toward rights-based approaches means there is a risk that the rights discourse is sidelined. Regardless of solidarity capital, everyone should have the *right* to seek asylum, the *right* to be rescued at sea, and the *right* to a fair process.

Solidarity's Ambivalence: Humanitarian Impulse, Exceptional Motive, or Legal Duty?

This individual experience of criminalization of activists working on behalf of migrant populations fits into a larger carceral turn with respect to sea rescue at the southern border of Europe and beyond. The debate over attacks on activists and non-governmental organizations working with migrants revolves around the tension between humanitarianism and the securitization of borders. This conflict is often framed as the "criminalization of solidarity," with solidarity grouping together an array of actions from providing food to conducting Search and Rescue (SAR) efforts at sea.¹⁴ In this context, the term "solidarity" implicates the ethical principle that motivates actions of assistance toward migrants, and the humanitarian principles of improving life conditions or reducing suffering independently of a person's nationality.¹⁵ Here, the term "solidarity" implies a humanitarian impulse, which can be wielded in a discretionary fashion; yet international maritime law sets out a legal obligation to rescue on states and shipmasters.¹⁶ Does qualifying the action as "solidarity" risk creating an ambivalence that undermines the mandatory legal duty of rescue?

The discussion of solidarity and duties, particularly regarding the obligation to assist, involves a wide range of viewpoints and debates within different national legal systems. These conversations explore the ethical and legal responsibilities of individuals and institutions toward each other and society as a whole. At the core of these debates is whether solidarity entails only a passive feeling or moral inclination or includes an active duty to help those in need.¹⁷ Does it require elements like sympathy, altruism, recognizing distress as a moral issue, and invoking a moral obligation to provide aid? Solidarity involves acknowledging the necessity of helping others during difficult times, as seen in the actions of search and rescue actors who quickly took to the sea in 2014 when EU state forces were insufficient to rescue all boats in distress.¹⁸

¹⁴ Cetta Mainwaring & Daniela DeBono, *Criminalizing Solidarity: Search and Rescue in a Neo-colonial Sea*, 39 ENV'T & PLANNING C: POL. & SPACE 1030 (2021); ReSOMA, *The Criminalization of Solidarity in Europe*, CROSSMIGRATION (2020); Martina Tazzioli, *Crimes of Solidarity: Migration and Containment Through Rescue*, 2 RADIC. PHILOS. 4 (2018); Lorenzo Pezzani & Charles Heller, *Blaming the Rescuers: Criminalizing Solidarity, Reinforcing Deterrence*, FORENSIC OCEANOGRAPHY (2017).

¹⁵ European Commission, *Humanitarian Principles* (last visited May 1, 2024).

¹⁶ *International Convention for the Safety of Life at Sea*, Nov. 1, 1974, 1184 UNTS 278 (2007 revision), Annex, Ch. V, Reg. 10; *United Nations Convention on the Law of the Sea*, Dec. 10, 1982, 1833 UNTS 397, Art. 98; *International Convention on Maritime Search and Rescue*, Apr. 27, 1979, 1405 UNTS 119, Annex, para. 2.1.10.

¹⁷ *SOLIDARITY: THEORY AND PRACTICE* (Arto Laitinen & Anne Birgitta Pessi eds., 2014).

¹⁸ Isabella Trombetta, *Maritime Borders in the Central Mediterranean: Search and Rescue and Access to Asylum*, 40 ANALES DE DERECHO 131 (2023).

The question remains whether the term “solidarity” rhetorically undermines humanitarian actors’ efforts to challenge their criminalization. Given the international legal obligations on shipmasters to rescue people in distress at sea, efforts by search and rescue non-governmental organizations might be understood as fulfilling a legal duty in the face of state failures.¹⁹ Within that framing, does the descriptive use of the term “solidarity” change the connotation of a legal duty by shifting the focus to the motivation behind that act and its recipient? Activists have introduced the “solidarity” label to highlight a universal humanitarian duty to assist people in need of basic aid, independently of their legal status, yet ironically, it has been instrumentalized to rhetorically downgrade actions of aid from legally mandated to ethically inspired and therefore optional or discretionary. This phenomenon is reflected in EU law: while facilitation of migration is criminalized, member states *may* exempt facilitators from prosecution “where the aim of the behaviour is to provide humanitarian assistance to the person concerned.”²⁰ In other words, motive may be a fundamental element of a criminal act, but its relevance for compliance with a legal duty (to rescue at sea) is much less clear.

If we layer the presumed legal status of the people assisted at sea with the moral judgment of the rescuer, bound by international law to help, it becomes clear how the language of solidarity is instrumentalized to stratify rights and perform an “othering” function: by drawing a distinction between compliance with duties to aid citizens-insiders versus the optional nature of assistance to migrants-outsiders.

Beyond the rescue at sea context, which has clearer legal obligations of rescue, activists, organizations, and private citizens have been targeted for offering food or shelter, leaving water tanks in the desert, but also for unknowingly providing services like taxi rides to undocumented migrants.²¹ This growing association between the terms “solidarity” and “migration” in the context of legal proceedings strengthens the use of solidarity as a motive. If the aid was directed toward a non-migrant population, it would be viewed as praiseworthy regardless of motivation. For example, if a passerby noticed someone unconscious on the street and called an ambulance—regardless of any legal obligation—they would be commended for their actions rather than asked about their motivation for undertaking that action. That rhetoric might not be the same if the person in question were a migrant, or perceived as such, in which case the passerby’s act could have been laudable or criminal, depending on their motive.

Conclusion

This dialogue asks whether solidarity’s ambivalence can be overcome and whether law can or should learn the language of solidarity. The essay begins by suggesting that, despite its ambivalent nature, if it is wielded in the service of migrants, solidarity holds the potential to shift nativist politics, a powerful force that international law, and human rights law in particular, have failed to overcome. The question remains, however, whether international migration law is structurally capable of enhancing solidarity and whether solidarity, by its nature, enhances or undermines international legal obligations. It next problematizes the discretionary nature of solidarity. While rights are not universally afforded in practice, the egalitarian nature of rights may correct for solidarity’s inequitable application. The conversation concludes by identifying the “othering” function that the instrumentalization of solidarity performs. The move from a legal duty of rescue at sea to solidarity-based rescue as an escape hatch from criminalization implicates an important rhetorical shift that separates citizens, to whom the duty attaches, from migrants, for whom aid is merely a beneficent act. The path forward depends on whether the universality of human rights law can be put to work to ensure that solidarity does not replicate societal relations of dominance; whether societies can align legal and moral obligations toward migrants and citizens; and whether law can enable the emancipatory potential of solidarity.

¹⁹ This might represent a challenge to a state-centric understanding of the law of the sea. See Çiğdem Çıdam, Luba Cortés, Ayten Gündoğdu & Violeta Moreno-Lax, *Solidarity as Legal Mobilization*, 119 *AJIL UNBOUND* 19 (2025).

²⁰ [EU Council Directive 2002/90/EC of 28 November 2002](#), Art. 1(2).

²¹ [ReSOMA](#), *supra* note 14.