

**(Dis)continuities in the Legal Protection of Refugees:
Comparing refuge for religious minorities in the 17th and 18th century with the
Common European Asylum System**

VENUE: Oudemanhuispoort 4. Amsterdam: Eggen Instituut, room A1.28

DATE: Friday 30 September 2016

This workshop explores historical legal arrangements providing protection to refugees in order to better understand the structure of legal protection of refugees in Europe today. The workshop concentrates on how the protection of religious refugees in 17th and 18th century was legally structured. The historical legal mechanisms will be contrasted with the current European refugee regime, in particular the Common European Asylum System (CEAS).

Open to academics, students and practitioners interested and working in refugee law and policy. Please register by sending a mail to: b.schotel1@uva.nl

Program

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|-------------|---|
| 9.30-9.55 | Introduction: Refugee Protection as Competition over Jurisdiction
Bas Schotel |
| 10.00-10.50 | The structure of legal protection of refugees in the EU today
Maarten den Heijer - Discussant: Geert Janssen |
| 11.00-11.50 | The Making of the (Early) Modern Refugee
Geert Janssen - Discussant: Thomas Spijkerboer & Marjoleine Zieck |
| 12.00-12.50 | The Legal Rights of Religious Refugees in the “Exulantenstädte” of the Holy Roman Empire
Benjamin Kaplan - Discussants: Veit Bader & Maarten den Heijer |
| 13.00-14.30 | Lunch |
| 14.45-15.35 | The European ‘Refugee Crisis’ in Historical Perspective: continuities and differences
Leo Lucassen - Discussant: Marjoleine Zieck |
| 15.45-16.35 | Offering Hospitality to Strangers: Hugo Grotius on the rights of the Jews
Marc de Wilde - Discussants: Benjamin Kaplan |
| 16.45-17.35 | The Expanding Reach of States in International Refugee Law
Thomas Spijkerboer - Discussant: Leo Lucassen |
| 17.45 | Drinks |
| 19.00 | Dinner, speakers and discussants invited |

ORGANIZERS: Amsterdam School for Historical Studies, Paul Scholten Centre for Jurisprudence, Migration Law Vrije Universiteit and Amsterdam Center for International Law

CO-SPONSOR: ACCESS Europe

Presenters and discussants

Veit Bader, em. professor social and political philosophy UvA (discussant)

Maarten den Heijer, assistant professor international law, UvA

The structure of legal protection of refugees in the EU today. In this contribution, I will critically look at the structure of refugee protection in the EU. That structure is characterized by two types of (legal) relationships: 1) the horizontal relationship between EU Member States and 2) the vertical relationship between a refugee and a Member State. I will argue that the legal conceptualization of the horizontal relationship is fundamentally flawed, which compromises effective protection in the vertical State-refugee relationship.

Geert Janssen, professor early modern history, UvA

The Making of the (Early) Modern Refugee. While refuge, exile and displacement have been known since Antiquity, the refugee first emerged as a mass phenomenon in the early modern period. This paper seeks to explain the origins of this process, to map the subsequent development of refugees as a distinctive group and legal category in European society, and to demonstrate how legal arrangements both created and protected refugees. It will look in particular at the impact of religious conflict, the rise of humanitarianism and of the role of patriotism in shaping social and legal understandings of refugees. This premodern perspective also prompts questions about refugees as victims and as agents of change in the 21st century.

Benjamin Kaplan, professor early modern history in Europe

The Legal Rights of Religious Refugees in the “Exulantenstädte” of the Holy Roman Empire. Some of the clearest examples in early modern Europe of special legal rights being accorded to religious refugees were to be found in the so-called “Exulantenstädte” of the Holy Roman Empire. These were new cities founded with the express intent of attracting religious refugees. This paper will examine the legal provisions that extended personal, economic, civil, and religious rights to the refugees who settled them. Offering two case studies, it will show that the rights reflected the agendas of early modern princes, but that they had to meet also the needs and interests of the refugees.

Leo Lucassen, professor of Global Labour and Migration History, Leiden University

The European ‘Refugee Crisis’ in Historical Perspective: continuities and differences

Bas Schotel, assistant professor legal theory, UvA

Refugee Protection as Competition over Jurisdiction. This article explores the structure of legal protection of refugees in Europe today. To this effect, it will contrast historical arrangements providing protection to refugees, namely church asylum in the late middle ages and refuge for religious minorities, with the current European refugee regime, that is the Common European Asylum System (CEAS). The central claim of this article is that a basic condition for legal protection of refugees is the existence of multiple jurisdictions, which in turn caters to competition over jurisdiction. The official logic of the CEAS, however, endorses harmonization, unity and hierarchy of jurisdictions rather than a plurality of and competition over jurisdictions. This explains

partially the difficulties under the CEAS to organize protection of refugees through law. In policy terms, this article supports calls for reconsidering the Dublin Regulation since through the 'single jurisdiction' approach Dublin hampers legal protection of refugees.

Thomas Spijkerboer, professor migration law, Vrije Universiteit

The Expanding Reach of States in International Refugee Law. The 2016 EU-Turkey Statement concerns "all irregular migrants crossing from Turkey into Greek islands as of 20 march 2016". The legal consequences of being covered by this definition is that these persons "will be returned to Turkey." This consequence can be invoked vis-à-vis Turkey. This is a departure from the 1951 *Convention*, because the *Statement* does not rely on a meaningful definition, because it contains an extremely clear legal consequence, and because it is extremely clear which state has an obligation. European states now seek to influence the behaviour of states, market actors as well as refugees far beyond their own borders. Whether this is effective (in the sense that the 2016 *Statement* achieves more than the 1922 *Arrangement*) is questionable. However, the new situation is part of a wider development in international law that legitimizes Western states in ruling populations which are outside the scope of their sovereign powers.

Marc de Wilde, professor of jurisprudence, UvA

Offering Hospitality to Strangers: Hugo Grotius on the rights of the Jews. In 1615, the States of Holland commissioned Hugo Grotius to draft a statute for the Jews. This paper analyzes the way in which Grotius justified the rights of the Jews on the basis of general ideas about natural law, the right to asylum, the freedom of religion and tolerance. More particularly, it shows how he adopted the concept of a natural duty to offer hospitality to strangers to advocate admission of the Jews. This concept was first developed by the Spanish late scholastics to justify the colonization of the Indies. However, Grotius recognized it as natural foundation of the right to asylum, which remains relevant for the protection of refugees today.

Marjoleine Zieck, professor International Refugee Law, UvA (discussant)