

The Ethics of Migration Policy Dilemmas

Innocence, Sanctuary, and Rescue at Sea. A Response to Mann and Mourão Permoser (2022)

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How do Search-and-Rescue (SAR) NGOs understand the ethical dilemmas they face while conducting rescue at sea? And how might we conceptualize that rescue within a broader context? Itamar Mann and Julia Mourão Permoser's article, 'Floating Sanctuaries: The Ethics of Search and Rescue at Sea' proffers an illuminating conceptual framework for this 'ethical landscape,' and creatively posits that we understand SAR NGOs to function as floating sanctuaries within the larger terrain of border externalization.

Turning first to the ethical landscape, Mann and Mourão Permoser differentiate what they identify as the 'command,' and the 'chain.' The command refers to the command of conscience to rescue people who are at imminent risk of drowning. The chain refers to linked events which both precede and follow the moment of rescue. The chain connects on one end to the point of departure, a territory of danger, and on the other to the sought-after destination, a territory of relative safety. Chain and command do not elicit the same ethical responses. This is evidenced by the different grammatical form used by SAR NGO members to express their ethical concerns: with the chain, as interrogative questions ('should we do x or should we do y?'); with the command, as an imperative ('we must do x').

The imperative of the command "rests on the individual value of every human life" (Mann and Mourão Permoser 2022, 7) and is associated with the sea. The interrogative, associated instead with land and airspace, opens up complicated political questions: on one end of the chain, relationships with state actors such as Libya as well as smuggling and trafficking networks; on the other, European states and their border regimes, criminal networks, European publics and funders.

SAR NGOs that work directly at sea can conceptualize their efforts as separated from these chains. As the article shows, many SAR NGOs actively engage in discursive and material practice to insulate rescue from the chains. This includes deliberately not collecting information about the origin of a distress call or about the personal life histories of those who have been rescued. It also involves the choice of some SAR NGOs to call rescued

migrants 'guests,' 'survivors,' or 'people in distress at sea' in an attempt to render those rescued outside the political space of migration. This enables the ship to function as a space where the humanitarian imperative rules.

The word 'innocence' appears only once in 'Floating Sanctuaries,' and is mentioned in the context of describing "unidentified men in fast wooden boats" who in earlier years would come to the rescue scene to remove engines from migrants' boats. Media outlets often portrayed these men as likely smugglers, suggesting collusion between smuggling and SAR NGOs, delegitimizing their work. Some rescuers call these men, instead, "engine fishers." This is a literal description of the actions that these men engage in, adopting "a kind of methodological presumption of innocence" (Mann and Mourão Permoser 2022, 10).

Yet innocence is salient in this story beyond the case of bystanders watching rescues. Innocence has been central to defining the morally legitimate suffering met by humanitarian rescue (Ticktin 2017, 581). And we need to think not just of the claims to innocence of the rescued, but of the rescuer. Rescuing the innocent also creates a savior class or subject, "and they too make claims to innocence" (Ticktin 2017, 583). As Miriam Ticktin puts it, "those inspired by humanitarian sentiments may try to bypass politics, claiming to act only as witnesses to injustice or in response to the immediacy of suffering," but this is "a refusal to acknowledge the structural inequalities that allow them to be humanitarians, witnesses or saviors" (Ibid). The etymology of in- + noscere meaning 'not to know,' that Ticktin links to the idea of innocence, echoes the 'willful ignorance' of those SAR NGOs focused on the moral command. This is a willful ignorance that Mann and Mourão Permoser are careful to not prejudge, functioning as a legal technology which may shield some rescuers from criminal prosecution, as well as an ethical one.

But as 'Floating Sanctuaries' shows, the attempt of those rescuers to avoid the question of politics is only possible because SAR NGO work is bifurcated between those who work at sea and those who use airborne operations or satellite phones to operate from a distance. Those who work at a distance cannot isolate the moment of rescue from the wider political context, especially those, like the NGO Alarm Phone, whose members communicate with non-state actors outside of Europe. The article likens the ability to view not only the space of command but the chains on either end to an avian bird's eye view - which also, disturbingly, evokes the drone in its disembodied exercise of power. The ethical dilemmas that the SAR NGOs at sea seek to avoid do not disappear; rather, they are pushed to the "flying shoulders" of those who "flutter above" (Mann and Mourão Permoser 2022, 16). The SAR NGOs at sea are also dependent upon the plane and the phone to help them conduct their work, to know where to go to rescue. Yet there are tensions between the SAR NGOs that identify as humanitarian and NGOs like Alarm Phone where "the command is closest to entirely collapsing into an unhindered chain" (Ibid, 17), alluding to Alarm Phone's commitment to free movement. Some members of humanitarian NGOs protest that Alarm Phone is 'de-urgentifying' the rescue narrative by thus rendering it 'political.'

Yet the sea is a "deeply political space" (Heller et al 2017, 5). 'Floating Sanctuaries' signals its agreement with this vision by positing that SAR NGOs seek to engage in a "strategy of counter-externalization" that establishes a "space of resistance" against state sovereignty, placing the work of SAR NGOs in the broader context of border externalization (Mann and Mourão Permoser 2022, 3). While many assume the sea is an "empty expanse" where

migrant deaths occur “naturally” (Heller et al 2017, 5), it is instead a contested zone that is not free of politics, or law.

Border externalization means that states conduct legal manipulation through pushing their borders far beyond their geographic edges, in order to deny migrants the ability to reach territory and claim concomitant protections (Volpp 2020, 158-59). This externalization can be conducted over land (for example, the United States outsourcing border control to Mexico); across air (for example, the extraterritorial screening of those who seek to travel by air), or at sea (for example, interdiction on the high seas). To capture the phenomenon of border externalization at sea, some extend the metaphor of the border to the entire ocean. The oceans “constitute a vast and deep frontier zone” (Heller et al. 2017, 14); Europe’s extra-territorial spaces of immobilization, where the “lion’s share of contemporary border control” takes place, are “legal borderlands” (Franko 2022, 133). In some ways, borderlands may seem inapposite to describe aquatic space. But the concept of legal borderlands captures the spaces that appear on the edge of law, where law is routinely violated, not because these are law-free zones, but rather because they are physical or ideological sites of abnormal legal regulation (Dudziak and Volpp 2006, 4), including the “maritime legal black hole” (Mann 2018, *passim*).

It is in this ‘frontier zone’ or these ‘legal borderlands’ that SAR NGOs are creating ‘floating sanctuaries.’ They do so through adopting internal regulations that suspend as much as possible the applicability of criminal and migration laws, shielding themselves from responsibility for enforcing states’ laws. They accomplish this via the same ‘willful ignorance,’ ensuring that the only vulnerabilities known to the rescuers are those that can be addressed from a humanitarian, and not a criminal or migration control perspective. This, according to Mann and Mourão Permoser, creates a space of exception where rescuers claim to be enforcing a higher law not being upheld by states – here, international law, that is resonant with the roots of sanctuary in religious philosophy where divine authority prevailed over the authority of the state.

But like more familiar land-based sanctuaries, the floating sanctuary is temporary and tenuous. It is a limited space where a wrong is corrected through a “state of righteousness” (Mann and Mourão Permoser 2022, 18). It does not create justice “for all persons in all places” (*Ibid*), and it is a zone of protection that exists only in the context of a complicated environment of larger political and economic power. In this telling, there are interesting links between humanitarianism and sanctuary. Both seem to rely upon isolating the task at hand (immediate safety) from politics and history, rescuing those facing danger without altering the conditions that produced this danger in the first place.

Looking to the U.S. context, where efforts to provide sanctuary to immigrants – among religious organizations, university campuses, municipalities and states – rapidly escalated during the Trump administration, this assessment of sanctuary as both important and limited finds clear echoes. Naomi Paik, while noting that sanctuary can provide a “ground floor for survival” (Paik 2020, 103), describes its political horizons as constrained, given the failure of the sanctuary movement to question liberal frameworks that affirm the legitimacy of broader injustice. Paik would conjoin sanctuary with an abolitionist perspective that would connect sanctuary, which operates through a defensive logic of protecting people from imminent harm under current conditions, to social justice organizing that would build a just, equitable world (*Ibid*, 113). Linda Bosniak describes sanctuary as denoting “the insulation of

spaces and places and persons” from some force or authority, and thus, as not “challenging state power frontally but as shielding against incursions of power” (Bosniak 2019, 205). Like Paik, Bosniak seeks to extend the idea of sanctuary, finding inspiration in immigrant social movement organizing for a moratorium on deportations under the rubric ‘#Here-To-Stay,’ whereby the national territory as a whole can arguably be understood to be claimed as a sanctuary against immigration enforcement power.

The conclusion that Mann and Mourão Permoser (2022, 19) draw from their depiction of “floating sanctuaries” is that because the “bird’s eye” vantage point is necessary for the sanctuaries to be effective, it tells us that sanctuaries “do not simply appear as self-constituting islands,” and if they are “islands in which power functions differently,” this is only because they are preceded by “a myriad of strategies and decisions.” I take them to be making two points. The first is that the humanitarian SAR NGOs cannot function well without the solidaristic ones, and that the ‘willful ignorance’ that underlies humanitarian rescue as well as the idea of the floating sanctuary is necessarily embedded within a broader critique. The second is that sanctuary is limited in creating a zone of defense that itself is bounded, temporally, spatially, and in its challenge to power.

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About the “Dilemmas” project

This commentary contributes to the [‘Dilemmas’ project](#) at the EUI’s Migration Policy Centre. Dilemmas analyses and debates fundamental ethical dilemmas in policy-making on migration and refugee protection.

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