

Judging Fears in Refugee Crisis

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Rosika Schwimmer was not a voluntary migrant who moved from her country of origin to another state in order to find better living conditions. In our current legal terms, determined by the Geneva Convention, she was rather a refugee who, “owing to a well-founded fear” of persecution, fled her country.^[i]

As a writer and journalist, advocate of feminism and pacifism, member of the short-lived revolutionary government of the 1918-1919 Hungarian Democratic Republic, Rosika Schwimmer was forced to leave her birthplace in 1920, after the restoration of the Monarchy in an authoritarian form led by regent Miklós Horthy.^[ii]

Next year she settled in the United States, started to work as a linguist and lecturer, declared her intention to become a citizen, and filed a petition for naturalization in 1926. On a preliminary form Rosika Schwimmer stated that she was willing to take the oath of allegiance. She also testified that she did not want to remain subject to Hungary, finding the United States nearest her ideals of a democratic republic. She expressed steadfast opposition to any undemocratic form of government, like communist or fascist dictatorship. “All my past work proves that I have always served democratic ideals and fought [...] against undemocratic institutions.” Being an uncompromising pacifist, however, she refused to bear arms in defense of the country. For the fulfillment of the duty to support and defend the Constitution, she expressed that “in every other single way, civic way” she was ready to follow the law.^[iii]

After a federal judge in Chicago denied her citizenship, and then a court of appeal reversed the decree and demanded granting her petition, the case went up to the Supreme Court at the request of the Government. In the case of *United States v. Schwimmer* (1929) the Supreme Court handed down its decision, which reaffirmed that the application for citizenship should be denied.^[iv] The majority opinion declared, first, that citizenship is a “high privilege” and not an individual right. Second, it insisted that the “duty of citizens to bear arms in the country’s defense” is “a fundamental principle of the Constitution”. Third, the decision warned that Schwimmer was an intellectual whose “influence on others” against the use of military force was “apt to be more detrimental than [her] mere refusal to bear arms”. Finally, and importantly, the ruling cited official records showing that during the Great War, pacifists and conscientious objectors encouraged disobedience in others. Hundreds of people were sentenced to imprisonment for desertion, propaganda and sedition.

The 6-3 decision is hailed nowadays as one of the landmarks, not for the majority reasoning, but on the contrary, for Justice Oliver Wendell Holmes’s dissenting opinion. Affirming that he did not share Schwimmer’s philosophic view at all, Holmes introduced, and Justice Brandeis agreed on, the “principle of free thought – not free thought for those who agree with us but freedom for the thought that we hate.”^[v] Moreover, Holmes argued pragmatically on the adequacy of the oath: “she is a woman over 50 years of age, and would not be allowed to bear arms if she wanted to.”^[vi] Taking her position and motives into account led the dissenting Justice to the conclusion that the majority on the bench was driven by groundless fear.

Schwimmer was among more than 1 million Hungarians who immigrated to the United States from the last decades of the 19th century onward. The first wave of resettling was called the “Great Economic Immigration”. Next, many Hungarians arrived as refugees fleeing persecution because of their political views, ethnic origin or religion. The “56ers” left Hungary to avoid being punished after the failed revolution.

On the face of it, the Schwimmer case has nothing to do with the current refugee crisis in Europe. The former was a legal case on citizenship; the latter is about an exodus for continued survival. Holmes portrayed Rosika Schwimmer as a “woman with superior character and intelligence”, whereas more than half of the newcomers are unskilled, without knowledge of any European language.

A glance at fear – a complex biological, psychological and social emotion – however, may allow us to draw a lesson from history. We can say that Schwimmer had a well-founded fear when she left Hungary, because the primary subjective element of her fear – a state of mind – was supported by an objective situation, namely

discrimination or persecution of advocates of democratic republican government in Hungary. (Today guidelines and commentaries to the Refugee Convention offer the same interpretation of the phrase “well-founded fear”).^[vii] Contrary to this, the fear in the minds of Supreme Court Justices proved to be ill-founded. The bondage of the irrational fears did not let them realize the difference between wartime militant rebels and a utopian pacifist who was even unqualified to bear arms. “Men feared witches and burnt women”, warned Justice Brandeis in another case.^[viii] In the Schwimmer case, justices feared Communist terrorism and unfairly disadvantaged the anticommunist applicant. In sum, what we see in this story is the twofold character of fear, ranked as rational and irrational. The well-known name of the latter is phobia.

Political theory reflects on this Janus-faced nature of fear too. For Hobbes, constant fear plays central role. He argues that human fears of “solitary, poor, nasty, brutish, and short” life, consistent with natural reason, move us towards peaceful security guaranteed by the state.^[ix] Liberal thinkers reject the Hobbesian state, and warn that despotism, not democracy, flourishes on the politics of fear. István Bibó, the twentieth century Hungarian political theorist wrote on irrational fears: “Being a democrat above all means not being afraid; not being afraid of people with different opinions, different mother tongues, or people from different races ... not being afraid of all those imaginary fears which are only made real by our fears of them.”^[x] As regards rational fear, Bernard Williams approves the idea of “liberalism of fear”, originated from the writings of Judith N. Shklar, which reflects on a basic human emotion, our fear of the arbitrary power. The liberalism of fear, as Williams understands, helps us to take action against tyrannical tendencies. For example, individual rights can be seen as a “necessary protection against threat of power”.^[xi]

It might be true that rational fear helps us protect ourselves against others or the state, a potential enemy of the freedom, and conversely, lack of fear may force us to engage in dangerous situations we would otherwise have avoided. However, what we are experiencing now in the European migration crisis, culminated in Hungary, is primarily not a fear that alerts us to our vulnerability, but rather a rioting phobia. Recalling the Schwimmer case, her belief, mere views, gave grounds for denying the petition, and consequently the rights of an ardent democrat were violated in the name of democracy. Similarly, not their conduct but their ethnic origin and religion are the basis of the harsh treatment of refugees. The absurd consequence is that people who are forced to flee from tyranny or jihadist terrorism are treated as terrorist suspects.

What is more, the real fear of the unknown, worry about change – cultural effects, crime rates, costs and so on – are manipulated by political leaders who exploit human fragility. In Hungary the xenophobic billboard campaign, the administration of nationalist ideology and the extended state of exception are the symbolic and factual means of the manipulation.^[xii] In short, the current evil is the asylum seeker. I believe that Ali’s words in Fassbinder’s 1974 movie *Angst essen Seele auf* are more alarming than ever: Fear eats the soul.

^[i] Convention relating to the Status of Refugees (1951), Article 1 A (2)

^[ii] Leila J. Rupp, *Worlds of Women, The Making of an International Women’s Movement*, Princeton University Press, 1970, p. 170. Beth S. Wenger, Radical Politics in a Reactionary Age, The Unmaking of Rosika Schwimmer, 1914-1930, *Journal of Women’s History*, Vol. 2 No. 2 (1990), pp. 66-99

^[iii] *The Case of Rosika Schwimmer, Alien Pacifists Not Wanted!* American Civil Liberties Union, New York, 1929, 99. 9-12

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^[vi] *Ibid*, at 655

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^[viii] *Whitney v. California*, 274 U.S. 357, at 377

[ix] Thomas Hobbes, *Leviathan*, ed. R. Tuck, Cambridge University Press, 1996, p. 84

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[xi] Bernard Williams, The Liberalism of Fear, in G. Hawthorn (ed.), *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, Princeton University Press, 2005, pp. 52-61, at 56. See also Thom Brooks, Bernard Williams, Republicanism, and the Liberalism of Fear, *Theoretical & Applied Ethics*, Vol. 1, Issue 3 (2011): 57-60

[xii] Kim Lane Scheppele, Orbán's Police State: Hungary's crackdown on refugees is shredding the values of democracy, *Politico*, www.politico.eu/article/orbans-police-state-hungary-serbia-border-migration-refugees/. From a regional perspective, see Jacques Rupnik, The Other Europe, *Eurozine*, <http://www.eurozine.com/articles/2015-09-11-rupnik-en.html>

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