

Vive La Fraternité: Why EU Civil Society Must Learn from the French

11. July 2018 by [Jennifer Allsopp](#)

Last week, the French Constitutional Court [ruled](#) that the principle of ‘fraternity’ that forms the third part of the French devise of *Liberté, Égalité, Fraternité*, should have shielded French olive farmer Cédric Herrou from prosecution for the crime of human smuggling. Herrou was arrested and handed a four-month suspended sentence last summer for helping asylum seekers to enter France as they fled from war-torn countries such as Syria and Afghanistan at the height of the biggest refugee crisis since World War Two.

Herrou is not your typical activist. His crime was to shelter refugees in his farmhouse in Southern France after he encountered them destitute at the Italian border along a disused railway track. The image of the rural *bon homme* outside his farmhouse in handcuffs next to a disused train line evoked the historic parallel of those [criminalised](#) in the United States for harbouring fugitive slaves on the underground railway. Somewhere, the image of this unassuming, modern-day Harriet Tubman resonated and Europe’s historic conscience was stirred.

Herrou has become a symbol of resistance to anti-refugee politics; his face appears in the form of graffiti in Greece and in cartoons in Italian newspapers. To some, he is the ‘new Schindler’: a symbol of plain old goodwill or hospitality for some and, to others, of political resistance to Fortress Europe’s anti-asylum regime.

Solidarity as a civic duty

After being prosecuted for facilitating irregular entry of migrants, Herrou explained that he had ‘no regrets’ for performing his ‘citizen’s duty’ and would not stop helping migrants. His defence was that he acted to help migrants cross into France from Italy safely after several had been run over trying to cross unsafely.

‘I picked up kids who tried to cross the border 12 times’, he explained. ‘There were four deaths on the highway. My inaction and my silence would make me an accomplice. I do not want to be an *accomplice*.’

Herrou has repeatedly defended his actions as a response to the inefficiency of EU policies and operations in terms of their failure to save lives: as a humanitarian obligation and an act of civil disobedience stemming from his duty as French (and European) citizen.

Last week, after a yearlong battle, the French court agreed with Herrou that ‘the concept of *Fraternité* confers the freedom to help others, for humanitarian purposes, without consideration for the legality of their stay on national territory’.

A lack of EU common standards

Despite common standards and guidance in the EU Facilitators’ Package, EU laws [differ](#) in the implementation of penalties for humanitarian assistance and smuggling related to irregular migrants and asylum seekers. This leads to confusion among EU civil society actors working across the region. As it stands, French law dictates that anyone who facilitates ‘the unlawful entry, movement or stay of a foreigner in France’ is liable to face up to five years in prison and a fine of up to €30,000. Following a long [debate](#) in France’s recent history (which echoes wider debates occurring now all over Europe), however; in France, immunity is granted to anyone who offers such help to a foreigner without receiving anything, such as money, in return.

With this new judgement, the French court has conceded that in addition to this humanitarian safety net, the words ‘unlawful stay’ should be removed to ensure that the principle of *Fraternité* extends to those in France both legally and illegally.

This important verdict has a much wider resonance for European civil society, which the court itself recognised. In the ‘[hostile environment](#)’ that has come to characterise a large part of the EU countries’ responses to vulnerable migrants and refugees, the enlightenment principles of *Fraternité* and Solidarity on which the EU was founded are in danger and civil society is their guardian.

EU civil society and its role in humanitarian assistance to migrants

Civil society has been at the frontline of responding to the so-called ‘refugee crisis’ in Europe. Indeed, humanitarian actors like Herrou inland, and the pilots of rescue boats in the Mediterranean and Aegean Seas, have saved lives where the EU has repeatedly and often [knowingly](#) failed.

Civil society groups were often the first and sometimes the sole actors responding to the scenes of humanitarian need at Europe’s external and international borders during the so-called ‘refugee crisis’ of 2015-17. As international bodies including the United Nations and the Nobel Peace Prize Committee have recognised, EU civil society actors have been the guardians of human rights at a time of stark need.

This work was, and is, conducted by an expanding group of volunteers and professional service providers, many of whom came to work together for the first time – from reputed international NGOs such as Oxfam or Médecins Sans Frontières, to grass-roots informal collectives and activist groups which sprung up in towns across the continent. As one Hungarian civil society actor put it in an interview with me for a research project in 2017: ‘[T]here is practically nothing or a bare minimum provided by the state and its institutions and authorities...[If] these organisations would shut down now these people would be left with nothing [...]’.

Civil society groups expressed concerns that heightened efforts to combat smuggling during this period by EU agencies and national policing institutions were affecting irregular migrants’ access to fundamental rights, including healthcare, education and housing. Research for our new [book](#) *Policing Humanitarianism EU Policies Against Human Smuggling and their Impact on Civil Society*, published by Hart, corroborates this claim. It demonstrates that the anti-smuggling apparatus at the EU and national level – and most importantly a widespread confusion among actors regarding what is legal and what is not – has led to some NGO workers being legally criminalised for smuggling or related offences when acting to save migrants’ lives. Another pervasive and [well documented](#) effect of anti-smuggling laws concerns the ‘chilling effect’ on humanitarian interventions on land and at sea.

Liberal democracy, civil disobedience and the changing face of pan-European civil society

The debate in France over the limits of *Fraternité* in this context exposes a [broader tension](#) between the communitarian logic of deterrence and exclusion expounded by EU Home Affairs agencies and institutions on the one hand, and the will to assist and include migrants among a significant part of European civil society on the other.

Indeed, this dynamic can be understood as a fundamental tension in liberal democracy writ large at the EU level. In recent clashes between civil society actors responding to refugees by

holding EU and Member State institutions to account to a liberal, democratic and humanitarian agenda on the one hand, and the increasingly centralised and nontransparent EU anti-smuggling apparatus on the other, we are witnessing a relatively new manifestation of the poorly studied phenomenon of pan-national European citizen mobilisation. This development has consequences for European civil society as a whole and raises new possibilities and challenges for democratic accountability within the Union.

While the debate poses many new questions in an increasingly interconnected world to what a European civil society looks like, some initial observations are clear.

Firstly, the state of 'emergency' introduced in parts of the EU in response to the 'refugee crisis' has brought in a raft of illiberal measures and allowed for unprecedented restrictions on civil society in a number of Member States including the [UK, Italy and Hungary](#). Where civil society actors were often the first to respond to the refugee crisis they are now being forced out, often through measures of policing including intimidation, disciplining and criminalisation. In this context, it is crucial that civil society remains connected to preserve the important monitoring and service space it occupies at the national and Europe-wide level.

Secondly, the nature of civil society groups and the work of NGOs in the EU has changed during recent years; this has been partly reshaped by austerity and cuts to public services and partly by the unparalleled need among refugee flows. Ongoing research by myself and others suggests that the main concern of practitioners continues to be how to deliver their assistance, tasks and responsibilities without being penalised, and how to avoid social exclusion, maintain social cohesion and cater for the needs of all these populations. Meanwhile, humanitarian organisations more experienced in providing shelter and food have leant into new areas such as legal assistance in recognition of shortcomings in statutory recourses to justice.

The space for civil society groups supporting migrants and refugees in Europe has also expanded to include more informal and loose networks and activist groups. Increasingly connected across borders, they exploit their privilege of free movement within Schengen to 'vote with their feet', assisting migrants across states at the point of need. Many such groups are working with refugees for the first time. It is yet to be seen how this new arrangement will develop and how these diverse threads will work together, although current [research](#) suggests there are examples of tensions (for example between western and eastern European civil society groups), as well as fruitful collaborations. More research is needed to explore how different types of civil society groups position themselves strategically according to different frames – from international humanitarian law, religious values, national ethics, political stances and personal ethics which must all be accommodated for civil society actors to operate. And also, crucially, civil society must create space for the voices of affected migrants themselves.

Thirdly, it is important to note that the stakes of maintaining an independent civil society have impacts far beyond the response to the 2015-2017 'refugee crisis'. Policies which criminalise migration have been shown to have broader impacts on the population as a whole, including making life more difficult for other minority groups in society and negatively impacting [social trust](#) in society. Policies that criminalise contact with irregular migrants may lead to widespread feelings of subjective insecurity as well as stigma, ill trust and prejudice towards migrants. Speaking of the recent deployment of 3,000 'border hunters' and enhanced policing and reports of violence at the external Schengen border between Hungary and Serbia, one civil society interviewee remarked to me in 2017:

'I wonder what is going to happen in a few years time, when those officers who have taken part in these acts of violence will go back to their original postings and community [...], if it will normalize that violence? ... [I]t's a very serious issue, not to do with migrants and asylum seekers. These police officers will be the ones who stop me on the road or anyone else so that's very problematic'.

His words echo those of a French civil society activist who [commented](#) to me back in 2010 that ‘crimes of solidarity’ do not just concern the rights of migrants but are also ‘about the rights of *citizens*’. They are, she stressed, about something bigger that binds us: that is, the value of *Fraternité*.

Conclusion: Fraternité versus Fortress Europe, a European device

It is recognised in international humanitarian law that we all have a duty to act to save fellow human beings in need and that human rights are universal. Other protections are included for example in the 1999 UN Declaration on Human Rights Defenders. Yet the boundaries of where this duty begins and ends are often contested.

Tensions between understandings of *Fraternité* as a communitarian defense of closure or a universalist ‘will to humanity’ remain a key debate for Europe; though for now the French court at least has spoken out in defense of the latter historic definition.

The concentration of powers to deter migrants and to control the actions of civil society actors at the level of the EU, coupled with a lack of clear protection for citizens to provide humanitarian assistance to irregular migrants and asylum seekers at the same level, has made the EU for one of the first times an arena of democratic deliberation on the topic of humanitarian aid and civil disobedience. Parts of civil society have awoken across borders to contest policies and laws that they believe to be contrary to the ‘core principles’ of both Member States such as France and the EU as a whole, as well as contrary to broader humanitarian, religious or political principles. The French judgement is cause for hope: a victory for pan-European civil society and solidarity at a time when it is under threat in many parts of Europe.

For more information see the full paper, Allsopp, J. (2012) [Contesting Fraternité: Vulnerable migrants and the politics of protection in contemporary France](#): Oxford: Refugee Studies Centre.