

Ancient Refugee Policies reviewed with the International Law Acquis of Today

Políticas de Refugiados Ancestrales revisadas con el Acervo de Derecho Internacional de la Actualidad

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Abstract

The article revisits the refugee policies of Ancient Athens and Ancient Rome and highlights how exploring them reveals the value of the contemporary *acquis* of international law for actively addressing refugee crises triggered by military invasion. The nexus between refugee flows, the undermining of ancient civilizations, and the value of legal corpuses has long been overlooked by contemporary literature. It is a gap that the article intends to fill by inquiring possible explanations for Athens' and Rome's failures in managing the Attican and Gothic refugee crisis. The article offers a historical analysis of the abovementioned refugee crises. The contribution of this article is two-fold: the article not only calls attention to the unpreparedness and lack of foresight in the refugee policies of the Ancient Athenians and Romans, but it also highlights how certain mistakes could have been avoided and why these failures remain relevant to modern society from an international law perspective. The results of the analysis are supported robustly by the triangulation of ancient testimonies with modern academic references.

Keywords: Refugees, Ancient Rome, Ancient Athens, Gothic Refugee Crisis, Attican Refugee Crisis, Valens, Pericles, Past Experiences, Modern Society, International Law.

Summary: Introduction, Ancient Refugee Crises and the Undermining of Two Ancient Civilizations, Assessment of the Findings: Some Lessons on the Value of the Contemporary Legal *Acquis* and Conclusions.

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Resumen

El artículo reexamina las políticas de refugiados de la Antigua Atenas y de la Antigua Roma y resalta cómo su exploración revela el valor del acervo contemporáneo del derecho internacional para abordar activamente las crisis de refugiados provocadas por una invasión militar. La literatura contemporánea ha pasado por alto durante mucho tiempo el nexo entre los flujos de refugiados, el socavamiento de las civilizaciones antiguas y el valor de los corpus jurídicos. Es un vacío que este trabajo pretende llenar investigando las posibles razones de los fracasos de Atenas y Roma en la gestión de la crisis de refugiados de Godos y Áticos. Este estudio ofrece un análisis histórico de las crisis de refugiados mencionadas previamente. La contribución de esta investigación es de dos aspectos: el artículo no solo enfoca la atención en la falta de preparación y la falta de previsión de las políticas de refugiados de los Antiguos Atenienses y Romanos, sino que también destaca cómo dichos errores podrían haberse evitado y por qué estos fracasos siguen siendo relevantes para la sociedad moderna desde la perspectiva del derecho internacional. Los resultados del análisis se apoyan sólidamente en la triangulación de testimonios ancestrales con referencias académicas modernas.

Palabras clave: Refugiados, Antigua Roma, Antigua Atenas, Crisis de los Refugiados Godos, Crisis de los Refugiados Áticos, Valente, Pericles, Experiencias Pasadas, Sociedad Moderna, Derecho Internacional.

Introduction

“How can it be right to drag the suppliant away by force?”
-Euripides, 2009-

In Euripides' play “Heracleidae”, the Athenian King Demophon comes to the rescue of the children of Heracles, refugees who have been driven from their homes in the Peloponnese by the vengeful King Eurystheus of Argos. By portraying a merciful and hospitable Athenian King, Euripides markets Athens as a cosmopolitan hub where the interests of the rabble and dispossessed are championed over that of the strong and the violent. This comes to the extent that the King Demophon is ready to risk the blood of his own kind to protect the life of the refugees.

Euripides' embrace of hospitality and solidarity were not unheard of at the time: both Ancient Athens and Rome believed their strength to be rooted in the successful integration of refugees of all kind. In Athens, officials such as Plutarch and Pericles praised their city for her free liberality and sophisticated ability to “teem with people constantly migrating to Attica from all over the Mediterranean, seeking refuge” (Plutarch, n.d.; as cited in Garland, 2020; Brown et al., 2002, pp. 38–41). Its borders were kept open in peacetime and welcomed predominantly males in their primes whose skills and resources benefited the host community (Rubinstein, 2018, p. 8). Rome, similarly, built its empire around the notion of universality, glorifying itself as a migrant foundation (i.e., founding tale of Aeneas, the refugee from Troy). However, Rome went even further than Athens through its legalistic premise of transforming human diversity into unity by the generalization of the Roman citizenship (Moatti, 2006, pp. 116–117). Eventually, the integration of refugees would turn Rome into a powerhouse over much of the known world, with many of these migrants joining the Roman army with the hope of elevating themselves in the Roman society (Nowrasteh, 2018).

Building on this cosmopolitan image, modern literature has commonly described Ancient Athens and Ancient Rome as models for modern societies to cope with refugee crises (Beard, 2015; Schumacher, 2019; Swift, 2015). Yet, although it is true that the two cities were

remarkably cosmopolitan for their time, they both poorly managed major refugee crisis, namely the Attican and the Gothic refugee crisis.

The Attican and Gothic crisis share many characteristics. First, they both fall in line with the definition of refugee under international law¹, insofar as they involved hundreds of thousands of people unable to return to their country of origin, fleeing a conflict, and seeking a refuge somewhere safe: in the first case within the walls of Athens, in the second case within the *limes* of the Eastern Roman Empire. Second, the two refugee crises disrupted the local balance of power in similar proportions, with the Athenian and the Eastern Roman authorities of the time both being caught off-guard by the number of refugees they suddenly had at their gate. This begs to a third point: unpreparedness resulted in poorly managed migration policies in both situations, in turn precipitating the decline of the two empires. In the case of Athens, over-crowdedness would pave the way for one of the deadliest epidemics in the city's history, in turn causing massive civil unrest and turning the population against Athens' open-door policy. In the case of Eastern Rome, corruption, self-interest, and the lack of foresight turned a poorly managed refugee crisis into one of the biggest military disasters of Roman history, with the Goths establishing themselves as the first foederati barbarian nation of the late Roman Empire.

The complete failure of both civilizations is puzzling, as Athens and Rome both successfully handled similar refugee crises in the past. While Athens withstood the integration of waves of refugees during the Dorian invasions and stood up to the invading armies (Wade-Gery, 1948), Rome had an experience in dealing with the tribes living across the Danube. Back in the first century AD, a senatorial governor, even displayed pride in bringing "over more than 100,000 of the people who live across the Danube to pay tribute to Rome" (Eaton, 2020, p. 58). *Then, how can Athens' and Rome's failures at managing the Attican and Gothic refugee crisis be explained? What do these failures reveal regarding the value of the contemporary acquis of international law?*

The article demonstrates that despite their very different contexts, both empires faced similar problems in refugee crisis management, and these problems resulted in similar outcomes: (1) structural weakening, (2) the erosion of their model of society, and (3) a sense of irreversible decline. While reviewing these aspects and establishing a pattern, the article shows the value of the contemporary *acquis* of international law in effectively addressing refugee crises triggered by military invasion.

The history of international law has come a long way, and as the article will demonstrate, looking back at the past can help us better understand the value of contemporary legal corpuses. For contemporary lawyers, history constitutes indeed "a rich reservoir of both successful and failed ideological, theoretical, practical, institutional, and methodological experiments" (Rasilla, 2021).

Of course, the purpose of the article is *not* to promote a retroactive application of international law. As jurist Kenneth Howard Anderson stated, "International law could hardly develop if states believed that by accepting newly developed norms of international law, the result would be to hold them liable under today's norms for behavior acceptable under yesterdays" (Declaration of Kenneth Howard Anderson JR., 2005, pp. 16-17). The article holds

¹ The 1951 Refugee Convention defined a refugee as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership, membership of a particular social group, or political opinion" (UNHCR, 2021, p. 3).

the same position as this quote and solely uses international law as a conceptual bridge for understanding the value of present legal corpuses.

The article conducts a qualitative content analysis of relevant sources. Qualitative content analysis identifies core consistencies and meaning from the different textual data that is collected (Bengtsson, 2016). This aligns well with the article's objective of categorizing the data of different historical settings to make sense of it and reveal a pattern regarding the management of refugee crises. There is, however, an evident lack of testimonies contemporary to the Attican and Gothic refugee crises. Many simply did not survive history. A number of those which did are too ideologically one-sided for being treated as reliable sources: romanticizing history was a common practice among the historians of the time (e.g., Herodotus, Zosimus, Socrates, Scholasticus). Consequently, the article chooses to base its historical analysis on the testimony of Thucydides and Ammianus.

Both authors were not only contemporary to the crisis in question but also demonstrated a commitment to stay away from mythology and other forms of mystification in their narration of the events, embracing instead *historiography*; i.e., the critical investigation of past events (Eisenberg, 2009; Hoffman, 2016). Thucydides and Ammianus were also similar in that they were both on the forefront of the political scene. Also, they both served in the military and were familiar with the key statesmen of the time: Thucydides was a friend of Pericles and Ammianus spoke as an alleged eye-witness of imperial court plots in the Roman East (Fornara, 1992; Hoffman, 2016). The two were therefore particularly knowledgeable of the technical details that surrounded the politics of their time. Thucydides was even present in Athens when the city was overcrowded and the epidemic hit: he caught the illness but recovered (Martínez, 2017, p. 139). Lastly, it is worth noting that Thucydides and Ammianus have enjoyed significant visibility in the modern literature, and while some contemporary historians have underlined that the ancient authors' narration of past events was not flawless (e.g., Duff, 1999; Eisenberg, 2009), a vast majority has continued to give tribute to the two ancient authors for providing the most comprehensive historical account about the era (Barnes, 1993; Gibbon, 2011; Hoffman, 2016; Wolpert, 2014).

The research starts by providing a historical analysis of the Attican and Gothic refugee crises. This analysis paves the way for a conclusive discussion in which Rome and Athens' refugee policies are reviewed with the international law *acquis* of today.

Ancient Refugee Crises and the Undermining of Two Ancient Civilizations Athens and the Attican Refugee Crisis

"In war, the way is to avoid what is strong and to strike at what is weak"
-Sun Tzu, 2000, p. 23-

Several scholars have mistakenly portrayed the Periclean war strategy against the Spartans as defensive; thus, they have overlooked Athens' broader strategy of striking where its enemy, Sparta, was the weakest, namely in naval battles (de Wet, 1969; Spence, 1990; Westlake, 1945). In the thinking of its general Pericles, Athens could afford to let go of its land possessions in Attica, retire behind its walls, and replace the subsequent loss of agricultural products by imports. With only its capital and a handful of forts to protect in the mainland, Athens would be able to divert all its attention to her empire and naval supremacy "to feed herself while avoiding a major hoplite engagement" (Spence, 1990, p. 91). Tactically speaking, the strategy was at least partially successful: the numerically superior Peloponnesians failed to subdue Athens through the plunder of her Attican crops, despite mobilizing two thirds of their forces for their repeated invasions of Attica. In the meantime, Athens was able to focus her war

strategy on far-off theatres, engaging in offensive wars as far afield as in the west coast of Greece, Macedonia, Chalcidice, and Sicily (de Wet, 1969, p. 118). What the Athenian general overlooked was the consequences of his war strategy on the peasants of Attica. Many had settled in this land for generations and were forced to evacuate in order not to face off the invading armies.

Thucydides wrote that the Atticans had long lived scattered in independent townships and that down to the present war, they had been living in the country with their families and households. They were consequently “not at all inclined to move now” when they were ordered to do so by Athens (Thucydides, 2003, p. 88). “Deep was their trouble and discontent at abandoning their houses and the hereditary temples of the ancient constitution, and at having to change their habits of life and to bid farewell to what each regarded as his native city” (p. 88). Their discontent would grow into resentment and outrage after they moved to Athens: only a few of them had houses of their own to go to. The rest “had to take up their dwellings in the parts of the city that were not built over and in the temples and chapels of the heroes” (p. 88). With the city of Athens proving to be too small to host them, law and order started to erode, and many refugees settled unlawfully in holy sites, towers, and parcels of the Long Walls (pp. 88-89).

The outbreak of the epidemic in 430 B.C., one year after the beginning of the war, would inflame the already explosive situation. Pericles, who was already “the object of general indignation” for “not leading out the army which he commanded” (p. 90), started receiving severe criticisms for his poor management of the capital’s health situation. The latter was getting untenable due to the siege by the Spartans. In the overcrowded urban environment, Thucydides describes that “[the refugees] had to be lodged at the hot season of the year in stifling cabins, where the mortality raged without restraint. The bodies of dying men lay one upon another, and half-dead creatures reeled about the streets and gathered round all the fountains in their longing for water” (p. 104). Anarchy eventually followed after scenes of horrors in the overcrowded streets. “Fear of gods or law of man there was none to restrain them,” as Thucydides explains. It seemed to the population that “a far severer sentence had been already passed upon them all and hung ever their heads, and before this fell it was only reasonable to enjoy life a little” (p. 105).

Modern historians believe that the disease killed between one fourth and one third of the Athenian population. While it is difficult to number the casualties (Thucydides did not indicate any number), there is a consensus in the literature that the city’s over-crowdedness due to the poor management of the refugee situation significantly aggravated the scope of the plague; i.e., the other Greek city states were only marginally affected by the same epidemic (Martínez, 2017; Morens & Littman, 1992, pp. 298–299; Soupios, 2004, p. 46). According to modern estimates, which are themselves based on Thucydides’ military numbers², the Athenian population trebled or quadrupled during the siege, from a prewar population of around 100-150,000 people to 300-400,000 people before falling sharply to 100-150,000 inhabitants again (Littman, 2009, p. 458; Martínez, 2017, pp. 138–139). The extremely high density of inhabitants may have climbed up to 100,000 per square mile; hence exacerbating the effect that a disease spread by person-to-person contact could have (Martínez, 2017, p. 139). The disease spread more among the poor and the refugees because of their precarious lifestyle and greater person-to-person interactions, but the rich were also affected. Pericles’ two sons, Paralus and Xanthippus, died of the plague in 429 BC and Pericles himself perished shortly thereafter.

² The only numbers mentioned by Thucydides are those of Athens’ military at the beginning of the Peloponnesian War: 29 000 hoplites, 1200 cavalry, 1600 archers, and 300 seaworthy triremes (Pritchard, 2020, p. 1).

There are no clear indications as to how far the social disruptions went, but it does seem that Athens was able to withstand the unrest. Despite being briefly ousted from his office of *strategos* in 430 B.C., Pericles was reelected the following year and remained in power until the disease caught him. Athens also continued the war against Sparta and equipped the great expedition against Sicily, before being utterly defeated in 404 B.C. The changes, therefore, were not immediately discernible, but they prepared ground for greater problems.

First, Athens was undeniably *structurally weakened* by the crisis. The epidemic spread from refugees to soldiers. For example, 1,050 hoplites of an expeditionary body of 4,000 died of the disease during the Potidean expedition (Morens & Littman, 1992, pp. 294–295). The disastrous management of the epidemic led Athens on a path of self-restraint. Athens resisted the idea of major military invasions overseas to spare the manpower it had left. This even applied when Athens set plans to invade the rebellious city-state of Mytilene in 428 B.C.: Athens would react after much hesitation and only after all diplomatic channels were exhausted. This timidity would outlive the epidemic and prevail in Athens' foreign policy-making until Athens completely recovered its manpower when the war resumed in 415 B.C. (Couch, 1935, pp. 100–102). While therefore not a point of non-return, the poor management of the refugee crises and of the health situation did exhaust Athens' efforts of achieving a quick victory against Sparta during the first half of the war (431 B.C. – 421 B.C.).

Second, Athens slowly *turned its back on the model of society* that had made its glory prior to the war: its free liberality and overture to the world. With Athens experiencing the worst from the epidemic and Sparta being largely unscathed, many Athenians started giving credence to the legend that their gods had favored a victory by the Spartans and therefore spared the Peloponnese from the illness (Martínez, 2017, p. 140). Athenians began questioning their overture to the world, accusing refugees and foreigners for causing them misfortune, and metics would become increasingly discriminated in society. These negative attitudes would never recede and the Periclean law of 451 B.C., which restricted the citizenry to Athenians born of two Athenian citizens, would be reenacted in 403 B.C., and this time more for ideological than economic reasons³. Many citizens died and to fill the subsequent political vacuum, only the richer and more industrious metics were naturalized (Martínez, 2017, p. 141). The rest was denied citizenry, including the refugees who had survived the epidemic and whom Pericles had promised concessions (Thucydides, 2003, p. 85). The epidemic also triggered a survival spirit, and people went on to think more in individualist terms. They preferred to live for the moment rather than living for the honored customs and social restraints. In this connection, the demise of Pericles signaled the ascension of self-interested Athenian politicians, more interested by their selfish gains than by Athens' virtuosity. They would renounce Pericles' wisdom and instead embark Athens on a path to recklessness (Alcibiades and the Sicilian campaign) and ruinous fiscal policies (Cleophon, Hyperbolus, and Cleon's debasement of the Athenian currency) (Soupios, 2004, pp. 50-51).

What would inevitably unfold is the *irreversible decline* of the Athenian Empire, Athens' imperial strength was primarily rooted in the idea of a system in which humans were political beings seeking honor and power for the common good. In its golden days indeed, Athens was a patriotic society in which Athenians formed a cohesive society: citizens were expected to help their friends and to harm their enemies. It was also an inclusive society. The value of honor (or *philotimia*) inspired all the inhabitants to serve the *polis* in the fullest of their ability (Karatzogianni, 2012, p. 195). Metics, and even asylum-seekers, could ascend in society

³ The original Periclean law of 451 B.C. was primarily voted to limit the number of potential beneficiaries of the civic redistributions of wealth which Pericles had championed for the poorer citizens. Contrary to popular wisdom, it did not have much to do with Athens' founding tale of autochthony (Azoulay, 2014, pp. 100–102).

if they were able to convince the Assembly of citizens and be granted the special status of “equal rights”, through which they were exempted of the usual liabilities of non-citizenship (Garland, 2020; Smith, 2012). After the refugee crisis and the plague, however, this social mobility eroded as demagogues rose to power, basing their rule on corruption and self-interests instead of the greater good. This stratified the Athenian society and made Apollodorus, a fourth century politician, seem uneasy over the prospect of one day being exposed as the descendant of a metic in the lawsuits he was involved in. This atmosphere of paranoia would generalize to the entire Athenian society and while a male metic might still be able to buy his citizenry, he would risk being reduced to slave status if evidence of his bribery was found (Martínez, 2017, pp. 143–144).

The stratification of the Athenian society would make Athens lose grip on the social mobility that had made its appeal to many foreigners and traders prior to the war. This loss of appeal in turn contributed to the breakdown of innovation and to the eventual decline of Athens (Karatzogianni, 2012, p. 200). Politically, Athens would be overshadowed by ascending regional powers such as Thebes and Macedonia; in the economic and cultural realm, it would never experience the same kind of blossoming that it had prior to the Peloponnesian War. The refugee crises played an instrumental role in this transformation, as it was largely Athens’ poor management of the refugee situation that led to the humanitarian tragedy; this tragedy in turn demoralized Athens and caused the ruling elite to rethink its model of society in more authoritarian terms. The Athenian democracy would rapidly lose its prime: it experienced two oligarchic coups in 411 B.C. and 404 B.C. before being definitively abolished after Macedonia conquered Athens in 338 B.C.

The case of the Attican refugee crisis therefore reveals a pattern with dangerous political ramifications for the future of a political entity. Many historians identify the plague, the refugee crisis, and the Peloponnesian war as elements leading to Athens’ decline (e.g., Retief & Cilliers, 1998; Zaretsky, 2020). Can the same be argued for Rome and the Gothic refugee crisis? This is explored in the next section of the analysis.

Eastern Rome and the Gothic Refugee Crises

“When the higher officers are angry and insubordinate, and on meeting the enemy give battle on their own account from a feeling of resentment, ... the result is ruin”

-Sun Tzu, 2000, p. 42-

While the Attican refugee crisis stemmed from poor tactical planning on the part of Pericles, the Gothic refugee crisis and the subsequent political breakdown was caused by self-interest, greed, and the complete failure of command of the Eastern Roman authorities. Despite the contexts and aggravating factors being therefore very different, the bottom of the crises was fundamentally the same: Tervingi Goths, just like the Attican peasants, were fleeing an invading army, in their case the Huns. This “race of men hitherto unknown”, described Ammianus (1939), “was seizing or destroying everything in its way,” “like a tempest of snows from the high mountains” (pp. 400-401). In desperation, many Goths deserted the cause of their king Athenaricus and decided to flee to a home “removed from all knowledge of the savages” (p. 401). This new home was Thrace, a fertile land beyond the Danube that was then under the domination of the Eastern Roman Empire. In 376 A.D., an official request was sent to Eastern Rome, asking the Emperor for permission to settle in the territory of Thrace.

Valens, the Eastern Roman Emperor of the time, saw this movement of population with a positive eye, believing that he could make use of the many Goths that were fleeing to expand his Roman army with fresh recruits (Goldsworthy, 2014). The civil wars of the Third Century

A.D. had also decimated the northern provinces and vast areas needed to be repopulated (Russell, 1958, p. 78; Willard, 1851). From the beginning, however, Eastern Rome appeared to be unprepared to deal with such a large influx of refugees. First, Valens gave almost contradictory orders to his officers, ordering them to let the Tervingi cross the Danube while blocking the border to another Gothic tribe, the Greuthungi. The different orders could be explained by the power politics of the time and the fact that Valens was sympathetic towards the leader of the Tervingi, Friteger, a converted Christian who had opposed the anti-Christian policies of Athenaricus (Atkinson, 2017, pp. 6–7).

Welcoming the Tervingi alone proved to be a tremendous stress to the infrastructure of Eastern Rome. Although the Empire had a strong bureaucracy and a network of cities with storages of grain and other essentials, the refugees were even more numerous than what Valens expected. Ammianus does not give any specific number but modern estimates place them between 10,000 and 200,000 fighting men and the whole body of refugees may have included up to a million individuals (Goldsworthy, 2014; Merelli, 2016; Willard, 1851, p. 168). Simply put, the officers in charge were rapidly overwhelmed by the enormous number of refugees.

Some proved to be unwilling to do anything to improve the refugee situation. Corruption was rampant in the late Roman Empire and instead of seeking solutions, Lupicinus and Maximus, two top Roman officers of the region, sought to take advantage of the political impasse. They imposed on Friteger and his Tervingi an humiliating traffic, offering them to “exchange every dog that their insatiability could gather ... for one slave each, and among these were carried off also sons of the chieftains” (Ammianus, 1939, p. 407). After signs of revolt started to become apparent, Lupicinus ordered his *limetanei* to bring the Goths before his headquarters at Marcianopolis, where he invited Fritigern and other Gothic chieftains for a dinner-party. It is unclear what happened at the dinner-party, if Lupicinus deliberately tried to use the celebrations as a pretext to capture and kill the chieftains (Goldsworthy, 2014), or if, as Ammianus (1939) suggested, fights broke out between the inhabitants of the city and the Gothic refugees who were pleading for food (Hughes, 2013, p. 151). One thing that the evidence knows for sure is that Fritigern was able to convince Lupicinus to let them go to “quiet the people” (Ammianus, 1939, p. 413). After this incident, Fritigern led his people away and prepared them for battle against the Romans.

Unpreparedness and greed had already turned an influx of refugees into a refugee crisis and a refugee crisis into a military standoff, but the escalation of violence would not stop here. With Lupicinus mustering all his soldiers to supervise the movement of the Tervingi, he removed his troops from the Danube border, thereby allowing the Greuthungi to cross in (Hughes, 2013, pp. 150–151). The Tervingi and Greuthungi would eventually join forces. Together, they defeated the Romans of Lupicinus in an ambush. The victory of Fritigern would deprive the province of Thrace from most of its Roman garrison and the Gothic raids intensified. In the process, Fritigern was able to convince many Goths who had been enslaved or who had been recruited into the Roman army to switch sides. By 377 A.D., Fritigern even recruited groups of Huns and Alans, paying them with plunder (Goldsworthy, 2014).

It took time for the Eastern Roman Empire to deliver a reaction that was proportionate to the growing threat, being the overstretched entity that it was. Furthermore, at the time of the refugee crisis, Valens was based in Antioch and in the middle of an indecisive war with the Sassanian Persians. Yet learning about the worrisome developments, Valens was able to arrange a cessation of hostilities with the Persians, and he returned to Constantinople, bringing with him some of his Eastern troops (Goldsworthy, 2014; Hughes, 2013, pp. 158–159). Several months passed during which the Roman and Gothic armies stared at each other, mustering all

the forces they could get and delivering minor skirmishes. A rescue army from Valens' nephew, the Western Roman Emperor Gratian, was also on its way. However, the arrival of this rescue army was delayed due to other commitments in the Western Empire (Atkinson, 2017, pp. 9–10).

Valens did not have the patience to wait for his nephew's army, and he decided to strike at Adrianople with an army strong of 15,000 men in August 378 A.D. Ammianus explained Valens' recklessness from his excessive jealousy of better men, namely Sebastianus, a general who had defeated the Goths in minor encounters, and Gratian, who was only 18 and who had yet already achieved victories against the 'barbarians' in Gaul on his own. Paranoid and fearing competition from all sides, Valens refused to listen to his advisors and decided to make the attack alone (Atkinson, 2017, p. 10). After receiving reports from his scouts that the Goths were only 10,000 men strong, he led his army on the battlefield despite his situation not to be as advantageous as anticipated⁴. Until very late in the battle, Fritigern was willing to negotiate his surrendering to Valens in exchange for lands where to settle (Eisenberg, 2009, p. 116). However, while the negotiations were ongoing, Roman archers started firing at the Gothic position without orders, leading to a counterattack from the Gothic cavalry. The cavalry easily broke the Roman lines and routed the entire army of Valens. It was a hot summer and the Roman soldiers were "exhausted by hunger and worn out by thirst, as well as distressed by the heavy burden of their armour" (Ammianus, 1939, p. 477). The battle was an unmitigated disaster, as no less than two thirds of the Roman army died, including Emperor Valens himself (Eisenberg, 2009; Goldsworthy, 2014). Ammianus (1939) would compare the battle to the Roman disaster of Cannae during the Second Punic War (p. 483).

Despite his outstanding victory at Adrianople, Fritigern did not achieve significant strategic gains. His disorganized army was unfit to siege fortified cities, let alone take over an entire empire (Goldsworthy, 2014). In the meantime, the Western Emperor Gratian, more interested in settling the power vacuum in the East than in suppressing a band of refugees, appointed one of his men, Flavius Theodosius, as Eastern Emperor in 379 A.D. and returned to the West. As a patient administrator, Theodosius would wage a war of exhaustion against the Goths, raiding and ambushing isolated groups. Surrounded, poorly supplied, and exhausted by the war, the Goths gradually surrendered to Theodosius and achieved the terms they wanted in the first place: the permission to settle in Thrace and to live with significant political autonomy, in return for which they would serve in the Roman army (Hughes, 2013, p. 190). As a result, after a bloody defeat, the Gothic refugee crisis was *mostly* resolved. Indeed, while the Empire appeared to have recovered its imperial borders and to have subjugated the Goths, there were massive repercussions to Eastern Rome's failure at handling the Gothic refugee crisis.

First, the Gothic refugee crisis *structurally weakened* Eastern Rome in proportions that were roughly similar to Periclean Athens. The Empire lost some of its most valuable legions at Adrianople and the need to fill in the gaps only accentuated the 'barbarization' of the Roman legions, with in the present case the Goths replacing the fallen Roman soldiers. This development did not only hint at relying on less Romanized and therefore less reliable men (e.g., see Alaric) but also fundamentally changing the structure of the Roman army, with the contemporaries of Adrianople attempting to learn from the disaster by giving greater focus to cavalry and overall mobility (Nickel, 1973, p. 150).

Second, the Gothic refugee crisis exposed the *decay of the Roman model of society*. Long gone were the days of Roman cosmopolitanism and the first reaction of the Roman

⁴ The scouts had largely underestimated the number of Goths; modern estimates confirm Ammianus' narrative and place both armies at roughly the same number (Eisenberg, 2009; Goldsworthy, 2014).

authorities after Adrianople was to disarm and massacre parties of Goths throughout the Eastern Empire, including those who had stayed loyal to the Roman army (Goldsworthy, 2014). Aside from the growing xenophobia of the Roman society, the very fact that Lupicinus and Maximus were able to use bribery as blatantly as they did is indicative of a decaying Roman order in which social mobility had long since eroded. In a striking contrast with the Augustan Romans who displayed pride in serving their Emperor, the Romans of the 4th century A.D. thought about themselves first. Landowners, Brown (1967) explains, “shared a common human wish to avoid high taxation and knew well enough how to protect themselves against its incidence” (pp. 338–339). Valens’ jealousy and paranoia are also illustrative of the power politics of the time, with the stature of the Roman Emperor losing its prestige and a proven military record being enough of a reason for a general to overthrow the Emperor and taking over his place.

This kind of individualism is characteristic of the decay of the Roman social ladder and the emergence of a “top-heavy” society (Jones, 1986). Due to its overstretched territory and the growing pressure at its borders, the late Roman army and bureaucracy was so heavy that it ended up absorbing all the wealth that traditionally came from landed ownership. This negative development would encourage people to ‘play outside of the system’, using bribery and hostile political takeovers to aggrandize themselves. These opportunists would not only be found among the Romans themselves but also, and increasingly, among the refugees migrating in the Empire, with warlords emerging from their ranks. Again, the life of the Visigothic King Alaric exemplifies this pattern very well: a soldier of Fritigern, Alaric rallied around him veterans of Adrianople and caused massive devastation across the Empire, sacking Rome in 410 A.D., and carving out a quasi-kingdom in Illyria. Ironically, it is through his devastation that he was able to elevate himself and obtain various concessions and political titles (he had joined the Roman army in 392 A.D. with the hope of doing a career in the military but he had grown bitter against the Empire after being denied a promotion in 395 A.D. (Smith, 2020)).

What the Gothic refugee crisis eventually demonstrates through the ascension of warlords such as Alaric is the *irreversible decline of the Roman Empire of the classical era*. By negotiating on an equal footing with the Goths after a crushing defeat, Theodosius would upset centuries of uneven dynamic between the Romans and the so-called ‘barbarians’ and encourage the latter to replicate the achievements of the Goths and to try carving out their own domain within the Empire. In this sense, the Gothic refugee crisis served as a dangerous omen for the weaker and less defensible Western Roman Empire, which would soon be overrun by wave after wave of Germanic tribes in the great migration of the 4th - 6th centuries culminating in its collapse in 476 and the dissolution of the Western imperial court in Ravenna by Eastern Roman Emperor Justinian in 554.

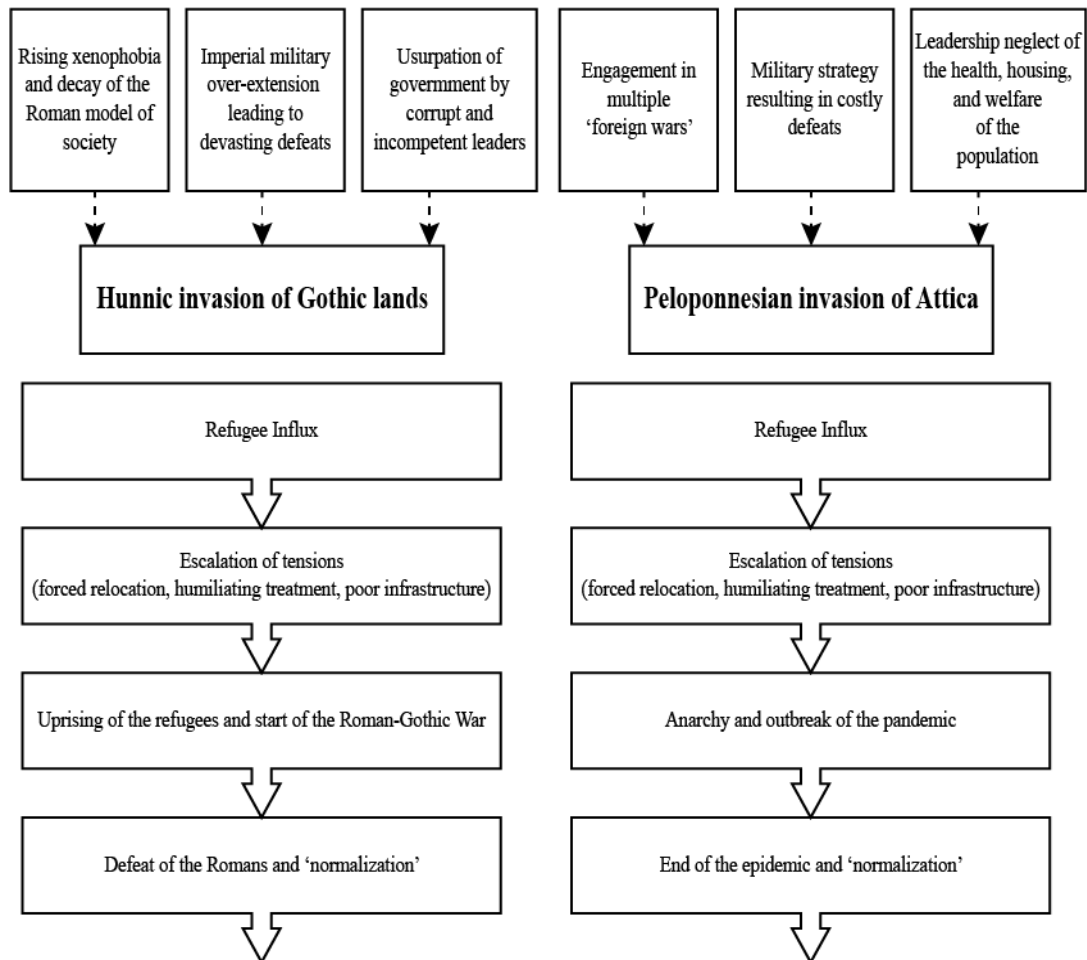
Assessment of the Findings: Some Lessons on the Value of the Contemporary Legal Acquis

It is remarkable to see how these ancient refugee crises mirrored each other in illustrating how seemingly minor refugee developments can fester into enormous political crises and generate significant impacts on the future of the two empires. Figure 1 showcases the similarities between the two crises. While the two crises ended with a *de facto* normalization, they also both unleashed dynamics that were particularly harmful to both empires. The Attican refugee crisis, by aggravating the outbreak of the plague, demoralized the Athenian society, lessened the likelihood of an early Athenian victory, and led its cosmopolitan democracy to be more receptive to demagoguery, xenophobia, and authoritarianism. The Gothic refugee crisis produced similar outcomes, with the disaster at Adrianople dealing a blow to Roman cosmopolitanism through its anti-Gothic massacres. Adrianople also opened a breach

to other ‘barbarian’ tribes seeking a place within the Empire. In both cases, there was a ‘before’ and an ‘after’ to the refugee crises.

Figure 1

When History Rhymes: The Pattern of two Ancient Refugee Crises



It remains unclear whether the two refugee influxes could have been avoided: while Athens would have needed to completely rethink its war strategy to protect the whole of Attica (Spence, 1990), Eastern Rome, even if it had rejected the Tervingi refugees, would have inevitably faced other refugee crises owing to the advance of the Huns. What however could most likely have been avoided is the despicable ways the refugees were treated in the two empires. Pericles could have better anticipated how overcrowded Athens would be and the health risks associated with overcrowding⁵. For example, Pericles could have ordered the relocation of some of the refugees to Athenian islands in the same way as he relocated the Attican cattle to Euboea (Martínez, 2017, p. 139). Valens could also have easily avoided the escalation of tensions with the Goths of Fritigern, had he had more competent administrators in place in Thrace. Perhaps even Valens’ presence when the crisis started would have helped. While Valens was not the most competent emperor and had all the negative traits to be expected from a leader with an “active-negative personality”⁶, he remained a “conscientious

⁵ The imposition of quarantines, both officially and spontaneously, indicates that the Athenians were knowledgeable of the connection between overcrowding and the spread of the disease (Martínez, 2017, p. 139).

⁶ Rourke (2007) defines a leader with “an active-negative personality” as follows: “The more active a leader, the more criticism he or she encounters. Positive personalities take such criticism in stride, but negative personalities

administrator, careful of the interests of the humble” (Hughes, 2013, pp. 191–193). If he had been the person directly in charge of marshaling the refugee influx, it seems unlikely that the situation would have escalated as badly as it did with greedy men like Lupicinus and Maximus taking advantage of the situation.

Athens and Eastern Rome’s failures reveal the value of key international law principles in addressing refugee crises triggered by military invasion. The first one of these principles is the inherent *dignity* of the human person, as codified today in the International Bill of Human Rights. If core human rights treaties stipulate that “all human beings are born free and equal in *dignity* and rights” (Article 1, Universal Declaration of Human Rights, 1948), they also emphasize the responsibility of all states to “ensure that any person whose rights or freedoms ... are violated shall have an effective remedy” (Para 3, Article 2, International Covenant on Civil and Political Rights, 1966). Special emphasis is dedicated to the right of everyone to an “adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (Para 1, Article 11, International Covenant on Economic, Social and Cultural Rights, 1966). In a context of refugee crises triggered by military invasion, refugee-hosting states are therefore bound to protect all human beings within their jurisdiction and to remedy to abuses that may have arise during the war or while settling here.

Neither the Atticans nor the Goths were treated with dignity by their ancient hosts, which only contributed to exacerbate resentment and anger among the refugees (and eventually anarchy for the former, revolt for the latter). Athens and Eastern Rome did open their gates to a significant influx of Attican and Gothic refugees fleeing the invading armies, thereby complying – at least mostly⁷ – with the Principle of Non-Refoulement, the Right of Asylum, and the Rule of Temporary Refuge⁸. However, both empires fell short of providing long-standing protection to the fleeing individuals, as the refugees were not provided with adequate health and food security. While the Atticans’ right to health was largely disregarded when Athens was under siege and hit by the epidemic, the Goths were deliberately starved out; in turn turning both populations against the host authorities. Both *the right to health* and *the right to food* are sanctified principles of modern international law. While health is recognized as a “fundamental human right indispensable for the exercise of other human rights” (Article 1, General Comment No. 14, 2000)⁹, the right to adequate food is also considered key. The latter is “realized when every man, woman, and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement” (Article 6, General Comment 12, 1999). In this connection, intentionally using starvation of

are prone to assume that opponents are enemies. This causes negative personalities to withdraw into an inner circle of subordinates who are supportive and who give an unreal, groupthink view of events” (p. 74). This definition matches well with Valens’ behavior prior to the battle of Adrianople: seeing enemies everywhere, including within his inner circle (Sebastianus); he only listened to the scouts that were giving him a positive narrative of his battle situation.

⁷ A reservation could be made in the case of Eastern Rome as the Greuthungi were not initially admitted.

⁸ The three principles belong to customary international law. The Principle of Non-Refoulement finds echo in Article 3 of the Convention against Torture, which states that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984). The right of asylum is recognized in the Universal Declaration of Human Rights (1948), Article 14(1): “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” Lastly, the rule of Temporary Refuge finds echo in United Nations General Assembly Document No. 12A (A/35/12/Add.1): Para (i) of Article (b) asserts that “in the case of large-scale influx, persons seeking asylum should always receive at least temporary refuge” (Temporary Refuge No. 19, 1980)

⁹ The General Comment was submitted by the UN Treaty Body for the International Covenant on Economic, Social and Cultural Rights (CESCR). The CESCR is a core UN instrument ratified today by 171 States.

civilians as a method of warfare – which is what the Eastern Romans did – constitutes a war crime that is today punishable under international law¹⁰.

The principles of humanity, also reflected in the Greek and Roman religions of the time, would have facilitated the management of the refugee crises and possibly even prevented the refugee influxes from becoming crises. Today, under the jurisdiction of the International Criminal Court, Lupicinus and Maximus would be treated as war criminals and they would be arrested for their outrageous actions. Frameworks such as the Human Rights Committee of the United Nations¹¹ would also have warned Pericles that even states confronted to widespread contagion cannot “derogate from their duty to treat all persons, including persons deprived of their liberty” (Human Rights Committee, 2020, p. 41). The Committee would particularly stress the importance of ensuring “the adequacy of health conditions and health services in places of incarceration” as exceptional measures cannot impede on the right to health of individuals within Athens’ territory (p. 42). If the authorities are unable to commit to measures proportionate to the health threat, a complaint may be submitted to the Committee. An inquiry procedure then unfolds and the Committee keeps the case under consideration until satisfactory measures are taken by the State party (OHCHR, 2021).

Two final principles of customary international law gain tremendous value when reviewing the two crises: the *principle of responsibility-sharing* and the *principle of access of humanitarian relief*. The principle of responsibility-sharing stresses that refugee protection only works with a sound level of participation by all countries. The countries to where refugees arrive first cannot be the only ones receiving refugees, every state “having differing capacities and resources” (Article 68, New York Declaration for Refugees and Migrants, 2016). One may thus wonder what might have happened, had Athens and Eastern Rome received the support of their allies in the reception of the refugees (Athens with its Delian allies, Eastern Rome with Western Rome). The principle of access to humanitarian relief also comes to mind when reviewing the two ancient refugee crises. Although customary international law does not prohibit military sieges, it does impose on besieging powers the obligation to provide access to humanitarian aid for the civilian population in need (International Committee of the Red Cross, n.d.). Retrospectively, the law would not only apply to Sparta during the siege of Athens but also to Emperor Theodosius when he waged his war of exhaustion against the Goths of Fritigern. Both powers would be required to maintain an unimpeded access or “corridor” for the passage of humanitarian aid for the civilians in need. This kind of assistance in turn may have helped de-escalate the two refugee situations, for example by mitigating the death toll of the plague in the case of Athens. To paraphrase the Brahimi Report¹², effective peace-building is contingent with the making of a demonstrable differences in the lives of the people and humanitarian relief, in this context, can help bridge the divide between refugees and hosting authorities.

From all these insights, it appears evident that our international legal *acquis* is relevant to address refugee crises triggered by military invasion. Two factors played an instrumental role in turning refugees against their host states in the two case studies: health and food

¹⁰ Para (xxv) of Article 8(b) of the Rome Statute of the International Criminal Court forbids states from “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions” (Rome Statute of the International Criminal Court, 1998)

¹¹ The Human Rights Committee is the UN Treaty Supervisory Body for the International Covenant on Civil and Political Rights (ICCPR). The ICCPR is a core UN instrument ratified today by 173 States.

¹² The Brahimi Report outlines the need for strengthening the UN’s capacity to operate a wide variety of peacekeeping operations (Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects, 2000, p. 7).

insecurity. Two additional factors aggravated the refugee crises: the lack of solidarity from neighboring powers and the lack of humanitarian relief. In this context, the developments in international law and human rights law provide effective mechanisms for the management of refugee crises triggered by military invasion, as countries are under scrutiny to ensure that their policies and practices remain consistent with international law principles. In turn, complying with these principles might help modern states ensure that they do not reproduce the same mistakes as ancient empires in their dealing with refugee influxes.

Conclusions

Mark Twain once said that “history doesn’t repeat itself, but it often rhymes” (Mark Twain, n.d.; as cited in Burleson, 2007, p. 23). The cases of the Attican and Gothic refugee crises confirm the line of Twain remarkably well. Although the settings, the people, and the host states were different, the pattern still rhymed: forced relocation in a war environment resulting in anarchy or revolt in the host country, due to poor treatment by the host authorities. Even the consequences of the two refugee crises were highly alike for both empires: structural weakening, erosion of the model of society, and overall decline. The article thus confirms the nexus between refugee influxes, poorly managed integration policies, and the undermining of ancient civilizations. It is evident that both the Attican and Gothic refugee crises could have been better managed and that the two empires’ failings had broader consequences on their political future.

The modern reader would be wrong to regard the Attican and Gothic refugee crises as episodes of a remote past that became irrelevant with the passing of time. In fact, reviewing these two refugee crises and their contextual situations with key international law principles reveals the value of our contemporary legal *acquis* in addressing refugee crises triggered by military invasion. The right to health, the right to food, responsibility-sharing, humanitarian relief; all these principles would have been relevant to help Athens and Eastern Rome manage the refugee crises of their time. In turn, the codification of these principles in contemporary international law demonstrates that these principles continue to remain relevant to address today’s refugee crises.

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