REVISED PRINCIPLE OF NON-REFOULEMENT. FROM JUSTICE BETWEEN STATES TO JUSTICE FOR REFUGEES[1]

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Abstract
Most philosophers concur with granting refugees a fundamental human right, in line with the Kantian hospitality principle, to sojourn in other territories temporarily and also more permanently, including a lifetime. David Miller argues that when it comes to protecting human rights, states' actions should reflect primarily the 'terms' of states, as they see fit; furthermore, states do not have a duty to automatically admit refugees, if for example, other similarly well off states can admit them, and the principle of non-refoulement is fulfilled (Miller, 2013). Miller rules out the theoretical possibility of human rights violations, in claiming that a state can deny entry to refugees, only if they are not returned to the country of origin and third countries where their human rights will be violated, and provided that some other state would take charge of them. Miller's state-centrist view, assuming the point of view of states primarily, and second, assuming that the only theoretically salient feature is when refugees do not receive admission and *minimal* protection, has pernicious implications. As an alternative, I argue that human rights are possible primarily when we view their defence as a primary moral concern, rather than instrumental and contingent upon what states see fit. I propose instead a philosophical view that genuinely assumes and acts upon the needs of refugees primarily, in both being admitted and rejected to sojourn in new territories.

Introduction

Most philosophers concur with granting refugees a fundamental human right, in line with the Kantian hospitality principle, to sojourn in other territories temporarily and also more permanently, including a lifetime. The principle is incorporated in the Geneva Convention on the Status of Refugees, as the principle of "non-refoulement" (United Nations, 1951), obliging signatory states not to forcibly return refugees and asylum seekers

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to their countries of origin, if doing so would endanger their lives. Furthermore, asylum seekers' and refugees' claims to admission and more broadly to human rights protection are legally incorporated in the international human rights regime, and subsequently accepted by states (Benhabib, 2004).

The fundamental human right to admission regards the admission of the asylee and refugee, and not that of immigrants whose admission remains "a privilege", in the sense that it is up to the sovereign to grant such a "contract of beneficence" (Benhabib 2004). David Miller argues that when it comes to protecting human rights, states' actions should reflect primarily the 'terms' of states, as they see fit: "your human right to food could at most impose on me an obligation to provide adequate food in the form that is most convenient to me (i.e. it costs me the least labour to produce), not an obligation to provide food in the form that you happen to prefer"; furthermore, states do not have a duty to automatically admit refugees, if for example, other similarly well off states can admit them, and the principle of non-refoulement is fulfilled (Miller, 2013). Miller rules out the theoretical possibility of human rights violations, in claiming that a state can deny entry to refugees, only if they are not returned to the country of origin and third countries where their human rights will be violated, and provided that some other state would take charge of them. Miller's state-centrist view, assuming the point of view of states primarily, and second, assuming that the only theoretically salient feature is when refugees do not receive admission and *minimal* protection, as a result of which their human rights are violated, has pernicious implications. As an alternative, I argue that human rights are possible primarily when we view their defence as a primary moral concern, rather than instrumental and contingent upon what states see fit. I propose instead a philosophical view that genuinely assumes and acts upon the needs of refugees primarily, in both being admitted and rejected to sojourn in new territories.

Since an adequate baseline from which to judge the justice of the distribution of refugees between states is still lacking, any new patterns of movement we might advocate creates possibilities for new unjust distribution patterns, a normative scrutiny that takes into consideration justice to refugees (besides justice between states) is of paramount importance. In this paper I argue that from a perspective of justice any responsibility-sharing model between states, will prioritize justice to refugees. In the first section I revise the principle of non-refoulement and

argue that due to the principle lacking specific guidance regarding refugees choosing their destination country, the discussion is carried further in view of justice and leaves room for the state having a *qualified* right to decide in its own terms. In the second section, I explain why engineered regionalism is problematic from a justice perspective, not merely because it allows for poorer state to take unjustifiably more responsibilities, but because they unjustifiably offer refugees a scarcer protection (including lack of it). Models of responsibility-sharing are all based on the presupposition that a right to free movement is what will entitle the refugee to (re)- settle to the country of one's choosing, whereas this right is grounded on a philosophically informed principle of non-refoulement (as the 'fire' illustration proves). I attempt in to propose the latter principle should inform any model of distribution of responsibility.

1. Principle of non-refoulement and Human Rights

It is useful to theoretically scrutinize and philosophically qualify the principle that entitles refugees to claim asylum and to receive hospitality in more secured states and access substantive rights and protection: the principle of non-refoulement. Broadly, the principle prescribes that no refugee (qualifying as such) should be returned to any country (including his own) where he or she is likely to face persecution and torture. Like Miller (2013: 10), I adopt a wider understanding of the principle, prohibiting states to return anyone whose human rights are at risk[2]. The literature indicates that the principle of non-refoulement is a *general* one, which does not say much about which state should bear which costs for the refugees' hospitality, or the refugee's hospitality itself. The principle does not specify which rights and in which forms these rights shall be fulfilled by states. For example, Syrians are enjoying non-refoulement in Turkey, in the sense that most of them seeking asylum are admitted into the territory, but the 'geographical limitations' that Turkey maintains does not entitle non-Europeans, such as Syrians, to access rights that Turkey is obliged to maintain towards European refugees only, by the treaties it signed. This means that treaties other than the non-refoulement principle itself will bind a state to respect rights, and these treaties are not signed by all states: some may sign some, and some may sign others, at their discretion. For example, the Union of South Africa[3] failed to sign the 1948 Universal Declaration of

[2] Guy S. Goodwin-Gill (2d ed.1996)

[3] "The Union of South Africa abstained from approving the document, which it knew the United States would use to condemn South African practices of apartheid and racial

Human Rights for quite some time. Some speculate that the United States would have condemned the practices of apartheid if South Africa had signed.

Whereas Turkey's open borders policies respect the non-refoulement principle, empirical investigation may suggest that the human rights regime Turkey is able to provide to the refugees might be limited.

Furthermore, if the fulfilment of the non-refoulement principle were understood as going hand in hand with a *specific* range (or standard) of human rights, obliging states to respect and uphold these in line with the non-refoulement principle, human rights suffer the limitation of being *non-content-specific*[4].

The theoretical structure of the principle of non-refoulement, and human rights- that pose some challenges as to how this should be implemented politically and legally- seem therefore to be: generality, non-content-specificity, unspecified range of human rights. These features are what allow current states to deal with the refugee issue *politically* for the most part, rather than prioritizing the humanitarian concern, and without being held responsible for a clear violation of some principle, or specific human rights. It can *de facto* lead to the scenario of 'regionalism', according to which some countries, usually the world's poorest, bear the most costs, whereas Western powerful countries bear virtually none or very little. The current Syrian refugee crisis seems to fit this type of reality[5].

Since the guidance of human rights discourse on how to best deal with refugees' crises, such as the contemporary Syrian one, is insufficient for the described limitations, criteria of justice must also be utilized in order to

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discrimination" CCNMTL. Center for Media Teaching and Learning, Columbia University. http://ccnmtl.columbia.edu/projects/mmt/udhr/udhr_general/drafting_history_10.html

[4]Miller's example (2013) describes the concept of non-content-specificity in the following illustration. Your need and respective right to food places a burden on my state to provide the food it can and want to provide, i.e. in the form it is easier for the state to produce, but it does not place a duty on the state to provide a specific food, for example, the food you might prefer.

[5] The "Syrian refugee crises" can safely be conceptualized as an "engineered regionalism" model (Gibney 2009), according to which the most conspicuous number of refugees ends up seeking refuge in the region of their origin. He uses the term of 'burden-sharing' to call for a more just distribution of the responsibility-taking between states. I will use the preferable term "responsibility-sharing", which is interchangeable in this context.

address this gap. I shall return to this point in the next section, in which I address the argument for justice among states and towards refugees.

The non-refoulement principle does not assess whether refugees could be resettled in countries of their own choosing, due to the states having the ultimate legitimate right to decline, diverge elsewhere (to some other secure or equally equipped countries) or downsize inflows of refugees. A state accordingly could deny the entrance of refugees by two strategies, both non-violations of the non-refoulement principle. Firstly, it could deter the arrival of refugees at the border via policies or via requesting acquiring a visa beforehand (this is possible particularly because of geographical distance). In this sense, a state, which declined the visa to a refugee applicant, *technically* fulfilled the non-refoulement principle, because the refugee never made it to the territory to be sent back to the dangerous place he or she comes from. Second, as in the case of Turkey, a state fulfils the non-refoulement, but it might not be the "best" or "good enough" state to ensure the bundle of human rights[6] to millions, or might not be under such legal obligation because it didn't sign the treaties designed to ensure a range of rights to the refugees (as in the case of European and non-European Refugees)[7]. Generally, although the fulfilment of the principle of non-refoulement is thought to be independent from the other human rights[8], it is considered 'effective' when it enables and lays grounds for upholding a range of human rights. It would be morally *void* if one refugee were expatriated to a new place where his fundamental human rights (or some of them) are still threatened or directly violated. It would also be morally *void* if refugees were hosted in a country where other threats and human rights are violated. Furthermore, if we find morally regrettable in the regionalism model that refugees generally receive the worst or a worse protection than elsewhere, we subscribe to the fact that morality demands

[6] This can be thought as lacking of capacity to ensure generally to refugees or non-refugees a range of human rights, but it can also be thought of not having the political will to doing so, but admitting refugees for other concerns than humanitarian ones.

[7] See Metin Chorabatir, (supra note 11)

[8] Fulfillment of the principle requires that refugees shall not be returned to the place they come from or any other place where their human rights are violated. If this is not the case, then the principle does not provide any guidance on where refugees shall be resettled, and whether refugees have a say regarding a new prospective country, etc.

refugees receiving *as good as possible* range of rights at least[9], and if necessary, elsewhere than in the first country hosting them.

Although the principle cannot assess many of the issues needed to qualify it, most would agree with the following proposals to be necessarily fulfilled in order to be "efficient"[10]. For the principle of non-refoulement to hold upon settling or re-settling refugees to third countries:

1) Human rights are not violated and the conditions of life are not below a minimum level (shelter, subsistence, basic medical care.
2) If they are re-settled in some other country, refugees should not face new forms of persecution, or other basic rights should not be violated.
3) Long term view: refugees should be provided the opportunity to return to their states when the conflict is over, and they should also have the opportunity to integrate and build a new life in the hosting country. Protracted 'limbo' situation also threatens human rights.

From a human rights perspective, we cannot settle one particular question: should a refugee be settled in the country of his or her own choosing? Is there a human right to move to the country of one's choosing? The principle of non-refoulement does not specify whether refugees could choose the place to be settled, but also does not say that they should not choose. It only makes the case that refugees should be resettled to a 'safe' place, whichever this is.

According to some (e.g. Gibney 2009; Miller, 2013) who adopt the view that that refugees have no such right to choose their new destination, the theoretical focus shifts to the problem of justice between states, rather than justice to refugees[11]. Both authors provide two main independent, yet

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[9] Or the best possible human rights protection, if one takes a generous account. But in this case, 'as good as possible constraint' is a sufficient condition for the sake of argument, and does not preclude the possibility of 'the best case scenario' being the preferred one.

[10] By 'efficient' I shall mean that the principle is not considered fulfilled simply because it was not violated, like in the case of placing visa restrictions that impede refugees to even approach the interested territories. It is efficient with regards to the 'destiny of refugees' that manages to better via the principle's implementation.

[11] It is not the case that denying that refugees choosing to move where they want entails necessarily approaching the issue of refugees distribution from a state-centrist view. One can deny in theory that refugees have a choice on their destination, and advocate a system that is primarily focused on justice to refugees over justice between states. The reason I take it this way is because this is how the issue is framed in the literature.

interrelated arguments against the refugees' moving to a country of their own choosing.

First, refugees choosing their own country could give rise to other forms of injustice, for example, if many of them were to choose a specific country. In such case, refugees' choice will not be made on criteria of justice between states, inter alia state's will, GDP, population density. This theoretical possibility exists, but it is an empirical claim. In the current world, if refugees chose a Western country as their destination, this would also contribute to justice between states because the burden would be moved from poor countries shown to be overburdened, and Western countries that notably take much less of the burden share in *absolute* and *relative* terms[12]. But in face of this theoretical possibility, one might place some limitations to this possible scenario, for example, might say that whereas one country, e.g Canada, has reached its capacity limits (let us say that we establish some standards that all states agree on), it is another country's turn, e.g. USA, to do their share and take to incoming refugees in need of shelter. One might argue therefore in favor of a 'negative' limitation to the argument, rather than a positive argument: since this is an empirical possibility, we theoretically do not rule out that refugees have the right to a choose *tout court*. Furthermore, this empirical claim (as a positive argument) could stand if refugees' choice of a new country were an 'absolute right', namely trumping all reasons that states could provide for declining their settlement. Against Miller and Gibney's views, until this right is proved to exist and be so binding, we might as well accept refugees' choice of destinations, and back up their choice with just criteria informing a system of responsibility- sharing to rule out possibilities of

[12] There are difficulties in judging whether absolute numerical division is key, or other relative burdens are at stake as well. "If we make simplistic assumptions that a just refugee regime would involve state refugee burdens correlating to a country's GDP, we have a palpable injustice in relations between states. But is this assumption warranted? While most people would reject an approach demanding simple numerical equality in the distribution of refugees across states (Luxemburg and the United States each accepting 50,000, for example) because it ignores the *relative* burdens of countries, the factors that ought to be included in determining a just distribution are highly contestable. GDP or state wealth may be pertinent considerations, but so too might factors such as country's population sixe or density, ethnic connections to the incoming refugees, etc. The attempt to determine what a just burden would look like is thus somewhat an arbitrary activity. Moreover, the determination of these burdens should occur only after allocating the special responsibilities of states to particular groups of refugees, notably those that they have harmed or otherwise played a part in generating"(Walzer 1983, Gibney 2004), in Gibney 2007, p. 66.

overburdening unjustly new states. Theoretically this empirical scenario seems viable in ensuring more protection for refugees, moreover preferable from a point of view of justice among states as well in the current world[13].

Second, the normative argument is: if there is an 'absolute' right to move across international borders of one's choosing, new states will be overburdened, and new injustice to states (and their own citizens) and perhaps, as a result of state's incapacity to settle all newcomers, to refugees themselves. But normatively no such right of freedom of movement exists.

Most theorists would claim that in order for refugees to move to a place of their own choosing, there should be a 'general' (for *everyone*) and 'absolute' right to free movement across international borders that states must observe, or in other words that trumps the state's authority limiting their crossing into its territory. Miller (2013) finds that since there is no such right to freely move across borders for migrants, which regards refugees as well, they cannot move to the country of their own choosing, but they move to countries *willing* to taking charge of their human rights protection.

This is one of the most recent contemporary debates on migration[14], and has not been settled conclusively. Miller's argument (2013, 2005) that a 'range of sufficient options' provided to refugees by other states is a good reason for a state to exclude outsiders in general, but it does not stand in the case of refugees given that we take the latter to have lost everything, and their human rights are threatened in the country of origin. The refugee's case is based on non-refoulement, and it is not based on a right to freedom of movement. Furthermore, in the regional refugee model, which I shall recall, the refugees are confined to seek asylum in their own region and rarely beyond it, and the quality of their protection in neighbour countries is among the worse they can receive. Therefore, empirically, it is not the case that refugees receive a decent range of options in the current arrangements.

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[13] I assume that refugees might choose to move to Western states, and that generally Western states, besides notably Sweden, accommodate a very trivial number of refugees compared to some of the poorest states in the world, on which the heaviest burden falls.

[14] Turculet, 2015, "Migration and States Borders. Which *facts* to complement the Normative Desiderata?", presented in The Philosophical Society of South Africa 2015 Conference, Nelson Mandela University, January 2015.

Miller's argument, however still stands, and goes further in claiming that since there are other states equally well equipped (for example, other Western states) to provide assistance to and protection for refugees (or, a range of options), why shall one particular state be in charge of it? This is a legitimate question the given state and its own citizens might ask.

Gibney (2009) and Miller (2005 in Gibney) appropriately claim that nothing in the literature, both philosophy and international law, allows for refugees to be settled but in a 'safe and secure' place, which normally would not be the place of one's choosing. And further, since there is no such right, understood as to affect *everyone*, and to be *absolute* for migrants or refugees to move elsewhere, such a right to choose *where* to move is even less justified if this comes to exacerbate justice among states (or some burden-sharing pattern that would alleviate injustice between states).

However, both Miller and Gibney contend that compatible with the lack of such right of free movement, there are other moral considerations to ground refugees' (and migrants' alike) right to choose their host country. The right to join one's family and continuing to reside in the country where one has made one's life over many years, for example, are independent moral claims that might ground the right of choice of one's country. Furthermore, other pragmatic reasons why refugees should choose their destination is that they have a fairly good idea as to where they will integrate much easier, flourish best, which will benefit them and the host society (Gibney 2007: 72). This line of argument suggests that there is no need for an 'absolute' right for everyone to move elsewhere across international borders, in order for such moral claims to stand against the authority of the state. If we add more moral claims to thicken the argument in favor of why this must be a viable solution for states (e.g. they are also benefiting in justice terms), and to qualify refugees' right to choose one's settlement, it proves that a *qualified* right (as opposed to absolute right) of refugees to choose would be sufficient to trump the legitimacy of the state to determine the rejection of a refugee claim.

Furthermore, it is worth inquiring about the type right states have in determining the rejection or acceptance of a migrant. Joseph Carens advocates for a right to free movement, as a justice-based argument. His argument does not explain how a justice-based argument in favor of free movement trumps authority-based arguments, and results in authority-limiting principles (Christiano, 2014). I approach the argument from two

angles: a strong one, advocating a state authority-limiting principle granting refugees' entry and a weak one, according to which there are moral considerations grounding the non-refoulement, but these do not lay grounds for the latter to be an authority-limiting principle.

To begin with the first, without proving how the moral right to free movement might become a viable right that trumps the authority of the state to determine its immigration policies, we may embrace the idea that the right that states get to determine who enters their territories is a qualified right, rather than an absolute one (Fine & Sangiovanni). Andrea Sangiovanni and Sarah Fine argue that some of the more compelling arguments grounding the right of a state to exclude are weak arguments, therefore they conclude that the right of a state to exclude is a weak right as well, and in need of qualification, rather than such as expansive right as Miller portrays it. Others, like Michael Blake, ground the right to exclude in the right to avoid becoming the agent charged with the defence of another's human rights, unless there are such moral reasons one ought to become so charged (Blake 2014). All these accounts[15] leave room for a qualified right of state to determine its immigration policies insofar as excluding or welcoming outsiders. They question *the strength* of this right, and the extent to which states have a right to exclude, rather than *whether* the right exists in the first place. However, I argue that when it comes to the refugee issue, the case for not excluding refugees, and taking their claims as *prima facie* qualified is much stronger than any other categories of migrants.

It is of paramount importance to notice that *all* states are signatories of treaties, therefore morally and legally bound to observe the principle of non-refoulement, which I take as a fundamental *instrument* to ensure the protection of human rights of refugees. This principle grants refugees admittance into *a* state territory, and their relocation to third states is allowed only if their rights will be respected in those states. States are not equally signatories of treaties binding states to admit migrants, as migrant's human rights, although of those in extreme poverty might not be intact, generally are not violated. There is *no prima* facie obligation on the international community (understood as states and their citizens) to open their borders to migrants[16]. While there might be an obligation to alleviate

[15]Including Miller's view, which I take as the one mostly in favor of an absolute right of state.

[16]Unless Carens is right about a human right to free movement, which we took that it is not the case.

human suffering in third countries, this does not become a right to immigrate to another country, but might as well become (preferable to many, and myself) a right to be assisted by the international community in the country of origin. There is, however, such an obligation that states have undertaken with regards to some *trans-boundary* issues, such as climate change, refugee protection. (Christiano 2014)

2. The "pure" case of non-refoulement

Consider the following illustration[17]. If my household is not as wealthy as my neighbors, Eylem and Murat's households[18], (this alone does not entitle me to jump from my window into one of their flats (move in there, making use of their living space.). Besides infringing on many of their rights (e.g. property, privacy, association rights), if I moved into one of their places without their permission, I, in the first place, have no such right to enter *someone*'s flat. However, if I have a fire in my place, and in order to save my life I need to jump into one of their places from my back window, I have a *prima facie* right to do so in order to save my life. My neighbors, Eylem or Murat, would then be morally responsible to not let me perish in the fire, therefore allowing me to jump from the window into their place[19]. For Eylem to say "I am sorry, I will not host you!" she would have to convince Murat instead to take charge of hosting me.

This analogy portrays the difference between the lack of *absolute* and *general* right to move to someone else's country in the case of socioeconomic disparity, contrasted with the prima facie *qualified* right to move elsewhere in case of life, bodily integrity (or other basic rights) under threat[20].

Furthermore, it establishes that there is no need for an 'absolute' and 'general' right of movement across borders for the qualified right framed as

[17] I am aware that this illustration might be rejected for the same reasons some associative accounts equating private clubs or social aggregations to states are rejected. The reason I am portraying the illustration in those terms is to simplify the illustration and keep it intuitive. If it is easier for the reader, he or she can take Murat to be Canada, Eylem the US, me in socioeconomic disparity a migrant, and me in the fire a refugee.

[18] A clarification: Murat and Eylem live in separates flats, at equidistance from mine.

[19] This implies they neither forcibly return me to the flat on fire, nor discharging their responsibilities by pushing me to the street

[20] See Seyla Benhabib, 2004: The fundamental human right to admission regards the admission of the asylee and refugee and not that of immigrants whose admission remains "a privilege", in the sense that it is up to the sovereign to grant such "contract of beneficence".

the non-refoulement principle to exist. Those are separate debates; therefore, whether the first right exists as a human right has little bearing on whether the second exists. In fact the lack of the one doesn't imply or demean the existence of the other. However, based on the non-refoulement principle granting my qualified right to move to one of my neighbors' places, the question still awaiting an answer is: is my right further qualified to allow me the choice to move to Eylem's rather than Murat's place (granted that they are equally well equipped to receive me)?

Note that the question is not *whether* I have a right to move elsewhere in case of fire, but whether the right I have is more extensively qualified to allow me *a* further choice to the one to move, which is *where* to move: having the choice between my two neighbors[21]. In this sense my right is authority-limiting on my neighbors' end[22].

The principle of non-refoulement, however, provides no guidance for whether I can or cannot choose between Eylem and Murat. Due to these limitations, the debate must be carried on not as a human right discourse *proper*, but as a justice-based discourse. Murat and Eylem, who start from an ideal 'even' situation, will be unevenly affected by taking charge of me (supposing one of them hosts me), and they might have justice-based claims against it, as I would. To this latter question Miller and Gibney reply that where I move is not up to me, but it should be based on which state (neighbor) is best equipped to receive me; hence their view does not apply to the case in which both neighbors are equally well equipped to host me, in relative and absolute terms. This implies that justice between the two neighbors may be satisfied in two ways: either i) they toss a coin to decide who takes charge to host me, or ii) I get to choose the one I want to stay with, say Eylem over Murat. I argue that the second option is the morally desirable one. For this point I pass to evaluating the second (weak) argument.

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[21] The reader might think that in case of fire, the victim might as well go in the street and then the state of social services will allocate her to some household willing to take her. I reject this possibility as the neighbors in my illustration represent states. In today's world, a world of states, there are no such empty spaces available, and so exiting one's flat implies entering someone's flat, just as exiting one's state implied entering another one.

[22] The neighbors have a duty to assist me, otherwise the non-refoulement would be ineffective by the criteria specified in section two.

The second weak argument, according to which there is no authority-limiting principle, but there are moral considerations at stake regarding the refugee protection, the non-refoulement principle does not say much about refugees choosing their new country of settlement, and it does not say anything against it. It is worth exploring some more moral considerations that would grant that this principle is best fulfilled when a choice on the end of refugees takes place. Furthermore, this implies that justice to refugees is a prevailing consideration over justice between states (in the sense that the former informs the latter).

Going back to my illustration, if Murat and Eylem tossed the coin and decided that I should go to Murat's place, this would leave me no chance to say that I am afraid of the dogs Murat has in his flat. If the choice belonged to them only, my fear[23] (which some would equate to human rights violation, if properly grounded) would be ignored. One main problematic implication about the fact that they are the only choosers – and with the argument prioritizing justice between states (e.g. as argued by Miller, Gibney)- is that a perfectly just distribution (due to the arbitrariness of the coin toss) among states can leave fatal room for human rights violations, and therefore for inefficient fulfilment of the non-refoulement principle.

I am inclined to take an extensive range of moral considerations to count as 'weak' reasons (in the sense that they are not state authority-limiting considerations) nonetheless add to thickening the argument for extending the 'right to move' to '*where* to move'.

[23] I will qualify this 'fear' in one way, but one can think of many ways in which it can be conceptualized, and which can be spotted only if the justice discourse places an important priority on the refugee's choice. One might feel mildly discriminated in one place, and might feel fear to ever express her opinions, and therefore, in one word feel unwelcomed or not sufficiently welcome to flourish as if she would in the alternative place, to the extent that this mild feeling would produce her discomfort and would prove detrimental to a conviviality between refugee and hosting parts. Notice that this would lead potentially to disadvantage parts, refugee and host, but it is quite possible that the latter is not affected, whereas the refugee is. In such a scenario, it is obvious why the choice on the side of the refugee needs be safeguarded from a justice perspective, particularly if no injustice is produced between the two prospect hosts (Murat and Eylem, or Canada and the USA), and last, if some more benefits in terms of justice are added to everyone at stake (hosts and refugee).

Refugees have the right to choose[24] A option over B option:

(1) If the refugees' human rights are not properly observed in country B (e.g. regional models)
(2) If country A has better human rights standards than country B (granted that A and B are equally well equipped)
(3) If the refugees' choice of country B does not upset the justice level between country A and B, and if it provides more justice between them.
(4) If there is ideal equality between states A and B (say in resources, population density) like in the 'pure' case presented, the refugees choice is preferred to the arbitrary coin toss, if (1), (2), (3) are also fulfilled.
(5) If the refugee has relatives in country A, or has lived in country A for a sufficient time to have meaningful ties to it.

As argued earlier, there is no reason to build a positive argument against any of these points on the assumption that any of these could exacerbate justice between states. In the face of this theoretical possibility, one might

[24] Not every reason the refugee provides is a valid reason, of course. It is useful to distinguish between three main categories, out of which only the first two, in my view, can ground refugees' choice for a destination from a justice perspective. 1. Human rights-based reasons related to the quality of the protection they might receive in a given state. (If country A can offer a better protection because besides the absolute and relative equality with country B, the former has a tradition and culture of offering shelter, better procedures in place to deal with such situations); 2) quasi-human rights-based arguments also related to the quality of protection (some might qualify as human right proper, some might not, the 'fear' taken in the illustration, or the feeling of cultural affinity or lack of it which might make the refugees feel unwelcome; 3. Mere preference argument, such as the refugee preferring country A to B based on linguistic preference (French versus English), the climate.

Now, if we take the point of view of fair distribution between states we might ignore these three points, whereas giving up on the points one and two is morally condemnable. One of the problems that some, including Gibney, seem to find morally regrettable when it comes to regionalism is that the quality of protection is lower in the neighboring countries in the region than if refugees were settled in third more developed countries. The way he chose to tackle this problem is to claim that a fair distribution among states will conjecturally lead to justice to refugees. But this is not the case if we do not uphold the 'quality of protection', and the 'quasi-quality of protection' arguments. As I have argued, this conjecturally might happen, yet the focus on justice among states does not provide arguments for ensuring justice to refugees proper. Thus it is plausible that justice among states might take place without justice to refugees taking place as well. For it, we might have to allow the point of view of refugees into place, primarily or going hand in hand with conceptions of justice of responsibility distribution among states.

as well imply a 'negative' limitation, namely constrain any of these points in the moment in which there is a shown state's capacity limitation, or even better, there is a standard of responsibility sharing that best reflects justice between states to impose a justice-based constraint to these points.

I now discuss the question of which responsibility-sharing solutions among states in line with justice criteria that, unlike engineered regionalism, better reflects justice to refugees, and between states. I have argued that although responsibility sharing concerns alone were a justice concern, on the premise that guaranteeing more justice between states is what *de facto* will also guarantee justice to refugees, runs into the limitation that justice between states, even when ideal, can leave room to injustice to refugees. By claiming so, we do not abandon the idea that a responsibility-sharing model between states in line with justice criteria is needed, but that a burden sharing model, biased by the state-centrist approach taking justice between states as the main concern of justice, suffers limitations.

One such limitation of these accounts focusing primarily on justice between states lies in not explaining properly why the need to abandon regionalism models is because we find regrettable that refugees receive a worse human rights protection than the one they would receive in wealthier states. Their argument, of course assumes that justice to refugees must be done and that this is the ultimate goal, yet it does not explain what is to be done if perfect 'ideal' equality among states does not lead to 'as good as possible' justice to refugees (as the flat on fire illustration proves). The protection of the latter's human rights comes in degrees[25], and some states are better ranked in providing assistance and others are ill equipped. If we do not provide an argument for why justice to refugees is of priority over that of states (in the sense that the former shall inform normatively the latter), we leave the possibility for a much weaker human rights protection, in terms of 'quality protection'[26], which I argued, is morally impermissible not only for the states themselves, but for the refugees. This leads to an inefficient fulfilment or undermining of the non-refoulement principle, which does not require simple admittance into a country, but the opportunity to lead a

[25] Protection seems to be viewed in Miller (2013) as rather an on and off, receiving or not receiving, protection, when he thinks of the protection as a 'minimum'. Against his view, even 'a minimum' comes empirically in degrees.

[26]Similarly to what happens in today's world, in which poorer states take heavier or the heaviest burdens, e.g. regionalist model.

minimally decent human life (Miller, 2012: 407-27).[27] Secondly, without the idea of a need of 'quality' of protection of refugees' rights in their 'as good as possible' form (on whatever standards we take as best), we would have no interest in finding 'better' solutions for the refugee system once it satisfies justice between states and somehow approximates or is far from the justice to refugees. Moral and pragmatic reasons, therefore, stand for safeguarding the need of advocating primarily justice to refugees, or keeping this premise in mind when discussing justice between states.

Concluding reflections

In this paper I provided a negative argument for why a philosophical view scrutinizing the protection of refugees' human rights must be concerned primarily with justice-based arguments related to refugees, which should inform arguments for justice between states. This is because justice between states (some equal distribution of responsibility) may not imply justice to refugees. We cannot posit much about justice between states, as they are *prima facie* obliged to honor the commitment to the principle of non-refoulement, and it is on this basis that we judged their performance: the quality of offering protection to refugees, rather than the just distribution among states. Secondly, I provided a positive argument (section two) advocating that the refugees' choice of a host country is what grounds the principle of non-refoulement. If this proposal is convincing, it is further promising to solving the problems the non-refoulement principle is affected by, mainly the 'generality' problem. The principle does not provide guidance on whether the refugees should choose their host country, and which country has the duty to admit refugees or compensate for not admitting any. Currently, there is no other convincing way to ground the principle of non-refoulement, but geographical proximity: when a refugee arrives at the border, this country cannot send him back, and can only send him to a third country after finding one. There is another viable solution, and is the one I propose: refugees themselves apply to the country they want to be resettled in and their choice justifies that this given country has the duty to non-refoulement towards this specific refugee (or else it needs a justice-based justification for denying it). I see this as a viable proposal avoiding the state legitimately claiming 'Why me, and not country A, B, or D?'

[27] David Miller (2012)

Last, as Gibney puts it, some might find the ethical approach to the *refugee issue* an indulgent exercise, given that states act *politically* and purposely disregard moral and philosophical standards. My reply: It might be true that states have other interests than acting justly, but since the refugee system as it is does not show signs of longevity and viability, we will soon need new solutions, which have not yet been found. This is strictly what states seem to need (and have in their interest) to be indulging in.

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