


The ethics of refugees

Matthew J. Gibney 

University of Oxford

Correspondence

Matthew J. Gibney, Professor of Politics and Forced Migration, Refugee Studies Centre, ODID, University of Oxford, 3 Mansfield Rd, Oxford, OX1 3LA, UK.

Email: matthew.gibney@qeh.ox.ac.uk

Abstract

In the face of the desperate plight of refugees, virtually all moral and political philosophers, regardless of their general position on immigration controls, argue that states have a duty to grant asylum: people must not be turned back to countries where they would face persecution or severe human rights violations. Yet this consensus obscures a number of thorny ethical issues raised by the plight of the displaced. In this piece, I want to draw from recent writing in political and ethical theory to bring some of these issues into view. I start by considering what a refugee is, before turning to the question how the obligations of political communities to the displaced are grounded. I then move to consider what societies owe to refugees and the question of international justice in the allocation of asylum. I conclude with a discussion of the moral responsibilities of refugees themselves.

1 | INTRODUCTION

The problem of the refugee is one of the central moral issues of our time. Almost 70 years on from Hannah Arendt's famous observation that the refugee is the "most symptomatic group in contemporary politics" (Arendt, 1986, p. 277), the displaced are seemingly everywhere. The sight of desperate people from conflict-ravaged countries attempting to reach the safety of Europe by boarding unseaworthy vessels, scaling barbed-wire fences, and secreting themselves in the backs of lorries or underneath buses and cars has become the staple of daily news bulletins. According to the United Nations High Commissioner for Refugees (UNHCR), there are almost 30 million refugees in the world, only a fraction of whom reside in Europe. The vast majority are in countries of the global South, which border the states that produce displacement. Many of the world's refugee find themselves in camps and detention centres; most have been in exile for over five years without genuine asylum or any possibility of repatriation (Milner, 2014).

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In the face of refugees' desperate plight, virtually all moral and political philosophers, regardless of their general position on immigration controls, argue that states have a duty to offer asylum: people cannot be forced back to countries where they would face persecution or severe human rights violations (Carens, 2013; Gibney, 2004; Miller, 2016; Price, 2009). Yet this consensus obscures a number of thorny ethical issues raised by the plight of the displaced. In this piece, I want to draw from recent writing in political and ethical theory to bring some of these issues into view. I start by considering what a refugee is, before turning to the question how the obligations of political communities to the displaced are grounded. I then move to consider what societies owe to refugees and the question of international justice in the allocation of asylum. I conclude with a discussion of the moral responsibilities of refugees themselves.

What I provide here is an introduction to some contentious ethical issues relating to refugees. Philosophical writing on refugees has flourished in recent years, and I cannot hope to do justice to the range of subjects it has considered. I do aspire, however, to give a sense of why, in spite of the general agreement on the state duty to provide asylum, many of the issues raised by responses to refugees are contested. These complexities suggest that the evident inadequacies of current international responses to refugees are grounded not only in a failure of political will, but also in principled disagreement on what are the sources of obligation to refugees, what is owed to refugees, and how responsibility for refugees should be distributed between societies.

2 | WHAT IS A REFUGEE?

Normative contestation over refugees starts at the very beginning, with the use of the term refugee. The 1951 Refugee Convention offers a legally precise answer to the question of what is a refugee. A refugee is someone who,

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

This definition has been agreed by 148 states and typically informs legal decisions on who will be granted asylum. Yet there are other legal definitions. In the Organisation of African Union Convention of 1969, a refugee is defined as, someone

who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Moreover, many philosophers have also questioned whether this 1951 Refugee definition adequately captures what makes a displaced individual worthy of moral attention and entitled to entrance in a new state.

From an ethical point of view, a major concern with the UN definition lies in the arbitrariness of using "persecution" an essential criterion for refugeehood. Why should one distinguish between someone whose life or liberty is endangered because they have been specifically targeted for bad treatment and someone who, while equally endangered, is escaping the indiscriminate violence of civil war? If, as seems plausible, the reason we want a category of people called "refugee" is to identify individuals with a need for the protection of a new state, the inappropriateness of this distinction seems obvious. One should no more distribute asylum on the basis of *why* someone is endangered than one should allocate access to hospital beds according to the how an individual came to be injured (for example, as result of an accident or a deliberate criminal act; Gibney, 2015).

Valiant attempts have been made to defend the Refugee Convention definition by arguing that individuals facing persecution have distinctive needs. James Hathaway, for example, suggests that Convention refugees are morally distinctive because they are less likely than other forced migrants to find protection in their country of origin. According to Hathaway, their social marginalisation (i.e., their subjection to persecution on grounds of race, religion, etc.)

makes Convention refugees “the most deserving of the deserving” of forced migrants (Hathaway, 1997, p. 86). They are so because they are unlikely “ever to be in a situation where they can seek effective address within their own state.” The point has been echoed in various subtle ways by Matthew Lister (2013) and Matthew Price (2009), with the latter suggesting that Convention refugees have a particular need for asylum in terms of access to permanent citizenship in a new country that distinguishes them from those who need temporary protection until a transient event like famine, war, or disaster has passed. These arguments are not compelling. Because both the persecuted and those fleeing random or generalised violence may each face death if they stay where they are, prioritising one over the other seems unwarranted. Moreover, while there are certainly circumstances where it is possible to differentiate between individuals requiring a new citizenship and those needing only temporary asylum, persecution is a blunt tool for making this distinction.

It seems wise, then, to avoid the concept of persecution when specifying an ethically sound refugee definition and view a refugee as someone who lacks the protection of their own state. In an influential piece in 1985, Andrew Shacknove (1985), argued that refugees were “in essence, persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and are so situated that international restitution is possible” (p. 277). Shacknove's (1985) definition highlighted the way that the refugee emerged out of a breaking of the “political bond”—or the social contract—between the individual and the state at the heart of legitimate rule (p. 275). He argued that this break could occur because of persecution or from any failure of a state to guarantee the basic needs of those under its protection. The collapse of the bond created, he argued a duty on behalf of international society to provide protection (asylum) to the individual concerned. Others, like Betts (2013), Carens (2013), Gibney (2004), Miller (2016), and Owen (2016), while eschewing an emphasis on human needs, have provided similarly expansive refugee definitions, emphasising violations of human rights.

According to David Miller (2016), the key question is whether an individual has to cross into another state in order to have his or her human rights protected. Refugees, he suggests, are individuals “whose human rights cannot be protected except by moving across a border, whether the reason is state persecution, state incapacity, or prolonged natural disasters” (p. 83). This definition is both clear and consequential. It has important implications, for example, for attempts to draw a bright line between “economic” migrants and “political refugees.” For it is evident that dire economic circumstances may impact upon an individual's human rights in areas of subsistence, medical treatment, and basic education. At the same time, the definition is sensitive to Matthew Lister's (2013) observation that not everyone whose human rights are violated should be considered a refugee. People who can be helped in their own state—such as victims of natural disaster and poverty—have no right to asylum *if states are willing and able to help them where they are*. If protection is not forthcoming, however, individuals may legitimately claim to be refugees moving to protect their human rights.

3 | WHY DO WE HAVE OBLIGATIONS TO REFUGEES?

Even if we have a clear of account of who is a refugee, we still face the question of how to ground an obligation by states to respond to such individuals. Perhaps the most common way is through a duty of rescue. In this conception, individuals, and, by extension, states, have a humanitarian duty to assist strangers in peril when the costs of doing so are low. As Miller (2016) notes,

for a duty of rescue to come into effect, there must on one side be a potential victim or victims facing a threat of death or serious injury, but on the other side the rescuer must be able to intervene without incurring serious risk himself and is entitled to look for an alternative course of action. (p. 79)

The idea of a duty to admit the imperilled stranger has a long history. Virtually all of the early theorists of international law, including Grotius, Pufendorf, Vattel, and Kant, recognised a state duty to grant asylum to necessitous exiles under certain circumstances. More recently, Michael Walzer (1983) has grounded the obligation to admit

refugees in what he calls the “duty of mutual aid,” a humanitarian duty to assist individuals to whom liberty cannot be exported” (pp. 48–49). Peter Singer and Renata Singer (2010) have appealed to a more consistently utilitarian account of the duty, analogising a state’s obligation to allow entry to refugees to an individual’s duty to open the doors of a bomb shelter to those at endangered outside. States, they argue, have a duty to admit refugees up to the point that the costs to residents of taking more refugees outweigh the benefits that would accrue to incoming refugees. Arguably, the idea of “rescue” is also on display in the widely acknowledged international law principle of *non-refoulement*. This principle obliges states to provide protection to those refugees who arrive at or on their own territory. States are under no international law obligation to rescue refugees outside their own domain.

There is obvious appeal in the idea of a duty of rescue holding between strangers. Taking rescue seriously could, moreover, have profound implications for responses to refugees, especially if the proviso of “low costs” is interpreted generously (Gibney, 2004). But rescue fails to capture the way that external states are often implicated in the plight of refugees. In many cases, third parties have engaged in actions that have created or exacerbated refugee situations: refugees may be the product of foreign military intervention (e.g., Iraq since 2002) or civil conflict that is subsidised, encouraged or facilitated by third party state powers. Displacement may be in part of the result of climate change that has been created or exacerbated by industrialised states (Heyward & Odalen, 2013). Equally, many the world’s refugees come from what might be called “fragile states,” where weak domestic institutions are explicable in terms of economic dependency and the aftermath of colonialism (Betts, 2013). Moreover, as Serena Parekh (2016) has recently shown, external states are arguably are morally implicated in the suffering of refugees in camps through their support for encampment in Southern countries.

When relationships of harm like these exist, the obligation of asylum may best be understood as a reparative obligation more than a duty of rescue. Consequently, the consideration of low costs applicable to humanitarian obligations would not apply (Souter, 2014). Of course, to identify duties to rectify harm, it is first necessary to explore the specific and sometimes complex causal relationships that exist between specific states, structures of power, and particular groups of refugees. Nonetheless, a harm-based account of refugee responsibilities must be a vital component of any comprehensive account of duties to refugees (Souter, 2014).

Finally, as well as being the result of harms committed by particular states, refugees can also be conceptualised as a result of the failure of a specific social system: the system of sovereign states. As Emma Haddad (2008) has noted, “Refugees are an inevitable if unintended consequence of the nation-state system; they are the result of erecting boundaries, attempting to assign all individuals to a territory within such boundaries, and then failing to ensure universal representation and protection.” (p. 59) Refugees are, in effect, “orphans of the state system” (Carens, 1991), people in the parlous position of lacking effective membership in one state with no positive entitlement to join another.

This situation of effective statelessness is clearly a problem for the individuals concerned. But it also poses a normative problem for the legitimacy of the state system, particularly if, following David Owen (2012), we conceptualise “the international order of states” as a “global regime of governance.” This international system of governance cannot be justified to refugees who are forced to live under its rules with no effective membership or state protection. The legitimation of this mode of governance requires a collective obligation on the part of states to incorporate refugees back into the system, if necessary through the provision of asylum. The duty to respond to refugees (and thus to ensure that they are provided with protection) would thus be conceptualised less as a humanitarian duty holding between strangers and more as part of the “political obligations” of states generated by the common system of governance that they uphold.

4 | WHAT ARE THE ENTITLEMENTS OF REFUGEES?

It is clear then that responsibilities to refugees have been conceptualised through the lenses of justice and the lens of humanitarianism. But what exactly do states owe to refugees? A minimalist answer to this question has recently been given by Christopher Wellmann (2011). He argues that refugees have a right simply to “protection from their

persecutors" (p. 121). This protection, moreover, does not oblige states to provide asylum if they can protect refugees through humanitarian intervention or by creating safe havens for them in their country of origin. Few have been prepared to endorse Wellman's position, largely because the track record of humanitarian intervention and in-country protection is so poor. Humanitarian interventions are as likely to produce new refugees as reduce the numbers of existing ones. Consequently, most scholars argue that refugees are owed asylum in a new country.

Typically, the provision of asylum means a hosting state is obliged not to return an individual back to their country of origin and guarantee of protection for the individual's human rights for the period of asylum. However, some, like Price, go further and argue that refugees, whom he defines narrowly as those fleeing persecution, should be admitted to citizenship in the country of asylum. For Price, the act of persecution rends asunder any contract between the individual and their state of origin (Price, 2009). Obviously, this position has some force. No one would have expected Jews to return to Germany after the end of World War II; the experience of the Holocaust destroyed any social contract that might once have held (Shklar, 1998).

Nonetheless, it is difficult to argue that a state is always be obliged to give refugees citizenship. Refugee generating events are sometimes the result of temporary and fast-changing social and political disruptions caused by circumstances that fall far short of the catastrophe of genocide. Moreover, treating refugees as if the relationship between them and their country of origin is over risks sending a message that the state's obligations to accept, reintegrate, and compensate the refugees concerned are at an end (Bradley, 2014). In the vast majority of cases, refugees themselves are eager to return home quickly to re-establish their lives when the first genuine opportunity establishes itself (Bradley, 2014). It thus seems dubious that states have a duty always to offer citizenship to incoming refugees, though extended residence in the host state may provide independent moral reasons for allowing access to citizenship after a period of time (Carens, 2013).

Another contentious question is whether refugees have the right to choose where they receive asylum. In recent years, many Western governments have criticised asylum seekers for travelling long distances to claim protection on their territory, arguing that refugees entitled only to a safe place of asylum and often this is available in the region. While the legal issues here are thorny, many philosophers have implicitly endorsed this government position. According to Joseph Carens, for example, refugees "have a moral right to a safe place to live, but they do not have a moral entitlement to choose where that will be" (Carens, 2013, p. 216).

The matter is more complex, however, partly because what is morally relevant about the experience of refugeehood is not simply legal insecurity. Refugees are people who have been displaced from the communities, associations, relationships, and cultural context that have shaped their identity and around which their life plan has hitherto been organised. Unsurprisingly, then, refugees often describe their experience as one of confusion, dispossession, and disempowerment. Refugees typically experience a loss of their entire social world.

Particularly if we see that the provision of asylum as a kind of compensation for harm, this broader sense of what refugees have lost is relevant to obligations to refugees. As asylum is a form of compensation for the losses incurred because state malevolence, negligence, or ineffectiveness, then, ideally, it should offer the refugee not only physical security and basic rights but, ultimately, a place where she can rebuild a meaningful social world.

The plausibility of the claim that duties to refugees extend beyond a secure asylum becomes clear if we return to the idea of refugees as "orphans" of the international community. Consider the state's response to vulnerable children in domestic society. In the case of a child endangered by domestic abuse—a breakdown in the normal functioning of the institution of the family—the immediate duty is to remove the child from harm. Yet, once the child has found safety, it is incumbent upon officials to search for long-term arrangements (such as adoption) that best promote her welfare. Ideally, we would expect officials to take into account the child's personal experiences, cultural and ethnic background, special needs, the availability of different options, and the child's own preferences in determining the appropriate place (Gibney, 2015).

While the analogy is far from perfect—families are not states and most refugees are not children—it is plausible that similar considerations should apply to asylum. Refugees, should, particularly when it does not jeopardise the availability of asylum for other refugees, be able to settle in a country where they have a good chance of flourishing,

for example, one where they have ethnic compatriots, members of same faith, family, opportunities for their skills, or proximity or distance from the country they have left behind. As refugees themselves will no doubt be best informed about what the essential criteria for flourishing are in their own case, there are strong moral reasons why refugees should have a role in choosing where they will receive asylum (Gibney, 2015).

5 | HOW SHOULD RESPONSIBILITY FOR REFUGEES BE DISTRIBUTED BETWEEN STATES?

One obvious concern about allowing refugees some choice in where they receive asylum is that it will lead to highly uneven "burdens" across states. Many refugees will want to go to economic powerhouses like Germany and the US while far fewer seem likely to choose Finland, New Zealand, or Iceland. The question of how to distribute responsibility for refugees fairly across states is one that has formed an increasing focus of scholars, in large part because the current system for distributing asylum seems so unfair.

Currently, the vast majority of the world's refugees are hosted by the poorest states: the least secure people on the globe are hosted by communities that have the fewest resources. This is largely attributable to the fact that the main legal principle for distributing responsibility to refugees is the principle of *non-refoulement*, which effectively allocates state responsibilities on the basis of location: a country has a legal duty to protect those refugees who arrive at or within its territory (Gibney, 2004). Walzer (1983) has endorsed this approach, arguing that states have a duty not to expel refugees who are inside their boundaries, in part because such people have already made their escape, and sending them back would involve using force against desperate and helpless people (Walzer, 1983, pp. 49–51). Others have argued that by claiming protection in a particular country, refugees have made themselves vulnerable to the decisions of that state in a way that creates responsibilities for the state concerned (Miller, 2016, pp. 84–85).

But most normative theorists have been more sceptical of the location principle for two reasons. First, the principle privileges in practice those refugees with access to the resources and ability to move in search of asylum (like young men), leaving others endangered in their country of origin or in insecure regions (Gibney, 2004). By contrast, Singer and Singer argue that states should offer asylum to those refugees most in danger, regardless of where they are located (Singer & Singer, 2010). Walzer's (1983) position, they reason, unjustifiably privileges location over need, and acts (using force to expel refugees) over omissions (failing to save refugees in other countries when this is possible; pp. 119–120).

A second concern is the justice of the distributions of refugee "burdens" between states that result from the principle (Ferracioli, 2014; Gibney, 2007; Miller, 2016; Owen, 2012). As I have suggested, states located near displacement generating states, typically poorer countries of the global South, find themselves with the highest proportion of refugee claimants because they are accessible. The resulting inequalities between states, which are cemented in place by migration control measures operated by Northern states to contain refugees in their regions of origin, mock the idea of refugee protection as a common responsibility of the "international society of states" (Owen, 2012). In response, a number of theorists have argued that a just distribution needs to be more sensitive to the integrative abilities of particular states (e.g., level of GDP, size, political stability, etc.; Gibney, 2007; Miller, 2016; Carens, 2013). Paying attention to such factors would result in a distribution of refugees across states quite different from the current one and one that is arguably more just.

This kind of ideal refugee distribution raises questions in itself. Some have argued that in the absence of institutionalisation of such a fair distribution scheme states are entitled to decide how many refugees they will take (Miller, 2016). More fundamentally, the question of fair distributions between states also brings us back to the question of refugee choice. Evening out disparities amongst countries may be fairer to states (and even more efficient in terms of maximising asylum) but it is likely to be in tension with where refugees themselves want to receive asylum.

Redistributing refugees, for example, runs the risk of treating people like mere commodities, especially if states are allowed to trade their refugee quotas as is proposed in some market systems (Schuck, 1997). While states could redistribute resources instead of refugees (financially compensating poorer states with their higher burdens), this smacks of richer countries buying themselves out of asylum (Anker, Fitzpatrick, & Shacknove, 1998). Asylum is in many respects a non-fungible good. Accepting refugees into a country—particularly for an extended period of time—is transformative for the society in question in a way that exporting financial support is not. Refugees, like all immigrants, bring with them different cultures, understandings, and expectations. These have short-, medium-, and long-term impacts upon the society they enter that cannot be easily turned off or shaped: they change the very constitution of the *demos*.

There appears to be a tension between doing justice to refugees by respecting their choices and achieving justice between states by aiming for equitable distributions (Gibney, 2007). This has led even enthusiastic advocates of more rational and ethically justifiable distributive systems for refugees to make some accommodation to refugee choice (Kuosmanen, 2013). More practically, the tension has also been recognised in recent social scientific attempts to create internationally co-ordinated refugee resettlement programmes. The “refugee matching” system proposed by Jones and Teytelboym (2017), for example, draws from mechanisms in distributing school places to find a way of distributing asylum that simultaneously integrates the preferences of states and the choices of refugees.

6 | WHAT ARE THE DUTIES OF REFUGEES?

Most normative discussion on refugees has concentrated on the duties of states. But there has also been a growth recently in work on the responsibilities of other agents. The question of the responsibilities of individual citizens (on their own or as part of civil society groups) has been engaged through discussions of “humanitarian smuggling” where humanitarian duties have sometimes led individuals to violate the laws of their own state (Landry, 2016). The question of the responsibilities of international organisations, like the UNHCR, have also received some focus, especially in their role as organisers of refugee camps, through which they govern the lives of many refugees (Barnett, 2001; Parekh, 2014).

However, I want to finish this piece by pointing to a topic that has been largely neglected: the duties of refugees (cf. Rescher, 1992). In some respects, lack of attention to this issue is not surprising. Is there not something dubious about focussing on the responsibilities of refugees to others when their own needs are so desperate? Yet we should resist being under the spell of the idea that refugees are *only* victims, driven by considerations of necessity. While it is true that refugees often find themselves in perilous situations on the high seas or navigating treacherous land border crossings when there is little to do but struggle to survive, they also find themselves in relatively secure situations that range from permanent residence in host countries to the protracted limbo of refugee camps or detention centres. In these circumstances, refugees make choices and act in ways that illustrate their moral agency: they decide to send money home to compatriots, to testify against the regimes they have escaped; they pay smugglers; they lobby governments for the entrance of their compatriots through resettlement programmes; and they choose to obey the law of the society they have joined.

In each of these situations and many others, thorny ethical and practical issues are involved. To understand refugee duties, it is necessary to navigate the relationships between refugees and a range of diverse agents (their host state, the community they have left behind, the international community, and other refugees) each of which may issue in competing moral claims. An exile, for example, might find herself torn between a duty to support compatriots fight the regime from which they have fled and laws in the asylum country that forbid material support for armed struggles overseas.

One also needs to examine closely the conditions that would need to prevail in each case for a duty to exist. For example, whether a refugee has a duty to return home to help rebuild a society ripped apart by war is likely to turn on the nature of the circumstances that originally led the refugee to flee, as these will determine whether there still

exists a morally valid connection between the refugee and her state of origin. Similarly, whether a refugee is obliged to wait to be resettled rather than to head to their own country of choice will depend, in part, upon the kinds of protection available to them while waiting and the extent to which the resettlement system served to maximise the availability of asylum overall.

Nonetheless, any account of the ethics of refugees is going to be radically incomplete without some reckoning with refugee's responsibilities. Indeed, many of the issues we discussed above in terms of state duties implicitly involve refugee obligations because they require refugees (as well as states) to act in certain ways. For example, if states are under no obligation to host refugees indefinitely, do refugees have a duty to quit their country of asylum once protection is not needed? If an equitable distribution of refugees between states is an admirable goal, to what extent do refugees have an obligation to modify their behaviour to enable such resettlement schemes to work? Are refugees obliged accept asylum where they are sent rather than where they think they would be best off? These are complicated questions that require more detailed examination than is possible here. Nonetheless, there is no denying the importance of answering such questions.

7 | CONCLUSION

While reckoning with the ethical issues raised by refugees and others forced to flee their homeland has long been a central subject in literature and politics, the history of philosophical thinking about refugees is still very much in its infancy. What is already notable, however, is that this is controversial and contested territory, raising a number of complicated issues, from the question of how to define refugees to the question of how to ground responsibilities to them that mirror practical political debates. With refugee numbers at such high levels globally, the importance of philosophical reflection on the responsibilities of states and other actors to address refugee concerns seems unlikely to recede in the coming years.

ORCID

Matthew J. Gibney  <http://orcid.org/0000-0003-3208-2859>

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Matthew J Gibney is Professor of Politics and Forced Migration at the University of Oxford, Official Fellow of Linacre College, Oxford. He specialises in the political and ethical issues raised by refugees, citizenship, and migration control. He is the author of *The Ethics and Politics of Asylum* (2004), *Globalizing Rights* (2003), which has been translated into Italian and Spanish, *The Normative, Historical and Political Contours of Deportation* (2013; edited with Bridget Anderson and Emanuela Paoletti), (with Randall Hansen) *Immigration and Asylum* (2005), a three volume encyclopedia, and many articles in scholarly journals.

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