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**Article:**

# Durable Solutions as Reparation for the Unjust Harms of Displacement: Who Owes What to Refugees?

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**Abstract**

In this article, I examine some of the theoretical and practical implications of understanding durable solutions as potential forms of reparation that can be offered to refugees for the unjust harms of displacement. I begin by making a basic moral case that durable solutions can act as forms of reparation, exploring the ways in which the creation or restoration of effective citizenship in a state through one of the durable solutions can go some way to providing restitution, compensation and satisfaction for refugees. I then discuss some considerations which need to be taken into account when seeking to identify which state should offer which durable solution as reparation to which refugees in any given case, such as the refugees' choice, their place of residence and social ties, any sense of group identity, and questions of state capacity and efficiency. Observing that bestowing a reparative function upon durable solutions would potentially create a tension with their classical humanitarian rationale, I move to explore how this tension might be navigated, with particular reference to the question of how states with limited resources should prioritise the needs of refugees for whose flight they are morally responsible vis-à-vis refugees for whose flight they are not responsible.

**Introduction**

The three durable solutions – of voluntary repatriation, local integration and third-country resettlement – have come to be a central element of refugee protection over the course of the last six decades. Within the United Nations, both durable solutions and refugee protection more broadly have been given a classically humanitarian rationale, with the intention that these solutions will be pursued in a politically neutral manner, independently of politically contentious questions such as who bears responsibility for causing refugees' flight (Landgren, 1998: 420).[1] Indeed, the Statute of the United Nations High Commissioner for Refugees (UNHCR) states that its work in 'seeking permanent solutions for the problem of refugees' is to be of a 'humanitarian and social' and 'entirely non-political character' (UNHCR, 1950: 6).

In practice, of course, UNHCR's work has been inescapably political (Loescher, 2001: 2), and durable solutions have been put to the service of numerous other political, economic and strategic goals, some of which are incompatible with their humanitarian rationale (see Chimni 2004). The pursuit of these solutions can also be justified in terms of their contribution to regional security and peace-building (Milner 2009), and by reference to their close relationship with transitional justice measures (Duthie 2012). Nevertheless, the principle of humanitarianism has underpinned understandings of durable solutions throughout the history of their pursuit.

This humanitarian rationale for durable solutions is rooted in an important moral concern for refugees' well-being. Yet, as I shall argue in this article, there is another equally morally compelling way of understanding and pursuing durable solutions: as forms of reparation for the unjust harms of displacement. That is, durable solutions may potentially constitute a means through which states can discharge their special obligations towards refugees for whose flight they are morally responsible.[2] Durable solutions are, on this account, capable of achieving for refugees the same end which reparations programmes seek:

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[1] This classical humanitarianism, as exemplified by the apolitical aspirations of the International Committee of the Red Cross (ICRC), stands in contrast with a more politically engaged, 'solidarist' brand of humanitarianism which is willing to condemn rights violators (see Weiss 1999). Unless otherwise stated, I henceforth use the term 'humanitarianism' to refer to its classical form.

[2] I understand the notion of moral responsibility to refer specifically to cases in which agents deserve moral blame for their actions (Miller 2007: 89). For the sake of brevity, unless otherwise stated I subsequently use the term 'responsibility' to refer to this narrower form of moral responsibility.

the rectification of past injustice, through restitution, compensation and satisfaction.[3] In making this argument, I do not advocate the abandonment of durable solutions' humanitarian rationale in favour of this reparative approach, but highlight the significant moral merits of such an approach.

Although the basic notion of durable solutions as potential forms of reparation is highly intuitive, or so I shall argue, it has until recently been largely overlooked by both practitioners in this field and by scholars within refugee and forced migration studies. While links between durable solutions and accountability for displacement have been identified by the Inter-Agency Standing Committee's Framework for Internally Displaced Persons (IDPs) (IASC 2010)  and the United Nations Secretary General's Framework on Durable Solutions (UNSG 2011), recent work has demonstrated the ways in which reparations and transitional justice mechanisms can contribute to the attainment of durable solutions (Duthie 2012). Some scholars have examined, in varying degrees of depth, the ways in which particular durable solutions, such as voluntary repatriation (Bradley 2013) and asylum and resettlement (Walzer 1983), may act reparatively. The intended innovation of this article is to extend these insights by exploring the implications of understanding the durable solutions framework as a whole in terms of reparation.[4]

Recognition of durable solutions' reparative potential matters for at least four reasons, which straddle the scholarly and the practical. Firstly, such recognition is important as part of an overall effort to identify the full range of moral obligations that states bear towards refugees, including those which have hitherto been neglected, which can both enhance academic understandings of the ethics of refugee protection and motivate practical efforts to hold states to those obligations. Reparation, it is increasingly recognised, is owed to refugees as a matter of justice, but is still relatively seldom offered to them explicitly. If durable solutions are – as I argue they are – a fitting and even obvious means of offering this much-

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[3] By taking this moral focus on reparation for unjust harms, I leave aside the question of whether a state's obligation to offer a durable solution as reparation could be grounded in international law, and view the unjust harms which result from displacement as encompassing, but not necessarily being limited to, human rights violations as they are legally defined.

[4] To my knowledge, this reparative approach to the durable solutions framework has been discussed only in passing. Rhodri C. Williams (2006: 13) has recognised that 'the corrective justice aspirations of reparations programs – to provide redress in proportion to the harm suffered by victims – would imply that they share many of the same basic objectives as durable solutions', while UNHCR (2012: 137) has asserted in relation to IDPs that, '[f]rom a protection perspective, finding lasting solutions that bring an end to internal displacement is an important form of reparation for the violations suffered by IDPs'. In this article I develop this line of argument and extend it to refugees more broadly. My discussion does not hinge on any particular definition of the refugee, whether that of the 1951 Refugee Convention or a broader conception.

needed reparation to refugees, then states are duty-bound to offer them. Given that the principle of reparation is, in common moral thought, equally if not more compelling than the principle of humanitarianism, it seems somewhat arbitrary to limit our attention to the humanitarian potential of durable solutions, while at the same time ignoring their latent reparative capacities.

Secondly, despite its rooting in compelling moral principle, a decision to use durable solutions reparatively would have significant implications for the operation of the refugee regime. It would not only involve a departure from the apolitical aspirations of durable solutions as they have been traditionally conceived, and necessitate a far greater engagement with controversial questions of responsibility for forced migration. It would, as I shall argue later, also upset the now orthodox hierarchy of durable solutions, which views voluntary repatriation as 'the durable solution' (Chimni 2004: 55), by recasting the provision of all three durable solutions as potentially being matters of justice.

Thirdly, the notion has the potential to strengthen advocacy calls for the redoubling of efforts to achieve durable solutions. It is widely believed that the principle of reparation, as a special and negative obligation, is weightier than that of humanitarianism, which is general and positive (see Pogge 2002: 139). There is, then, a pragmatic case for framing durable solutions reparatively that is of strong interest to activists given that, as a matter of moral psychology, this approach may well exert a greater influence on policy-makers and publics (see Butt 2009: 16). Lastly, because a durable solution involves, as I shall discuss, the creation or restoration of citizenship, this discussion has theoretical implications not only for our understanding of durable solutions, but also for our understanding of the potential moral functions of citizenship itself.

I begin by making a basic moral case that durable solutions can act reparatively, exploring the ways in which the creation or restoration of effective citizenship in a state through one of the durable solutions can go some way to providing restitution, compensation and satisfaction for refugees. I then discuss some considerations which need to be taken into account when seeking to identify which state should offer which durable solution as reparation to which refugees in any given case, such as the refugees' choice, their place of residence and social ties, any sense of group identity, and questions of state capacity and efficiency. Observing that bestowing a reparative function upon durable solutions would

potentially create a tension with their humanitarian rationale, I move to explore how this tension might be navigated, with particular reference to the question of how resource-constrained states should prioritise refugees for whose flight they are responsible vis-à-vis refugees for whose flight they are not responsible.

## The Case for Viewing Durable Solutions Reparatively

A basic moral case for understanding durable solutions reparatively can be made in several relatively simple and intuitive steps, which are nevertheless worth outlining in order to lay out the logic behind this approach. The first step is to acknowledge that many of the unjust harms that refugees experience before, during and following their flight – whether through the loss of their safety, security, homes, livelihoods or relationships – flow from their lack of effective citizenship within a state (Arendt, 1986 [1948]: 293; Shacknove 1985). This effective citizenship is, at root, membership in a state which serves as a 'precursor' for the enjoyment of basic human rights (Batchelor 1998: 156), and which effectively responds to the security concerns and material needs that are often the most tenacious obstacles to durable solutions.[5] Refugees lose or continue to lack this effective citizenship when their states of origin actively violate their basic rights, or fail to protect them from serious harm either perpetrated by external states or non-state actors, or which is the result of severe deprivation. Effective citizenship operates as a bulwark against such abuse, harm and deprivation.

The second step in this argument is to note that one important means of offering reparation to refugees for the unjust harms of displacement is to offer such effective citizenship, either in refugees' states of origin or in other states. This can involve either the restoration of effective citizenship, if refugees enjoyed such citizenship before they fled, or the creation of it for the first time if, as is often the case, the refugees in question have never enjoyed it (see Long 2008: 35-36). Such citizenship may, but not necessarily, be offered formally and entail naturalisation.[6] If, at bottom, the principle of reparation is the notion that

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[5] I use the term 'effective' in order to maintain a distinction between refugees and de jure stateless persons for, while refugees may retain citizenship formally, they are deprived of the basic rights which should flow from this citizenship (see Batchelor 1998: 172).

[6] Indeed, it is important to recognise that refugees may find de facto protection or informal modes of citizenship or belonging beneath the radar of the state in which they reside, and are very often agents of their own durable solution (see Zetter and Long 2012). Furthermore, non-state actors, such as international organisations, may also

every 'fault creates the obligation to make good the loss' (Grotius, quoted in Lee 1986: 536), then an offer of effective citizenship to refugees can clearly fulfil exactly this function. Given that reparations, as opposed to remedies, can be offered only by those morally responsible for a harm, and not by third parties (see Thompson 2002: 42), an offer of effective citizenship by a state to a refugee can only constitute a genuine offer of reparation if the state making the offer bears at least some degree of moral responsibility for the harms experienced by the refugee as a result of his or her flight.[7]

The third point is that the aim of durable solutions is precisely to create or restore this effective citizenship, whether in refugees' states of origin (in the case of voluntary repatriation), in their states of first asylum (in the case of local integration), or in third states (in the case of resettlement). As Long (2011: 232) has observed, '[a]ll three "durable solutions"…are intended to restore a refugee's access to citizenship, and through citizenship the protection and expression of their fundamental human rights', such that voluntary repatriation may function as a renewal of the social contract between a refugee and his or her state of origin (Long 2008). Durable solutions, therefore, implicitly view the fundamental 'problem' facing refugees to be their lack of effective citizenship, and the 'solution' to be its lasting establishment (Gottwald 2012: 104). Given that an offer of effective citizenship can, if undertaken by a state bearing responsibility for refugees' flight, constitute a form of reparation for those refugees, and durable solutions aim to provide such citizenship, durable solutions may, therefore, themselves act as forms of reparation.

Restitution, Compensation and Satisfaction

Another means of demonstrating the reparative capacity of durable solutions is to outline how each of these three solutions fits within the standard international reparations framework. Reparations are commonly thought to fall into at least three categories: restitution (the attempt to restore the conditions before a violation occurred); compensation (a monetary or material transfer); and satisfaction (such as apologies, trials and truth-telling

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play an important role in addressing the harms of displacement. However, in a world carved into sovereign states which remain the ultimate guarantors of rights, a key means of rectifying the harms of displacement remains formal citizenship in a state.

[7] Throughout this article, I use reparation and redress synonymously.

exercises) (UN General Assembly [UNGA] 2005; International Law Commission 2001: 52).[8] How might durable solutions offer each of these forms of reparation?

Firstly, voluntary repatriation can clearly act as a form of restitution if, through their flight, refugees lost effective citizenship which is later restored upon their return.[9] The greater the ability of voluntary repatriation to restore the status quo ante, by allowing refugees to regain their particular homes, properties and assets, and resume their lives prior to their displacement, the stronger a form of restitution it is. Voluntary repatriation – if conceived as the renewal of the relationship between a state and citizen which does not necessarily entail physical return to that state's territory (Long 2012: 369) – may also provide restitution, even if the refugee decides not to return but rather to continue residing elsewhere. In such a scenario, a refugee would regain effective citizenship in his or her state of origin, but would choose not to avail themselves of the right to residence in that state that forms part of such citizenship.

Restitution through voluntary repatriation has been assumed to be the optimal form of redress for the harms of displacement in documents such as the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons (see Bradley 2013: 83) and within return policy in Bosnia-Herzegovina following its conflict in the 1990s (Williams 2012: 92). Nevertheless, it is important not to overstate either the capacity of voluntary repatriation to provide restitution, or the moral desirability of using this solution to achieve restitution for refugees. Some of the harms of displacement are so egregious as to be practically irreparable; if the status quo ante was itself unjust, then it should not be restored in any case; and restitution should not create fresh injustices by displacing secondary occupants who may have developed genuine property rights over the course of their extended residence (Bradley 2013: 188-189). It also may not even be desired by refugees, many of whom will have rebuilt their lives elsewhere by the time voluntary repatriation is even viable, and who may not have the static conception of home that many might imagine them to have (see Warner 1994).

Despite these limitations, it might still be thought that only voluntary repatriation is genuinely capable of providing any measure of restitution to refugees. As Long (2012: 369)

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[8] The UN Reparations Guidelines also lists rehabilitation (in the form of medical, psychological, legal and social care and assistance) and guarantees of non-repetition as forms of reparation (UNGA 2005).

[9] Indeed, the UN Reparations Guidelines views both 'citizenship' and 'return to one's place of residence' to be potential forms of restitution (UNGA 2005).

has commented, 'the righting of the wrong of involuntary flight can arguably only be achieved through return, rather than resettlement'. This is indeed arguable, for the other two durable solutions are able to offer a meaningful degree of restitution in a broader sense: both local integration and resettlement are capable of restoring refugees' effective citizenship, even if this effective citizenship is to be enjoyed in a different state from the one in which they once enjoyed it.

In addition to offering restitution, the three durable solutions can also act as meaningful forms of compensation. Effective citizenship often entails access to a bundle of goods, including welfare provisions, which are of course particularly substantial within the global North. Having admitted a refugee into the fold of its political community, a state bearing responsibility for his or her flight is also in a better position to also offer further forms of compensation to that refugee, such as family reunification, or specialist psychological support.

If a durable solution is openly and fully acknowledged by the state offering it as a form of reparation and is understood by the refugees in question as such, then a durable solution may also act as a form of satisfaction: a means of communicating its recognition of its own wrongdoing and its symbolic commitment not to repeat the actions which led those refugees to flee. Price (2009) has explored the ways in which asylum, which he understands a permanent status akin to local integration, has a strong expressive function. While Price focuses on the ability of asylum to convey a state's condemnation of the actions of other states, there is no reason in principle why an offer of asylum, or the other durable solutions, cannot also embody a sense of contrition and apology, which can be strengthened in conjunction with other initiatives aimed at achieving satisfaction for refugees, such as trials or truth-telling exercises (see Bradley 2012a).

I hope now to have demonstrated that the offer of effective citizenship through a durable solution is capable of acting reparatively, either as a form of restitution, compensation or satisfaction. However, it is important not to exaggerate durable solutions' reparative potential, strong as it is, for they are best understood as having a potentially strong reparative element, rather than being fully reparative by themselves. The establishment of effective citizenship is an important, yet insufficient form of reparation by itself, given that refugees may have suffered losses and harms which are not necessarily addressed by durable

solutions, such as the separation of families or the psychological impact of displacement. In short, states may often have to go beyond durable solutions in order to redress the unjust harms of displacement fully, utilising other remedies for human rights violations such as trials or truth commissions. To suggest otherwise would be to risk allowing states to shirk their additional reparative responsibilities to refugees once they have offered them a durable solution. However, it is often the case that the provision of durable solutions can facilitate and promote access to these additional forms of reparations so that, taken together, durable solutions and these other mechanisms repair the harms of displacement to the greatest extent possible. For instance, by allowing for voluntary repatriation, refugees may more easily participate in truth-telling exercises or access compensation in their states of origin, which have often been inaccessible to those remaining in exile (Bradley 2012a: 207).

It is also important to note that the extent of durable solutions' reparative capacity depends on the ways in which these solutions are both conceived and pursued. While it is true that, in theory, the aim of durable solutions is to create or restore effective citizenship, it could be argued that this reparative potential is stymied by several key practical limitations. Firstly, it might be said, the top-down and somewhat paternalistic manner in which durable solutions have been pursued by UNHCR and states in the past – given their privileging of state interests through tripartite commissions composed of UNHCR, the state of asylum and the state of origin, which have systematically ignored refugees' voices and interests and have pushed for repatriation even while the situations which caused refugees to flee persisted (e.g. Crisp 1984; Harrell-Bond 1989) – would preclude their meaningful use as forms of reparation. Secondly, the fact that durable solutions have possessed, in Oliver Bakewell's words, a strong 'sedentary bias' (Bakewell 2008 quoted in Long 2010: 5), which sees the provision of a solution as entailing the cessation of all further movement and migration, also limits their reparative potential.

In response to these concerns, it can be argued that it is not the pursuit of policies which aim to achieve durable solutions per se that may act reparatively, but durable solutions when conceived and implemented in the most morally justifiable way. This means that, for durable solutions to operate reparatively, or for efforts to repatriate refugees even to constitute a durable solution in the first place, they must be pursued and realised in ways which respect refugees' choice, and provides opportunities for their continued mobility. I shall return to this principle of refugee choice later in this article.

One important implication of understanding durable solutions reparatively is that this approach weakens the traditional hierarchy of durable solutions. Coupled with the privileging of restitution over other forms of reparation, voluntary repatriation is widely seen by states, and has been judged by UNHCR, to be the preferred durable solution, whereas resettlement, and arguably also local integration, are seen as being merely discretionary (UNHCR 2011: 36). Yet if, as I am arguing, states are duty-bound to offer the most fitting form of reparation to refugees for whose flight they are responsible, and resettlement or local integration is most fitting, then an offer of one of these two solutions is not discretionary but rather obligatory, and a matter of justice. While scholars have rejected this hierarchy of solutions on other grounds (e.g. see Adelman and Barkan 2011), understanding durable solutions reparatively therefore provides further support for a shift to the more holistic notion of 'comprehensive solutions' (Gottwald 2012).

## Which States Owe Which Durable Solutions as Reparation to Refugees?

I now hope to have made a basic and intuitive moral case for durable solutions' reparative potential. However, an important implication of this approach remains to be explored: the question of which states should offer which durable solution to which refugees. While the particular answer to this question will of course vary from case to case, in this section I seek to identify some broad criteria which can provide guidance in any given situation.

The first and most obvious consideration is the question of which state is responsible for the flight of any given refugees. As I commented earlier, reparation can only be offered by the actors who bear responsibility for unjust harm. There is, however, one general answer to this question which, in its simple form, needs to be set aside at the outset. This is what has been dubbed the 'internalist' approach to forced migration (see Chimni 1998: 360; Zolberg et al. 1989: vi), which views refugees' states of origin as bearing full, or at least predominant, responsibility for the generation of refugees. Refugees' states of origin bear a strong remedial responsibility towards them on account of the bond of citizenship between the two parties, and have an obligation to create the conditions which allow for their voluntary repatriation, which persists even if those refugees gain protection or citizenship elsewhere (Bradley 2013:

32-33).[10] However, refugees' states of origin do not necessarily bear moral responsibility for their flight. The clearly external causes of forced migration, which often interact with internal factors, range from military interventions to the workings of the international political economy (see e.g. Gibney 2004: 48-57).

Having recognised the fact that responsibility for forced migration lies with both refugees' states of origin and with external states, it might be tempting to seek to match the state which bears responsibility for a refugees' flight with a particular durable solution. The seemingly obvious way of undertaking such matching would be to claim that, if it is refugees' state of origin which is primarily responsible for their flight, then voluntary repatriation is most reparatively fitting; if the refugees' state of asylum is primarily responsible, then asylum followed by local integration is most fitting; and if a resettlement state is primarily responsible, then resettlement is most fitting.

There may indeed be cases in which this kind of matching exercise is justifiable. Equally, however, there are other cases in which other considerations can cause us to depart from this somewhat simplistic procedure. The question of which state bears responsibility for the flight of refugees is only one, albeit central, consideration for determining which durable solution should be offered reparatively. Even if this form of matching does turn out to be justifiable, this will only be because the other considerations which should be taken into account also point to that conclusion. What, then, are these other considerations?

The first additional consideration is the principle of refugee choice that I mentioned earlier. If an important aim of reparation is the restoration of full dignity and agency – understood as the renewed ability to make claims (see Bradley 2013: 60) – then, as Duthie (2012: 54) has puts it, 'an important aspect of redress is the ability to choose a solution in itself'. This choice should be as wide as possible, allowing refugees to decide between durable solutions and, ideally, allowing them to switch between such solutions (such that choosing, for instance, to locally integrate should not preclude a later decision to return to one's original home).[11] This principle of choice also undermines the hierarchy of durable solutions which I criticised above. While there is evidence that some displaced persons, such as IDPs in Uganda, would welcome 'government assistance in return…as a form of

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[10] For the distinction between moral and remedial forms of responsibility, see Miller (2007: ch. 4).
[11] This ability to switch between solutions is emphasised by the IASC (2010: 12) in its Framework on Durable Solutions for IDPs.

reparations' (Refugee Law Project 2009: 13), others – such as Colombian refugees interviewed by Cantor (2011: 32) – would not, and have strongly preferred to seek stability in their host countries.

It could be objected here that this principle of choice is not an 'inextricable part of the idea of refugee protection' (Gibney 2007: 71), and that states are therefore not obliged to offer refugees' preferred durable solutions to them. However, where reparation is concerned, refugees' choice must be given considerable weight. While it is highly desirable that every refugee be given as wide a palette of options concerning their protection as possible, it can be argued that, when reparation is being offered, the principle of refugee choice is especially strong. Bearing in mind that, as I suggested above, an important goal of reparation is to restore dignity and agency, a durable solution will fail to achieve this end, and will therefore not constitute a genuine form of reparation at all, if it is offered to, or even imposed on, a refugee against his or her will.

The second, and related, consideration is the place of residence and social ties of the refugees in question. While UNHCR (2011: 35) has rightly recognised that local integration is often the most appropriate durable solution for those who already have developed 'close family, social, cultural and economic links to their country of asylum', theorists such as Joseph Carens (2009) have powerfully argued that depriving non-citizens of a right to stay after a number of years often cruelly deprives them of social ties which provide their lives with meaning.[12] For instance, the most reparatively fitting durable solution for an Iraqi asylum seeker who has strong social ties as a result of his or her residence in the United Kingdom (UK) for several years may very well be British citizenship, given these ties and the UK's partial responsibility for the generation of Iraqi refugees since the invasion of Iraq in 2003.

A third additional consideration is whether the refugees in question are bound by a strong sense of group identity, which may generate a desire among them to reside together in a community or to take the pursuit of a particular durable solution as the basis of a shared political project. This may manifest itself as a desire to live in a state which already contains a strong diaspora community for that group, or it might instead manifest itself as a strong

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[12] This consideration is connected to the notion within international law of a 'genuine and effective link' between an individual and a state, which has been used as a ground for naturalisation (see Batchelor 1998).

determination to achieve political rights in a homeland through voluntary repatriation, which has been evident in the cases of Palestinian refugees and the Guatemalan return movement of the 1990s (see Bradley 2013: ch. 4; ch. 8). In such cases, the durable solution offered may function as a collective, rather than solely being an individual, juridical form of reparation.[13] Whereas local integration or resettlement may be fitting for individual refugees, voluntary repatriation may be uniquely able to 'offer the political space to address group-based as well as individual political rights' (Long 2012: 373; see also Kymlicka 1995: 98-99).

The fourth additional consideration concerns state capacity; that is, whether states are able to meet their reparative obligations to refugees while also fulfilling their obligations towards their own citizens. In the case of fragile states throughout the developing world, this of course simply cannot be counted on. In situations of extreme material scarcity, meeting the minimal needs of one's citizens may trump the obligation to offer reparation to refugees for, as Lu (2007: 203-204) has argued, 'nothing may justify a level of material reparations that would incapacitate a state from fulfilling its domestic obligations'. Indeed, there are other actors besides refugees, such as host and return communities, who also have strong reparative claims in situations in which efforts are being made to resolve displacement, such as times of political transition and attempts at reconciliation. It is also increasingly recognised that, in states devastated by war or social conflict, sustainable voluntary repatriation is initially an aspiration, and is a 'difficult, gradual long-term process that requires significant capacity-building by the international community' (UNHCR 2012: 68).

At times, furthermore, considerations of efficiency may have a bearing upon the kind of durable solution which is most reparatively fitting: if a state's resources and absorptive capacity are genuinely such that it can only offer one type of durable solution to large numbers of refugees to whom it owes one, then it may be justified in offering one rather than the other. This may potentially be the case with regard to resettlement, which has been criticised as an expensive and even lavish measure (see Milner 2005: 523). It is conceivable that a poor state which bore responsibility for some refugees' flight may genuinely only have the capacity to offer one standard durable solution to a large group of refugees after granting them prima facie refugee status following a mass influx, and may have to dispense with a

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[13] For analysis of collective reparations, see de Greiff (2006) and van der Auwereart (2012).

resource-intensive programme of individual, juridical reparations and individualised refugee status determination (see de Greiff 2006).

These considerations mean that we cannot necessarily conclude that the kind of matching exercise mentioned earlier will be justified. Refugees may not desire the durable solution that this exercise may recommend, perhaps given their place of residence and social ties, or the state may genuinely not have the capacity to offer it.[14]  However, if a durable solution is to function reparatively then, as we have seen, it must be offered by the agent responsible for the unjust harms of displacement. It might seem that the principle of refugee choice undermines this principle of reparation for, surely, it might be argued, it must be the state that caused the refugees' flight that bears the obligation to offer them a durable solution on its territory. How might a state bearing responsibility for refugees' flight offer them reparation if they prefer a durable solution in another state?

The first option is that of inter-state compensation. If, all things considered, the most fitting durable solution for some refugees is one that cannot be directly offered by the state responsible on its territory, then that state may offer reparation more indirectly. If, say, voluntary repatriation is not desired by certain refugees, then reparation may still potentially be offered to them by their states of origin, conceivably through the provision of compensation to the refugees' states of asylum (see Garry 1998; Lee 1986). While this arrangement might seem to shift the focus away from refugees' agency to the settling of scores between states, it potentially allows for greater flexibility for refugees. Although the logic of reparation entails that it be offered by the actor responsible, this option constitutes a means of avoiding the trapping of refugees in the responsible state's territory, by allowing them to choose their preferred durable solution. If managed properly, such an arrangement could therefore enhance, rather than undermine, refugees' agency.

The second way in which a durable solution may operate reparatively, even if it is offered on the territory of a state which does not bear responsibility for refugees' flight, is for

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[14] These criteria for distributing reparative responsibilities to offer durable solutions broadly match some of those presented by Miller in his connection theory of remedial responsibility, which aims to specify the connections between an agent and a bad situation which can ground responsibilities to remedy it. In addition to the notions of causal and moral responsibility which are most relevant to the principle of reparation, Miller sees communitarian connection and capacity as two additional grounds for distributing remedial responsibilities (2007: 103-105).

the responsible state to help to create the conditions which allow for the attainment of that durable solution. In the case of voluntary repatriation, for instance, this may involve an external state offering assistance with reconstruction or development to refugees' states of origin. Furthermore, given that reparations and other transitional justice measures can contribute to the conditions that allow for voluntary repatriation or other durable solutions (see Duthie 2012), then the external states responsible for refugees' flight may bear a further responsibility to offer and facilitate reparations programmes in refugees' states of origin, such as property restitution, the criminal prosecution of perpetrators, truth-telling exercises or compensation. In short, specific reparations may have to be offered within a state of origin for voluntary repatriation to operate reparatively in itself. Such reparations and voluntary repatriation may be mutually reinforcing, for the reconciliation, however minimal, which may result from reparations allows for voluntary repatriation to be more sustainable, while voluntary repatriation may increase access to, and participation in, other reparations efforts in refugees' states of origin. Development assistance and efforts aimed at achieving some degree of reconciliation between refugees and their host societies which allow for sustainable local integration to be achieved (see Bradley 2012a: 12) may also play a reparative role.

**Further Implications**

I have already observed how a reparative conception of durable solutions has a range of implications both for our theoretical understanding of durable solutions and citizenship, and also for the operation of the refugee regime. For instance, this approach begs questions of institutionalisation and enforcement, such as the issue of which international body would allocate responsibilities to offer durable solutions in practice. Moreover, although the offer of a durable solution as reparation to refugees tracks state practice to some extent – for instance, the belatedly accelerated resettlement of Iraqi refugees generated by the 2003 invasion of Iraq to the US was motivated at least partly by a sense of special obligation towards them (see Berman 2012: 126) – it currently appears somewhat unrealistic to expect states voluntarily to accept responsibility for, and offer durable solutions to, large number of refugees in the absence of any enforcement mechanism.

The implications of shifting from the humanitarian rationale of durable solutions to also considering the relevance of a reparative approach remain to be drawn out. Given the centrality of the principle of humanitarianism and that of reparation to moral thought, it would not do to claim that one should be dispensed with entirely in favour of the other as far as durable solutions are concerned. Instead, we are faced with a potential 'clash of norms' (Weiner 1998). On the one hand, the reparative approach has the moral advantage of seeking to hold states to account for their refugee-producing actions and ideally deterring states from engaging in these actions in the first place, rather than giving durable solutions a merely 'palliative' humanitarian role (see Price 2009: 7). On the other hand, this approach risks, when placed in the hands of states, weakening refugee protection. In an international system in which responsibilities for refugees are routinely shirked and shifted, attempts to assign responsibilities to offer durable solutions could potentially degenerate into a 'blame game' in which little by way of reparation actually ends up being offered to refugees in need of it, and already highly protracted refugee situations are dragged out yet further during the time-consuming process of negotiating and assigning responsibility.

This approach also raises epistemic problems for, although responsibility could be assigned in clear-cut cases, there are other cases in which responsibility may be difficult or impossible to identify, in cases of diffuse responsibility such as displacement linked to the effects of climate change, or refugee movements associated with systemic forces such as the workings of the global political economy (see Souter forthcoming). I have proceeded in this article so far as if responsibility for instances of forced migration is invariably borne by one state alone, but cases of joint responsibility raise the question of how the responsibility to offer durable solutions can be justifiably shared between states, and how a coordinated approach to supporting such solutions might be developed. The fact that the pursuit of durable solutions is often a complex and gradual process presents the difficulty of ascertaining when a durable solution has been achieved, and hence whether a reparative obligation has been successfully discharged by a state.

Moreover, if it could be shown that certain cases of displacement were justified overall – in that they were necessary and unavoidable for a morally overriding end such as a genuinely humanitarian intervention, and carried out in the most humane manner possible – then it becomes questionable whether a durable solution is invariably owed to refugees as a

form of reparation (see Blake 2013: 114-119). If refugees were generated as part of a wholly just war, which fully met the criteria of jus ad bellum and jus in bellum (see Banta 2008), then a durable solution may be owed on humanitarian grounds, but not as reparation. It is for this reason that it may be more accurate to speak of reparation as being owed specifically for the unjust harms of displacement rather than for any harm, regardless of its overall justification. However, it is important not to overstate the likelihood of displacement being morally justified and, given its typically extremely heavy human costs, to uphold a strong presumption against the legitimacy of displacement and the existence of a prima facie 'right not to be displaced' (see Stavropoulou 1994) which can only been overridden in the face of extremely weighty countervailing considerations.

Given lack of space, however, these important implications will have to be deferred for future discussion. For the remainder of this article, I briefly focus on the implications of a reparative approach to durable solutions for one important question for the ethics of refugee protection: how refugees should be prioritised for protection in a climate of scarce resources. This is, as we shall see, a particular instance of the tension between the principles of humanitarianism and that of reparation in this context.

**The Problem of Prioritisation**

In order to explore how a reparative approach to durable solutions might affect the just prioritisation of refugees, let me briefly outline the abstract characteristics of humanitarian duties and reparative obligations. On the one hand, humanitarian duty can be broadly characterised as impartial, general, and positive, in that it is a duty to assist individuals solely on the basis of the urgency and severity of their need, and regardless of any past interaction or relationship with them. Reparative obligations, on the other hand, are partialist, special and negative, insofar as they are owed only certain individuals on account of past relationships and interactions which arise only as a result of the violation of duties not to harm.

As I mentioned earlier, reparative obligations (and special obligations more broadly) are widely believed to be both weightier and more extensive than positive, humanitarian

duties (Pogge 2002: 207; Kagan 1988: 293). One clear consequence of this effective hierarchy between humanitarian duties and reparative obligations is that, if an agent is genuinely unable to fulfil both sets of duties simultaneously for whatever reason, then the fulfilment of his or her reparative obligations should take priority. Indeed, as Scheffler (2001: 86) has contended, part of what it means to have special responsibilities towards particular others, whether associates or victims, is 'within limits, to give their interests priority over the interests of non-associates, in cases in which the two conflict'. An agent is obliged to provide reparation to individuals whom he or she has harmed, even if that means that he or she is unable to assist a larger number of needy individuals for whose plight he or she is not responsible.

However, this priority is not absolute or unlimited, but is rather circumscribed by other important moral considerations. In Scheffler's formulation, cited above, special responsibilities have priority only 'within limits', while Pogge (2002: 291) observes that '[i]t is generally acknowledged that a higher moral reason can be outweighed by a lower, if more is at stake in the latter'. Therefore, if an individual whom one has not harmed is in a significantly needier state than an individual whom one has harmed, and it is only possible to assist one of them, then prioritising one's humanitarian duty over one's reparative obligations may be justifiable. At some point, moreover, the obligation to offer reparation to individuals whom one has harmed may be outweighed by the humanitarian duty to assist a greater number of needier refugees, if it is impossible to fulfil both simultaneously.

What are the implications of this abstract discussion for the just prioritisation of refugees for durable solutions? The first point is to note that in many cases this issue is purely hypothetical, as states are often able simultaneously to fulfil both their humanitarian duties and their reparative obligations to refugees by offering them durable solutions. Yet if a state were genuinely unable to fulfil both sets of duties, then, on first glance, the principles of humanitarianism and of reparation seem to recommend very different courses of action to states: humanitarianism says to prioritise the neediest refugees in a process akin to triage (see Zolberg et al. 1989: 3), whereas reparation says to prioritise those refugees for whose flight one is responsible. This issue could arise either in states of asylum, or conceivably in refugees' states of origin. External states might deem a refugee to be in more urgent need on the basis of the severity of harm that he or she would face on return, or the availability of

other forms of protection elsewhere (if, say, a refugee had family members in a neighbouring state which could form the basis for a successful application for family reunification there).

If the hierarchy between humanitarian duty and reparative obligation is accepted, then it would seem that genuinely resource-constrained states should prioritise refugees for whose flight they are responsible over refugees for whom they bear no such responsibility, at least if their need is at a comparable level. This should not be taken to imply that those refugees for whose flight those states are not responsible are less deserving of durable solutions, but rather that, in times of genuine scarcity, these solutions may have to be offered by other, third-party states with greater capability on humanitarian grounds. However, two points can be made which complicate this observation. The first is that, although in this kind of scenario states would be justified in prioritising their reparative obligations over their humanitarian duties to refugees, they also bear a responsibility to develop their resources so that they are able to progressively realise both their reparative obligations and their humanitarian duties to offer durable solutions and allow for their simultaneous fulfilment.[15]

The second point is that, as I observed earlier, the priority of reparative obligations over humanitarian duties is circumscribed, and the priority can potentially be reversed by the sheer force of other refugees' need. If the refugees for whose flight a state is responsible have a similar level of need to refugees for whose flight that state is not responsible, then priority can justifiably be given to the former refugees. However, if the need of the refugees for whose flight the state is not responsible is significantly greater, then a strong case can be made for prioritising the needier refugees. In such a case, it seems justifiable to prioritise saving lives and preventing terrible suffering in the short term, and then seeking to offer reparation to the other refugees if and when the state gains the capacity to do so, perhaps by providing other benefits to that refugee in her state of asylum. The obligation to offer reparation may need, in times of genuine scarcity, to be put on hold to allow the receiving state to respond to overridingly pressing and immediate need.

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[15] This borrows the notion of progressive realisation enshrined within Article 2(1) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

## Conclusion

In this article, I have highlighted an emerging approach to durable solutions which, I have argued, is highly intuitive and grounded in compelling moral principle. Nevertheless, I have sought not to duck the wide range of theoretical and practical implications for refugee protection which this approach throws up. I have outlined some broad considerations which I believe should be taken into account in any attempt to distribute responsibilities to offer durable solutions as reparation to refugees, and have explored a particular potential moral tension between the reparative use of durable solutions, and their humanitarian rationale. While I have not shown that this tension can be entirely resolved, I suggested some broad ways in which it can be navigated, and the obligation to offer reparation and to protect the neediest refugees can be balanced.

As I noted earlier, many more implications of this approach remain to be explored, such as questions of how reparative obligations to offer durable solutions would be allocated and enforced in practice, especially in cases of diffuse or joint responsibility, and how the justice of interventions which create refugees might affect states' reparative obligations to offer durable solutions to those refugees. If this reparative understanding of durable solutions is to develop beyond being an attractive proposal in principle, if it is to gain traction in scholarly and popular debates over refugee protection, and if it is to become a viable mode of refugee protection in practice, then further and sustained attention to these implications by both scholars and practitioners is required.

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