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Costs of Refugee Admission and The Ethics of Extraterritorial Protection

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Most liberal democratic states attempt to off-load their responsibilities to admit refugees by pursuing extraterritorial policies. Australia's offshore detention and processing of asylum-seekers, the EU deal with Turkey and the latest moves from EU policy-makers to equip Libya and Tunisia with means to pull-back, and possibly process, migrants and refugees, are all examples of such extraterritorial policies (e.g. Collett, 2017). These policies restrict refugees' access to protection and place many people in extremely precarious situations. Yet they seem to be a persistent circumstance of our contemporary non-ideal world. Is it permissible for states to limit refugee admissions in this way?

Given the persistence of states' non-compliance with their supposed moral duty to admit refugees to their territory, and the urgency of providing protection for millions of refugees, I argue that states are permitted to limit the number of refugees they admit *if* they compensate by contributing to protection in a third country through bilateral or multilateral agreements. The protection provided in the third country must be substantial, which means that it must allow for integration and not just basic rights. I argue that extraterritorial protection must also reflect the costs that states' bear for admitting refugees to their territory. Low costs of refugee admission impose a duty to make high contributions extraterritorially, and vice versa.

The questions this paper address emerge from certain non-ideal conditions, by which affluent, Western states admit fewer refugees than they ought to, to the detriment of the provision of refugee protection globally.¹ There are at least three important reasons to interrogate the ethics of extraterritorial protection in such a non-ideal world. Firstly, the urgency of providing protection for millions of refugees is arguably paramount to developing institutions that perfectly map states'

duties of justice. If extraterritorial protection can increase the overall provision of protection globally, then at least in the short term it appears preferable to the *status quo*. Secondly, given the ferocity with which Western states do in fact pursue extraterritorial policies, there is an alarming gap in our ethical understanding of the conditions that may make such policies more or less acceptable. Thirdly, many states prefer to discharge their duties to refugees outside of their territory and many scholars do acknowledge that they may have a right to do so (Miller, 2016; Wellman, 2016; Owen, 2016). Yet little scholarly attention has been paid to the questions of *when* and *how* they are permitted to do so. Thus whilst much of the scholarly literature grants states the right to engage in extraterritorial policies, it does not specify under what conditions or what the implications are for states' overall duties to refugees.

The methodological approach of this paper, which starts from non-ideal conditions, is useful to assess and improve existing institutions for which complete overhaul is unrealistic in the short-term (cf. Carens, 2015: 11). From an advocacy point of view, this also provides tools for assessing current state practices that are far from ideal, but which may nonetheless differ quite substantially in their ethical acceptability. I take both the non-compliance of Western states with their duties to admit and protect refugees, as well as their asserted right to exclude migrants in general, as givens, but I am conscious throughout that this approach must not lead to the entrenchment of the unjust institutions and practices it takes as background constraints.

The paper starts by asking *why* there is an obligation to refugees, followed by the question of *what* constitutes protection. Next, I ask *how* such protection might be offered. Given that protection can be provided both by admitting refugees to a state's territory and by contributing to protection in a third country, I argue that the lower the costs of admitting refugees to a state's territory are, the higher its extraterritorial contributions must be, provided certain conditions are fulfilled. Lastly, I

illustrate this approach of trading costs of admission against extraterritorial contributions by discussing what kind of costs may count in two areas where admitting refugees is often seen as incurring high costs to the hosting state: self-determination and equality.

Why is there an obligation to protect refugees?

This paper does not intend to settle the question of why there is an obligation to protect refugees, but only to argue that affluent states have obligations towards a vast number of refugees that mostly exceed the number that they currently host by a large margin. It is likely that states' obligations towards refugees have several moral sources and four are considered below, which all provide plausible explanation of why states have extensive obligations towards refugees. It is not necessary for the argument pursued here to side with any of these accounts, as the main questions considered here concern how duties are discharged, rather than what their moral foundation is.

Firstly, some scholars argue that states have a collective responsibility to protect refugees that emerge from the humanitarian duty to protect human rights (Miller, 2016: 83; Gibney, 2004). Because the refugee's state of origin has failed to protect his or her human rights, this responsibility now falls on all other states collectively. Secondly, David Owen (2016) pursues an argument that also entails collective responsibility of states to protect refugees, but he argues that the moral foundation of such responsibility is to repair the legitimacy of the international order of states, which is damaged by the existence of refugees. According to Owen's account, the international order of states, which bestows sovereign states with legitimacy, assumes that human rights will be protected for all individuals. The existence of refugees demonstrates that this is not the case and states therefore need to protect all refugees to repair this legitimacy damage, or their own legitimacy as sovereign states will also be damaged. Thirdly, Joseph Carens (1992b: 39) has suggested that the so called non-arrival policies implemented to prevent access to asylum establish

a moral connection between the state implementing them and refugees who are denied protection as a consequence. These non-arrival policies include, for example, visa requirements, ‘push-backs’ at sea and carrier sanctions. Thus, these policies create special obligations for states that use them to eschew responsibilities towards refugees. Lastly, states may have a special set of obligations to refugees from conflict areas where they have been involved in creating the conflict, such as the UK in the case of Iraq (Souter, 2014; Walzer, 1983: 49).

What constitutes protection?

On all accounts presented briefly above, responsibilities to refugees are extensive. On some accounts, duties amount to protecting all refugees collectively. On others, duties encompass a special set of refugees based on the existence of non-arrival policies and military involvement in refugees producing regions. Since both such activities are widespread, duties to protect refugees even on these more limited accounts around bound to be extensive. But what does refugee protection consist of?

Many scholars argue that the main claim that refugees can make is that their human rights should be protected (Miller, 2015; Betts and Collier, 2017; Owen, 2016; Ferracioli 2016). For example, David Miller (2015: 5) argues that

[the scope of the refugee’s claim] is limited to whatever is necessary to protect her human rights. It does not extend in any immediate way to the full set of rights and opportunities that a state may make available to its own citizens.

Yet this conceptualisation of refugee protection is inadequate, as it fails to consider the harm or displacement. Matthew Gibney (2015: 13) suggests that refugees are deprived of their ‘situated self’ by virtue of their displacement:

What exactly are the harms associated with being made a refugee? To be a refugee is not simply to be an individual who has lost the protection of her basic rights; it is to be someone deprived of her social world. It is to be someone who has been displaced from the communities, associations, relationships and cultural context that have shaped one's identity and around which one's life plan has hitherto been organised.

Others have pointed out in relation to the importance of place and territory, that feeling at home somewhere, and feeling secure there, is crucial to living a meaningful and autonomous life (Stilz, 2011; cf. Moore, 2015; Nine, 2016). This is because all meaningful human activity – all relationships, plans and projects – depend on a specific place. To not have a secure place on earth from which activities can take place therefore comprises of a grave form of harm. Refugee protection, at least that which is anticipated to last in the long-term, must therefore include the possibility of being integrated in a political community where the person who has fled is able to build a social world that subsequently allows for an autonomous life: a life where plans, relationships and projects are possible and feel meaningful because they are connected to a social context. The reason why having a secure place is linked to being integrated in a political community is because it is such a community, or a state, that structures the impact place has on someone's life. This is encapsulated in Joseph Carens' (2014: 540-1) account of 'social membership'. Carens (2014: 540-1) notes that '[we] are embodied creatures. Most of our activities take place within some physical space. In the modern world, the physical spaces in which people live are organized politically primarily as territories governed by states.' This means, he goes on when describing the case of a newborn child, that the state 'inevitably structures, secures, and promotes her relationships with other human beings, including her family, in various ways'. One's social context, in other words, is intimately related to the state that structures it. To feel secure in

one's physical place in terms of having a social context implies that one must be able to participate in most areas of the political community that structures space. This may not immediately mean citizenship, but at least access to some social rights that allows a person to interact with her social context without marginalisation or stigmatisation.

This precludes that refugee protection is reduced to mere existence in refugee camps or in states where refugees enjoy minimal support or rights.² Indeed, such 'protection' may not be acceptable on human rights accounts of refugee protection either, especially not on extensive understandings of human rights. It also precludes most forms of temporary protection, as this hampers the ability to make plans and form meaningful long-term relationships, which is not normally recognised when only considering human rights. Protection must, as a minimum, include rights to work, rights to family life and rights to education for children, but because of the importance of a secure space for human activity, protection must, apart from in the very short-term, be durable. This means that it must include the possibility to integrate fully in a new state, eventually through naturalisation, though it may be permissible for states to regulate this access through time criteria and/or citizenship tests. Alexander Betts and Paul Collier (2017) has argued that the refugee system needs to be transformed in a way that provides refugees with autonomy. Yet by autonomy, they mainly mean economic freedoms; the ability to be self-sufficient. What theories of territory and space teach us is that to be fully autonomous, human beings require a secure space from which activities can gain meaning. Having economic rights is surely important, but if protection is temporary and does not include the possibility of full integration, economic self-sufficiency alone does not enable an autonomous life.³

How can protection be offered?

Establishing that states have wide ranging obligations to protect refugees and that such protection constitutes integration into a new state does not tell us, however, how these obligations are to be discharged. From the viewpoint of a state, refugee protection can be offered either by admitting refugees to settle (and integrate) on the state's territory, or by contributing to protection in a third country. Whilst many scholars acknowledge that these options exist (e.g. Miller, 2015; Wellman, 2016; Owen, 2016), there is a lack of understanding of when and how a state can discharge its obligations extraterritorially. Given non-ideal circumstances, I argue that a) provided that protection is provided in accordance to the standards of integration outlined above, and b) an agreement exists with a third state, states are permitted to discharge their duties in both these ways. The costs, in the senses I specify below, states bear for admitting refugees regulate the extent to which they must also contribute extraterritorially, and vice versa.

To elaborate, various forms of burden-sharing schemes have been proposed in order to 'disassociate the site of arrival from the place of asylum' (Hathaway and Neve, 1997: 145). By allowing the relocation and resettlement of refugees, states can discharge their duties through collective agreements. Yet when considering the responsibility states have towards refugees, most theorists are concerned with the *number of refugees* a state has the capacity to *admit* for settlement (e.g. Gibney, 2015: 10). Miller (2016: 92) argues, for example, that states can determine how many refugees they should admit on the same basis as they determine general immigration targets. However, he also argues that states can discharge their duties towards refugees in ways other than admitting them to their territories (Miller, 2016: 86; 2015: 6). To reconcile these claims, we need to recognise that states' obligations towards refugees need to be distinguished from how they discharge of those obligations. This is important, as Western states increasingly seek to discharge of their duties extraterritorially, yet the conditions under which this is permissible have not been

systematically considered. Because of the focus on discharging duties in this paper, I assume that states' overall obligations towards refugees can be established via one, or a combination of the theories presented above. This overall scope of obligations remains constant, unless any of the reasons that it was established change, such as the creating of special responsibilities due to for example military involvement. This is important, because extraterritorial policies are often pursued to eschew responsibilities to refugees and it is not acceptable to diminish a duty one holds by discharging it in a certain way. The way these obligations are discharged, however, can vary. I suggest that the higher the costs states have for admitting refugees to settle on their territory, offering protection according to the standards discussed above, the lower their extraterritorial obligations are and vice versa. This approach is summarised in Figure 1.

Figure 1 here.

The advantage of this approach is that it specifies *when* states extraterritorial policies can be acceptable. Below, I will elaborate what counts as high or low costs of refugee admission, which creates a framework for assessing states' extraterritorial policies. I argue that extraterritorial policies are acceptable when they reflect states' costs of refugee admission. If states bear low costs for admission *and* extraterritorial policies, they are not fulfilling their duties to refugees. In addition, I outline two conditions of permissible extraterritorial protection, which enable us to assess *how* states are permitted to discharge duties extraterritorially. Whilst it may be argued that, ideally, states would be willing to admit all refugees who sought asylum on their soil, the approach developed here provides a more fine-tuned moral framework for assessing state practices under non-ideal conditions. Even those holding that there is something morally important about states accepting refugees who apply for asylum on their territory may accept that states can be permitted to discharge their duties to refugees in a third state if it would lead to more refugees gaining

protection overall. And if that is the case, then it is necessary to understand under what conditions that is permissible.

The two conditions that need to be in place for a state to discharge their duties in a third country imply that the approach developed here is a far cry away from those advocating that European states only admit very few refugees and that most efforts should instead be redirected to extraterritorial processing or to refugee camps in countries neighbouring conflict areas (e.g. Goodhart, 2016). The two conditions that must be met by the state that wants to discharge its duties in a third country are: a) the protection offered allows refugees to integrate, b) an agreement with a third country exists. Firstly, the protection that is being offered in the third state must accord with the standards outlined above, which include the ability to fully integrate in a new society so that meaningful human activity can resume. This consequently rules out many contemporary forms of extraterritorial refugee protection, which often only amount to providing (insufficient) funding of refugee camps. It also rules out recent suggestions of the creation of so called “economic zones”, where refugees can work without becoming part of the host society (Betts and Collier, 2017). Protection must ultimately be durable and humane, and this means that it must allow for full integration in a new society unless immanent return to the country of origin is feasible and desirable to the refugee. This is the case regardless of where protection takes place – whether in an affluent state or in a third state that the affluent state is paying to provide protection.

Secondly, if no third countries are willing to admit refugees, then it is not possible for a state to discharge its duties outside its territory and these duties consequently must be discharged within the state’s own territory. For a state to be discharging its duties by compensating a third country, this must be settled through bilateral or multilateral agreement, rather than by unilateral policies. Currently, poorer states take a much larger number of refugees because more affluent states

implement non-arrival policies that actively prevent refugees from accessing their territories (cf. UNHCR, 2016: 15). Even if they do provide economic support to those poorer hosting states, it is not as a result of a bilateral agreement, but as a result of coercive, unilateral policies. To count as discharging duties, rather than avoidance, extraterritorial efforts towards refugee protection must follow from mutual agreements with the third countries in question. Such agreements are also likely to depend on the paying state agreeing to also admit some refugees. This is because less affluent states are unlikely to agree to host large numbers of refugees if more affluent states do not also host a share themselves (Betts, 2015: 8). Thus, whilst the worry that these sorts of agreements may be exploitative, because more affluent states are in a more powerful position, the conditions of the agreements suggested here would nonetheless make current arrangements far less exploitative compared to the *status quo*.

What counts as a cost of refugee admission?

So far, I have outlined the main claim of this paper, which is that, under non-ideal circumstances, states are permitted to discharge their duties to refugees extraterritorially if they can do so through an agreement with a third state and the protection offered allows for integration. The extent to which states contribute to protection extraterritorially, I have suggested, depends on what costs they have for admitting refugees on their territory. High costs for admission means low extraterritorial contributions, and vice versa. To consider how states' costs for admitting refugees to settle on their territory relate to their obligations to aid refugees outside of their territory, we need to establish what can justifiably count as a cost of refugee admission. To be clear, like extraterritorial protection, such admission must amount to refugee protection according to the standards outlined above, allowing refugees to fully integrate. The remainder of the paper will be devoted to this question. The discussion focuses primarily on these immaterial costs, as these costs,

as opposed to economic effects, are often key factors underlying opposition to immigrants and refugees (e.g. Ivarsflaten, 2005). However, whilst costs of admission may be both material and immaterial, the compensatory extraterritorial contributions will likely mainly be, but not limited to, financial contributions. As in, for example, the EU/Turkey deal, the EU's extraterritorial contributions also included, although this has not been realised, access to visa-free travel for Turkish nationals.

It may be argued that only the loss of basic liberties, or human rights, amongst citizens of the refugee hosting states can permit a state to limit the number of refugees it admits. This is because refugees suffer a loss of human rights and it can be argued that it is not permissible to prioritise the non-basic rights of citizens over the human rights of refugees (cf. Carens, 1987: 259; Abizadeh, 2016). On this view, then, only extremely high costs to the receiving state, namely those that result in the loss of basic liberties for citizens, can justify restrictions (cf. Owen, 2016a: 284). The humanitarian accounts of obligations to refugees discussed above (Miller, 2016; Gibney, 2004), would find this too demanding. They hold instead that states only have an obligation to assist refugees when costs are 'low'. Because this paper is not primarily about what obligations states have towards refugees, but how states discharge these duties, I will allow that the threshold for what counts as a maximum cost will vary depending on what account of obligations is inserted. According to the most demanding account, such as Owen's (2016), any costs of refugee admission that do not involve the loss of human rights cannot reduce states' overall obligations to refugees. Yet what they could do, according to the approach advanced here, is to allow the state to discharge duties extraterritorially instead. Even in the case that basic liberties may be at stake for admission, it may not necessarily follow that overall obligations will alter unless basic liberties are also threatened were the state to provide extraterritorial assistance as well. Less demanding accounts

will draw the limit at a lower point, and consequently some of the high costs discussed below will also lead to an overall reduction in states' obligations. At no point, however, can a state shun the principle of *non-refoulement*, which is the general duty to not forcibly return refugees to a place in which their safety is endangered.

I limit the analysis to what constitutes costs to liberal democratic states. I suggest that costs count when they negatively affect interests of citizens and functions of the state that are central to the realisation of a liberal conceptions of justice. According to Rawls (2005: 6), a liberal political conception of justice, of which there are many, has three main features:

first, a specification of certain basic rights, liberties and opportunities [...]; second, an assignment of special priority to those rights, liberties, and opportunities, especially with respect to claims of the general good and perfectionist values; and third, measures assuring to all citizens adequate all-purpose means to make effective use of their liberties and opportunities.

It is not my intention to argue for a specifically Rawlsian political liberalism here, and other approaches could be substituted (cf. Patten, 2011), but the definition above contains some basic tenets of egalitarian liberal justice that can be accepted by many different liberal approaches. This contains the priority of equal basic rights and liberties, but also the more demanding notion that citizens need to be able to make effective use of these, which can entail a variety of egalitarian approaches. Such approaches generally provide citizens with some basic capabilities or goods that allow for citizens to use their liberties to advance opportunities. There is also a caution against strong perfectionism, wherein the state would advance a particular comprehensive conception of the good (cf. Chan, 2000). Such strong perfectionism would violate the legitimacy of the state based on universal justification, the notion that all who are subject to coercive political institutions

must in theory be able to accept them. Thus costs that do not count are costs to features of functions or values of the state that do not respect the equal rights and liberties of all citizens, that give priority to perfectionist values over such rights or do not provide all citizens with the means to make effective use of their liberties. For example, states cannot claim that the racial or religious composition of their citizenry must be preserved, and that refugee admission may constitute a cost in this regard, since such claims are not compatible with everyone's equal liberties and opportunities. To be clear, these costs are disqualified not because they violate the rights of refugees, but because they are incompatible with a liberal conception of justice. The arguments pursued in this paper are meant to be applicable to liberal democracies, hence they cannot appeal to illiberal values to alter their duties to refugees. Costs to the two values that are discussed in this paper, collective self-determination and equality, may count, since both refer to ways in which citizens can use their liberties effectively, as explained below.

Costs may also be direct or indirect and high or low and this may not solely relate to their impact on the function or value that is worth protecting. One aspect of the assessment of costs, whether they are high or low, is the causes of costs. The cause of a cost may be related to factors that are circumstantial, in that individual states cannot easily control them, such as market forces or climate change. But costs may also be caused by things that are possible for the state and its citizens to control, such as their own attitudes and behaviour, and the design of institutions. What are we to make of these costs? It is useful to consider how these kinds of factors, factors that a duty-bearer can control, generally impact on duties. Justice is often argued to be conditioned on feasibility; 'ought implies can'. This is particularly true of theories of justice that intend to be action guiding in some regard (Mason, 2016). To have a duty of justice thus implies that one can realise that duty; it is feasible that the duty-bearing agent is able to discharge his duty. In terms of what is feasible,

we are faced with hard and soft constraints (Gilbert and Lawford-Smith, 2009). Hard constraints are things we cannot control – they are part of the human condition. In contrast, soft constraints are ‘malleable to some degree’ (Mason, 2016: 49), they are within the agent’s control, such as, for example, self-motivation. Hard constraints clearly impede feasibility and therefore constitute costs, but what about soft constraints?

There are two aspects to including soft constraints in the feasibility of realising a duty of justice. First is the time frame and the action guiding intentions of theorising about feasibility and justice (Mason, 2016: 52; cf. Gilbert and Lawford-Smith, 2012: 815). If a theory of justice is to be action-guiding, it may have to consider how some soft constraints may in fact appear like hard constraints in the short-term. This is a relevant consideration for the approach developed in this paper, which accepts certain facts about current liberal democracies such as their assumption that they have a right to exclude migrants from their territory, which may ultimately be unjustifiable (Author). The timeframe is consequently shorter and the action guiding intentions stronger, implying that some soft constraints may count towards the feasibility of carrying out the duty to protect refugees on a state’s territory. Second, however, soft constraints also give rise to ‘dynamic duties’ (Gilbert, 2009: 677). These are duties that involve ‘the expansion of the feasible sets of political action’ (Gilbert, 2009: 677).

These duties are peculiar in that they are not merely focused on what is to be done within certain circumstances, but also on changing certain circumstances so that new things can be done (Gilbert, 2009: 677).

Consequently, soft constraints may count towards the costs of admitting refugees to a state’s territory depending on how ‘hard’ they appear to be in the short-term, but they are also followed by concomitant dynamic duties to reduce their impact on feasibility in the long-term. The

assessment of how ‘hard’ the soft constraints appear to be in the short-term depends on how difficult it is to control the impact of, and alter, soft constraints in the short-term. The ‘harder’ they appear to be, the higher the costs of them are likely to be.

Yet there is an important caveat to add to this simple formula. Determining how to count the costs of soft constraints is to an extent a moralised process. For some soft constraints seem to be more circumstantial whereas others are caused by unjustifiable attitudes. For example, a circumstantial soft constraint may be the lack of housing for refugees, whereas other soft constraints may result from in-group favouritism or prejudice, such as an increase in ethnic discrimination. It seems like the latter kind are not only ‘softer’, arguably easier to change in the short-term by the individuals harbouring those attitudes, but also that they count as lower costs to avoid perverse incentives. To allow those morally problematic soft constraints to count the same as other constraints simply based on their impact of refugee admission would entail that the more prejudiced someone is, the more they are permitted to discharge their obligations to refugees outside their territory. Furthermore, it is important to clarify in what sense citizens can be ‘in control’ of their attitudes. Even if there is evidence to suggest, for example from research on implicit biases, that humans are cognitively less able to control our views than we may have hoped, it would be deeply problematic to infer that we are not morally responsible for our views. If the realisation of one moral duty is hindered by a person harbouring a set of values and attitudes that are incompatible with that duty, then it would be morally deterministic to argue that therefore this duty is subject to hard constraints.

In addition, to assess how feasibility constraints affect the duty to admit refugees on a state’s territory, we must first establish who the duty-bearing agent is, as that matters for the extent to which it is able to control and alter feasibility constraints. Primarily, the duty to protect refugees

falls on the state, as individual citizens do not have the capacity to provide such protection. Individual citizens cannot protect the rights of refugees; this is an obligation that attaches specifically to an agent like the state, which has capacities to protect rights. Yet the state, at least if it is a liberal democratic one, is not simply an external agent to the citizens it represents. When we speak of the democratic state as an agent, we speak to some extent about the institutions and officials specifically involved in governing. But we speak also of the citizenry as a whole, which authorises the state and its actions. Consequently, whilst it is debatable to what extent citizens share collective responsibility for state actions, citizens of democratic states as the state's authorising agents are at least responsible for not obstructing the state when it is carrying out its duties. Therefore, when assessing what feasibility constraints are soft or hard, we may count as soft constraints not only those that involve the design and capacities of state institutions, but also those that involve the attitudes and behaviour of citizens, as these are both within the control of the state and its authorising citizens.

Gibney argues along these lines in relation to his humanitarian principle of refugee protection. He suggests that governments have a responsibility to work towards making the political conditions more favourable to accepting refugees:

governments can and do play an important role in shaping the social and political environment in which they are located. [...] This suggests that the conception of 'costs' at the heart of humanitarianism is partly a social and political construct. If this is right, and we concede the moral importance of the claims of refugees, then it makes sense to see humanitarianism as imposing on governments an additional responsibility – a duty to work towards reshaping the political space in which they find themselves in ways more conducive to the reception of refugees and asylum seekers (Gibney, 2004: 244).

Again, it is not enough to allow some contingent social realities to be part of the overall formula of calculating costs for refugee admission, as the impact of any actions or policies in the short-term also affects the conditions for admission in the long-term. Even though the approach explored in this paper operates mainly in the short-term, and thus allows for some soft constraints on the ability of states to discharge their obligations towards refugees to count, different timeframes of justice can never be fully separated. Present actions will limit or expand the range of possible actions in the future. It is therefore not justifiable to refer to contingent factors that limit the range of possible actions in the short-term without also addressing how these factors can be altered so as to expand the range of possible actions in the long-term, or at least not to refer to them in a way that may further entrench those contingent factors. For example, in the case of a racist backlash, political parties that mimic xenophobic rhetoric to win back voters from xenophobic parties may be entrenching such sentiments and thus make the overall social conditions less favourable to refugee admission.

In summary, this section has discussed what kind of costs that can permit a state to discharge their duties to refugees outside of their territory. Firstly, these are costs that refugee admission impose upon a function or value central to a liberal conception of justice. Secondly, these costs may result from hard constraints, in which case they are higher, or soft constraints, in which case they are lower. In addition, we would want to avoid creating perverse incentives, so that we do not count as costs, or at least not as high costs, effects of refugee admission that incentivises states to increase those costs to restrict refugee admission.

Costs of Refugee Admission

Now, let us look at what may count as costs in two areas. The discussions below serve as examples of how this framework of costs, limits and obligations may be applied to various areas of concern.

The main claim is that if states pursue extraterritorial protection policies, they must do so in a way that reflects the costs that they already bear, or fail to bear, for refugee admission. If the refugees they admit only impose a small cost, then the state must contribute substantially extraterritorially for such policies to be justified as an alternative to admission.

The Capacity for Collective Self-Determination

The right of a state to exclude immigrants in general is often defended on the grounds that control over borders is essential for collective self-determination (Walzer, 1983; Moore, 2015; Wellman, 2008). Such accounts of the right to exclude normally make some exceptions for refugees, though they often leave it up to the state to decide on the appropriate number of refugee admissions (Wellman, 2016). Does protecting refugees constitute a cost to the capacity of current citizens to be self-determining?

Autonomy, alienation and belonging

Following Anna Stilz's (*forthcoming*) distinction, the rights of refugees can be seen as claims to 'taker freedom', basic liberties and security, whereas current citizens' right to self-determination is a claim to 'maker freedom', to be the authors of the coercive institutions that are protecting 'taker freedom' and governing their lives.⁴ It is this 'maker freedom' that encapsulates a core value of self-determination as the interest in being the author of the political institutions that govern one's collective existence. Collective self-determination is not solely a demand for political institutions that can guarantee popular sovereignty through democratic governance, but a demand for *particular* political institutions to serve this function. Stilz (*forthcoming*) suggests that these are institutions that citizens *affirm*. When citizens affirm their political institutions, they do not see them as 'hostile constraints', but in part as 'self-imposed' (Stilz, *forthcoming*: 16). In contrast, if

citizens do not affirm their political institutions, but feel alienated from them, the freedom that self-governance bestows them with is rendered to some extent meaningless. Mason (2000: 133) has similarly emphasised that when citizens fail to identify with political institutions, and do not feel at home in them, they 'are less likely to think that they have a stake in their stability or survival'. Thus through affirming and identifying with political institutions, citizens avoid the alienation that may otherwise occur and a sense of authorship, 'maker freedom', is induced.⁵

This notion of collective self-determination is in line with common understandings of self-determination as the absence of 'alien rule', and I believe explains well the value of self-determination as an additional value to democratic self-governance. Collective self-determination is a form of collective freedom from alien rule, whilst democratic self-governance is a way of reconciling individual freedom with political power. Making affirmation and non-alienation core parts of collective self-determination clarifies what is special about self-determination as an aspect of freedom. Indeed, this may be especially applicable to newcomers, who might feel marginalised from political institutions whilst being formally included and in this way be deprived of an important aspect freedom. This account may not appeal, however, to nationalist scholars who hold that collective self-determination is valuable because it enables a community to preserve its national identity and culture (Miller, 1995: 85). Whilst the argument below may therefore not be convincing to those advocating nationalism, it is worth pointing out that it may simply be unhelpful to talk about culture in relation to collective self-determination, as cultures do not necessarily overlap with self-determining groups (Moore, 2015: 80). Whilst preserving a culture may be important to some self-determining collectives, it fails to capture what is uniquely valuable about self-determination. What remains important is citizens' political identity, which allows them to affirm, to feel at home in political institutions and consider themselves as authors of their collective

existence. As collective self-determination relates to freedom in this way, costs to collective self-determination may justifiably count towards states' costs of refugee admission, as they relate to the ability of citizens to make effective use of their rights and liberties.

Collective Agency

What is necessary for collective self-determination in this sense to come about? Many recent accounts have suggested that collective self-determination requires collective agency (Moore, 2015; Stilz, *forthcoming*; Buchanan, 2016). In essence, collective agency consists of the ability of a group to form we-intentions and to act upon them. Such intentions and actions are not reducible to any single individual in the group, but can only be understood in the collective sense, and individual group members intend to be part of a joint enterprise as plural subjects rather than as individuals; as a 'we'. What forms the basis of this 'we'? According to Stilz (*forthcoming*: 10),

a shared *procedural* commitment to a joint venture is all that is required. Political unity need not be grounded on shared first-order values, but can rest on a second-order attitude of valuing a *process* of political cooperation undertaken in concert with others.

This shared commitment, akin to the idea of constitutional patriotism, can form the basis of the 'we', which citizens imagine as they understand others to affirm particular political institutions. Without a sense of a 'we' – without a shared identity – it is not possible to share intentions. Stilz's account, of course, rests on a very thin conception of political identity. Yet if the way collective self-determination contributes to freedom depends on how citizens are able to affirm political institutions and feel at home in them, it is identification with those institutions that matters, or 'belonging together as a polity' as Mason (2000: 127) suggests. The necessary political identity

rests, therefore, on shared commitments to the joint enterprise of governing together under a particular set of political institutions, and not a thicker sense of identity.

A few more conditions apply before a group can exercise collective political agency. Political institutions must be structured so that political representatives are accountable and govern according to a constitution (Stilz, *forthcoming*). Without constitutionalism and accountability, the state may be pursuing policies that do not constitute a shared intention by the people. They must also be legitimate, so that citizens' affirmation is 'authentic' and not corrupted by authoritarian institutions (Stilz, *forthcoming*; Buchanan, 2016). Lastly, in order to be self-determining, citizens' actions must be coordinated in such a way so that decisions can be attributed to the whole group (Buchanan, 2016: 453). The following section will discuss how admitting refugees may constitute a cost to these conditions of collective self-determination.

Costs to Collective Self-Determination

Firstly, citizens need to share a commitment, a joint intention, to shared institutions as plural subjects, as a 'we'; a political identity. As suggested above, this condition of a shared political identity need only be interpreted in a minimal sense, as shared commitments to a particular set of political institutions, if the purpose is to avoid alienation and enable collective authorship of coercive institutions. The fact that thicker forms of identity may be why people *do* identify with their political institutions does not make them necessary conditions for exercising collective self-determination, though I suggest below that they may count as soft constraints. Many theorists of self-determination argue that a fundamental part of what it means to be self-determining is to be in control over the composition and character of the 'self' (Walzer, 1983; Wellman, 2008: 115). Being able to restrict immigration *and* refugees is therefore seen as an essential component of

collective self-determination. On the account of self-determination defended here, this is not necessary. What matters is that citizens can imagine a ‘we’, that in their intention to contribute to the core political institutions of the state they understand themselves as part of a joint enterprise together with others who also identify with the same polity. What matters is not the capacity to *control* the ‘self’, but the ability to *imagine* the ‘self’.⁶

However, if citizens harbour a thick sense of their collective self, then this collective imagining may prove difficult in the face of refugee-driven diversification. National identities may be ‘sticky’ and difficult to change in the short-term, and rapid disruptions may make citizens feel alienated from political institutions. Since they are within the control of the attitudes of current citizens, as well as the state with its nation-building tools (e.g. citizenship, education and cultural policies), they are soft constraints. The dynamic duties that follow consist in undertaking a ‘re-imagining’ process to a thinner identity, so that citizens’ collective identity does not hinder refugee admission in the long-term. As suggested, only ‘thin’ forms of political identity are necessary for collective self-determination. And as contended above, determining soft and hard constraints is also a moralised endeavour, where constraints are ‘softer’ if persons can also be regarded as morally blameworthy for their attitudes, even when they may be subjectively perceived as hard to change. This is important to avoid perverse incentives. If someone feels alienated from their political institutions because they hold a racialized view of their political identity, and institutions embrace diversity, then this person ought to change their political identity to one that is compatible with a liberal conception of justice and especially with the equality of all persons. Some forms of identity, like those based on racism, undermine other aspects of freedom and justice than ‘maker freedom’; they undermine the realisation of a liberal conception of justice (with or without refugee admission).

The difficulty of imagining a shared identity may also stem from refugees themselves. We may worry, for example, that they do not immediately affirm their new political institutions. This may undermine the constitutional basis of the state, which is a necessary condition of collective self-determination, and it may undermine a political identity based on shared commitments to political institutions. Before addressing whether these costs may count, it is important to recognise that claims about the distance in values between refugees and the native population are often based on prejudice (Holtug et al, 2015). Moreover, the internal value consensus amongst the somewhat arbitrary categories ‘citizens’ and ‘immigrants’ is often exaggerated. Just as a ‘thick’ identity may require citizens to ‘re-imagine’ themselves so that their collective imagination can incorporate newcomers, the way in which shared values are deliberated within a political culture may also be required to change to that end. Discussing the role of universal values in public deliberation in relation to the Danish cartoon controversy, Christian Rostbøll (2010: 408) notes that ‘it was the presentation of liberal principles as inseparable from a specific history and culture that led to the notion that Muslims could not possibly share these principles’. The failure to imagine some people, in this case Muslims, as part of the imagined ‘we’, may stem from what the shared properties of the ‘we’ are perceived to originate from. Hence, in this case, whilst this may count as a low cost, it is certainly possible for citizens and, especially, public officials to change their way of conducting public discourse in a more inclusive way. Indeed, there is already wide variation in how national identity and national discourse on community boundaries are understood within most liberal nations and there are consequently ample symbolic resources for a more inclusive discourse already available. There is therefore a strong onus to remove this soft constraint.

Yet some costs may remain resulting from the different values, identities and attitudes of some refugees, especially if numbers are high. This can be circumvented by separating admission and

membership (Pevnick, 2009; Author). Commitment to political institutions can also be developed through integration and naturalisation policies. However, many refugees need permanent membership in a new state, so this can only be a partial mitigation (Gibney, 2015: 8). If a large majority of the admitted refugees hold radically different regime type preferences, favouring authoritarian or clerical regimes, then their inclusion in the citizenry may, however, constitute a cost to the ability to form shared intentions in the particular regard of preferences for particular political institutions. And these costs, though they are rarely as severe as portrayed, may indeed count as high, since they are beyond the immediate control of the state and of citizens, so long as their identity is of the thinnest possible kind.

In summary, refugee admission may impose costs to the capacity of self-determination. But almost all of these costs result from soft constraints, such as costs of citizenship and integration policies, and some are caused by prejudiced attitudes of current citizens, such as exclusionary public discourses. Therefore, most only count as lower costs, especially those that are based on prejudice, as otherwise perverse incentives would be created. Consequently, whilst these costs to self-determination may permit the state to pursue extraterritorial protection instead of admitting refugees to its territory, it will either have to provide very extensive extraterritorial protection or nonetheless admit a substantial number of refugees.

Equality

A liberal conception of justice includes some form of redistribution through a welfare state so that citizens can be equipped with means to make effective use of their liberties and opportunities. The welfare state may need additional resources as a result of very high levels of refugee admission. Yet many of the costs that states are reluctant to shoulder in relation to the welfare state are not material, but relate to the value of equality. What kind of costs are they and do they count?

In a discussion of the factors that affect a state's capacity to absorb refugees, Gibney (2004: 216-21) argues that the wealth of a country is an inadequate indicator of its ability to absorb refugees, since admitting refugees is more expensive in Western states, with expansive welfare states, than in less developed countries that do not include refugees in such extensive provisions of public goods. Many poorer countries that host a large number of refugees, such as Lebanon and Turkey, provide few rights to refugees and refugee admission is therefore less costly per refugee.⁷ A state with a generous welfare state and a commitment to egalitarian membership will have much higher costs for refugees than a state with a limited welfare state and/or no commitment to egalitarian membership. That is, a state may have a generous welfare state, but without a commitment to egalitarian membership, that all citizens or permanent residents should have equal social and political rights, the welfare state need not extend to refugees. The most generous welfare states, such as the Scandinavian ones, often have a very strong commitment to equality and extend many rights to residents, even sometimes if they are not permanent or even recognised by the state. To keep the commitment to egalitarian membership, refugees need to be fully included in the welfare states, which may result in high costs per refugee, in particular if they struggle to break in to the labour market. Can these be justifiably classed as costs?

Liberal conceptions of justice vary, and indeed one of the reasons collective self-determination is valuable is that it allows citizens to implement a particular conception of justice. Because there is no one standard of equality by which all liberal conceptions of justice can be judged – there can be reasonable disagreement on matters such as the size and design of the welfare state - it may also be necessary to ask of states to adjust their particular interpretation of equality to enable increased refugee admission. Otherwise, perverse incentives are created, whereby those states that prioritise their own citizens the most, and implement the strictest form of egalitarianism, also need to admit

fewer refugees. In general, obligations that arise between citizens of affluent states cannot themselves reduce their obligations to outsiders (Abizadeh, 2016; Scheffler, 2001). For if we have X obligations to all humans, the fact that our cooperation with A and B in a welfare state creates Y obligations to A and B does not alter our X obligations to all humans. Consequently, egalitarian states can reduce their costs of refugee admission by lowering their commitment to equality. If they differentiate social rights between citizens and non-citizens, or temporary residents and permanent residents, they can maintain a generous welfare state for citizens/permanent residents whilst providing a more limited set of social rights for non-citizens/temporary residents. This need not necessarily have detrimental effects on refugees or on the economic equality between citizens and refugees, depending on the extent to which rights are restricted. For example, such restrictions may be limited to contribution-based entitlements. Yet this way of reducing cost can only be temporary, as refugees must be provided the opportunity to become both permanent residents and citizens.

In addition, we do not want to create an incentive for states to provide very few rights to immigrants, or in general develop a very limited welfare state with the argument that it allows them to admit more refugees. Because of this, costs to equality that count may certainly arise from refugee admission. Examples of these are reorganisations of the labour market and welfare state in such a way so that income differences will increase, or tax increases to fund the education and training of refugees to provide them an equal footing on the labour market.⁸ Material costs of refugee admission may however be dispersed differently across the population, which affects whether the costs to equality are high or low. Whether capacity-increasing measures such as spending cuts or tax increases are progressive or not matters for whether the value of equality has been affected by refugee admission. It is when the number of refugees reach a point where the

state must introduce capacity-increasing measures that have a regressive effect that refugee admission constitutes a cost to equality. At this point, it may be permitted to pursue extraterritorial policies instead.

Motivational Constraints

There is a second way in which refugee admission may constitute a cost to equality; by reducing popular support for redistribution. Nationalist scholars have long argued that national identity contributes to creating the trust and solidarity necessary to uphold the welfare state (Miller, 1995). Diversity, as it undermines a sense of shared national identity built around a shared culture, may therefore indirectly undermine equality by eroding trust and solidarity. There is some, though mixed and inconclusive, evidence that an increase in diversity may have such effects (Schaeffer, 2013; Burgoon, 2014). Moreover, these effects often emerge as a result of perceived ethnic differences (Burgoon, 2014). This suggests that citizens are not justified in reacting in this way, as it amounts to ethnic discrimination and this is not compatible with a liberal egalitarian conception of justice. Even if these kinds of costs do affect a central feature of a liberal conception of justice, therefore, they appear to emerge from the unjustified attitudes of citizens.

Accordingly, Ryan Pevnick (2009: 152) argues that ‘it is objectionable to allow citizens to use predictions about their own future behavior to rule out policies because they control their future behavior’ (cf. Carens, 1992a). Whilst this is true in terms of how such soft constraints cannot alter the scope of obligations to protect refugees, they may still impose some feasibility constraints in the short-term on how to discharge them. Two things follow. Firstly, since the costs that result from these constraints stem from contingent, discriminatory in-group favouritism by current citizens, the costs count less than their impact on redistribution may otherwise have implied. Secondly, they also give rise to dynamic duties. Governments accordingly have a responsibility to

implement policies that will strengthen trust and solidarity in diverse societies in the long-term and thereby reduce the impact of these motivational constraints. Such policies may include, for example, having robust and fair, non-discriminatory, institutions, provide equal opportunities for the disadvantaged who may otherwise be inclined to blame immigration and design the welfare state in ways that increase solidarity (cf. Rothstein, 2011).

Such dynamic duties are often forgotten in discussions on the relation between immigration and the welfare state. In an argument for the legitimacy of prioritising domestic welfare over open borders, James Woodward (1992: 79) suggests that '[...] it does seem uncontroversial that facts about non-ideal behaviour and institutions are relevant to and will make some difference for the obligations of citizens in affluent countries.' But Woodward's argument, that even non-ideal institutions give rise to obligations that prioritise the welfare of members (citizens) of those unjust institutions over those who are affected by their injustice (potential immigrants), neglects that by allowing non-ideal behaviour and institutions to affect obligations it may become even harder to make that behaviour and those institutions more ideal in the long-term. This is why dynamic duties must also include the duty to consider how sequences of actions to mitigate the effect of soft constraints in the short-term impact what is feasible in long-term. It is not permissible to mitigate a soft constraint in the short-term in such a way as to make it more likely that this soft constraint will remain in the long-term. Motivational constraints, to the extent that they are real in the world right now, may count as low costs of refugee admission as they impact on other legitimate goals and they also carry a concomitant obligation to work towards reducing their impact. And importantly, even though such constraints may count as low costs for the way duties are discharged, allowing motivational constraints to count may not be permissible if in doing so, soft constraints are even more entrenched. Doing so would entail a failure to discharge dynamic duties.

Conclusion

Affluent states persistently try to eschew their responsibilities to refugees by pursuing extraterritorial policies. This paper has considered when and how such policies may nonetheless be permissible. I argue that states may be permitted to limit the number of refugees they admit if they compensate by contributing to protection extraterritorially. However, this is only permissible under two conditions. These conditions are a) that protection in a third country must allow refugees to integrate, and b) protection in a third country must be based on bilateral or multilateral agreements. The first condition is particularly demanding and disqualifies many if not most of current extraterritorial practices, which often fail to even protect basic rights. This sets this paper apart from a recent attempt to theorise extraterritorial protection, where the authors argue that states can contribute to extraterritorial protection that falls short of integration in a new society as an alternative to admission (Betts and Collier, 2017).

To concretise the relationship between costs, limits and obligations, this paper has explored what costs refugee admission may incur on states in the areas of self-determination and equality that may permit states to limit admission in favour of extraterritorial contributions. I concluded that refugee admission may incur costs, but that these tend to be of a lower kind since they are caused by controllable factors such as the institutional framework of the state or the attitudes of its citizens.

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¹ Under strictly ideal conditions, no refugees would exist, but when they do it would be more ideal if all states fulfilled their duties towards refugees. Thus, when I refer to ‘non-ideal conditions’ the quasi ideal world that this is measured against is not one where there are no refugees, but one in which all states fulfil their duties to refugees.

² This is not to deny that many refugees do manage, despite the adverse conditions and limits to their rights, to create meaningful lives in refugee camps.

³ Some may argue that this notion of refugee protection implies that refugee definitions must be ‘narrow’, including for example only those who are persecuted, and not those generally deprived of human rights. Matthew Lister (2013) and Max Cherem (2016) pursue variations of this argument. This paper is not concerned with the definition of refugees, but I note that my argument does not validate Lister’s and Cherem’s position, but it is compatible with it. That is, to them, extensive notions of protection imply that refugee definitions must be narrow, yet others may disagree that this is so whilst agreeing with my notion of refugee protection.

⁴ Although eventually, refugees will make claims to ‘maker freedom’ too, in their new state.

⁵ In addition, we should distinguish between legitimate and illegitimate means of instilling affirmation of political institutions amongst the citizenry, as well as between necessary and sufficient conditions. Affirmation may be produced through indoctrination, but this would not increase ‘maker freedom’ as it would be based on manipulation. Authorship of political institutions is also not a sufficient condition to generate affirmation.

⁶ It should be clarified that this does not amount to a demand on refugees to understand themselves in a particular way in relation to the hosting state’s political institutions in order for them to be able to claim their rights of protection, just as there are no conditions on citizens of a state to identify in a certain way in order to claim their rights as citizens.

⁷ Although as part of the EU/Turkey deal, Turkey has started to provide refugees with work permits.

⁸ Of course, refugees may also bring benefits in terms of for example tax payments and entrepreneurship and this needs to be taken into account too.
