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Chapter 1: Introduction

Refugees face the stark threat of serious harm. They escape dangers such as war, generalised violence, persecution, severe poverty and damaging environmental change, whether these ills have been created partly or wholly by their own states, non-state actors, or other states. Refugees flee in very large numbers: at the end of 2020, there were around 82 million displaced persons in the world, of whom around 26 million had crossed an international border as refugees (UNHCR 2021: 2).¹ Yet very many do not find the protection they seek. Given the policies of a range of states, they endure frequently perilous journeys only to be trapped in insecure camps or to lead precarious lives in urban settings throughout the developing world for years, or even decades, on end (see Parekh 2020). In particular, the variety of measures that wealthy states use to exclude refugees ensures that only a relatively small number reach their borders to claim asylum, although this does not prevent loud declarations of ‘crisis’ in response by politicians, publics and sections of the media in those states (see FitzGerald 2019; Gibney 2004).

The plight of refugees is now one of the most urgent moral and political issues in the contemporary world. Indeed, the sheer magnitude of current refugee movements, the severity of the harms faced by refugees, and the ongoing political controversies surrounding asylum in Western states, all give rise to many pressing questions. How should the institution of asylum function? Who, of the many millions who live with their basic needs unfulfilled in their states of origin, should be granted asylum? Should the question of which actors caused refugees’

¹ The 1951 Refugee Convention defines a refugee as an individual with a ‘well-founded fear of persecution’ on various grounds who is ‘outside their country of nationality’, and excludes those displaced for other reasons and those who remain within the borders of their own states.

flight have any bearing on the question of who is obliged to protect them? How should responsibilities to protect refugees be distributed among states?²

In addressing such questions, political theorists have identified a number of moral functions that asylum may assume. As I examine in Chapter 2, the dominant understanding of asylum, in both theory and some contemporary political practice, is *humanitarian*, viewing asylum as a response to the moral imperative to protect refugees from serious harm and to meet their immediate needs, simply by virtue of our common humanity (e.g. Gibney 2004). Proponents of this humanitarian approach to asylum tend to view the refugee as an individual in flight from serious harm, to recommend that refugees are allocated to states on the basis of their capacity to protect them, and that they are prioritised for protection, where necessary, on the basis of the urgency of their need. However, theorists have also recognised a range of other moral roles that asylum may take and have highlighted, for instance, its potential as a means of condemning the illegitimate actions of refugee-producing states (Price 2009), expressing solidarity with refugees with whom a state of asylum shares particular affinities (Walzer 1983: 49), and even repairing the legitimacy of the international states system (Owen 2016).

Foregrounding the Causes of Forced Migration

These accounts all provide important rationales for protecting refugees in other states. As I hope to show throughout this book, however, they are also incomplete: they offer only a partially adequate moral and political picture of the institution of asylum and its moral functions, and need to be supplemented in order for us to capture the full range of these

² While there are also a number of vital ethical questions surrounding the proper response to refugees by non-state actors – from the role of multinational corporations in creating displacement, to the proper response of civil society organisations to the arrival of refugees – my focus in this book is on the responsibilities of states. This is because the state generally remains the central actor with the capacity to respond to the plight of refugees in the contemporary world, given their control of access to territory that refugees need to enter in order to avoid serious harm.

functions. As I explain shortly, these accounts are incomplete precisely because of their general reluctance to engage fully with the moral significance of the *causes* of contemporary forced migration, and particularly its external, international causes. Placing the causes of contemporary forced migration at the forefront of our ethical analysis of states' responsibilities to refugees should, I will argue, lead us to embrace an additional *reparative* approach to asylum as a political institution, which asserts that states bear special responsibilities to offer asylum to refugees where they have caused or contributed to their flight. In order to see more clearly why the external causes of forced migration matter when seeking to understand states' responsibilities to refugees fully, consider the following kinds of case.

Military intervention and displacement

In March 2003, the United States led a military coalition into Iraq to oust Saddam Hussein's regime, following air strikes with a ground invasion. While the invasion itself generated little initial displacement (Chatty and Marfleet 2009: 1), the coalition's subsequent military activities, a steep decline in public services, and the emergence of sectarian violence between Iraq's Sunni and Shi'a religious communities, led to growing patterns of large-scale forced migration. Having brought about the effective collapse of the Iraqi state and its institutions, coalition forces produced a power vacuum into which insurgent groups could move, creating the conditions for the full-scale civil war which erupted in 2006, as part of which a pattern of ethnic cleansing in previously mixed cities such as Baghdad arose (Stansfield 2007: 205). Although a subsequent change in US military tactics led to a decline in the bloodshed, and its military presence formally ended in December 2011 (Dodge 2012: 75, 13), the extremist militant group, Islamic State, were soon able to capitalise upon persisting Iraqi state weakness, seizing territory and major cities in northern Iraq from 2014 until their ousting from these strongholds several years later. As a result, 1.7 million Iraqis were estimated

to have become refugees, and 2.8 million as internally displaced persons by 2012 (Chatty and Mansour 2012: 98), while at least 3.2 million people fled from areas seized by Islamic State between January 2014 and October 2015 (Ferris and Kirişci 2016: 24).

The plight of Iraqi refugees has become increasingly overshadowed by the displacement of an estimated 13.5 million Syrians – over half of Syria’s population – since the onset of its brutal civil war in 2011 (UNHCR 2021: 7). While Syria has not been subject to any thoroughgoing external invasion during this conflict, as in the case of Iraq, other states (notably Russia and Iran) have played significant roles in fuelling this mass displacement. As the Syrian regime has forced out huge numbers of its own citizens, it has enjoyed the supply of weapons, ammunition and other military support from Russia (Souleimanov and Dzutsati 2018: 42), which has also intervened more directly through air strikes against civilian areas, including hospitals and markets, thereby worsening the displacement crisis more directly (Ferris and Kirişci 2016: 25).

Climate change and displacement

There is today compelling evidence that the intensive and ongoing use of fossil fuels since the advent of the industrial era, particularly by Western states, is driving rising temperatures and the breakdown of the world’s climate. This process is increasing the frequency of extreme weather and climatic events (such as heat waves, droughts, wildfires, deluges and storms), jeopardising health and food security and potentially risking violent conflict, while sea-level rise is threatening coastal communities and the very existence of small island states. This range of risks is contributing to growing patterns of displacement, as millions are expected to find life in their homes less and less viable, to the point of becoming impossible (see Romm 2018). Although it can be very challenging to separate out environmental drivers of forced migration from other contributing factors clearly, climate change can be seen as a

‘threat multiplier, which magnifies existing vulnerabilities’ (McAdam 2012: 5). Despite the large responsibility of Western states for causing these grave threats of displacement, they have generally not shown the political will to respond adequately and some, such as the United States under its former president, Donald Trump, have openly denied this responsibility (Romm 2018: 280-281).

Colonial legacies and displacement

While many refugee movements flow from recent military intervention or the ongoing effects of excessive carbon emissions, others may be rooted in historical injustice, such as the legacies of colonialism. In general, some have argued that the prevailing models of the colonial state ‘set the stage’ for post-colonial refugee movements, by deploying strategies such as ‘divide and rule’, which involved the privileging of certain ethnic groups over others, and thereby creating the conditions in which post-independence conflict and displacement would result (Anthony 1991: 574; see also Hovil 2019). It is also frequently observed that the imposition of arbitrary boundaries that were insensitive to local social and ethnic groupings also sowed the seeds of such conflict (e.g. Adepoju 1982: 24), and that the leaders of former colonies perpetuated the repressive apparatus of the colonial administration that they inherited upon independence in order to consolidate and maintain their control (Ottunu 1992: 18; Hovil and Lomo 2015: 41).

More specifically, there are cases in which particular former colonial powers may have created conditions ripe for contemporary displacement. One example here is the role of Belgium in creating the conditions that made the Rwandan genocide possible, as well as its attendant refugee crisis, in which three million Rwandans had become refugees by the end of July 1994 (Klinghoffer 1998: 3). Although the genocide has been framed as a form of almost primordial ethnic violence (see Chimni 1998: 360-361), Belgian colonial policies can be seen

as largely responsible for ossifying the distinction between Hutu and Tutsi, and privileging the latter, thereby laying the ground for the subsequent acrimony and violence between them (see e.g. Prunier 1995: 37).

A Reparative Approach to Asylum

In these and many other cases, external states have been deeply implicated in the production of refugees. This much is perhaps unsurprising in a globalised world that has become deeply interconnected politically, economically and socially. However, dominant approaches to asylum in contemporary political theory do not take the moral significance of these causes into account fully when discussing states' responsibilities to refugees.³ For instance, the widespread humanitarian account of asylum, with its heavy focus on meeting refugees' immediate and pressing needs, generally views the capacity of each state to protect refugees, and not any special responsibility it may have for the creation of those refugees, as morally decisive when determining the correct distribution of responsibilities to refugees among states. It does not ultimately matter for this distribution, on the humanitarian view, whether or not Syrians were forced to flee partly given Russia's actions or purely due to those of their own government; whether some may be displaced as a consequence of other states' excessive carbon emissions, or whether ethnic conflict that produces refugees is rooted in ongoing colonial legacies. It would follow from this that Russia has no greater responsibility to protect Syrian refugees than any other state; that the world's highest-emitting states bear no more responsibility for hosting the environmentally displaced than the lowest emitters; and that Belgium was no more responsible for protecting Rwandan refugees in 1994 than, say, Thailand.

³ Although Matthew Price's view of asylum as a potential form of condemnation recognises the *internal* causes of forced migration, by seeing asylum as a remedy for those facing persecution at the hands of their own states (Price 2009), the other accounts canvassed briefly at the start of this chapter do not engage with the *external* causes of forced migration in any depth.

Yet, intuitively, these conclusions are highly implausible. The reason they are implausible, or so I shall argue, is that the humanitarian impulse sits alongside another widespread and deeply rooted conviction which, very roughly, asserts that those who cause harm, and especially unjustified harm, bear a special obligation to make amends for it. This, in very basic terms, can be described as a principle of reparation. In many other contexts – from legal settings to interpersonal relationships – we routinely apply something like this principle, so a key question facing the humanitarian and other theoretical accounts of asylum is: why not in the context of asylum?

Acknowledging both the frequently external causes of forced migration and the intuitive force of the principle of reparation should lead us also to recognise an additional moral function that asylum may possess: as a form of reparation for the unjustified harms of displacement. This potential reparative function, I shall argue, stems from a special obligation on the part of states to offer asylum to refugees for whose flight they are responsible, whether through their military interventions, support for oppressive regimes, or imposition of damaging economic policies. Asylum needs to be partly re-conceptualised in order to reflect fully the range of moral obligations that states bear towards refugees; it should also be conceived as potentially offering a means by which states that have caused or contributed to refugees' flight can rectify the unjustified harms that they have imposed on them. In ethical theorising on states' responsibilities to refugees, I aim to show, it is of great moral import that states of asylum are often implicated in the flight of the refugees to whom they may go on to offer protection, even while they more often than not go to great lengths to debar those refugees from their territory.⁴

⁴ In this respect, my argument has parallels with theoretical work that seeks to challenge the framing of global issues as causally unconnected with Western actions, such as global poverty (Pogge 2002) and humanitarian intervention (e.g. Nili 2011; Dunford and Neu 2019).

The idea that states bear a special responsibility to offer asylum to refugees for whose flight they are responsible has been politically salient in the modern era in light of military interventions by Western and other states, such as the Vietnam War, NATO's bombing of Kosovo in 1999, the invasion of Iraq in 2003, and Russia's military role in the Syrian civil war. In response to these cases, some politicians, citizens and academics have asserted that the intervening powers bore a special obligation to protect the refugees whom they generated (e.g. Carens 2013: 195; Walzer 1983: 49). While clear examples of states explicitly using their asylum policies for reparative ends are not plentiful, the United States' resettlement of Vietnamese refugees can be seen as implicitly reparative in character (Carens 2003: 100), and the legislation passed in the US promising admission to Iraqi interpreters and translators was explicitly framed as fulfilling a special responsibility to them.⁵

In contrast, this reparative approach to asylum has not received detailed theoretical treatment, as political theorists have often engaged with this idea only in passing.⁶ Reflecting the dominance of the humanitarian approach, ethical theorising on asylum has instead tended to be synchronic and ahistorical in character, focusing upon the rights and duties of refugees and states that stem from the *current* situations of both parties, rather than from pre-existing relationships among them. Work that has addressed the rights of refugees to reparation has tended to focus strongly on voluntary repatriation and refugees' claims for redress against their states of origin during transitional justice processes following periods of conflict and human rights violations, rather than any entitlement to asylum from external states (e.g. Bradley 2013;

⁵ The *Refugee Crisis in Iraq Act* asserted that 'the United States has a fundamental obligation to help the vast number of Iraqis displaced in Iraq and throughout the region by the war and the associated chaos, especially those who have supported America's efforts in Iraq' (United States 2008).

⁶ Discussions include: Bader (2005: 346-347); Blake (2013: 114-119); Carens (2013: 195); Coen (2017); Ferracioli (2020: 195-196); Mark Gibney (1986: 79-108; 1991); Matthew Gibney (2004: 48-57); Holtug (2016: 284-285); Lennox (1993); Miller (2016: 113-114); Owen (2020: 67); Shacknove (1988: 140-141); Walzer (1983: 48-51); and Wilcox (2007). More recently, however, a few scholars have offered somewhat more detailed explorations of states' reparative obligations towards the environmentally displaced (e.g. Buxton 2019; Draper 2018; Eckersley 2015), war refugees (Davidovic 2016; Kling 2019), and migrants more generally (e.g. Achiume 2019; Bosniak 2016: 209-217; Collste 2015: ch. 12; Glanville 2020; Nevins 2019).

Bradley and Duthie 2014). While Megan Bradley (2013) has convincingly argued that the voluntary repatriation of refugees can potentially act as a form of redress for the injustices of displacement, Bradley's insight that 'reparations are a critical expression of accountability for forced migration' (Bradley 2013: 2) is highly relevant for reflection on the responsibilities of refugees' states of asylum, as well as those of their states of origin.

Given this relative neglect of the reparative approach to asylum, the claim that states bear a special obligation to those whom they have displaced continues to contain unresolved ambiguities. Although this basic claim may – at least for those of a broadly liberal and internationalist ethical orientation – be highly intuitive or even considered obvious,⁷ it is when we seek to flesh out and specify it that matters become much more controversial and interesting. As it turns out, even if we are prepared to admit the existence of this obligation in principle, the conditions under which it should obtain are far less clear. Should external states offer asylum to refugees for whose flight they bear only causal responsibility, or should moral responsibility, in the form of fault or blameworthiness, be required? Should such states offer asylum as reparation to refugees whom they have displaced justifiably (assuming this is possible), or is it owed to refugees who have been displaced only unjustly?⁸ How should this obligation be balanced against other competing moral considerations, not least the morally powerful humanitarian principle? What are the moral and practical implications of asylum as reparation for the operation of the international refugee regime?

Moreover, without a clear account of states' reparative responsibilities to refugees, theorists are liable to slide, perhaps inadvertently, between assertions of different types of

⁷ For instance, in his discussion of states' responsibilities to refugees, Mark Gibney (1986: 80) sees the 'harm principle' as being 'such an intuitive concept that it nearly defies justification'.

⁸ In Chapter 5, where I address this question in depth, I use the term 'justified displacement' to refer to both the intentional displacement of refugees, and flight that is an unintended by-product of external states' actions, giving more attention to the latter kind of case.

putative special responsibility, including reparative responsibilities, in this context.⁹ Take perhaps the most famous articulation of states' special responsibilities towards refugees within contemporary political theory, expressed by Michael Walzer (1983: 49):

Toward some refugees, we may well have obligations of the same sort that we have toward fellow nationals. This is obviously the case with regard to any group of people whom we have helped turn into refugees. The injury we have done them makes for an affinity between us: thus Vietnamese refugees had, in a moral sense, been effectively Americanized even before they arrived on these shores.

Here, Walzer effectively combines a recognisably *reparative* moral claim (when he refers to 'the injury we have done them') with a distinct *solidarist* claim (when he writes of 'an affinity between us' that he believes was created as a result of this injury). Furthermore, as I note later, the claims made on behalf of Iraqis employed by the US-led coalition during its occupation of Iraq have melded together, or oscillated between, reparative, associative and desert-based notions. Various commentators argued not only that Iraqi employees have a special claim to asylum because of the harm posed to them as a result of their employment, but also as a reward for their assistance to the war effort, which some consider to have forged a strong tie between them and the US polity. This slippage between different kinds of special responsibility claims may not be problematic from the perspective of refugee advocates, who will pragmatically aim to mobilise whichever arguments, or combination of arguments, will enable them to make their case most forcefully and effectively. For political theorists, however, getting a clearer view of what is at stake in the ethics of asylum requires disentangling the

⁹ Indeed, there are a number of other special responsibilities that states may bear to refugees. These include the responsibility of refugees' states of origin to readmit and reintegrate their estranged citizens (Bradley 2013); the responsibility of states which, by receiving refugees onto their territory, acquire a duty of *non-refoulement* (Miller 2016: 84); and states' associative duties towards refugees on the basis of political, social or cultural ties those refugees may have to a state of asylum that stem from colonial legacies (e.g. see Amighetti and Nuti 2016; Smith 2008; 2014). While recognising these other forms of special responsibility to refugees, my focus in this work is on states' reparative obligations arising from the act of causing or contributing to refugees' flight.

overlapping, yet conceptually distinct, special responsibility claims made in the context of asylum and refugee protection.

In addition, although the principle of reparation is widely accepted in everyday moral thought, its application to asylum in any given case of displacement is somewhat more variable and unpredictable. The assertion of a special obligation on the part of a particular state to offer asylum as reparation to certain refugees is vulnerable to a variety of counterclaims, concerning issues of causality, justice, state capability and fittingness, which may defeat it in certain circumstances. As we shall see, in some cases a state's putative obligation to offer asylum as reparation to certain refugees may be resisted, whether convincingly or unconvincingly, on the grounds that the causal links between a state's actions and a refugee's flight are too tenuous; that the intervention which created the refugees was morally justified and that therefore no reparation is owed to them; that the responsible state lacks the capacity to offer an adequate form of asylum; or that another form of reparation is more fitting than asylum. The normative force of reparative justice itself notwithstanding, it is due to the very instability and defeasibility of our intuitions concerning states' reparative obligations to refugees in any given case that they need bolstering by an explicit account of asylum as reparation that brings our perhaps semi-conscious beliefs and presuppositions into the open, and clearly defends them.¹⁰ In short, while the basic idea of asylum as reparation may be highly intuitive, its normative presuppositions, background commitments, practical implications and underlying complexities require detailed clarification.

In this book, I address the ambiguities surrounding the notion that states bear a special responsibility to offer asylum to refugees whom they have displaced by characterising it as an obligation to offer 'asylum as reparation' to those refugees. I thereby forge a theoretical link

¹⁰ I am grateful to Blair Peruniak for suggesting this point.

between two concepts that are standardly discussed in isolation from one another, and develop a detailed and systematic account of when this obligation obtains. As noted above, my starting point is a general moral principle, which I term the principle of reparation. I make no explicit argument in support of this principle, but rather assume it as an important part of the fabric of modern moral, political and legal thought and practice within, but not limited to, liberal-democratic states, and put it to work in a context to which it has not been explicitly applied. The argument made here effectively has a ‘conditional character’,¹¹ suggesting that “*if* one believes in the principle of reparation, *then* one has good grounds for also believing that states at times bear a special obligation to offer asylum as reparation to certain refugees”.¹²

As my opening comments make clear, the argument of this book is animated by the observation that forced migration often has external causes. However, my main intention in this work is to offer a theoretical framework which can then be used to assign reparative responsibilities to protect particular refugees through asylum in a more justifiable and convincing way. This framework may be of use to those who take a variety of empirical views on the contemporary causes of forced migration, from the belief that only a small proportion of the world’s refugees are generated through external forces, to the conviction that most, if not all, refugees are produced this way. The theory of asylum as reparation developed here is, therefore, amenable to a range of views on the causes of contemporary displacement.

¹¹ For a rectificatory argument with a parallel structure, see Butt (2009: 14).

¹² The argument presented in this book is also therefore of a *contextualist* character, taking one principle that is firmly embedded in a particular normative context, rather than basing it on any foundational or metaphysical truth. Although this renders the argument readily applicable to liberal-democratic states (given both their commitment to principles of reparation and their roles in the production of refugees), it also potentially applies to non-democratic states which also generate refugees and adhere in their laws and policies to a conception of reparative justice. For a discussion of contextualism with reference to the ethics of immigration, see Carens (2004).

Structure of the Argument

This book is divided into three main parts. In Part I, I lay out my reparative approach, and explain the ways in which it constitutes an alternative to the dominant humanitarian understanding of asylum. In Chapter 2, I begin by examining the nature of humanitarian asylum, and make a distinction between the way in which this mode of asylum is currently understood in political theory and some practice on the one hand, and its most defensible form on the other. In Chapter 3, I more precisely articulate the principle of reparation that I use to guide the subsequent analysis, and explain the ways in which asylum may act as a form of reparation for the unjustified harms of displacement. Asylum, I suggest, may constitute forms of *restitution* (where effort is made to recreate the conditions that held before a violation occurred); *compensation* (where a monetary or material good is provided to make up for that violation); and *satisfaction* (where an apology for, or other form of recognition of the violation is offered). I argue that asylum, while capable of offering only a fairly weak form of restitution, may have a strong compensatory role, and also potentially functions as a form of satisfaction.

In Part II, I aim to identify the main conditions under which asylum should function as a form of reparation. Over the course of the following four chapters, I apply the principle of reparation outlined in Chapter 3 to the case of refugees seeking asylum in another state. I argue that a state owes asylum as reparation to refugees when it bears outcome responsibility¹³ for subjecting them to the risk or experience of unjustified harm; when asylum is the most fitting form of reparation for this harm that is available to those states; and the state in question is capable of offering this form of asylum to the refugees who are owed it. Throughout these four chapters, I work through and defend each of the elements of this formulation.

¹³ Outcome responsibility, as I explain in Chapter 3, is a term broadly defined by legal scholar Tony Honoré (1999: 14) as ‘being responsible for the good and harm we bring about by what we do’, and taken up in work on global justice by David Miller (2007: ch. 4).

I begin this process in Chapter 4, highlighting the variety of both direct and diffuse ways in which external states may bear outcome responsibility for refugee movements. I defend the condition that a state must bear outcome responsibility for displacement in order to owe asylum as reparation to them, as opposed to other types of responsibility, such as its causal or moral forms. I also address the difficulty of accurately attributing responsibility for displacement to external states in causally complex cases, in which responsibility is shared by many actors given their joint or separate behaviour over extended periods. Nevertheless, I suggest that such responsibility may be justifiably assigned even in these causally murkier cases through a political and deliberative process.

In Chapter 5, I examine the condition that a state owes asylum as reparation to refugees when those refugees have suffered unjustified harm, or are at risk of suffering such harm. While the idea that perpetrators of unjustified harm should offer reparation is philosophically uncontroversial, I focus on external states' reparative responsibilities to refugees produced by justified humanitarian interventions aimed at halting atrocities in two rarer (and perhaps hypothetical) kinds of case. The first type of case would arise where displacement caused as part of such an intervention could conceivably be *fully* just. In contrast, the second kind of case would arise where the production of refugees would be *tragically* justified, in the seemingly paradoxical sense that this would involve states unavoidably engaging in wrongdoing despite the existence of an overall justification for their actions. Such states, I suggest, would thereby gain what some political theorists have come to refer to as 'dirty hands' in the process (Walzer 1973). I argue that, if cases of tragically justified displacement were genuinely to arise, reparative responsibilities for refugees should be shared among the international society of states at large. This would be required given both considerations of international fairness and the fact that outcome responsibility for the effects of justified humanitarian intervention can

plausibly be seen as being shared amongst the states comprising international society, rather than being borne by the intervening state alone.

In Chapter 6, I address the condition that, for a state to owe asylum as reparation to refugees, asylum must be the most fitting form of reparation for the harms of refugeehood that is available to that state. Acknowledging that asylum is not always the most fitting form of reparation for these harms, I identify some of the reparative strengths of other forms of refugee protection and assistance for refugees, such as voluntary repatriation and *in situ* interventions, and recognise certain reparative weaknesses and biases within asylum in its current form. Despite these weaknesses, the chapter contends, there are genuinely conditions under which asylum is the most fitting form of reparation for refugees that is available to states. I also outline some of the considerations that determine which form of refugee protection is most reparatively fitting for any given refugee, such as their choices, location, social ties and group identity, and suggest that the content of reparative asylum needs to be tailored to be address particular harms that prompted refugees' flight.

In Chapter 7, I examine some of the ways in which genuine limitations to states' capacities might legitimately prevent them from fulfilling their reparative obligations to refugees, whether these constraints are material, political or even conceivably cultural. If states were genuinely unable to discharge their reparative responsibilities to refugees through grants of asylum, I argue that this would not let them off the hook morally, as they should seek to progressively realise reparative justice in this context as their capacity increases. I also address a consequentialist challenge to the notion of asylum as reparation, which states that using asylum reparatively is unjustified wherever it leads refugees to gain a lesser quality of protection as a result.

Having elaborated a theoretical framework for understanding asylum as a potential form of reparation, in Part III of this book I turn to explore some of the potential practical

implications of this idea for domestic and international asylum politics. In Chapter 8, I focus on two implications for states' asylum systems on the domestic level. The first concerns whether the demands of reparative justice might warrant unfairly differential treatment of refugees within a state of asylum depending on which actors caused their flight. The second, in contrast, relates to how reparative and humanitarian claimants should be prioritised if a state found itself in a scenario in which it genuinely could not offer asylum to all refugees owed it. In this chapter, I examine different ways in which states of asylum can seek to navigate ethical tensions between the requirements of reparative justice and humanitarianism in this context.

In Chapter 9, in contrast, I shift focus to the international level and seek to anticipate some of the possible effects that the introduction of reparative thinking into the international politics of refugee protection might have. I begin by envisaging the ways in which this kind of thinking might affect the operation of international refugee responsibility-sharing schemes, at first making the assumption that all states would agree to comply with their reparative obligations to refugees within such a scheme. I then drop this assumption, and consider the potential effects on international refugee protection in the much more likely scenario of states' partial compliance. The chapter speculates as to the nature of the incentives that might be created in this non-ideal scenario, identifying certain perverse incentives and moral hazards that the pursuit of reparative justice might create in this context. Finally, I conclude this book by recapitulating its main arguments and identifying broader questions raised by my approach, reflecting upon its continuing relevance to refugee protection and international politics as the twenty-first century progresses.

In elaborating this reparative approach to asylum, it may be that it is vulnerable to attack from two sides: by those who see it as unrealistic or even utopian in some respects, and by those who view it as insufficiently radical in others. On the one hand, the account may be seen as unrealistic simply because I am open to the possibility that states may comply with their

obligations to offer asylum as reparation to refugees whom they have displaced. This may seem unwarranted, given the highly limited extent to which states – perhaps at times conscious of the admission of failure implicitly involved in protecting refugees from states where their interventions were supposed to have delivered freedom and security – have recognised or fulfilled their reparative obligations towards refugees. It may also seem unrealistic given that the analysis in this book does not, in principle, apply only to those defined as refugees under the 1951 Refugee Convention, who have a well-founded fear of persecution on various grounds, but to any individual forced to flee serious harm; a definition which would enjoin states to host far greater numbers of refugees than they are generally prepared to.¹⁴ Although much of this book is an exercise in what has become known as *non-ideal* political theory – in that my focus is upon the proper response to the injustices of displacement, generated by states’ lack of compliance with ideal moral requirements – it may also fall within what Charles Mills (2009: 178) has described as ‘rectificatory ideal theory’, which aims to identify ‘what is *ideally* required to remedy past injustices’ (emphasis added).¹⁵ Thus, while the account of asylum as reparation advanced here is concerned with these injustices, it seeks to identify the ideal remedy for these injustices, in a way that may well be far from being politically feasible.

On the other hand, others may detect a certain conservatism built into the theoretical framework of asylum as reparation itself, given that it involves presupposing what Joseph Carens (2013: 10) has dubbed ‘the conventional moral view on immigration’ that states are entitled to control their borders. This view, some have argued, leads liberal states to violate the principles of freedom and equality to which they are committed (e.g. Carens 1987). Indeed, instead of challenging a view of asylum as a ‘loophole in otherwise restrictive immigration policies’ (Price 2009: 3-4), I argue only that the responsibility of external states for certain

¹⁴ For broader theoretical definitions of the refugee, see Shacknove (1985), Gibney (2004: 7).

¹⁵ For a critique of the use of idealism and realism in political theory concerning refugees, see Sandelind (2019).

refugees' flight can provide those refugees with one specific ground for passing through this loophole. It may even be the case that the idea of asylum as reparation would not make sense in a world of open borders for, in that scenario, refugees with reparative claims would simply be acting on their general entitlements when entering another state, and the state responsible for their flight would consequently have to offer reparation to them in other ways.¹⁶ While a reparative argument for open borders could be mounted if one established that *all* migration is the product of external states' actions, as Jonathan Seglow (2013: 2556) has recognised, reparative justice 'does not call for open borders when no harm has occurred' (see also Song 2018: 82, 92).

Nevertheless, there is value in running both ideal and non-ideal arguments on parallel tracks, as it were. Even if the idea that the powerful may voluntarily hold themselves accountable for the displacement they cause seems unrealistic and we need instead to pursue some course of action that falls short of Mills' rectificatory ideal in this context, we still have to know what this ideal consists of, so as to ensure that we do not end up confusing the normatively desirable with the practically possible. Similarly, it is possible to support open borders as a longer-term political goal while at the same time advocating asylum as reparation for certain refugees in the meantime, given the obstinate political reality of immigration controls. Asylum as reparation, therefore, is significant as a potential means of offering some measure of justice to refugees in a deeply unjust and bordered world.

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¹⁶ I am grateful to Daniel Butt and Katy Long for prompting this point.

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