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Moral Refugee Markets

Abstract: States are increasingly paying other states to host refugees. For example, in 2010 the EU paid Libya €50 million to continue hosting the refugees within its borders, and five years later Australia offered Cambodia \$31.16 million to accept asylum seekers living in Naru. These exchanges, which I call ‘refugee markets,’ have faced criticism by philosophers. Some philosophers claim the markets fail to ensure true protection, and are demeaning, expressing just how much refugees are unwanted. In response, some have defended refugee markets, claiming they can ensure refugees have protection and are not demeaned. I argue that many markets do demean refugees, and therefore have moral costs, but can still be all-things-considered preferable to alternative schemes if they protect refugees more than these alternative schemes.

Keywords: quota trading; refugees; asylum; discrimination; resettlement.

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Introduction

In 2007 the EU gave Morocco €68 million to continue hosting refugees and prevent them from reaching Europe. Three years later it handed €50 million to Libya for the same purpose,¹ and later offered Turkey €3 billion for providing asylum to refugees arriving in Greece.² In 2016 Australia paid Cambodia \$31.16 million to accept asylum seekers living in Naru³ and Israel paid Rwanda \$5,000 for every Sudanese and Eritrean refugee it resettled from Israel.⁴

I call the above policies ‘refugee markets.’ Just as buyers in commercial markets pay money for services, states in refugee markets pay money for protection. The amount of money states pay is dependent on demand: if Libya demands at least €50 million from the EU before agreeing to host 500,000

1 Maximilian Popp, ‘An Inside Look at EU’s Shameful Immigration Policy,’ *Spiegel Online* (11 September 2014), <<http://www.spiegel.de/international/europe/europe-tightens-borders-and-fails-to-protect-people-a-989502.html>> (Accessed: 16 January 2018); Bjarte Vandvik, ‘The EU’s dubious refugee deal,’ *The Guardian* (20 October 2010), <<https://www.theguardian.com/commentisfree/2010/oct/20/eu-refugee-libya-gaddafi>> (Accessed: 29 December 2017).

2 Only those arriving on the Greek Islands from Turkey would be returned to Turkey, and only those who would not qualify for asylum within the EU. An individual might qualify for asylum within the EU if her life would be in danger were she to return to Turkey. See European Commission, ‘Implementing the EU-Turkey Statement – Questions and Answers’ (2016), <http://europa.eu/rapid/press-release_MEMO-16-1664_en.htm> (Accessed: 29 December 2017).

3 Reuters, ‘Most Refugees Snubbing Australia’s Offer for Cambodia Resettlement’ (17 April 2015), <<https://www.ndtv.com/world-news/most-refugees-snubbing-australias-offer-for-cambodia-resettlement-755716>> (Accessed: 29 December 2017).

4 Ilan Lior, ‘Israeli Ministers Want Asylum Seekers to Choose: Jail or Deportation,’ *Haaretz* (17 November 2017), <<https://www.haaretz.com/israel-news/.premium-1.823318>> (Accessed: 29 December 2017).

refugees, and the EU is willing to pay €50 million for Libya to host 500,000 refugees, the EU will transfer €50 million to Libya to host 500,000 refugees.

Some philosophers have objected to refugees markets, arguing that they demean refugees, expressing just how much they are unwanted. If a state is willing to spend money so that fewer refugees arrive, this indicates just how much the state dislikes the presence of refugees.⁵ Refugee markets also fail to ensure refugees are protected. When the EU pays Libya to host refugees, it does not ensure that the refugees are protected from deportation and abuse by Libyan authorities.⁶

Even when refugees are protected, refugee markets wrongly force refugees to live in whatever country accepts money to provide them asylum. Refugees ought to be given more choice in deciding where they shall live, rather than depending on the whims of the market.

Others have objected to the above arguments. Refugee markets needn't demean refugees; states may simply prefer fewer refugees because of costs involved in providing asylum, and not because they are xenophobic towards outsiders. Moreover, markets could be instituted in a manner that ensured refugees were protected. If refugees were protected, this would be sufficient to fulfill state's obligations, even if refugees would prefer to select their country of asylum.

In the next section, I argue that markets can demean refugees and, even if refugees have no right to choose their country of asylum, there is still value in giving refugees some choice. Markets therefore have moral costs. In the second section I argue that, even though markets have moral costs, they are generally morally superior to alternative policies if they incentivize states to accept more refugees than under alternative policies.

The moral costs of refugee markets

There are four primary arguments against refugee markets. Versions of each argument are valid despite recent objections.

5 Matthew Gibney, 'Forced Migration, Engineered Regionalism, and Justice Between States,' in Susan Kneebone and Felicity Rawlings-Sanaei (eds.), *Regionalism and Asylum seekers: Challenges Ahead* (Oxford: Berghahn Press, 2008), 57–77; Michael Sandel, *What Money Can't Buy: The Moral Limits of Markets* (New York: Penguin, 2012), p. 64; Deborah Anker, Joan Fitzpatrick and Andrew Shacknove, 'Crisis and Cure: A Reply to Hathaway/Neve and Schuck,' *Harvard Human Rights Journal* 11 (1998), 295–310, p. 306.

6 Amnesty International, 'Libya: European governments complicit in horrific abuse of refugees and migrants,' (12 December 2017) <<https://www.amnesty.org/en/latest/news/2017/12/libya-european-governments-complicit-in-horrific-abuse-of-refugees-and-migrants/>> (Accessed: 16 January 2018); Human Rights Watch, 'Libya: Whipped, Beaten, and Hung from Trees- Detained Migrants, Asylum Seekers Describe Torture, Other Abuse in Detention' (22 June 2014), <<https://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees>> (Accessed: 16 January 2018).

The Negative Valuation Argument

This first argument has been endorsed by Matthew Gibney, Deborah Anker, Michael Sandel, and others. When states pay other states to accept refugees, this treats refugees as having negative valuation, similar to toxic waste. Just as a company might pay another firm money to transfer toxic waste to a far-off area, states might pay others to transfer refugees to a far-off area. It is demeaning to treat refugees like toxic waste, and so wrong to institute refugee markets.⁷

In a recent article on refugee markets, Jaakko Kuosmanan objects to this argument. Just because one agent pays another to transfer a good, it does not follow that the good in question has negative value. It could be that the payment and good both have positive valuation.⁸ For example, a state could value protecting refugees a great deal, but also value a society that does not dramatically change from year to year, and so pays another state to accept refugees for a given year. Such a state may also be nervous that accepting some refugees now will encourage more refugees to arrive later, and later it will lack the capacity to accept quite so many refugees. Just as states may worry about a major influx of immigrants, because they lack the capacity to integrate these immigrants, states may worry about a major influx of refugees, because they lack the capacity to accept these refugees.

I believe this objection is valid, and requires us to modify the Negative Valuation argument. Rather than claiming all markets express negative valuation, we may claim that markets permit negative valuation when states are motivated by xenophobia. Xenophobia, as I define it here, is a preference to have fewer refugees because of negative stereotypes regarding refugees, and because they are viewed as foreign and not belonging. If such states hope refugees never arrive, and also pay other states to ensure they never arrive, the payments express precisely how much refugees are not wanted. Just as it would be wrong for a xenophobic policymaker to announce, ‘I strongly dislike the presence of refugees,’ it would be wrong for this policymaker to imply that she strongly dislikes the presence of refugees by paying a large amount of cash to ensure they are not present.

Here is an example. In 2012 the Israeli Prime Minister declared that Africans were ‘flooding the country’ and an Israeli Member of Knesset declared that Africans were a ‘cancer to the body,’ statements which the majority of Israelis agreed with.⁹ Shortly after, the Israeli government approached the governments

7 See footnote 5.

8 Jaakko Kuosmanan, ‘What (If Anything) Is Wrong with Trading Refugee Quotas?’ *Res Publica* 19/2 (2013), 103-119, pp. 111-112.

9 Ephraim Yaar and Tamar Hermann, ‘Peace Index’ (2012), <[http://en.idi.org.il/media/602071/Peace%20Index-May%202012\(1\).pdf](http://en.idi.org.il/media/602071/Peace%20Index-May%202012(1).pdf)> (Accessed: 3 October 2014).

of Rwanda and Uganda, offering them \$5,000 for each Sudanese and Eritrean refugee they agreed to accept. In this case, there were two expressions of xenophobia: first when African refugees were compared to a flood and cancer, and then again when the government implied the following message: ‘We dislike refugees to such an extent that we are willing to spend hundreds of millions of dollars so they leave.’

Importantly, the above implied message can arise even if a state’s primary reason for rejecting refugees is not xenophobia. It is enough that xenophobia plays some part. For example, in 2010 Italy paid Libya \$5 billion in return for Libya keeping refugees within its borders.¹⁰ It may have been that Italy’s primary interest in paying Libya was related to economics – it felt it could not integrate a large number of refugees into the economy at once – but if it also was influenced by xenophobia, this may have impacted the amount of money offered. If in a world with less xenophobia it would have agreed to pay Libya only \$4 billion, the additional \$1 billion expressed a xenophobic preference, and so entailed an expressive harm.

Moreover, the above argument is relevant even if only some states in a market have xenophobic intentions. A refugee market will permit these xenophobic states to partake in an expressive harm that would be avoided under alternative schemes. One alternative scheme is the system current implemented in the EU, where each EU state must accept a given quota of refugees. Under this scheme, states may express their frustration at accepting refugees, but they will not be able to put their money where their mouth is, expressing just how much they are willing to pay to ensure refugees do not arrive.

A second objection to the Negative Valuation argument rejects this assumption, and claims that other non-market schemes – including the current EU quota scheme – do express similar negative valuation.¹¹ The EU quota scheme is popular among EU states that end up accepting fewer refugees than under the previous policy, and so these states are expressing negative valuation: they think refugees’ presence is negative, and so support a scheme to ensure their exit. Consider, also, non-market compensation schemes that offer states money for the refugees they accept. The EU has a scheme providing roughly €6,000 in compensation for costs of providing food, shelter, and assistance to a resettled refugee in the first year.¹² A new EU proposal combines quotas

10 Bjarte Vandvik, ‘The EU’s Dubious Refugee Deal,’ *The Guardian* (20 October 2010), <<https://www.theguardian.com/commentisfree/2010/oct/20/eu-refugee-libya-gaddafi>> (Accessed: 14 March 2018).

11 Kuosmanan (2013), p. 112.

12 European Resettlement Network, ‘EU Funding for Resettlement (ERF/AMIF)’ (2014), <<http://www.resettlement.eu/page/eu-funding-resettlement-erfamif>> (Accessed: 29 December 2017); European Parliament, ‘Asylum, Migration and Integration’ (March 2015), <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551316/EPRS_BRI\(2015\)551316_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551316/EPRS_BRI(2015)551316_EN.pdf)> (Accessed: 29 December 2017).

and compensation: each EU state would be required to accept a given quota of refugees, with the option of paying €250,000 to another state to accept a given refugee within this quota.¹³ If, for example, France accepted one less refugee than its quota, and Sweden accepted one more refugee than its quota, France would be required to pay Sweden €250,000 in compensation. Both of these compensation schemes can express negative valuation if states agree to accept refugees only if paid compensation, and if other states are willing to pay compensation to accept fewer refugees. If such schemes seem acceptable, then so are refugee markets.

There is an important distinction, however, between refugee markets and other schemes. Other schemes are intended to decrease material burdens alone. For example, quota schemes are based on GDP and population, not based on how many citizens are xenophobic. If it turned out a country had more xenophobic citizens, it would not be allocated a smaller quota to account for citizens' wishing to distance themselves from refugees. In contrast, in a refugee market this country could pay another state to accept all of its refugees to fulfill xenophobic voters' wishes to distance themselves from refugees. In paying another state, the country would be expressing precisely how much it devalues refugees for their own sake, rather than only expressing the idea that refugees incur costs. Of course, a refugee market would not necessarily express xenophobia: if states had no xenophobic voters, trades might only express the idea that refugees incur material costs, with each state only paying another money if it felt the non-xenophobic costs surpassed the benefits of accepting refugees. But if states have xenophobic voters, any market that arises will likely express some xenophobia in a way non-tradable quotas do not.

A similar claim is relevant for compensation schemes. When one EU state pays another compensation for accepting refugees, it only pays them the actual material costs of accepting refugees, not the psychological costs xenophobic citizens bear when accepting refugees. In contrast, when a state pays another state money in a market scheme, it can pay for the psychological costs of xenophobia. If a state accepts a given refugee only if paid €11,000 on the market, and the actual material costs of accepting this refugee is €6,000, the state may be expressing the idea that the refugees' very presence – rather than their material costs – are a burden worth €5,000. The state would be expressing negative valuation in a way current compensation does not.

If the above is true, then some compensation schemes may indeed express negative valuation, and are objectionable for similar reasons to markets. For

13 European Commission, 'Towards a sustainable and fair Common European Asylum System' (4 May 2016), <http://europa.eu/rapid/press-release_IP-16-1620_en.htm> (Accessed: 29 December 2017).

example, in 2015 the EU Commission proposed that every state pay .002% of its GDP to a centralized fund if it refused to take part in a quota system. The Commission seemed to propose this as a sanction, rather than compensation for the costs another state takes on in accepting more refugees.¹⁴ If it turned out that this sanction was greater than the material costs for some states, and these states were still willing to pay this sanction rather than accept refugees, the difference between the sanction and the actual costs could express similar negative valuation. There would therefore be a similar reason to reject such compensation.

The Discrimination Argument

There is a second related argument against refugee markets, which I call the *Discrimination Argument*. It begins with the premise that it is wrong for a state to reject a refugee based on her religion, race, or gender. This is wrong because the state places negative valuation for a core feature of refugees' personal identity, and this can result in feelings of humiliation amongst refugees. Were Slovakia to reject a refugee because he was Muslim,¹⁵ this would likely cause humiliation for Muslim refugees. In a refugee market, Slovakia could reject an applicant because he was Muslim, paying another state to take him instead. This would cause the same humiliation, and so be similarly wrong.¹⁶

Importantly, this may cause humiliation even if a state's primary motives are not to discriminate against a given group. It is enough that discrimination plays some part in the market price. Imagine that, when Italy paid Libya \$5 billion in 2010 so that fewer refugees would arrive from Libya, its primary motivation was to decrease the number of refugees arriving, but it also wished to decrease the number of African refugees in particular, such that it would have paid Libya only \$4 billion had the refugees all been white. If the extra \$1 billion was motivated by racist intentions, and resulted in fewer African refugees arriving, Italy's actions would be humiliating towards refugees from Africa, and so would be wrongfully discriminatory.

There are two potential responses to the above argument. Kuosmanan argues that refugees will not feel humiliation from being rejected via a market mechanism. For a person to feel humiliation, they must have sound reason

14 EU Commission, 'Proposal for a Regulation of the European Parliament and the Council' (2015), <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_ep_and_council_establishing_a_crisis_relocation_mechanism_en.pdf> (Accessed: 29 December 2017).

15 Slovakia did state it would not accept Muslim refugees, and a recent poll in ten European states found that the majority opposed permitting any Muslims to enter. See BBC News, 'Migrants crisis: Slovakia will only accept Christians' (19 August 2015), <<http://www.bbc.co.uk/news/world-europe-33986738>> (Accessed: 29 December 2017); M Goodwin, T Raines, and D Cutts, *What Do Europeans Think About Muslim Immigration?* (London: Chatham House, 2017).

16 Gibney (2008), p. 73.

to feel that their self-respect has been injured. For example, a person's self-respect might be injured if their status falls below a given threshold, as when a refugee is forced to live in an enclosed refugee camp rather than gain formal residency rights. A refugee's self-respect needn't be injured in this manner if she is promised residency rights in a safe country, and simply denied residency in a given country that is wrongfully discriminatory.¹⁷ If a given refugee is Muslim, and an anti-Muslim state pays another state to take her instead, the refugee needn't feel her self-respect is injured if this second state is welcoming towards Muslims and treats her with respect.

This response, however, overlooks why it is wrong to reject a refugee because of her race, religion, or gender. It is wrong not only when it undermines self-respect, but when it discriminates against refugees in a manner that is offensive. One way discrimination can be offensive is if it excludes individuals because of racist preferences. For example, imagine a racist hospital paid another superior hospital to treat all of its patients who were of African descent. Such a policy would seem wrongfully discriminatory even if the patients felt no undermining of self-respect, and even if they were admitted to a superior hospital which white patients would prefer.¹⁸ This would be demeaning not only towards the patients rejected, but to individuals of African descent more generally. These individuals would understand that, in a close possible world where they were in need of medical care, they would be unwanted in the hospital because of their race.

The same harms arise in refugee markets. Imagine a state pays another state to accept its Muslim refugees. Such state is expressing the idea that refugees are less desirable because they are Muslim, insulting non-refugees who are Muslim as well. Even if the state tells its Muslim citizens, 'Don't worry, *you're* welcome to stay,' the state would still be implying the following: 'If you were a refugee, you would not be welcome.' In contrast, non-Muslim citizens would receive a less offensive message: 'If you were a refugee, we might not want you. We do not know.' The message Muslims are exposed to provides a weighty reason to reject refugee markets.

There is a second potential response to the *Discrimination Argument*: states needn't know the race, religion, or gender of a given refugee. Consider, for example, 'Refugee Quota Trading' schemes. Under one version of this scheme each state is given an initial quota of refugees without knowing the race, religion, or gender of these refugees, and states can then sell all or part of this quota to other states. If Malta is given a quota of 5,000 refugees, and France is

17 Kuosmanan (2013), pp. 114-115.

18 For similar examples of discrimination that is demeaning yet helpful for the victims, see Mollie Gerver, 'Paying Minorities to Leave,' *Politics, Philosophy and Economics* 17/1 (2018), 3-22; Adam Slavny and Tom Parr, 'Harmless discrimination,' *Legal Theory* 21/2 (2015), 100-114.

given 50,000 refugees, France can pay Malta to accept all or part of its 50,000 refugees. If neither France nor Malta knows the race, religion, or gender of these refugees, neither can act on discriminatory motives.¹⁹

The problem with such a policy is that states can often infer the race, religion, or gender of refugees. Imagine that in 1999 a market was set up for all refugees who had arrived in Europe, a period when a large proportion of refugees were from Kosovo.²⁰ Imagine, also, that states were willing to accept a given refugee if paid €5,000 per person. Twenty years later a second market is set up, and nearly all refugees are from Syria or Eritrea, with states willing to accept refugees only if paid €20,000 per person. The difference in price could be reflective of racist preferences, even if no state was explicitly told the race or religion of a given refugee. So long as states can infer the race and religion in a given year, they can select refugees based on race or religion that year.

A similar problem arises if markets are administered by a neutral third party, such as the United Nations High Commissioner for Refugees (UNHCR). UNHCR would only prevent a state literally paying another to accept all refugees of a given race, religion, or gender. UNHCR would be ineffective if a state paid another state to accept all of its refugees, and all of its refugees *happened* to be of a given race, religion, or gender. This may occur if the majority of refugees arriving happen to be from the Middle East and Africa, and the state paid another state to accept all such refugees due to racist sentiments. A market scheme would permit this transaction, as it would be difficult to establish the state's racist intentions.

Some might claim this is a problem with all market transactions. In the relatively free-market economy we function in today, a given industry might hire more individuals in a given decade, because far more individuals are of a given ethnicity, and hire fewer individuals in a different decade, because more individuals are of a different ethnicity. The industry might be taking these steps due to racist intentions or biases, but this is not a reason to reject a market economy, given the benefits of markets. These benefits include efficiency, freedom, and preference-fulfillment, benefits that ought to be protected even if some discrimination is inevitable. Refugee markets similarly entail benefits for states and refugees, given that markets can encourage states to accept more refugees than they otherwise would.

This is true: there are perhaps benefits arising from refugee markets. The point is merely that, even if there are benefits, there are moral costs. Just as a

19 Kuosmanan (2013), p. 114.

20 Matthew Gibney, 'Kosovo and Beyond: popular and unpopular refugees,' *Forced Migration Review* 5 (1999), 28-30.

free market economy has the moral cost of some unavoidable discrimination, a refugee market will have the moral cost of some unavoidable discrimination. The question, then, is whether the benefits outweigh these costs. This is an issue I shall address in the next section. For now, let us discuss a third potential wrong arising in markets.

Refugees' choices

Refugee markets deny refugees the ability to choose their country of asylum. If a refugee desires to live in a European country, and Europe pays Libya to provide asylum to this refugee, this refugee is unable to live where she desires.

Some have argued that this is not a reason to reject markets. Refugees' right to asylum is derived from the general right all humans have to freedom and resources protecting their basic needs. Refugees' basic needs in their home countries have not been fulfilled, and so they are owed asylum in a country that can meet these needs, including food, shelter, security, healthcare, education, and perhaps a route to citizenship.²¹ So long as these needs are met, refugees do not have a moral right to choose where these needs are met. Markets are therefore permissible.²²

The above argument, however, rests on an incomplete premise. It is not clear that refugees only have a right to asylum because they cannot access basic needs in their home countries. They may have right to asylum because they have been displaced from their home communities. The wrong of displacement is distinct, as it forces an individual to cut ties with those they love, stop life plans they were pursuing, and discontinue the routines essential to their everyday functioning.²³ For example, when Syrian poet and journalist Yazan was forced to flee Syria, he was forced to cut his ties with fellow poets, discontinue his plans to complete a law degree in Damascus, and stop his productive writing routines.²⁴ To ensure that refugees like Yazan no longer experience the particular wrongs of displacement, it is not enough that they receive food, shelter, education, and medical care. They must be able to join communities where they can re-ignite ties, continue plans, and take up the routines which were interrupted. Refugees are often best placed to determine which location can help them continue ties, plans, and routines, and so there are good reasons to let them determine where

21 Joseph Carens, *The Ethics of Immigration* (New York: Oxford University Press 2013), p. 216.

22 Kuosmanen (2013), p. 110; Johannes Himmelreich, 'Asylum for Sale: A market between states that is feasible and desirable,' *Journal of Applied Philosophy* (forthcoming), p. 10.

23 Cara Nine, 'The Wrong of Displacement: The home as extended mind,' *The Journal of Political Philosophy* (Forthcoming); Anna Stilz, 'Nations, States, and Territory,' *Ethics* 121/3 (2011), 572–601, pp. 582–87; Anna Stilz, 'Occupancy Rights and the Wrong of Removal,' *Philosophy and Public Affairs* 41/4 (2013), 324–356, pp. 336–341; Jeremy Waldron, 'Superseding Historical Injustice,' *Ethics* 103/1 (1992), 4–28, p. 18.

24 Alexa Boncimo, 'An Interview with a Refugee' (2017), <<http://merionwest.com/2017/06/28/an-interview-with-a-refugee/>> (Accessed: 18 January 2018).

they shall gain asylum. For example, Yazan initially gained asylum in Lebanon, and later reached out to fellow poets in Paris who assisted him in obtaining asylum in France, a country where he could better rebuild his poetry career. Yazan's asylum is morally preferable to the asylum of refugees forced to remain in a country of asylum that, though safe, fails to help them rebuild the lives they left behind. This is not to claim that refugees' preferences have absolute value; merely that they hold some value. A system accounting for this value is, in one way, better than a system that does not.

A similar argument is relevant for refugees who wish to avoid the communities they left behind, feeling they are responsible for their insecurity and inability to live the life they desire. For example, Hamza bin Walayat claims his Muslim family in Pakistan was threatening his life because of his humanist beliefs. In the UK he lived in a city where he could access the Humanist UK organization, and not a city where he could access a community similar to the one he left behind.²⁵ Because refugees like Hamza bin Walayat have intimate knowledge of the conditions threatening their freedom or security, and knowledge of where they can access the life they were denied, there is good reason to give them the power to decide where they shall live. At the very least, there is good reason to give refugees' preferences some weight, rather than ignored entirely. Because the refugee markets I describe do not give refugees' preferences any weight, there is a moral cost in accepting such markets.

Of course, a modified version of a refugee market could give refugees' preferences some weight. I shall consider this possibility in the next section when addressing morally acceptable markets. Before I do this, let me address a final objection.

Deteriorating protection

Refugee markets can incentivize states to accept more refugees, and then fail to provide protection. Such is the case in Libya, which denies refugees the right to work, and forces refugees into detention centers where they are tortured or deported back to their home countries. Importantly, Libya regularly opens fire on any refugees attempting to leave for Europe, so that it can continue to receive payments from Europe for accepting these refugees.²⁶ Because Libya

25 Harriet Sherwood, 'Pakistan Humanist Denied UK Asylum After Failing to Identify Plato,' *The Guardian* (17 January 2018), <<https://www.theguardian.com/uk-news/2018/jan/17/pakistani-humanist-denied-uk-asylum-after-failing-to-identify-plato>> (Accessed: 18 January 2018).

26 Amnesty International, 'Libya: European governments complicit in horrific abuse of refugees and migrants (2017), <<https://www.amnesty.org/en/latest/news/2017/12/libya-european-governments-complicit-in-horrific-abuse-of-refugees-and-migrants/>> (Accessed: 16 January 2018). Human Rights Watch, 'Libya: Whipped, Beaten, and Hung from Trees- Detained Migrants, Asylum Seekers Describe Torture, Other Abuse in Detention' (2014), <<https://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees>> (Accessed: 16 January 2018).

is paid to accept refugees, but not paid to ensure they are protected, Libya has an incentive to accept more refugees, refuse them protection, and violate their rights if they try leaving.

Some have argued that such outcomes can be avoided if an independent mediating institution ensures refugees are protected.²⁷ For example, UNHCR could ensure that refugees in Libya are protected, declaring any deal failing to provide protection as illegal. Just as the police in consumer markets ensure goods are traded without human rights being violated, UNHCR in a refugee market could ensure that refugees are traded without human rights being violated.

While in theory UNHCR may have such power in the future, today it does not. UNHCR lacks the resources to fully monitor refugees' conditions in host states, and lacks the political power to force states to protect the refugees they accept. For example, UNHCR has lacked the power to compel Kenya to grant refugees the right to work, and the right to freely migrate within Kenya.²⁸ UNHCR has similarly lacked the power to stop Pakistan from detaining and deporting refugees,²⁹ or to persuade Libya to refrain from torturing refugees in its detention centers.³⁰ The reason that UNHCR lacks such power is that states lack the incentive to grant UNHCR such power. States lack this incentive because most voters do not care a great deal about refugees abroad. Most voters will not change their vote based on the conditions that refugees face in Libya, and so if the EU pays Libya to accept refugees, and Libya refuses to protect the refugees it accepts, then refugees will be without protection.

When should refugee markets be instituted?

Though no institution currently ensures protection globally, some EU bodies ensure protection locally. The European Court of Human Rights and many state courts are responsive to complaints of abuse against refugees within the EU, at least to an extent.³¹ This is partly because European states have a greater budget to monitor and evaluate refugee protection, and partly because voters seem

27 Kuosmanan (2013), p. 106; 116; Himmelreich (Forthcoming), p. 3.

28 Human Rights Watch, 'Kenya: involuntary refugee returns to Somalia' (2016), <<https://www.hrw.org/news/2016/09/14/kenya-involuntary-refugee-returns-somalia>> (Accessed: 7 January 2018).

29 Human Rights Watch, 'Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees' (2017), <<https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees>> (Accessed: 7 January 2018).

30 UNHCR, 'Libya: Refugees and migrants held captive by smugglers in deplorable conditions' (2017), <<http://www.unhcr.org/uk/news/briefing/2017/10/59e5c7a24/libya-refugees-migrants-held-captive-smugglers-deplorable-conditions.html>> (Accessed: 16 January 2018).

31 The Library of Congress, 'Refugee Law and Policy: European Union' (2016) <<https://www.loc.gov/law/help/refugee-law/europeanunion.php#Court>> (Accessed: 18 January 2018); UNHCR, 'The Case Law of the European Courts: the Courts of Justice of the European Union and the European Court of Human Rights – Refugees, asylum seekers, and stateless persons' (2015), <<http://www.refworld.org/pdfid/558803c44.pdf>> (Accessed: 18 January 2018).

to care more about refugees in their own communities compared to refugees living in other countries.³² Importantly, nearly every EU state has a mechanism for refugees to eventually obtain citizenship, and once these refugees obtain citizenships they can vote, gaining further protections.³³ If a refugee market were set up between states which reliably protected refugees, then markets needn't harm refugee protection. They may even improve protection: if a state knows it can receive money to accept more refugees, and it is also required to provide true protection, it may be willing to accept more refugees who are then granted true protection.

In cases where markets increase the number of refugees which safe states are willing to accept, three questions arise.

The Negative Valuation Question

If states are motivated by xenophobia when trading in a market, but the market increases the number of refugees a state is willing to accept compared to an alternative scheme, it is not clear if the market is morally superior to the alternative scheme. For example, imagine a state agrees to the EU resettling more refugees from Libya and Kenya, but only if it has the option of paying another EU state to take some of the quota of refugees it is allocated under this plan. Even if this state ends up paying another state due to xenophobia, the market is what motivates the state to support more refugees arriving in Europe.

Now it is worth noting that a market which initially motivates more refugees arriving in Europe may, in the long term, decrease the number of refugees arriving in Europe. If markets portray refugees as a burden, European citizens may view refugees negatively, and over time accept fewer refugees than they would under a non-market scheme. But if a market did not have this effect, and really did increase protection compared to alternative schemes, then a question arises as to whether the market should be adopted.

In such cases, we ought to generally adopt the market, even though it involves a moral wrong of negative valuation. This is because, if we adopt a non-market scheme only to avoid the offense of negative valuation, it is refugees who

32 Helen Dempster and Karen Hargrave, 'Understanding Public Attitudes towards Refugees and Migrants,' Chatham House Working Paper 512 (2017), <<https://euagenda.eu/upload/publications/untitled-92767-ea.pdf> at 18-19> (Accessed: 18 January 2018).

33 This is changing, as many states are limiting the rights of refugees to access citizenship. Regardless, refugees who do gain citizenship have far more rights in Europe than refugees who gain citizenship in transit countries like Libya and Morocco. See Eurostat, 'Main countries of citizenship and birth of foreign-born population' (2016) <[http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Main_countries_of_citizenship_and_birth_of_the_foreign_foreign-born_population,_1_January_2016_\(%C2%B9\)_in_absolute_numbers_and_as_a_percentage_of_the_total_foreign_foreign-born_population.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Main_countries_of_citizenship_and_birth_of_the_foreign_foreign-born_population,_1_January_2016_(%C2%B9)_in_absolute_numbers_and_as_a_percentage_of_the_total_foreign_foreign-born_population.png)> (Accessed: 18 January 2018); Jason Tucker, 'Sweden's Temporary Asylum Laws: The Impending Problems for Stateless Refugees,' European Network on Statelessness (2017), <<https://www.statelessness.eu/blog/sweden-s-temporary-asylum-laws-impending-problems-stateless-refugee>> (Accessed: 18 January 2018).

will pay the ultimate price. Assuming refugees prefer protection while being negatively valued compared to no protection at all, the former is preferable. This is consistent with the claim that the xenophobic state acts wrongly, and the market permits this wrong. A market that permits a wrong can be better than a scheme that permits less protection.

The Discrimination Question

The second question relates to discrimination. It is not clear whether a market ought to be adopted if it increases the number of refugees gaining protection in a discriminatory manner. Imagine the EU agreement with Libya encouraged the EU to accept more refugees than it would under alternative schemes, but the extra refugees accepted were nearly all from Syria due to an anti-African-refugee bias. It is not clear if such a market would be better than alternative schemes that entailed fewer refugees gaining asylum but no one facing this discrimination.

In such cases, we ought to adopt the following rule: when a market contributes to discrimination but helps refugees gain protection compared to a given alternative scheme, the market is morally superior if it makes no refugees worse off compared to the alternative scheme. When I write ‘make no refugees worse off’ I mean ‘reduce no refugees’ welfare.’ For example, imagine that the EU was deciding between two schemes:

- A. A non-market scheme where the EU resettles 40,000 refugees from Libya from all nationalities without bias, such that an African refugee would have an equal chance of being resettled as a Middle Eastern refugee.
- B. A market with Libya, where the EU would pay Libya to accept a given number of refugees, and to resettle 50,000 refugees to Europe. Of these 50,000, 40,000 would be from all nationalities without bias, such that African refugees would not face disadvantage in being resettled into this quota, but the extra 10,000 would only be from Syria due to racist preferences or biases.³⁴

If the same number of African refugees were resettled under both schemes, and the remaining African refugees in Libya were equally badly off under both schemes, the market is generally superior. This is because, while the market

³⁴ The second scenario may be occurring today. The EU has agreed to fund the resettlement of 50,000 refugees, and may have not agreed to such resettlement without a deal with Libya. In general, of the refugees resettled to safe states, including European states, refugees from Eritrea and South Sudan were significantly under-represented compared to refugees from the Middle East and Southeast Asia. It is not clear that this is the result of bias, but it is worth exploring if it is. See UNHCR, ‘Resettlement,’ <<http://www.unhcr.org/uk/resettlement.html>> (Accessed: 15 March 2018).

permits a serious wrong, because discrimination against African refugees is a serious wrong, it also entails a serious benefit, because 10,000 extra Syrian refugees are resettled. Moreover, were such a market rejected, it is the 10,000 Syrian refugees who would pay the ultimate price, given that they would be forced to remain in Libya.

It is important to note that, even if a market is superior, it does not make it permissible. It may be that the market and non-market schemes are both impermissible, but the market is the morally superior impermissible scheme. There may be some third scheme that is both permissible and superior, such as the EU accepting far more than 50,000 refugees, engaging in no discrimination, and paying a very safe state to ensure that other refugees access true protection.

The Choice Question

Even if a given market scheme is both superior and permissible, there is a question relating to choice. Markets diminish choices for some refugees, who cannot choose in their country of asylum, and so it is not clear if they ought to be adopted.

Now, clearly markets ought to be adopted over current policies if current policies also deny refugees a choice in their country of asylum, but markets increase the number of refugees obtaining asylum. Today refugees are usually forced to remain in their first country of asylum or required to resettle to whatever country they are allocated to in a resettlement scheme. If a market will at least increase the total number obtaining asylum, and is no worse in other regards, it is superior. Similarly, we should clearly adopt other potential policies over markets, if other potential policies protect the same refugees to the same extent, but at least give them the choice to select their country of asylum. And we should clearly adopt other policies over markets if other policies increase choice *and* the number of refugees obtaining asylum.³⁵

But when markets both increase the number of refugees obtaining asylum, and also decrease choice, it is not clear if the market is superior to non-market schemes that increase choice and decrease the number obtaining protection. Imagine that the EU was willing to resettle 50,000 additional refugees if it adopted a market requiring refugees to live in the country willing to accept them, but only 40,000 refugees if it gave refugees the choice of deciding which

35 For example, a recent 'matching scheme' proposed by Will Jones and Alex Teytelboym involves refugees sending their list of preferred states to a centralized agency, and asks states to send their preferred refugees to this same agency. The agency then uses a matching algorithm to allocate refugees to states. It may be that this scheme, by accounting for both the preferences of refugees and states, increases the chances that refugees will integrate into their respective states, and that refugees will be supported by the citizens of their respective states. This can encourage states to accept more refugees for resettlement. See Will Jones and Alexander Teytelboym, 'Choices, preferences and priorities in a matching system for refugees,' *Forced Migration Review* 51/January (2016), 80-82.

EU country they could live in. If refugees' choices have value, it is not clear which policy is preferable.

Some scholars have attempted to mitigate the tension between the benefits of markets and the benefits of choice, proposing markets that respect refugees' choices. Jesus Fernandez-Huertas Moraga and Hillel Rapoport propose for states to be allocated a quote of refugees, after which they trade these quotas amongst themselves, followed by a matching mechanism which determines which refugees are allocated to which quota. For example, if there were 110,000 refugees the EU wished to resettle into Europe, it might allocate a quota of 50,000 refugees to France, and 60,000 to Sweden. France could then pay Sweden to accept 20,000 of its quota, leading to 30,000 refugees resettled to France and 80,000 to Sweden. To determine precisely which 30,000 refugees were resettled to France, and which 80,000 refugees were resettled to Sweden, a matching mechanism would be instituted. One potential matching mechanism first ranks refugees in a random order, and the first refugee in line obtains asylum in her first country of choice, the second in line obtains asylum in her first country of choice, and so forth, until top-choice quotas fill up. When this occurs, refugees are given their second country of choice, until second-choice destinations fill up, and so forth.³⁶

Such a system, though accounting for refugees' choices, does not entirely resolve the dilemma. It still limits refugees' abilities to choose their country of asylum in some scenarios. If France paid Sweden to accept its entire quota, but some refugees' top choices were to live in France, then refugees' top choices would not be respected. This is a moral cost, even if the market element still entailed a benefit of more refugees obtaining asylum. More importantly, states may be willing to accept more refugees if, in addition to being able to trade quotas, they could ignore refugees' preferences entirely and select the refugees they receive.³⁷ When either of these scenarios occur, we are again faced with the question of whether a system that increases refugees' ability to choose their country of asylum is better than a system that increases the number obtaining asylum.

A second more recent proposal, by Joseph Blocher and Mitu Gulati, faces similar challenges. Their proposal begins with the premise that refugees ought

36 Jesus Fernandez-Huertas Moraga and Hillel Rapoport, 'Trading Refugee-Admission Quotas, Matching and the New European Agenda on Migration,' *CESifo DICE* 2/June (2015), 50-54. For similar matching algorithms applied to migrants, see Jesús Fernández-Huertas Moraga and Hillel Rapoport, 'Tradable Immigration Quotas,' *Journal of Public Economics* 115 (2014), 94-108, pp. 104-105.

37 Moraga and Rapoport (*Ibid.*) try to somewhat avoid this dilemma by proposing a scheme where states are asked to rank their preferred refugee groups, and an algorithm matches states' choices to refugees' choices. Because states' choices matter, states are willing to accept more refugees than if states' choices were ignored entirely. But even here the dilemma remains, because in reality states may be willing to accept more refugees if they could ignore refugees' choices entirely, using a market where only states' choices mattered.

to be recognized as having financial claims against their countries of origin. If refugees from Eritrea faced human rights violations when forced into life-long military service, and the trauma and financial loss they experienced was worth a total of \$1 billion, they have a right to claim \$1 billion in compensation from the Eritrean government. Moreover, they ought to be able to transfer their claim to a safe state in return for asylum, after which the safe country can then litigate to obtain this \$1 billion. Importantly, the worth of the claims always cover at least the costs that host countries bear in providing asylum, including relevant social costs.³⁸ For example, if it costs Sweden over \$1 billion to provide asylum to Eritrean refugees, then the claim must be worth over \$1 billion.

The above proposal can increase the number of refugees accessing asylum by providing states the incentive of obtaining claims they do not currently have. If refugees' claims are worth enough, states will compete for refugees, giving refugees more choice than they currently have. If both Sweden and France wish to grant asylum to Eritreans because the claim against the Eritrean government is worth quite a lot, then Eritreans can choose whether they wish to gain asylum in Sweden or France.³⁹

This proposal, like the first, does not quite resolve the particular dilemma I raise, assuming some states are willing to accept more refugees if they can choose which refugees they select. Imagine that multiple countries were willing to accept 20,000 refugees each from Syria if they could both select the refugees they accept, and also receive the claims these refugees have against the Syrian government. Imagine, also, that these states would be willing to accept only 10,000 Syrian refugees each if, though receiving the claims these refugees have against Syria, they could not select the refugees they accept. The first trade increases the number of refugees protected, but the second trade provides refugees who are protected greater choice in their country of asylum. It is not clear which is better, and so the dilemma remains.

When faced with this dilemma, we ought to generally prioritize increasing the number of refugees obtaining asylum over increasing the number choosing their country of asylum. More specifically, *the more refugees struggle in their home and transit countries, and the more they will benefit from asylum in another country, the more we should prioritize asylum in another country over choice*. A market that encourages states to resettle 20,000 more refugees to Europe, but denies them the option of choosing their country of asylum, is preferable to a market that resettles only 10,000 refugees, but gives them

38 Joseph Blocher and Mitu Gulati, 'Competing for Refugees: A market-based solution to a humanitarian crisis,' *Colombia Human Rights Law Review* 48/1 (2016), 53-111, p. 90.

39 Blocher and Gulati (2016), p. 59.

the option of choosing their country of asylum. We should select the former because access to asylum is a more basic right than the opportunity to choose one's country of asylum, especially when asylum provides protection from life-threatening conditions. Moreover, the general value of choice is often better upheld in a system that maximizes the number who gain asylum. If 20,000 refugees are resettled from Libya to Sweden, and Sweden significantly expands refugees' range of choices compared to Libya, then 20,000 refugees will have their choices significantly expanded. A system that expands choices for 20,000 seems preferable, even if the alternative would have provided slightly more choice to 10,000 refugees.

This leaves open the possibility that, in some cases, increasing refugees' choices should take priority over increasing the number of refugees resettled from transit countries. We might imagine a scenario where one mechanism provides 999 refugees in Uganda the option of resettling to Europe and choosing their country of asylum, and another mechanism provides 1,000 refugees resettlement to Europe without the option of choosing their country of asylum. The former mechanism may be superior to the latter if all refugees are fairly safe in Uganda. But such a scenario is unlikely, given that states generally limit resettlement to the most vulnerable, those who cannot access basic necessities in transit countries. In such cases, saving one extra refugee from a life without basic necessities is more important than permitting refugees to choose their countries of asylum.

Conclusion

Refugee markets permit some states to accept fewer refugees, paying others to take them instead. This can be demeaning towards refugees. The more a state is willing to pay, the more it is expressing just how much it wishes to accept fewer refugees. The more it demands payments to accept more refugees, the more it expresses how much it does not want to accept refugees. Markets can also permit wrongful discrimination. If states pay others to accept unwanted minority refugees, this humiliates the refugees in question, creating a strong reason to condemn such trades. Finally, refugee markets require refugees to live in whatever state agrees to take them, denying them the ability to choose their country of asylum. Given that many refugees have been forced to leave their lives behind, and given that refugees are best placed to know where they can rebuild their lives again, there is a weighty reason to allow refugees to choose their country of asylum.

Some philosophers have rejected these claims, arguing that all burden-sharing regimes create similar effects. For example, when a state pays compensation to

another state for accepting refugees, this denies refugees the ability to choose their country of asylum, and similarly expresses how much a state is willing to pay to accept fewer refugees. If compensation is acceptable, then refugee markets are acceptable as well. I rejected this argument: when states pay compensation, they express the idea that refugee hosting costs money. When states provide payments in markets, they express the idea that refugees' exit is worth money. The latter can express a dislike for refugees themselves, as opposed to a dislike of costs of accepting refugees. And while many compensation schemes deny refugees the ability to choose their country of asylum, choice may still be important: a mechanism that accounts for refugees' choices – whether a market mechanism or otherwise – is better than a mechanism that does not, all else being equal.

In reality, all else may not be equal. Markets may increase the number of refugees gaining asylum compared to some alternative schemes, but also entail moral costs not found in these alternative schemes. I addressed the dilemmas arising in such cases, reaching three conclusions:

First, a market that entails negative valuation, but also increases the number of refugees gaining asylum, ought to be accepted over alternative mechanisms that avoid negative valuation but entail fewer refugees gaining protection. Second, when markets contribute to discrimination and increase the number obtaining asylum, the market is preferable to alternatives if it is no worse for any refugees compared to alternatives. Finally, when choosing between a market that increases the number obtaining asylum, and a scheme that increases choices, we ought to generally select the former. More specifically, the more refugees struggle to access basic needs, and the more they will benefit from gaining asylum, the more important it is to increase the number gaining asylum over the number given a choice about their country of asylum.

The above rules address cases where markets increase the number of refugees obtaining protection compared to other schemes. The question, then, is when markets have this effect. Markets between EU and non-EU states rarely do. When the EU paid Libya to accept more refugees, Libya used these funds to build detention centers where refugees attempting to flee were killed or tortured. Libya had an interest in forcing refugees into detention so they would remain, and had an interest in their remaining to continue to receive EU funds. It is likely that many non-market schemes, where Libya is not paid to accept more refugees, are more effective at protecting refugees. In contrast, a refugee market within the EU may increase protection compared to what we have today. If EU states hold judicial systems that ensure refugees' minimal rights are protected,

and if refugee markets increase the number of states willing to accept refugees, then more refugees may find protection within an EU refugee market. Such a market may be preferable to what we have today, despite the moral costs.

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