

JAMIE
DRAPER

Responsibility and Climate-induced Displacement

Abstract: This paper addresses the phenomenon of climate-induced displacement. I articulate an account of asylum as compensation owed to those displaced by the impacts of climate change which ought to be accepted by minimalists about the requirements of global justice. I reconstruct this account through an examination of the work of David Miller, who is taken as an exemplar of a broadly 'international libertarian' approach to global justice. In the course of the argument, I set out the relevant aspects of Miller's views, reconstruct an account of responsibility for the harms faced by climate migrants which is consistent with Miller's views, and demonstrate why responsibilities owed to those displaced by climate change can, under some conditions, justifiably be discharged through the provision of asylum as a form of compensation.

Keywords: climate change; David Miller; historical injustice; migration; responsibility.

Introduction

Migration in response to changes in one's environment is not a new phenomenon, but anthropogenic climate change gives political theorists and philosophers distinctive reasons to be concerned about justice in climate change-induced migration and displacement (hereafter 'climate migration'). The anthropogenic nature of climate change invites questions about the responsibilities of different actors towards those displaced by the impacts of climate change and about the institutional arrangements best suited to discharging those responsibilities. Those who have engaged with the phenomenon of climate migration have proposed responses which have, in many cases, consisted of something like a special right to free movement for those understood to count as 'climate migrants/refugees/exiles' (e.g., Biermann and Boas, 2010; Byravan and Rajan, 2010; Heyward and Ödalen, 2016; Nawrotzki, 2014). Many of these accounts have tended to draw on relatively 'thick' claims about states' responsibilities to those beyond their borders; on claims about the international community's *positive* obligations to aid those facing displacement due to climate change. For example, Biermann and Boas take as their starting point that there is a 'governance need' to address the 'plight of climate change refugees' (Biermann and Boas, 2010: 61). Such a 'governance need' is taken to be the shared responsibility of states in the international community. Accounts such as these typically depend upon a conception of global justice which includes positive

obligations to those beyond the borders of the state. Such a conception of the requirements of global justice may well be independently correct, or best suited to addressing global challenges such as those of climate migration. There are, however, at least two good reasons to explore the possibility of elaborating an account of what is owed to ‘climate migrants’ which depends on more minimal normative commitments.

First, we might be concerned that the normative commitments upon which these accounts depend are unlikely to be shared amongst the main political actors who are positioned to effectively pursue justice for those displaced by climate change. Insofar as an account of our obligations to ‘climate migrants’ is a response to a problem which has emerged in an institutional and social context characterised by a broadly minimal view of what is required of states in the international order and a reticence on the part of states to accept positive obligations abroad, then having minimal normative commitments is likely to be of practical value. Second, economising on normative commitments may be a virtue of a theory of what is owed to climate migrants, beyond any practical value it might have. If it can be shown that obligations to those displaced by climate change can be grounded in more minimal normative commitments, then there is ecumenical appeal for an account of our obligations to climate migrants. It can, as such, form the basis of a consensus amongst theorists with different commitments.

In this paper, I seek to demonstrate that there is scope for an account of asylum as a form of compensation owed to climate migrants which only needs to appeal to minimal commitments about the requirements of global justice. I propose to show that such an account need only rely on *negative* duties. In this sense, my argument is analogous to Thomas Pogge’s (2002) argument that the globally wealthy have duties to the global poor by virtue of having harmed them, though I make no claim about the success of Pogge’s own argument.¹ As Samuel Scheffler (2001: 36) has pointed out, the idea that negative duties are (in general) stricter than positive duties is central to the conception of responsibility in ‘common sense’ moral thought. I articulate an account of our obligations to climate migrants which yields demanding duties on the basis of minimal normative commitments through an examination of the work of David Miller, whose work serves as a useful vehicle for this project. Miller’s work is fruitful here because he has an established view both about responsibility for climate change and about the state’s presumptive right to exclude would-be immigrants. His account gives the state a significant amount of discretion in the right to exclude would-be immigrants and takes the requirements of global

¹ For critiques of and alternatives to Pogge’s view, see Satz (2005) and Risse (2005).

justice to be relatively minimal. As such, an account which is consistent with his broader view but which nevertheless yields strong duties demonstrates that there are good prospects for arguments which depend only on minimal normative commitments more generally. So, whilst in this paper I am concerned with Miller's specific arguments, he is taken to be representative of theorists with relatively minimal commitments. This allows me to demonstrate that there is scope for an account which yields strong duties to climate migrants which is relies only upon a minimal view of the requirements of global justice.

Inevitably, some of the empirical complexity of climate-induced migration and displacement is elided in this discussion. Empirical studies demonstrate that the impacts of climate change often exacerbate existing drivers of migration and are mediated by existing vulnerabilities and capacities amongst those affected (e.g. Black et al., 2011; McLeman and Smit, 2006; Piguet, 2010). A fully elaborated and policy-prescriptive account of our obligations to climate migrants would need to account for this complexity. My aim here, however, is more modest: I seek to provide clarity about the principles of responsibility that can justify a particular set of obligations to climate migrants. In order to get clear on these principles, I focus on those climate migrants whose situation cannot be remedied *in situ* and who are displaced internationally. I also exclude from consideration those who face what Milla Vaha (2015: 207) has termed 'state extinction,' such as those in small-island states, on the basis that in such cases there are distinctive concerns about entitlements to self-determination. For those under consideration, it need not be the case that each individual person cannot be helped *in situ*; it might be that an *in situ* remedy is possible for any one individual, but that scarcity of resources means that *some* people will be unable to be helped *in situ*. This group is clearly somewhat idealised, but this idealisation is useful for gaining in analytic clarity about what is justified by our principles of responsibility. I return to the implications of this idealisation for our theorising about our obligations to climate migrants at the end of the paper.

Finally, a note on terminology is useful. In this paper I refer to climate *migrants* rather than climate *refugees*. This is because my argument sidesteps the need to ascribe refugee status to those displaced by climate change, not because I have a principled objection to their being ascribed refugee status. At present, the ascription of refugee status in international law makes no provision for those displaced by the impacts of climate change. Instead, it is ascribed on the basis of 'a well-founded fear of being persecuted on the basis of race, religion, nationality, membership of a particular social group or political opinion' (*UN Convention Relating to the Status of Refugees*, 1951: art. 1). Various normative assessments of this definition have been put forward, including those which see it as too

restrictive (e.g., Gibney, 2004; Shacknove, 1985), and those which defend the relevance of persecution (e.g. Cherem, 2016; Lister, 2013; Price, 2009). It has also been argued that it is consistent with the ‘logic’ (but not the wording) of the Refugee Convention to ascribe refugee status to some of those displaced by the impacts of climate change (Lister, 2014). Here, I neither take a stance on whether the existing legal definition of a refugee is normatively defensible, nor on whether those displaced by climate change should merit such a status. Nothing in my argument depends on the ascription of refugee status to those displaced by the impacts of climate change. As such, and to avoid confusion, I use the term ‘climate migrants’ throughout, though this should not be taken to constitute an objection to extending the Refugee Convention to cover those displaced by the impacts of climate change.

The paper proceeds as follows: first, I briefly set out the relevant aspects of Miller’s views, including his view of the demands of global justice, his view of the state’s right to exclude would-be immigrants, and his account of responsibility for mitigating climate change. Next, I reconstruct an argument that Miller ought to accept concerning responsibility for responding to the harms faced by those displaced by the impacts of climate change. Next, I explain how asylum can be a remedy and a form of compensation owed to those displaced by the impacts of climate change. Then, I respond to some possible objections that might be raised against the account I set out. Finally, I conclude and offer some reflections on the implications of my account global justice minimalists.

Miller’s ‘International Libertarian’ View

The sense in which Miller’s view of the requirements of global justice is minimal should be explained. Miller is counted amongst those theorists who are described as ‘international libertarians’ by Daniel Butt, alongside theorists such as Thomas Nagel, John Rawls, Michael Blake, and Andrea Sangiovanni (Butt, 2009: 9).² Although each of these theorists offers a different justification for their views, according to Butt they converge on some substantive principles of just interaction between states. For these theorists, the principles of just interaction between states can be conceived of as analogous to those that libertarians claim exist for individuals at the domestic level. This means that states’ primary obligations of justice beyond their own borders are to respect the self-determination of other states and not to engage in unjustifiable forms of interaction, such as unprovoked acts of aggression (Butt, 2009: 9). For Miller, such unjustifiable forms of interaction include encroaching on the territory of another state and engaging in the exploitation of states which are one-sidedly

² For expressions of the views of these theorists which make it appropriate to call them ‘international libertarians’ in Butt’s terms, see Blake (2001); Nagel (2005); Rawls (1999) and Sangiovanni (2007).

vulnerable to one's actions (Miller, 1995: 104).

More specifically, Miller endorses what he calls a 'weak cosmopolitanism,' which involves the recognition that all individuals are owed equal moral concern, but also involves the claim that this does not entail substantively equal treatment (Miller, 2007: 43-44). Rather, associative ties between citizens can ground strong positive duties, whilst our duties to those beyond our borders are more limited. Duties to outsiders are primarily to refrain from harming them, and to securing their human rights when their primary guarantors (their own states) fail to do so, at least when the state is appropriately picked out as being responsible for stepping in (*ibid.*: 47-49). There are also some positive obligations that states have beyond their borders which are owed to other *states* (rather than to individuals), such as the duty to comply with voluntarily made agreements, and obligations of reciprocity arising from cooperative practices (Miller, 1995: 104-105). Primarily, however, states' duties beyond their borders are *negative* duties, at least when they are owed to individuals. Miller also endorses the claim that negative duties are *ceteris paribus* stricter than positive duties (Miller, 2007: 48).

Miller takes the state to have a fairly robust right to exclude would-be immigrants from its territory. He more or less endorses what Joseph Carens calls the 'conventional view': that 'states are morally free to exercise considerable discretionary control over the admission and exclusion of immigrants despite differences between states' (2013: 11). This view is also consonant with international legal practice, where the presumption is that 'states may draw limits, and that they may condition the entry of foreigners into their territory upon their consent' (Bosniak, 1991: 743). Indeed, as Sarah Fine writes, this power is generally taken to be a 'central, legitimate, undeniable aspect of sovereignty' (2013: 254).

The power of the state to exclude would-be immigrants is not unlimited on Miller's view, however. One important exception is the case of refugees. Miller understands refugees as 'people whose rights cannot be protected except by moving across a border, whether the reason is state persecution, state incapacity, or prolonged natural disasters' (2016: 83).³ Obligations to admit refugees are not unlimited, however, since they are owed collectively by international society. Any individual state is only obliged to admit either what has been agreed upon through a formal international agreement, or through what could be reasonably interpreted as its 'fair share' (*ibid.*: 162). Another important exception is the category that Miller terms 'particularity claimants': those who 'assert that

³ Those climate migrants under consideration in this paper may well count as refugees under Miller's definition. As previously noted, however, nothing in my argument rests on their being counted as refugees.

one particular state owes them admission in virtue of what has happened in the past' (*ibid.*: 77). Particularity claimants can be, but need not be, refugees. If their claim is legitimate, it may ground an exception to the states' right to exclude, but such claims do not always ground a right to immigrate (*ibid.*: 116). The claim may be based on reparation (for example, those displaced conflict in which a foreign power was involved) or on desert (for example, those who have performed military service, such as in the French Foreign Legion) (*ibid.*: 113-115). More generally, Miller's weak cosmopolitan requirement to show universal moral concern requires states to give reasons to those that they turn away. These reasons need not be reasons that would-be immigrants do in fact accept but must rather be reasons which they *ought* to accept, given that the policy objectives that they serve are legitimate. This requirement explains why states cannot, for example, use racially discriminatory admissions policies (*ibid.*: 105).

Miller sees the shared project of mitigating climate change as a cooperative endeavour in which states seek to realise the common goal of avoiding the impacts of dangerous climate change. As such, there are requirements for states to engage with each other on fair terms. Mitigating climate change here involves reducing the level of greenhouse gas (GHG) emissions, and the cost of mitigation is measured in terms of economic growth forgone (Miller, 2008: 125). Miller sets out what he calls the 'Principle of Equal Sacrifice,' which states that 'no society in which poverty is endemic should be asked to cut its gas emissions' and that 'targets for reducing gas emissions should be set in such a way that the costs of meeting these targets are allocated on an equal per capita basis among the members of the better-off societies' (*ibid.*: 146). This principle is justified on two grounds. The first ground is that requiring societies in which poverty is endemic to bear costs would jeopardise the human rights of those within those societies, which ought to be respected by all. The second is that since mitigation is a cooperative practice between states, terms of cooperation ought to be fair, and equal sacrifice is a fair principle for engaging in this cooperation.

Endorsing the Principle of Equal Sacrifice means rejecting historical responsibility as an organising principle for our responsibilities to mitigate climate change. Miller's rejection of historical responsibility is not explained by the problem of excusable ignorance or by the idea that present people should not be asked to bear the costs of the actions of their forebears. Rather, this rejection is based on the idea that emissions before a certain cut-off date (he suggests the mid-1980s) were not themselves harmful. He writes:

'[F]rom the historic responsibility perspective what interests us is the amount of human damage that would be caused by these [pre-

mid 1980s] emissions alone [...]. But in the global warming case, what chiefly matters is the combined and progressive effect of cumulative greenhouse-gas emissions, not the early emissions taken by themselves' (*ibid.*: 132).

This is to say that, according to Miller, early emissions would have had to be harmful if they were to count in favour of historic responsibility. In fact, however, these emissions themselves were not harmful.

Rather, Miller argues that we have only 'shallow reasons' to distribute the remaining atmospheric sink capacity (the earth's capacity to absorb GHG emissions) equally (*ibid.*: 142). His conception of the problem is this:

'Global warming is a problem that is likely to have very serious effects for all of us unless we take action now. The action that is required involves some sacrifice, and those who can contribute without harm to their vital interests should do so on an equal basis' (*ibid.*: 150).

One of the reasons that Miller thinks we only have shallow reasons to favour equality here is that he does not think that there is an equal right to the earth's resources (Miller, 2007: 55-62). As such, on his view there has been no identifiable harm, nor wrong to be redressed, in the historic (over)use of the atmospheric sink. The justification for the Principle of Equal Sacrifice, then, is that it allocates the remaining usage of the sink in a way that affects everyone equally, taking into consideration threshold minimums of welfare. This, on his view, represents fair terms of cooperation in the shared project of mitigating climate change.

Reconstructing Responsibility for Climate-induced Displacement

Having set out the relevant aspects of Miller's views on global justice, the state's right to exclude, and the project of mitigating climate change, we are in a position to reconstruct an argument which Miller ought to accept concerning the duties that are owed to climate migrants. Before doing so, however, it is worth clarifying the conceptions of responsibility that are relevant for this argument. Miller distinguishes between *outcome responsibility* and *remedial responsibility*. Importantly, neither outcome nor remedial responsibility are the same as *moral* responsibility, understood in the sense of blame- or praise-worthiness.

Outcome responsibility, according to Miller, 'has to do with agents producing outcomes' (2007: 83). It is not, however, identical with causal responsibility. Rather than capturing a causal relation, outcome responsibility concerns situations where 'an outcome can be credited or debited to an agent' (*ibid.*: 88). Outcome responsibility must involve *agency*, though not necessarily intention.

One can, for example, be outcome responsible for producing outcomes negligently. There must be, however, ‘a foreseeable connection between my action and the result’ (*ibid.*: 88). The reason for this condition is that our conception of responsibility ought to be suited for allowing people to control their liabilities. In determining whether someone is outcome responsible for a given outcome, we must, according to Miller, ‘apply a standard of reasonable foresight: an agent is outcome responsible for those consequences of his action that a reasonable person would have foreseen, given the circumstances’ (*ibid.*: 96).

To have a remedial responsibility, on the other hand is ‘to have a special responsibility, either individually or along with others, to remedy the position of the deprived or suffering people’ (*ibid.*: 98-99). The ascription of a remedial responsibility begins with the identification of a situation where it is ‘morally unacceptable for people to be left in that deprived or needy condition’ (*ibid.*: 98). A remedial responsibility then picks out the agent or agents who are rightfully ascribed the responsibility to put such a situation right. That ascription may be justified on the basis of one or more connections that an agent has to the person(s) in the morally unacceptable condition. Miller argues that moral responsibility, outcome responsibility, causal responsibility, benefit, capacity and community can all be justifications for the ascription of remedial responsibilities (*ibid.*: 100-104).

It is also worth noting that for Miller, outcome responsibility can be ascribed to the *nation*, as a transhistorical agent. This is possible because ‘there is continuity between the generations, both in the form of national identity [...] and in the form of practices and institutions that persist over time’ (Miller, 2008: 128). Whilst remedial responsibilities must be discharged through state institutions, Miller finds holding states themselves outcome responsible to be problematic because not all states are the kinds of continuous agents that can bear responsibilities. He points to the example of the current German state being held responsible for emissions under the German Democratic Republic to illustrate this point (*ibid.*: 127-128). However, Miller takes it to be important for our conception of the *nation* that it can be treated as an agent which can bear responsibilities over time, since ‘[n]o meaningful form of self-determination is possible unless nations are given sufficient control of their assets to be able to make decisions about their own future priorities’ (Miller, 2007: 151). There are independent reasons why present-day members of nations have obligations to discharge their responsibilities qua members of nations. One reason for accepting liabilities from our forebears is that we, as members of nations, accept the benefits of their actions. Miller writes: ‘it is unjustifiable to treat them in that way [as the

inheritors of previous generations] when what is at stake is the inheritance of benefits, but not when what is at stake is the inheritance of liabilities' (*ibid.*: 156). It is not *mere* benefit justifies this ascription of responsibility for Miller, but rather the *parity* between accepting benefits and accepting burdens when agents are relevantly connected by being members of nations.

This is not simply a particularity of Miller's approach. Rather, taking the collective to be the appropriate unit of responsibility-ascription is consistent with other 'international libertarian' views. To see this, note that *any* plausible conception of the state requires it to be the sort of agent that can take on responsibilities which last over time, and as such to transfer liabilities to those in the future. Capacities which are essential for the modern state, such as taking on public debt, require us to understand the state as a *persona ficta*, able to bear liabilities across time (Skinner, 2009). This conception of the state also explains its capacity to sign treaties under international law (Thompson, 2002: 14).⁴ Whilst Miller favours the nation as the bearer of responsibility, other theorists can sustain this view of responsibility through a conception of the state as the bearer of responsibility.

Here, I argue that high-emitting states have a remedial responsibility to remedy the situation faced by climate migrants, in virtue of the outcome responsibility that they bear for their plight. To see why this is the case, first recall that Miller sees mitigating climate change as a cooperative project in which states engage on fair terms. On this picture, we might think of the allocation of mitigation obligations as taking place at time T^1 , where dangerous climate change has not yet occurred, and the costs of avoiding harm are up for distribution. These costs are to be distributed according to the Principle of Equal Sacrifice. In the case of climate migration, however, the picture looks different. At the time at which climate migration occurs, T^2 , the harm that was to be avoided at T^1 has been brought about. A full examination of the nature of the harms that might face climate migrants is beyond the scope of this paper, and so I understand 'harm,' following Feinberg, in a broad, non-normative sense as 'the thwarting, setting back, or defeating of an interest' (1984: 33). Of course, not every instance of an interest being set back will be of moral relevance. In the case of climate migration, however, it should be clear that there are harms that we ought to care about. Those displaced by climate change face all kinds of setbacks to their interests which are troubling in terms of welfare in differing degrees. It should be clear, however, that those displaced by the impacts of climate change are in a situation in which it is morally unacceptable to leave them.

The harms faced by climate migrants are also united by the fact that they would

4 See also the legal expression of this power in the Vienna Convention on the Law of Treaties (1969).

not have been brought about had it not been for the effects of *anthropogenic* climate change. This means that the harms faced by climate migrants are unlike natural accidents, where it might also be morally unacceptable to leave the victims to bear the costs. In the anthropogenic case, it is possible to pick out agents who can be assigned remedial responsibility on the basis of their historical relation to the situation that requires remedying. That relation, I contend, is one of outcome responsibility.

The most plausible way of thinking about how the harm facing climate migrants has come about, and how high-emitting states bear outcome responsibility, is as follows: agents with obligations as part of a cooperative mitigation endeavour were aware that, in combination with others, their emissions would generate harmful effects. Their failure to appropriately mitigate the effects of their emissions grounds the ascription of outcome responsibility for the harms faced by climate migrants. Here, the causal link between any emitting act and any harm is not the grounds of the ascription of outcome responsibility, but rather the failure to have discharged pre-existing mitigation obligations, which led to a harm coming about. As we have seen, outcome responsibility can be ascribed on the basis of negligence. Here, agents with responsibilities to avert harms have failed to do so. It is this failure which is the grounds of 'debiting' high-emitting agents with the harm of climate-induced displacement, and so justifiably ascribing outcome responsibility to them. This outcome responsibility then serves to pick out the agents who are appropriately ascribed a remedial responsibility to remedy the situation facing climate migrants.

As has been noted, a standard of foreseeability must be met for the ascription of outcome responsibility to be appropriate: the consequences must be those 'that a reasonable person would have foreseen, given the circumstances' (Miller, 2007: 96). In our case, it seems clear that harmful effects were foreseeable. The fact that agents might not have specifically foreseen *displacement* is not central here. Rather, it was reasonably foreseeable that harmful consequences would ensue from a failure to adequately mitigate climate change. We can still be held outcome responsible when we foreseeably cause indeterminate harms, as is demonstrated by Miller's example of a stray spark from a bonfire in one's garden burning down a neighbour's shed (*ibid.*: 88). Moreover, in actual fact, the possibility of displacement as a result of climate change was foreseen as early as the first Intergovernmental Panel on Climate Change report in 1990 (IPCC, 1990: ch.5). On top of this, the cooperative project of mitigating climate change, on Miller's view, makes sense precisely because it is a shared project to avoid harms such as climate-induced displacement.

Now, suppose that harms facing climate migrants came about without agents

having failed in discharging their mitigation-related obligations. Suppose, for example, that climate sensitivity is a lot higher than previously thought. Even under these circumstances, high-emitting nations can be ascribed outcome responsibility for the harms faced by climate migrants. To see this, we can consider two possible models of how this harm has come about, and how high-emitting nations can be ascribed outcome responsibility. This outcome responsibility, in turn, serves to pick out those high-emitting states as remedially responsible. We can remain neutral about which of these two models is more plausible, since both serve to justify the ascription of outcome responsibility. Call those emissions emitted before the mid-1980s *early emissions*, and those emitted after that point *later emissions*.

The first model sees later emissions as being the ‘actually harmful’ ones, whilst earlier emissions cannot be plausibly thought of as having brought about the harm. On this model, the harm of climate-induced migration was brought about by the later emissions having pushed us over a threshold of harm, with the earlier emissions operating as ‘background conditions.’ We might take Miller to be endorsing this model in his general claim that that ‘from the historic responsibility perspective, what interests us is the amount of human damage that would be caused by these [early] emissions alone’ (2008: 132), and in his endorsement of a ‘threshold’ model of the relationship between emissions and impacts (*ibid.*: 131). This justifies the ascription of outcome responsibility for present-day members of high-emitting nations quite straightforwardly, since their emissions were the harmful ones. Since we are asking present-day members of nations to bear any costs associated with remedial responsibilities, we are in fact asking those whose emissions were the ‘actually harmful’ ones to bear responsibility. Outcome responsibility would seem to pick out later emitters whose emissions were harmful as the agents as being relevantly connected to the harm, and as such as being suitable targets for the ascription of remedial responsibility.

On the second model, the harm of climate-induced displacement is a function of both earlier and later emissions, with earlier emissions ‘becoming’ harmful at the point at which the harm occurs. We might take Miller to be endorsing this second model in his claim that ‘what chiefly matters is the combined and progressive effect of cumulative greenhouse-gas emissions’ (*ibid.*: 132). Here, the harm faced by the climate migrant is a function of *both* later emissions and earlier emissions, even if this is because of a threshold having been reached. The earlier emissions contribute to the harm at the point at which they, in combination with later emissions, precipitate changes which cause harm to climate migrants. It is true that they were not ‘by themselves’ harmful, but their

combination with later emissions means that they contributed to the harm. On this second model, it is less immediately clear that present-day members of high-emitting states can be ascribed outcome responsibility for the entirety of the harm. Recall, however, that responsibility is being ascribed at the collective level. The collective is being held responsible for the actions of its earlier members. Just as a shareholder can be held responsible for liabilities acquired before she acquired her shares, so too can a member of a nation be held responsible as part of the collective agent of the nation for actions performed before she became a member of the nation. As such, present-day members of a high-emitting nation are being asked to bear remedial obligations *qua* members of a high-emitting nation.

Miller's 'international libertarian' rejection of historic responsibility for mitigating climate change is based on the argument that emissions were not harmful. However, as we have seen, international libertarians cannot maintain this claim in the case of climate migration, where a harm has been brought about. Miller can even consistently hold that *mitigation* burdens are only distributed equally for 'shallow reasons' whilst concurrently holding that in the case of identifiable harms, redress is required. This is because, according to Miller's 'international libertarian' view, there is no wrong or harm in the historic overuse of the atmospheric sink, as there is no entitlement to natural resources. Rather, we have 'shallow reasons' to distribute the remaining (pre-dangerous climate change) absorptive capacity of the atmosphere according to the Principle of Equal Sacrifice. In the case of climate migration, however, an identifiable harm has occurred, and so the forward-looking framework of distributing the remaining absorptive capacity of the atmosphere is no longer appropriate. For international libertarians, the reasons for denying the relevance of historic responsibility cannot apply, since a harm has occurred. Despite the differences in the details of international libertarian views, they all maintain that states can be held responsible for harming those beyond their borders. As we have seen, nations (or states) as collective agents can be held outcome responsible for the harms inflicted on climate migrants. As such, those collective agents have remedial obligations to bear the costs of remedying the situation facing climate migrants.

Asylum as a Remedial Responsibility

Having demonstrated how high-emitting states can be ascribed remedial responsibilities for the situation facing climate migrants, we can now turn to showing why the provision of asylum can be an appropriate way of discharging those responsibilities. Miller's account of the ethics of migration is also relatively minimal, and so we might expect to find some resistance in his work to the

idea that asylum can be a remedial responsibility. In this section, however, we will see that Miller's own account points towards how asylum can function as a remedy for harms brought about as a result of the impacts of climate change.

The remedial responsibility owed to climate migrants is in response to the harms that they face. As has been previously noted, the harms that climate migrants face may be diverse, and as such, the nature of the remedial responsibilities owed may likewise be diverse. Asylum will not always be an appropriate remedial response, but here I want to demonstrate how for the idealised climate migrant under consideration, who needs to move internationally and cannot be helped *in situ*, the provision of asylum might provide a way of redressing at least some of the harms they suffer. I do not claim that it will provide a complete response on its own, but rather that it is an important part of any satisfactory response under some conditions.

It is worth examining briefly what is meant by a 'remedial responsibility.' I take such a responsibility to be the object of what Butt calls the 'rectificatory project' which is 'the general aim of seeking to ensure that one's moral duties arising from historic injustice are fulfilled' (2009: 23). In the case of redressing harm to climate migrants, those who are directly affected are the ones to whom this obligation is owed. They might be owed what Onora O'Neill terms *restitution*: 'restoring matters to those that obtained before the wrong was done' (1987: 74). The literal restoration of the state of affairs is unlikely to come about in most cases, however. Rather, *compensation* is afforded here, which, in O'Neill's terminology, 'substitutes a vicarious good, rather than restoring the original one' (*ibid.*: 76). In these cases, there is a qualitative difference between the remedy provided and the state of affairs before the harm occurred.

In understanding asylum as a remedy here, I build on an account proposed by James Souter, which specifies four conditions which must be met for asylum to function as a form of reparation:

- '(1) The refugee's lack of state protection must have been caused by the actions of an external state;
- (2) that state must bear outcome responsibility for causing this lack of protection;
- (3) that refugee must either have been unjustly harmed, or be at risk of unjust harm, as a result of this lack of protection;
- (4) the provision of asylum by that state must be the most fitting form of reparation for that harm available' (Souter, 2014: 330).⁵

5 Souter's use of the term 'refugee' does not refer definition in international law. Rather, he follows Shacknove (1985) in using it to refer to those who face severe harm and lack state protection.

The key conditions for our purposes are (2) and (4). With regards to (2), Souter mentions that states may not bear outcome responsibility for the situation of those made ‘refugees’ by rapid industrialisation and ensuing climate change, as future displacement was not foreseeable (*ibid.*: 332). As we have seen, however, those being ascribed the outcome responsibility *could* reasonably foresee the harmful effects of their emissions and their failure to sufficiently mitigate. Those *early* emitters who could not have reasonably foreseen the effects of their emissions are not those being ascribed outcome responsibility. Rather, it is the nation as a collective which is ascribed outcome responsibility. Present-day members of such nations, who could also reasonably foresee the impacts of their emissions, are being asked to discharge remedial duties through their state. According to Miller’s international libertarian framework, there can be a remedial responsibility without it being the case that each emitter could have reasonably foreseen the effects of their own emissions.

With regards to (4), two key criteria proposed by Souter for judging when asylum can be a fitting form of reparation are the refugee’s choice and the state’s ability to provide asylum to those to whom they owe it (*ibid.*: 335). The weight of the climate migrant’s choice comes from the fact that asylum is not wholly restitutive. Whilst it may go some way to providing protection, it cannot fully make up for the loss involved. In the cases in which we are considering, *in situ* adaptation is not an appropriate option for those affected, or at least not for all of them, and so asylum must be considered a ‘second-best’ alternative. The state’s ability to provide asylum should be understood strictly: the state cannot simply decide to pursue other domestic objectives instead of providing asylum, as it would then be failing to meet its obligations of compensatory justice. Some of those objectives may have to be compromised in order to satisfy its ability to provide reparative asylum. So, it would seem that in some circumstances, i.e. when it is chosen by the climate migrant and when the state can provide it, the remedial obligation owed to ‘climate migrants’ can be discharged through the provision of asylum.

Climate migrants can be understood as ‘particularity claimants’ on Miller’s framework. Recall that particularity claimants are those ‘who assert that one particular state owes them admission by virtue of what has happened in the past’ (Miller, 2016: 77). Their claim here is levied at those states which are outcome responsible for their plight. Those in need of asylum as a form of reparation, insofar as their human rights are threatened, could also reasonably claim to fall under the scope of Miller’s understanding of the refugee. The ‘particularity’ claim and the claim to be a refugee are, however, conceptually distinct. The obligations we owe to particularity claimants hold regardless of whether they are refugees. This view about obligations to particularity claimants is consonant

with the broader views held by minimalists about immigration. It maintains the central claim that admission is a matter of state discretion, except where states have violated a negative duty in such a way that gives rise to a claim to admission.

Miller accepts that, under some circumstances, admission into the state as a form of reparation is justified. In considering Souter's account, he distinguishes between two possibilities, one being that the claimant affected is a refugee, and is using the reparative claim to single out the state which has caused it harm as the one which should discharge the international community's existing obligations to her in virtue of her refugee status (2016.: 114). Though it is possible that this claim might be made, this is not the claim that I have elaborated in this paper. The other possibility is that the claim is for the wrongful harm to be restored (*ibid.*). This is the claim that can be made by climate migrants by virtue of the historic responsibility nations have for the harms brought about by their emissions. Miller does seem to think that this type of claim warrants admission, in some circumstances. He writes:

'Ideally, the responsible state should try to engineer conditions that would enable those affected to return to their previous lives rather than move them to entirely new surroundings. Sometimes repair is impossible, in which case granting the refugees the right to remain permanently in S [i.e. the outcome responsible state] may be an acceptable, albeit second-best alternative. In these cases, then, admission as a form of reparation is warranted' (*ibid.*: 115).

So, if I am right to claim that nations have a remedial responsibility to climate migrants, then it would seem that when that responsibility cannot be discharged *in situ*, Miller is committed to saying that those affected can claim admission as a remedy. International libertarians should be committed to this claim as well. Given that, *ex hypothesi*, those under consideration cannot have their situation remedied any other way, international libertarians cannot claim that their remedial obligations can be met without recourse to admission. The nation may well owe other climate migrants different remedial obligations in other cases, but in the cases where they cannot be aided *in situ* it seems clear that asylum is the appropriate form of redress. This is the central conclusion of this paper, and it is worth noting that it does not depend on the claimant being a refugee, but rather on their claim to reparation for past wrongs. Miller gives significant weight to the state's right to exclude would-be immigrants and takes the requirements of global justice to be relatively minimal, so this is an important conclusion. It demonstrates that there are promising prospects for

accounts of our obligations to those displaced by climate change which need not appeal to strong cosmopolitan moral principles which are unlikely to be shared amongst political actors in the context in which the need to address climate migration arises.

Objections

In this section, I respond to objections that might be made against the account set out above. I then reflect on some of the implications of the account that I have given here for the ‘international libertarian’ view.

My opponent might object to the idea that the provision of asylum is an appropriate remedial obligation. Recall that my claim was not that asylum will be sufficient compensation, but rather that in a certain set of cases it will be a necessary part of any satisfactory compensation. So, the complaint cannot be that asylum will not be good enough; indeed, I agree that in all likelihood, other compensatory measures beyond asylum will be appropriate. It is also important to note that the compensating state need not be the admitting state; the claim is rather that the remedially responsible state ought to pay the compensation, and that asylum can be an appropriate kind of remedy. So, for example, the state bearing the remedial responsibility might make a bilateral agreement with a state preferred as an asylum destination by some climate migrants. The remedially responsible state could then pay the hosting state to carry out its obligations on its behalf.

The complaint might rather be that asylum will *overcompensate* for the harm. To see the force of this possible objection, we might imagine a climate migrant who comes from an unstable state where their life prospects are minimal, who is then provided with asylum in a stable state with substantial welfare provision, which raises their overall level of welfare. Might it then be justifiable to provide the climate migrant with a differentiated, lower level of protection from that which the state provides to its own citizens? Souter considers this possibility, and his response is that asylum is not only regulated by the remedial responsibility, but also by ‘considerations of equality and solidarity,’ and argues that ‘some may also find the inequalities now *within* a society after the refugees’ arrival as more morally troubling than those that were once *across* societies before it’ (Souter 2014: 334).⁶

Indeed, the kinds of status inequalities that this would be likely to engender are certainly troublesome. Nonetheless, this answer is, I think, only partially satisfactory. Part of the reason that we consider asylum to be a ‘second-best’ response is that an objective assessment of welfare might not capture

6 Souter refers here to Wellman (2008).

the qualitatively different nature of the 'loss' involved in climate migration. Avner De-Shalit points out that in an attempt to rectify the loss of a home, '[t]he point is not whether the new place is better or worse than the old one but that it is different; it is not the authentic place for that person' (2011: 324). On this understanding of asylum as a remedy, the case for the possibility of overcompensation is weakened, since increases in welfare in one domain are unlikely to ever fully compensate for the kind of loss involved in climate migration.

Of course, we may think that there are cases where compensation does not 'make up' for the loss suffered but is nonetheless inappropriately burdensome. Consider, for example, a case where Jones accidentally breaks a near-priceless sculpture in a museum and is required to have her wages garnished in compensation until she has paid its market value. We might think that such a scheme of compensation, whilst not 'making up' for the loss involved in the destruction of the sculpture in any meaningful way, is nonetheless a case of overcompensation, especially if Jones is working a minimum wage job. However, the case at hand is not like this example. Recall that we are considering whether it is justifiable to afford a differentiated, lower level of protection to a climate migrant in virtue of her previously lower level of welfare according to some objective measure, whereas in the sculpture case, the reason for the complaint of overcompensation is rather that it is overly burdensome for the agent paying compensation. If such a complaint is levied in this case, then it is already regulated by condition (4) in Souter's schema, which requires that the state must be able to provide asylum without compromising its ability to provide asylum to all those to whom they owe it.

Moreover, it is not clear that the understanding of 'compensation' that is implicit in this critique is the appropriate one. Recall that we turned to compensation because *restitution*, the restoration of states of affairs in O'Neill's terms, was not a viable option. Given that restitution is not available, it is unclear why we should expect compensatory approaches to provide an equal level of welfare in the victim. Certainly, we might think that compensatory approaches ought to aim to make their beneficiaries as subjectively well-off as they were before. Insofar as it is necessary to compensate rather than to provide restitution, however, the kind of compensation that is appropriate will depend on the options that are available. If one such option involves a better quality of life for the affected in the new state, then this would seem to count as a consideration in its *favour* when selecting amongst possible options, rather than against it.

Conclusion

In this paper, I have demonstrated what one account of asylum as compensation owed to climate migrants might look like, through an analysis of the work of David Miller. I have argued that Miller ought to accept that high-emitting nations have a remedial responsibility to climate migrants on the basis of their outcome responsibility for the harms faced by climate migrants. In the case of migrants who cannot be aided *in situ*, I have argued that asylum is an appropriate remedy. I have demonstrated that such an account is consistent with Miller's broader view on global justice, his account of justice in mitigating climate change, and his account of the state's right to exclude would-be immigrants. Taking Miller to be representative of theorists who hold that the requirements of global justice are minimal, and that the state has significant discretion in its right to exclude would-be immigrants, this is an important conclusion, since it demonstrates even minimal assumptions about the requirements of global justice can yield substantial claims to remedial asylum on the part of climate migrants.

It is worth reflecting on the implications of the account that I have set out here. I have focused here on a stylised subset of climate migrants: those displaced internationally, who cannot be helped *in situ*. The purpose of this restriction has been to lend analytic clarity to our principles of responsibility. Of course, in reality, those being displaced by the impacts of climate change do not neatly fall into clear categories such as these. Climate change intersects with a variety of existing drivers of migration which make 'climate migrants' difficult to identify and to distinguish from other kinds of migrants (McAdam, 2011). As such, it might be argued that my argument is practically inert, since it will be difficult to identify particular climate migrants who can claim asylum as a form of compensation.

If so, then this practical difficulty still does not get responsible parties off the hook for their obligations. It may well turn out to be the case that individual climate migrants of the kind under consideration in my argument cannot be identified. However, it is clear at the aggregate level that climate change imposes important burdens and risks on the migration and refugee regimes, even if particular individuals cannot be identified as 'climate-displaced.' The arguments that I have here made demonstrate that states can be held outcome responsible for the harms that they impose, and that such outcome responsibility can ground remedial obligations. If, for practical reasons, such obligations cannot be discharged at the individual level, then the obligations may take different forms. We might think that it would be appropriate to move the macro-level for discharging such obligations, for example. We could think of a system whereby high-emitting states would be required to contribute greater

resources to the global regime of refugee protection, in order to account for the additional burdens which they have imposed the regime through their failure to adequately mitigate climate change. There is no reason in principle why such a model could not be extended to cover those displaced internally as a result of climate change as well.

These speculations serve to demonstrate that there is clear importance to getting our responsibilities clear even if the practical specification of how our obligations ought to be discharged remains obscure. But they might also point us towards a doubt that we might entertain about the account of responsibility at the international level that minimalists about global justice propose. As Margaret Moore (2008) has argued, Miller's account of responsibility focuses on picking out existing agents to bear remedial responsibilities but ignores that global-level institutional agents may be better suited to tackling global problems like climate change. Given the complexities of identifying individual climate migrants for whom high-emitting states are responsible, it may be more promising to pursue justice for climate migrants at the international institutional level. Positive obligations to uphold global institutions, however, go beyond the more minimal theoretical commitments that Miller endorses in the domain of global justice. There is a tension for minimalists about global justice then, since it can be shown that *in principle* their commitments can yield strong obligations, but it may be that they are unable to discharge those obligations without the kind of global institutions to which they would ordinarily be reticent to endorse.⁷

Jamie Draper
 Leverhulme Doctoral Scholar in Climate Justice
 Department of Politics
 University of Reading
 Email: J.R.G.Draper@pgr.reading.ac.uk



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