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Climate Change Migrants as Refugees

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ABSTRACT

Climate change and migration are two of the most salient challenges humanity currently faces, complicated further when both intersect. This paper addresses the question of whether climate change-induced migrants have a just claim to refugee status. It takes a liberal, deontological approach to justice. First, I explore the natural duties as a possible grounds, but find it too narrow due to its focus on needs. Moving from a needs-based approach to a rights-based approach, I evaluate political cosmopolitanism as a possible grounds since it strives to guarantee the rights of humans as world citizens. However, due to the infinite nature of the cosmopolitanism versus particularism debate, I conclude that this is too controversial and leaves climate change refugees too vulnerable. I do however recognize the strength of a rights-based approach. Building upon insights of forced migration studies, I argue that we can distinguish refugees as a separate moral category on the basis that they are forced to flee because their basic rights are violated. I conclude that this is also the case with climate change-induced migrants and they can be considered climate change refugees.

(184 words)

Introduction

Humanity is facing challenges it has never dealt with before. People all over the world will see their way of life being eroded by the effects of climate change, causing many to either flee or, at the very least, consider this option. Simultaneously, migration has been one of the most politically polarizing subjects internationally – one need only look at Brexit and the election of Donald Trump. Recently, an article in *Al-Jazeera* shows how the politicization of migration and climate change intersect in unfortunate ways. The author talks about the case of Juan de Leon, a 16-year-old Guatemalan teen, who died while being detained by the United States Immigration and Customs Enforcement. The reason Juan was attempting to move to the US was due to years of drought in Guatemala that have made it impossible for Juan's family to harvest anything (Abbott, 2019). But how should we consider Juan? Is he an economic migrant or could he be considered a refugee? These are conceptual questions that have significant normative implications for global justice.

As Koko Warner, a senior official at the United Nations Framework Convention on Climate Change Secretariat, points out, the international community has reached a point where they must reevaluate the norms upon which global governance is built (2018, p.386). The current institutional structures were designed in a particular historical period, but times have changed. The magnitude of the challenge posed by climate change should make us reconsider the norms and values of our current world order. It is predicted that climate change will have a critical effect on livelihoods through warmer temperatures, impeding precipitation-sensitive agricultural production, amplifying natural disasters, limiting access to potable water, more flooding and rising sea levels in coastal areas, and reducing natural resources. These are all essential for the growing world population (IPCC, 2018). Although these predictions are dire indeed, there is no definite way to say how many people climate change will affect, and

which geographical locations will be hit hardest. To ensure those who would be forced to leave their country due to climate change are dealt with in a just manner, the following question arises: ***“Do climate change-induced migrants have a just claim to refugee status?”***

The question of whether environmental disasters can make one a refugee is not new. The concept of ‘climate change refugee’ could be considered a subcategory of ‘environmental refugee’. The term ‘environmental refugee’ was popularized by El-Hinnawi in 1985 to describe those who “have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardizes their existence and/or seriously affects the quality of their life”. There is a significant overlap between environmental degradation and climate change. Both could be considered to be (at least partially) manmade, both prevent people from having a minimally acceptable standard of living, both affect certain regions in the world disproportionately, to name a few. As a result, distinguishing climate change refugees from environmental refugees as a whole warrants a justification.

Climate change as a phenomenon could be considered different from environmental disasters for several reasons. First of all, the scope of manifestations and the number of people that are potentially involved are different. Climate change is far more wide-reaching and can have more varied consequences for different communities than a localized environmental disaster. Climate change can affect people on all continents as a cause of multiple changes in the environment – it does not manifest itself in only one way. Furthermore, a natural disaster will happen within a set period of time, whereas climate change will be permanent and will likely be the indirect cause of more particular environmental disasters across the world. The gravity of the challenge of climate change, beyond its global and indefinite nature, is the fact that many aspects remain unknown, or at the very least, uncertain. It is therefore impossible to

ascertain who will be affected the most, which means that we cannot say for sure who has the potential to become a climate change refugee.

Most of the literature focusing on climate change migration deals with the empirical and legal implications of the phenomenon. Relatively little is written about the normative aspect. The limited amount of normative pieces that have been published are mostly concerned with what climate change refugees are owed by the international community and the various ways in which these moral duties and obligations could be satisfied. However, there is a gap in the literature - no one deals with the general concept of 'refugee' critically. Building upon insights from forced migration studies, I wish to use a normative conceptualization of 'refugee' as central to my argument to simultaneously fill this gap and to ground the claims of climate change migrants. Furthermore, although there are a plethora of theories of justice, in order to limit the scope of the essay, I shall deal primarily with deontological liberal conceptions of justice in the tradition of John Rawls and Charles Beitz.

The structure of the paper shall be as follows. The first section explores the notion of natural duty to ground the claims of climate change refugees. Since this is a primarily needs-based approach to justice, natural duty as a grounds could be considered too narrow. The second section evaluates cosmopolitanism as an alternative. This is a move away from a needs-based approach to a rights-based theory to ground the claims of climate change migrants. However, due to the ongoing debate about the moral nature of borders that cosmopolitanism tends to bring about, thinking of rights being derived from world citizenship is too problematic. Rather, I shall employ basic rights as a way of grounding the claims of climate change refugees independent of the issues associated with national borders. I conclude that if we look at 'refugee' as a concept from a normative point of view, then we can see that climate change refugees fit within this conceptualization, thus grounding their claims. In short, I argue that

categorizing climate change migrants as refugees whose basic rights are not protected by the state can ground their claims for justice.

1. Climate Change Refugees and Natural Duty

I shall first deal with the way in which theories of justice could account for the claims of climate change refugees. As climate change can affect anyone, anywhere, it might be a fruitful place to ground the claims of climate change refugees in the notion of natural duties, since they focus on what we owe to each other on the basis of common humanity. Therefore, this section shall explore to what extent natural duty can be used to ground the claims of climate change refugees.

The notion of natural duty is a fundamental component of John Rawls' (1971) seminal work *A Theory of Justice*. Rawls focuses on social justice. His subject is the basic structure of society. Although we all stand to benefit from the fruits of cooperating as a society, there are still bound to be conflicts of interest among its individual members. To create a just society, he proposes that certain principles¹ should distribute moral rights and duties so that people have the liberty to pursue their desires and life plans. This can only happen if everyone's individual freedom is ensured and consequently places limits on the power of institutions and the behavior of people. Rawls' conception of justice is a deontological one in response to the popularity of the teleological nature of utilitarianism at the time.² As such, for him "justice denies that the loss of freedom for some is made right by a greater good shared by others" (1971, p.25). He conceptualizes justice as fairness, which means that there would be equality

¹ These principles will be discussed further in the second section on cosmopolitanism

² Specifically, Rawls uses Sidgwick to respond to the form of utilitarianism that was prevalent in modern political philosophy,

among the members of society choosing the moral principles underpinning the basic structure due to the characteristics of the original position. The original position is a hypothetical situation whereby these principles would be selected under a veil of ignorance - members would not be aware of their social standing in society, their level of wealth or their conception of the good.³ Fairness refers to that these hypothetical individuals would be equal in their ignorance and would choose the principles fairly on the basis of this equality. There are moral principles that regulate institutional relations and there are natural duties that are owed at the individual level.

Natural duties have specific characteristics that distinguish them from other kinds of moral considerations. A useful way of demonstrating these is by comparing them with moral obligations. Natural duties are those duties that are owed to everyone by everyone. At first glance, natural duties seem similar to the moral obligations that we all would hold under cosmopolitanism; both apply on a global scale. However, natural duties differ from the moral obligations that are part of cosmopolitanism for a number of reasons. Firstly, cosmopolitan moral obligations derive from the social bonds that exist between humans by virtue of belonging to the same cooperative scheme. They are generated by the consent that would have been given in the original position through a voluntary act. In contrast, natural duties “apply to us without regard to our voluntary acts. Moreover, they have no necessary connection with institutions or social practices” (Rawls, 1971, p. 98). This means that we do not have to give consent to acquire duties or evaluate whether they derive from national or international institutions and whether they apply to us or not. Natural duties “obtain between all as equal moral persons... not only to definite individuals, say those cooperating together in a particular social arrangement, but to persons generally” (ibid, p.99). In other words,

³ The conception of the good refers to one’s ability to pursue and revise what one considers valuable in life

every person owes, and is owed, the natural duties. There is no way that one can be absolved, but these duties do not require us to act, all things considered. There might be other moral considerations that are stronger than the natural duties that may give one a reason to act in a way that goes against the natural duties. Although Rawls does not list all the natural duties that exist, he does discuss a few that might serve as the basis for grounding the just claims of climate change refugees.

The most important natural duty for Rawls is the duty to uphold just institutions. This means that we are to uphold institutions that are just in the sense that they comply with the moral principles chosen in the original position and that we must do what is necessary to make unjust institutions just (1971, p.216). Matthew Lister (2014) argues that the current UN Convention on Refugees should expand to include climate change refugees. We can take that argument one step further by asserting that by virtue of the natural duty to support just institutions, we ought to implement Lister's idea by protecting potential climate change refugees through the three established durable solutions (integration, resettlement, or repatriation) by giving them the chance to apply for asylum just like any other refugee. However, here the issue of the limits of the basic structure of society arises. Rawls argues that we have a natural duty to uphold and comply with just institutions that apply to us (1971, p.293). He asserts that the basic structure is a domestic, self-contained society. Consequently, it is vague whether we only have a natural duty to comply with just domestic institutions, or more generally, international institutions. If we only have a natural duty to comply with domestic institutions, then the applicability of this natural duty is too narrow to ground the claims of climate change refugees. If we accept Rawls' limits on the social structure and we confine ourselves to domestic responsibility, then no refugees would be covered under the natural duty to uphold just institution, since refugees cross international borders.

We might be more expeditious in grounding the claims of climate change refugees in the natural duties “to not be cruel and to help one another” (Rawls, 1971, p.98). Rawls argues that we have a natural duty to assist each other. This is because “situations may arise in which we will need the help of others, and not to acknowledge this is to deprive ourselves of their assistance”(ibid, p.298). One could consider dangerous circumstances caused by climate change among these types of situations since it is unpredictable who climate change will affect. This duty of assistance is the foundation of trust between humans. For Rawls, “[t]he primary value of the principle is not measured by the help we may actually receive but rather the sense of confidence [...] in other men’s good intention and the knowledge that they are there if we need them” (ibid). It is this level of trust that is an essential component when attempting to tackle a global problem like climate change. For example, when the Paris Climate Accord of 2015 was being drawn up and was signed by a number of states, this international agreement required that the states would trust that the other signatories would also implement it. If there is no trust, then signing international agreements becomes meaningless. Due to the global nature of the challenge posed by climate change, trust among states is essential to have a chance at limiting its consequences.

There are those that have taken the concept of natural duty of helping each other and have used it to argue that the international community has a duty of assistance towards climate change refugees. This ‘rescue principle’ is grounded in the needs of refugees and the limited costs to countries of providing this assistance. Michael Walzer (1983) has taken this from the individual level, as Rawls uses the natural duty of assistance, to apply it to political communities, whereby Walzer argues that political communities have a duty to people in urgent need. Megan Bradley (2012) uses Walzer’s arguments in the case of the populations of island nations threatened by permanent submersion, which she argues, can be resettled at

little cost to developed countries. Both authors have argued that states or political communities have a natural duty to assist people like climate change refugees. This principle does not fundamentally undermine sovereignty since states are able to control membership to their political communities. Therefore, the moral nature of borders is not contested. This could be considered a significant advantage of natural duty as a grounds, since we are not being asked to comment on the complex issue of the morality of borders and sovereignty. In short, the natural duty of assistance could be considered a pragmatic way of grounding claims of climate change refugees.

On the other hand, Bradley's use of natural duty to ground the claims of climate change refugees is relatively narrow because supererogatory actions are not necessary to fulfill one's natural duties. Rawls argues that "[f]or while we have a natural duty to bring about a great good... if we can do so relatively easily, we are released from this duty when the cost to ourselves is considerable" (1999, p. 100). There is no objective standard of deciding when the cost of doing something becomes considerable. A standard becomes even more difficult to establish when one attempts to assess what is a considerable cost to a political community, as in the case of the 'rescue principle'. This limitation on natural duties leaves climate change refugees relatively vulnerable. In the case of the small island states, Katrina Wyman argues that "developed countries can avoid obligations under mutual aid by arguing that their resettlement obligations are limited to what developed countries can undertake at little cost themselves" (2017, p. 356). It also may be used in the case of anti-migration populist rhetoric where anything that has to do with aiding refugees is often framed in terms of the costs. However, we may be able to counter this narrative by focusing on the long-term benefits of migration. Rawls stresses that "[w]hile on particular occasions we are required to do things not in our own interests, we are likely to gain on the balance at least over the longer run

under normal circumstances” (1971, p. 298). Research has shown that migrants often bring economic growth and other associated benefits.

Nonetheless, another significant difficulty in natural duties grounding the claims of climate change refugees is that there is no way to say which natural duty is more important when they come to contradict each other. Charles Beitz points out that “the principles of natural duty in the nonideal world are relatively unsystematic, and we have no way of knowing which should win in the case of conflict” (1975, p.41). Rawls himself acknowledges this and proposes we make a utilitarian calculation of costs and benefits. For Beitz, this is too broad, in particular with regard to global justice. For example, he applies it to the case of statist arguments that they should have a right to reinvest their economic surpluses. Beitz discounts the idea that “a wealthy nation’s general right to retain its domestic product always overrides its obligation to advance the welfare of lesser-advantaged groups elsewhere” (1975, p.42). This question of unequal distribution of resources and wealth is intimately tied to climate change. It contributes to the burden of responsibility and the ability of certain countries to have a better chance at adapting to the myriad of effects of climate change. Perhaps Beitz’s cosmopolitan theory of justice may have an advantage over natural duty in that there is a very clear hierarchy within which moral principles function. We shall explore this in the next section.

2. Climate Change Refugees and Cosmopolitanism

One might be able to justly ground the claims of climate change refugees in political cosmopolitanism which aims to protect the basic liberties and needs of humans directly as world citizens rather than through the state. This is a stronger premise than natural duty, since it focuses on global institutions rather than individuals. Since climate change is a global

phenomenon, where we are all dependent on each other to help mitigate and adapt to its potential consequences, it might be conducive to address justice as world citizens rather than as citizens of individual states.

Beitz (1975) takes modern interdependency due to globalization as the basis for his position. In his essay *Justice and International Relations*, Beitz uses Rawls' two principles of justice and argues for applying them globally. Before evaluating Beitz' theory as a way of grounding the claims of climate change refugees, I shall briefly elaborate upon the Rawlsian principles of justice. They are as follows:

“1. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all” (Rawls, 1971, p.266).

This principle aims to safeguard everyone's basic rights and liberties, and shall hereafter be referred to as the first principle of justice. Then Rawls proposes the following:

“2. Social and economic inequalities are to be arranged so that they are both:

- a. to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- b. attached to offices and positions open to all under conditions of fair equality and opportunity” (ibid).

Principle 2 shall be referred to as the distributive principle. As mentioned previously, these two principles are the basis for a just basic structure of society, which is a domestic society in the case of Rawls.

Beitz disagrees with the limits of the basic structure that Rawls adheres to. Beitz argues that Rawls' premise of fully independent domestic societies is flawed and pays insufficient

attention to two problems. Specifically, he points out that Rawls leaves undiscussed the extent to which states have exclusive rights over their natural resources or to what extent states should adhere to an international second principle of justice, i.e. the distributive principle. He points out that “if the societies of the world are now [...] open, fully interdependent systems, the world as a whole would fit the description of a scheme of social cooperation and the arguments for the two principles would apply ... at the global level” (1975, p.23). In fact, domestic development is dependent on “human-cooperative activity” and “natural resources... distributed over the earth” (ibid, p.30). The fact that natural resources are distributed unevenly across the world has moral implications. As a result, Beitz proposes to apply Rawls’ two principles of justice on an international scale.

The strength of Beitz’s argument is that he acknowledges the importance of natural resources and their unequal distribution and use across the planet. This is not morally insignificant, as Rawls would suggest, but instead has implications for how justice functions in the international sphere. In fact, to Beitz, the unequal distribution of resources is crucial for a theory of justice. He compares the moral arbitrariness of natural resources to Rawls’ claim that natural talents are arbitrary on the individual level (1975, p. 33). Since natural resources are distributed randomly, countries are not morally entitled to these resources just because they fall within a nation’s territory. Consequently, countries are not automatically entitled to the wealth generated by this abundance. For Beitz, the resultant inequality means that we must change the basic structure of the world in order to rectify this injustice through the global difference principle. This means that the position of the most well-off could only improve if the position of the least well-off also improved. Beitz is therefore principally concerned with global distributive justice, where the subject of justice is attempting to rectify global material inequalities. These global material inequalities have a myriad of effects on the

way in which climate change manifests itself and negatively impacts the most vulnerable disproportionately.

Derek Bell (2004) sees the potential usefulness of Beitz's approach to protect climate change refugees by utilizing the global difference principle. Bell proposes that climate change refugees could be considered part of the globally least well off. They, therefore, should be protected by the distributive principle. He argues that "in a just world, the victims of climate change would be protected by global institutions that guaranteed them a fair share of global wealth" (2004, p.148). This means that the basic structure would have to be reorganized to provide climate change refugees with compensation. He argues that "Beitz's cosmopolitan theory of international justice would offer substantial rights to potential and actual environmental refugees displaced by the effects of climate change" (ibid). In contrast to a theory based on the natural duty of assistance, grounding the claims of climate change refugees in political cosmopolitanism goes beyond merely the *needs* of climate change refugees. It focuses on their *rights* as well. Bell illustrates the potential of the global redistributive principle by applying it to members of the small island states that are disappearing due to rising sea levels by suggesting they may be entitled to wealth transfers (ibid, p.149). These wealth transfers would give climate change refugees the ability to pursue the life they want and to fulfill their own needs. This example shows the link between needs and rights that natural duty cannot account for. In short, cosmopolitanism essentially suggests a rights-based approach to protecting climate change refugees.

Yet, there are a number of ambiguities in Bell's interpretation of Beitz as applied to climate change refugees. The inherent characteristics of moral obligations, in general, might pose a problem to Bell's application. Firstly, the content of a moral obligation is defined by the

institutions that require particular acts of a participant (Rawls, 1971, p.97). In the case of climate change, international organizations have created specific obligations binding together climate change refugees and states. As such, Bell does not seem to immediately run into trouble. The other two characteristics of moral obligations more difficult to find in the case of climate change refugees. The second characteristic of moral obligations, according to Rawls, is that they arise out of voluntary acts (ibid). It is difficult to establish whether voluntary acts have been displayed by the international community to generate a moral obligation. I challenge the idea that the international community is conceivable as a single able to give consent via a voluntary act. Perhaps the diverging interests of states are too varied to ever consider the international community a unitary actor. Thirdly, obligations are owed to definite individuals (ibid). There is no way of knowing what the definite individuals will be in the case of climate change refugees. There is speculation about the numbers, but there are no clear and widely agreed-upon data. Scientists and researchers are unsure about many of the specificities of climate change and, as such, the third requirement also cannot be met.

Furthermore, Bell does not give a comprehensive account of what the redistributive principle should look like in the case of climate change and whether climate change refugees even qualify under it. Would there be institutions created especially for climate change refugees or would they be reformed versions of pre-existing global governance structures? It is also not certain that climate change refugees would be part of the least advantaged on the planet. It may be that victims of other injustices would qualify better as the most disadvantaged and are consequently a better case to apply the global difference principle to. For example, we can compare a climate change refugee with a severely impoverished war victim who has suffered horrible atrocities. Which person would be grouped as part of the least advantaged? It is almost impossible to assess who would be considered among the least advantaged on the

planet. If we cannot be certain that climate change refugees are part of this group, they do not fall under the global difference principle and their claims cannot be grounded in it.

I have a more general concern with the way in which the Rawlsian principles of justice are often interpreted. The focus is often only on the second principle, but I believe there is insufficient attention paid to the lexical ordering of the principles of justice. The lexical ordering means that the first principle of justice has to be fully satisfied before we can move onto the second principle. In other words, the global difference principle only becomes important when the first principle of justice is satisfied. Beitz does address the lexical ordering briefly by acknowledging that it has the consequence that “national policies that maximize the welfare of the least-advantaged group within the society cannot be justified if other policies would be more optimal from the point of view of the lesser advantaged elsewhere” (1975, p.35). In contrast, Bell does not address the importance of the lexical ordering of the principles of justice at all. I believe that this downplays the importance of the first principle in ensuring social justice. Therefore, it might worth considering that one could ground the claims of climate change refugees in a cosmopolitan interpretation of the first principle of justice.

If we look at the first principle of justice, it is essentially about guaranteeing individuals the freedom to pursue their life goals and satisfy their own needs. These basic rights and liberties are “political liberty [...] and freedom of speech and assembly; liberty of conscience and freedom of thought, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of the rule of law.” (Rawls, 1971, p. 53). If we apply the first principle of justice on a global scale, one

could argue that the international community has the moral obligation to guarantee the basic rights and liberties of everyone as world citizens. This would especially challenge the border securitization policies that have been rampant in the Global North.

However, I run into the contentiousness of the value judgments implicit in Beitz's theory. Bell contends that nature is commodified too much by Beitz in his analysis of natural resources. This is supposedly in contrast with the way in which others value their environment. People who are potential climate change refugees might thus not view nature as a resource to be utilized that can be replaced, if needed, but rather as something irreplaceable. Bell thus seems to suggest that Beitz only sees the natural environment as a quantifiable supply, but little else. "Beitz's cosmopolitan theory of justice succumbs to the liberal temptation to conceive of the environment as a resource" (2004, p.150). For Bell, Beitz mischaracterizes the role of nature in human life. Yet nowhere does Beitz state this general position that nature, in general, does not matter. He simply focuses on the role of natural resources in determining what global distributive justice should look like. Natural resources are not the same as nature. That is a conceptual confusion.

However, Beitz's assertion that borders have become morally insignificant due to economic interdependence is more problematic. Particularism would argue that we have a stronger moral obligation to our compatriots than to the rest of humanity by virtue of the bonds between citizens of the same country. This is part of the broader argument there is a strong moral significance to belonging to the same place. Avner de Shalit points out that "place is vital to human identity because it bonds us to our values, history, personal and collective memory, natural surroundings, to things we are familiar and at ease with" and it cannot be replaced (2011, p.318). In a similar vein, Bell argues that "the people most likely to be

displaced by climate change may also be most likely to have a closer attachment to the land that is their 'home' and the community that shares that 'home'" (2003,p. 150). Perhaps Bell is being too hyperbolic in his suggestions that people in the Global South are more attached to their land than in the west (that in itself points towards some controversial stereotypes of less 'civilized people' are more attached to the soil) but he might have a point.

When Beitz argues that borders are no longer morally significant, is he not diminishing the centrality of place in the basic functioning in humans? This is a debate that has been going on for centuries and continues to lead to polarizing answers to this day. I have yet to come across a satisfactory, conclusive response to this question. Therefore, perhaps seeking to address the claims of climate change refugees as world citizens is too controversial to attempt in the context of this paper.

Particularists might also argue that redistributive justice might not be the most appropriate type of justice suitable for guaranteeing the claims of climate change refugees. De Shalit argues that "environmental displacement involves a loss of a crucial functioning of having a sense of place...Since this functioning is incommensurable with other functionings... there is no way we can really compensate for displacement" (2011, p. 311). Functionings here refers to Amartya Sen 's (1999) meaning of the word, i.e. the substantive freedom to choose the life one has a reason to value. Therefore, since the loss of 'home' is incommensurable for de Shalit, redistributive justice might not be an adequate solution for climate change refugees. I do not necessarily subscribe to the view that the loss of home will automatically result in a loss of crucial functioning. Here, I again face the same insoluble nature of the particularism versus cosmopolitanism debate. However, what the argument of de Shalit does underscore is the way in which becoming a refugee might involve the loss of other crucial functionings, such as a loss of basic rights and liberties, since one does not have the freedom to achieve the

life one desires. This does not have to do with the loss of 'home' as much as it does with the way to understand the concept of refugee generally.

In short, the debate about the moral significance of borders seems to be too complicated and contentious to make cosmopolitanism a suitable theory to ground the claims of climate change refugees. However, we can disconnect the idea of rights from cosmopolitanism's emphasis on world citizens. Rights do not have to derive from citizenship - they can also be rights that we have due to our humanity. Although it may be a stretch to say that all rights are human rights, it may be said that we should have, at the minimum, the right to liberty so that we can fulfill our needs. After all, this emphasis on individual liberty is at the core of liberalism. Having individual liberty that cannot be infringed upon, even if it may be for the greater good, is essential to an individual's ability to satisfy their needs. When this liberty is taken away, the ability of people to do so is taken away. As a result, people may be forced to flee. This is where a moral categorization of 'refugee' comes into play.

3. 'Refugee' as a separate moral category

So far, I have found that natural duty and cosmopolitanism cannot sufficiently account for grounding the claims of climate change refugees. However, political cosmopolitanism does show the intimate connection between needs and rights. In the following section, I wish to argue that the failure of the state to guarantee the basic needs of its citizens constitutes a violation of a person's basic rights, causing them to flee. This is fundamental to all refugees - including climate change refugees.

However, there are some pitfalls that come with the term 'refugee' that I believe are insufficiently highlighted by the aforementioned authors that have attempted to ground the

claims of climate change refugees. The most famous, and arguably, the narrowest definition of ‘refugee’ can be found in international law. According to the 1967 UN Convention on Refugees, a refugee is a person who “is unable or unwilling to return to their country owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group, or political opinion.” From a legal standpoint, then, there are two criteria that make someone a refugee; they need to A) have a well-founded fear of persecution, and B) be persecuted on the basis of the social group to which they belong. Academics and policymakers are not satisfied with the narrow conceptualization of refugee embodied by the UN Convention. In particular, they disagree on how to distinguish between migrants and refugees. They often travel along the same routes, resulting in ‘mixed migration flows’ and people usually choose to move for a mixture of reasons. There is a tension between practical concerns and academic accuracy. Categories like ‘refugee’, ‘migrant’ or ‘internally displaced person’ often reflect particular political and policy agendas rather than scientific facts (Malkki, 1992; Phuong, 2000; Turton, 2003). Particular understandings of refugeehood reflect concerns at a particular time. We must be careful to not universalize them and blindly accept that they are appropriate conceptualizations for the present day.

In short, forming a conceptualization of ‘refugee’ is a complicated matter. Exploring the intricacies of these legal and empirical discussions is beyond the scope of this paper, I simply wish to show that the word ‘refugee’ is not neutral and value-free. It is an extremely loaded concept, both in everyday life, and in academic circles. This contentiousness of the general term ‘refugee’ is simply glossed over by authors like Bell, Bradley, and Lister and strikes me as intellectually reckless. The process of conceptualizing ‘refugee’ has political implications and the final version reflects certain power hierarchies. One might ask why I do not simply use the layman’s understanding of ‘refugee’ as being someone who is forced to flee and be

done with it. However, if we are to take the matter of protecting climate change refugees seriously, simply using the dictionary understanding will not suffice. To object to the underlying assumptions upon which policymakers justify their highly ethically questionable policies, we need a conceptualization of refugee that has a sound intellectual basis. That is the only way to challenge the norms of current migration governance structures.

I propose that from a normative point of view there are characteristics that refugees share which distinguish them as a separate moral category of people. I base my claims on Andrew Shacknove's discussion of who is a refugee. Shacknove (1985) points out that the UN Convention is making certain moral claims that do not reflect all conceptualizations of 'refugee' that governments and policymakers use. Specifically, he discredits the idea that alienage or persecution are sufficient grounds to make someone a refugee as is implied by the UN Convention. Rather, he argues that these are expressions of a wider phenomenon; an absence of state protection of the citizen's basic needs. In short, Shacknove proposes that the essence of refugeehood is the failure of the State to protect the citizen's basic needs (1985, p.275). He thereby assumes that morally speaking, there has always been a minimal bond of trust, loyalty, protection, and assistance between humans and a larger collectivity (ibid, p.278). In the modern world, this is exemplified by the relationship between citizen and state. Once the state fails to protect the basic needs of the citizen, this could be considered an injustice. Consequently, he defines refugees as follows; "*refugees are ... persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible*" (1985, p. 277). Shacknove's characterization will serve as the basis for my conceptualization of refugee.

I wish to go one step further than Shacknove by taking a rights-based approach to refugeehood rather than merely a needs-based approach. By merely focusing on the needs, Shacknove does not sufficiently address the link between rights and needs. As Rawls points out, seeking justice is about the following:

“The idea is not simply to assist those who lose out through accident or misfortune, but instead to put all citizens in a position to manage their own affairs and to take part in social cooperation on a footing of mutual respect under appropriately equal conditions” (1990, p.v)

If we focus merely on needs, we are largely missing the point that being a refugee entails having lost the freedom to use one’s ability to fulfill those basic needs. There is agency in the process of fulfilling those needs, it is not the responsibility of the state to directly fulfill these needs as passive recipients. Rather, the state, at a minimum, should create the conditions wherein its citizens have the opportunity and the freedom to meet their own needs (and hopefully more than just that). By taking a rights-based approach, we acknowledge the importance of freedom in making choices on how to fulfill our basic needs and we are able to use the first principle of justice proposed by Rawls.

Now, a particularist may counter against my argument that the basic rights and liberties that are infringed upon are derived from citizenship. Since refugees are no longer in the state that they belong to, these are no longer guaranteed. Therefore, one may argue that I am proposing a veiled version of political cosmopolitanism since I am arguing that everyone’s basic rights should be ensured. However, of course, citizenship rights are only one source from which rights can be derived. One could argue that at the minimum we all have the natural right to be free. Hart (1955) argues “the principle that all men have an equal right to be free, meagre as it may seem, is probably all that the political philosophers of the liberal traditions need to

have claimed to support any program of action even if they have claimed more” (1955, p.176). As such, people always will have this right, “not only if they are members of some society or stand in some special relation to each other” (ibid). This does not mean that we have absolute freedom to do whatever we want. There are bound to be moral constraints to freedom. However, we all should have the minimum freedom to live a life of a minimally acceptable standard. Consequently, in the narrowest sense, refugees have a just claim to asserting that this natural right should always be protected by the international community.

Thus, I argue that the fact that a state is unable to guarantee the basic needs of its citizens constitutes a violation of their natural right to freedom. We can see that the violation of basic rights as a defining characteristic of refugeehood is also implicit in the UN Convention.

Refugees are granted durable solutions in order to rectify the injustice of persecution. That is the moral objective of the international organizations that regulate migration. Persecution of the government is in the first place an infringement of the liberty of a person, whether it be physical, mental or social. These individuals’ basic rights are infringed because the state to which they belong no longer guarantees them. According to Rawls, the fundamental objective of a just society is to ensure these basic liberties. One can become a refugee for several reasons. If one is prevented from expressing one’s political opinions or one’s freedom of thought is oppressed in a systematic manner, this would make one a refugee in the classic legal sense. One might also become a refugee if one is in physical danger or if one is unable to have the chance at a decent life at all due to the failure of the state. These different circumstances lead to an infringement upon the basic functionings of an individual. They no longer have sufficient freedom to pursue their desires and fulfill their needs. As a result, they are forced to flee to another state. In short, I argue that a refugee is the following; *a person who has been forced to flee due to the state’s failure to protect their right to basic liberties,*

which results in their basic needs not being met because they no longer have the capacity to do so.

I want to clarify two important aspects of my moral conceptualization, which concern the severity of the failure of the state to ensure basic rights. Firstly, I am not suggesting that states must always work perfectly – to conclude that a state is not ensuring basic rights depends on the gravity of the deficiency. For example, one may argue that one migrating due to extreme poverty is also a victim of the state's failure. That is undeniably the case.

However, I want to argue that it is the severity of the failure of the state that makes one a refugee. Although economic malaise may indeed mean that a person does not have the life they aspire to, this does not mean that they have no chance at a decent life. Even if one is living paycheck to paycheck, a life that is far from ideal, one is still able to survive. Sen (1999) argues that the state is tasked with offering people a set of capabilities which enables them to function. In the case of refugees, I argue that the state's provision of these capabilities is so eroded that the possibility of a decent life is no longer there. This may be due to persecution on the basis of social group, but may also be due to other factors.

Secondly, with this conception, I do not wish to suggest that justice is strictly a domestic matter and that the international community has minimal moral obligations or duties.

4. Climate change-induced migrants as refugees

So far, I have argued that a person becomes a refugee when their basic rights are not ensured by their home state. We can now assess whether these characteristics can be found in climate change migrants to evaluate their claim to refugee status. We can also see that the tensions associated with the general term 'refugee' and its controversies play out in the literature on

climate change refugees. I assert that, although those who have fled from climate change might not be considered refugees strictly speaking from a legal and/or empirical point of view, they can still be considered refugees if we employ my moral conceptualization of 'refugee'.

Under current international law, climate change-induced migrants are not considered refugees. If we look at the legal definition of refugees inscribed by the UN discussed earlier, then it is obvious that those who have fled due to climate change do not have a well-founded fear of persecution and do not belong to a particular social group. As such, they would not be able to claim asylum under the current international legal system. Yet, maybe we are dismissing the UN Convention on Refugees too swiftly. Lister (2014) believes that at least certain groups of climate change refugees would be able to be protected by the UN Convention, because, just like other kinds of refugees, the basic rights of climate change refugees have been violated. Specifically, he argues that refugee status is owed to those displaced by climate change of expected indefinite duration, which has required them to move across the border, not necessarily because their preferred or traditional lifestyle is threatened, but because they have no possibility of a decent life at all (2014, p.621). This impossibility of a decent life could be interpreted to mean that this group of climate change refugees is unable to exercise their basic liberties.

However, there are those that doubt the benefits of extending the current UN Convention or creating a new treaty to address the needs of climate change migration, because they feel the term 'refugee' is not appropriate. Jane McAdam (2011) believes it is factually incorrect to designate those fleeing from climate change as refugees for two reasons. She bases this on her fieldwork in Tuvalu, Kibriati and Bangladesh, which often feature in the media as examples of the world's first climate refugees. In the case of the small island nations, she

claims is that movement is pre-emptive in response to slow-onset changes that gradually degrade the island (2011, p.8). This is in contrast with the spontaneous ‘flight’ of refugees. However, I take exception with the validity of this argument. Take, for example, Jewish refugees who were fleeing from Nazi Germany in the 1930s. One could argue that this move was also pre-emptive and in response to a slowly degrading situation, albeit political. It makes little sense to discount that someone is a refugee on the basis of how long it took them to decide to flee.

Although Lister and McAdam disagree on the utility of an international instrument to be capable of assisting climate change refugees, they are among the group of academics who are concerned that including climate change as a cause of refugeehood would overextend the current international migration management system. This would result in even poorer standards of aid than are currently in place for refugees. McAdam argues that focusing on new remedies gives states the opportunity to neglect wider migration issues. In a similar fashion, Bell and Lister are very careful to keep the group that qualifies as ‘climate change refugees’ as narrow as possible. They thereby implicitly perpetuate the moral assumptions that currently underpin migration policy.

Since states are already so unwilling to take in refugees, I disagree that concerns about states remaining willing to comply with their obligations under the current migration regime should be the basis for deciding whether climate change-induced migrants have a just claim to refugee status. The political will to help refugees is not part of the current geopolitical landscape, especially not in the Global North. In fact, several academics argue that Europe has been externalizing its borders in the last twenty years (Phuong, 2000, Turton, 2003). In a similar vein, the United States has recently pressured Mexico into increasing the border patrol along its southern border with Central America by threatening to increase tariffs if

Mexico did not do so. There is no good reason that critical normative engagement with the definition of 'refugee' should depend upon the goodwill of states to take them in. In fact, it should serve as "a goal toward which efforts at political change should aim" (Beitz, 1975, p. 40). I argue that the norms and values upon which current migration policy is built, are out of date, and unjust. They should be challenged at their core.

Furthermore, other forced migration scholars are hesitant to use the notion of 'climate change refugee' because they are uncomfortable with the neat separation between migrants and refugees that is upheld by policymakers so that states can continue to demonize certain groups and valorize others. They advocate for focusing on migration multi-causality so that migration is better understood and we consequently are better equipped to help all migrants. For example, Susan Martin (2013) argues that long-term trends in climate change such as drought, flooding, and scarcity of resources are all potential push factors that make one more likely to migrate but are not the sole cause. Similarly, the Asian Development Bank (2012) underscores that environmental factors cannot be isolated from other migratory drivers, whilst acknowledging that climate change can be important. Instead, they advocate for a sensitivity analysis. In other words, there is a wide-reaching consensus that when people choose to migrate, it is always due to various push and pull factors. The empirical reality is further complicated by the fact that the effects of climate change are often exacerbated by human activity (Renaud et al., 2011). The consequence is that it is very difficult to determine with absolute certainty the main reason is that someone has fled. This is the case for all forms of migration and does not mean that we cannot morally distinguish refugees from other migrants.

In other words, although one could argue that climate change migrants are not refugees empirically or legally speaking, they can still be considered so when employing a moral

conceptualization. The complexity of motivations of people to move, is not an argument against my normative conceptualization of refugeehood being due to the state's failure to ensure the basic rights of its citizens. In fact, migration is sometimes seen as the failure of adaptation policies (Boano et al., 2008). Adequate adaptation policies are the responsibility of the state, because these ensure that people have the basic capabilities to live a minimally acceptable life. One may point out that implementing sufficient adaptation and mitigation policies to counter the effects of climate change is expensive, complex and perhaps requires resources that not all states might have. This is exacerbated especially since the countries in the Global South are both most likely to be affected by climate change and the least economically well off. Since the Global North is more responsible for causing climate change, one could go as far as to say that they have a stronger moral obligation towards ensuring the rights of climate change refugees. On the other hand, many developing countries currently pursue polluting policies that undoubtedly worsen the situation. Regardless of what states are more responsible, the only chance at truly minimizing the damage of climate change is through international cooperation. As a result, each state has a moral responsibility to implement sufficient climate change policies.

One could argue that states are jeopardizing their citizen's basic rights by not doing enough to combat climate change. If a state proves to be sufficiently negligent in its climate change policies, this could create situations where the only chance at survival for certain people is to flee the country. For example, Shacknove argues that refugees can indeed become so when the state fails to protect them or secure their livelihoods. He acknowledges that "when determining who is, or is not, entitled to refugee status, natural disasters, such as floods and droughts, are usually dismissed as the bases for justified claims" (1985, p.277). This is based on the assumption that such disasters are not considered political events and outside social control. This, then, imposes no obligation on a government to secure a remedy. Yet this

separation between the world of humans and nature is illusory. As Shacknove puts it, “devastation of a flood or supposedly natural phenomena can be minimized or exacerbated by social policies and institutions” (ibid, p.279). If the level of harm reaches the point that the basic needs of citizens are no longer met, then they become refugees for Shacknove. In a similar vein, I argue that this constitutes a failure of the state to ensure the basic liberties of its citizens, thus rendering some refugees.

We can illustrate this conception of ‘climate change refugee’ in the case of the victims of Hurricane Maria in Puerto Rico.⁴ In 2017, Hurricane Maria ravaged the island, destroying much of Puerto Rico’s fundamental infrastructure. The island has still not recovered and it is estimated that 4645 people have died in the aftermath of the storm. The initial number of deaths was 64. However, the Trump administration has refused to send vital aid to the island and blamed Puerto Rico for its difficulty in recovering. The response of the American government was to blame Puerto Ricans and deny vital humanitarian assistance. This shows how the failure of the state can make it impossible for people to have a chance at a decent life. 300,000 people have been estimated to leave Puerto Rico. Recent studies by scientists show how hurricanes are exacerbated by climate change. The Trump administration’s staunch refusal to give adequate support to the island in combination with its withdrawal from the Paris Agreement and rolling back of environmental regulations could be interpreted as a failure of the United States to provide its citizens with adequate protection against climate change. This infringes on their basic liberties in a number of ways. It means that they are not protected from unnecessary harm and their right to own property is seriously compromised. In some cases, it even threatens the very survival of ordinary people.

⁴ Puerto Rico is part of the United States, and, at least in part, political and economic decisions are made in Washington, outside of the control of the Puerto Rican people

Therefore, Puerto Ricans that have been forced to migrate could be considered climate change refugees from a normative point of view.

Thus, climate change-induced migrants are refugees because their life would be below the threshold of minimally acceptable standards if they stayed in place. One could perhaps even argue that climate change refugees have a stronger claim to refugee status, since there are cases where the entire countries could become uninhabitable. This not only precludes people from exercising basic political rights, it means that everything they have ever known can simply disappear. They no longer have full access to basic functionings that are inherent in their right to liberty, because of the failure of states to combat the effects of climate change. In short, refugeehood can be manifested in several ways. The most extreme case is that of one's living space being completely destroyed permanently. An obvious example is that of island nations which could potentially disappear because of rising sea levels. However, one can also fear the persecution of the government for being a political dissident, which will infringe upon basic functionings in a different way. The essence of those varied experiences is the same - people are denied their natural right to liberty.

Conclusion

In closing, I would like to return to the case of Juan de Leon, the 16-year-old Guatemalan teen who died in US custody. Was he a refugee? I have presented a case that would suggest so. The argument has been made that climate change-induced migrants do have a just claim to refugee status when we conceptualize refugeehood as a moral categorization. A refugee is thus a person who is forced to seek international assistance, due to the failure of the state to guarantee their basic needs and liberties. Guatemala was unable to provide the necessary conditions to allow Juan de Leon's family to continue their subsistence farming. Trying to

migrate to the US was not about economic betterment per se, it was about surviving. When a state does not put in place sufficient climate change mitigation and adaptation policies and life becomes unbearable for humans, they may become refugees. My emphasis on liberty and capability is essentially an attempt to emphasize the agency of refugees. Refugees are often perceived as little more than victims of their circumstances. We could see remnants of this assumption in the natural-duty derived 'rescue principle'. Of course, they are victims, they have fled from often horrifying circumstances, they have experienced hardship. But that does not mean that they become passive, that they are now destined for helplessness. We can counter this problematic narrative by expanding beyond the victim aspect that is implicit in a needs-based approach. By focusing on the rights of refugees, we can acknowledge their capacity and resilience.

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