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## **Refugee crises and the failure of liberal states.**

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**Refugee crises and the failure of liberal states.**

## Introduction

Refugee crises have known a worldwide resurgence since the 1990s. In 2019 alone, the United Nations High Commissioner for Refugees (UNHCR) counted 79.5 million forcibly displaced people. Refugees live in conditions of extreme deprivation all around the world. Displaced by violence, war, or natural disasters, refugees are those who flee their country of origin due to a well-founded fear of persecution (UNHCR, 2011). Protected under international law, asylum-seekers are theoretically entitled to special status. Refugee protection is awarded to those who, through an application process at the border, can prove that they have been driven out of their countries by major threats of violence. However, we still observe drastic poverty in refugee camps and regular abuse of asylum-seekers' rights. Refugees, contrarily to migrants, are forcibly displaced by war, persecution, or natural disasters. This is a crucial element to address their claim to resettlement. Indeed, being driven out of one's homeland by fear triggers distinct requirements of justice and international attention than a quest for better opportunities abroad.

The liberal requirements of justice and how they apply to asylum-seekers are the focus of the present research. There is a baseline consensus in liberal theories of justice that absolute deprivation, total humanitarian despair requires our direct attention and special measures. There is also agreement within liberal theory that individual autonomy cannot be restricted without rightful justification. These assertions are commonly present in several accounts of global justice, including theories of migration. The focus is the provisions liberal theories make for absolute deprivation and analyze how they apply to asylum-seeking. I use the theories of Blake (2001), Nagel (2005) and Miller (2008). Blake (2001) makes a different case for *absolute* and *relative* deprivation. He argues that absolute deprivation is a state of drastic poverty. Such a state creates moral duties from the international community towards the ones in need (p. 258). He says these duties are owed internationally, universally, regardless of the relationship between the individuals. Conversely, relative deprivation is a less dire, more limited state of poverty which would only trigger requirements of justice among co-nationals. Nagel (2005) uses the same distinction: he declares that dire poverty creates an absolute requirement for attention (p. 119). There is therefore a universal humanitarian requirement for consideration of people in absolute deprivation, and that is a global one, to prevent these situations from flourishing across the world. Miller (2008) argues that requirements include first and foremost

the guarantee of basic human rights everywhere, universally, and whatever the structure of the world we live in (p. 395). Similarly, Blake (2001) argues that a fundamental claim of all human beings is the right to autonomy and that liberalism must make autonomy its priority (p. 267).

I argue that seeking asylum constitutes an instance of absolute deprivation, and as such triggers requirements of global justice and immediate attention. Furthermore, I argue that the treatment of asylum-seekers at the border constitutes absolute deprivation and unjustified autonomy-infringement. This rests on the fundamental distinction between the claims of asylum-seeker and those of migrants. While refugees are so deeply deprived that they are driven out of their homelands, migrants have more relative claims to relocation, because of the rather voluntary character of their migration. Therefore, while refugees find themselves in absolute deprivation, we could argue that migrants merely face relative deprivation. This difference and the distinct requirements it triggers for global justice is mirrored from the difference between relative and absolute deprivation. Consequently, the original situation which forces people to flee qualifies for international measures of protection. This distinction between refugees and migrants is what I call the “differentiating system”. The differentiating system is a set of arguments, processes and structures surrounding the distinction between absolute and relative deprivation. In the current international structure, the differentiating system is enacted in border control. In liberal democracies, the differentiating system should allow international efforts to focus on avoiding absolute deprivation. However, the observed reality is that the differentiating system, embodied in border control, currently reproduces situations of absolute deprivation and infringes on individuals’ autonomy. The conditions of detention and the asylum procedure at the border of liberal democracies are themselves instances of absolute deprivation. Through the example of refugee camps, I examine how this system is enacted in border control, and how its practice conflicts with liberal requirements of justice. I further argue that border control is not merely misery-inducing but also an infringement on autonomy. Therefore, I argue there is a discrepancy between liberal requirements of justice and border control as practiced by states despite their commitment to liberal values.

To fulfil this research objective, I start with evidence that asylum-seeking arises from absolute deprivation. Theoretical definitions as well as empirical research show that seeking asylum and living in refugee camps expose refugees to extreme, drastic poverty. Then, I examine more

closely what liberal theories provide for situations of absolute deprivation and how such provisions apply to asylum-seekers. The liberal distinction between relative and absolute deprivation is reproduced in the difference between migrant and refugee. The conditions of absolute deprivation do not arise merely from seeking asylum *per se* but also from the conditions of border control asylum-seekers face. This is a substantial argument against border control which stems from the observation that it creates situations of absolute deprivation which are inconsistent with the requirements of liberal values. Subsequently, asylum-seekers are maintained in absolute deprivation by the very system that was created to protect them: border control. This paradox emerges from the practice of the differentiating system as we know it. As such, the practice of border control recreates situations of absolute deprivation. But there are also abuse of liberty rights and infringement on autonomy inherent to the premise of border control. There, I investigate how border control requires unjustified detention of individuals which is, in any form, a violation of human rights. Differentiating regimes of border control are therefore right-infringing because they require detention of individuals, a treatment reserved for lawbreakers. Such a system equates the *irregular* situation of asylum-seekers, inherent to the refugee status, to a *transgression* punished by law. By systematically detaining the people applying for asylum, border control necessarily restricts freedom unjustifiably. Such considerations are morally flawed regardless of how good conditions of detention at the border might be. I reach the conclusions that border control is harmful in practice and right infringing. This conclusion highlights a discrepancy between the requirements of liberal theories and the practice of 'liberal' democracies. Finally, I argue that the system of border control stands in need of justification. This conclusion stems from the impossibility of justifying the autonomy-infringement detention causes. Indeed, detention is inherently autonomy-infringing, regardless of the level of comfort provided or the duration of the detention. I argue that liberal theory makes clear requirements for the justification of infringement on autonomy, and the detention of asylum-seekers simply does not qualify. Therefore, regimes of border control which include detention stand in need of justification. If such justification cannot be obtained, detention needs to be eliminated from border control.

## **Chapter 1: The refugee crisis as absolute deprivation and autonomy-infringement.**

Refugee crises around the world, whether in Myanmar, at the Mexican border or in the Mediterranean Sea gather all the characteristics of absolute deprivation. Empirical observation of asylum-seeking shows it qualifies as absolute humanitarian despair. Indeed, fleeing one's country is such a radical hardship that it cannot be understood as anything short of drastic deprivation. But asylum-seeking does not merely arise from absolute deprivation, it also entails absolute deprivation. The subsequent conditions in which asylum-seekers find themselves in are constitutive of absolute deprivation as well. Furthermore, the system of border control places asylum-seekers in arbitrary detention which is by no means justified under liberal principles.

Asylum-seeking refers to the process prior to the reception of the refugee status. Asylum-seekers are the people whose "request for sanctuary has yet to be processed" (UNHCR, 2011). Asylum-seekers therefore are those who flee their country of origin, motivated by the prospect of finding refuge somewhere else. According to the 1951 Refugee Convention, a "refugee" is defined as someone who is "unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (UNHCR, 2011). Therefore, the protected status of refugee will be awarded to those who qualify for the abovementioned criteria. Such persecution can involve life-threatening experiences, serious imposition of harm, inhuman or degrading treatment, torture. As a result, a large population of asylum-seekers have suffered tremendous violence before they reach safety. Mendola & Busetta (2018) mention that 50% of the refugee children from the Middle East in Denmark have a parent who was a victim of torture, and 70% of them have at least witnessed violence. They add that most residents of the studied camps in Italy have fled to improve their access to human rights, having "escaped wars or famine (...) been tortured and abused" (p. 485). Such conditions would certainly vouch for the qualification of asylum seeking as absolute deprivation, as torture and violence are threats to the basic rights to life and safety. Refugees also flee their countries to escape indiscriminate forms of violence, such as armed conflict or natural disaster. To be deserving of international protection, applicants must prove that in their situation, the level of indiscriminate violence or

risk was so high that the simple fact of being present on the territory endangered their lives (UNHCR, 2013). The terms speak for themselves: the extreme situation which leaves victims with no alternative other than fleeing calls for international protection. Such evidence accounts for the idea that a level of violence so high it would drive citizens out of the country amounts to absolute deprivation.

Therefore, the situations that push asylum-seekers out of their homelands arise from absolute deprivation. Someone who presents a fear of discriminatory persecution or serious harm is arguably being denied a basic set of human rights, such as rights to life and right to fair treatment. Beyond the empirical observation that seeking asylum is quite a desperate endeavor, the cost-and-benefit analysis of such an enterprise further indicates the deprivation it arises from. In purely empirical terms, fleeing is extremely costly. Asylum-seeking is a dangerous journey sometimes involving violence, trafficking, smuggling. It places people in irregular situations across borders with very little protection available until they reach safe countries. Arguably, it is not a journey that would be considered if there were viable alternatives, which leads us to understand there are none. Fleeing involves facing risks of deportation, clandestine travelling, and material deprivation while on the move. Asylum-seekers are the people who have exhausted all other means of protection, meaning state remedies, non-state actors and other organizations have failed to provide protection. Hence, it is safe to admit that the original position in which asylum-seekers find themselves is one of absolute deprivation. Was it not the case, there is significant reason to believe that they would pick alternatives that do not involve displacement and relocation. These elements expose the absolute character of the deprivation faced by asylum-seekers. Persecution, war, natural disasters are instances of extreme violence which leave people to their own devices. Other means of justice-seeking and survival have, at this point, been exhausted or proven inefficient. It is crucial to emphasize the involuntary nature of asylum-seeking because it is what distinguishes it from other patterns of migration. While migrants turn *towards* a place, refugees flee *from* somewhere. The emphasis here is not on the opportunities elsewhere but on the impossibility of staying at home. This is critical to understand the absolute deprivation of refugees.

Asylum-seeking therefore arises from a situation of absolute deprivation, but it also *results* in absolute deprivation. The circumstances in which asylum-seeking take place are desperate. This

is observable from the conditions of detention awaiting asylum-seekers when they reach “safety”. Reception camps that are set up in the hotspots of refugee-hosting areas display deplorable life conditions and autonomy-infringing processes. For instance, the European Union New Pact on Migration and Asylum-Seeking (2020) involves extensive tracking and tracing of persons upon arrival, with an explicit prohibition of movement within and across countries. Such restrictive measures are coupled with deplorable living conditions. In refugee camps, access to healthcare, water, education can be extremely limited, or completely non-existent (UNHCR 2020, Mendola & Busetta 2018). In such camps in Italy, for example, Mendola & Busetta (2018) observe rapid deterioration of residents’ health conditions associated with poor access to facilities. They report that residents live in makeshift camps with limited to no access to housing, water, electricity, food distribution, clothes, education or healthcare (p. 496). Persecutions sometimes persist in refugee camps, for instance with the proliferation of Sexual and Gender-Based Violence (SGBV) during the journey and in the camp. Freedman (2016) reports on the different risks of SGBV refugee women encounter during the asylum-seeking procedure, which include sexual assault in and around the camp, as well as forced sexual relationships with smugglers and border control officials (p. 21). She explains that SGBV is facilitated by the inadequate accommodation and criminalization of movement (p. 22). Such situations certainly qualify for what Blake (2001) calls “drastic poverty” (p. 258), and for what Miller (2008) names as abuse of basic human rights.

But the deprivation does not end here. Additionally from living in conditions of material deprivation and abuse of rights, asylum-seekers are being detained, to varying extents, during the procedure of assessment. Prior to the decision of whether to award refugee status, asylum services restrict their applicants’ freedom of movement by placing them in closed detention centers or demanding they do not leave a limited geographical area. This is aimed at preventing asylum-seekers from escaping deportation in the case that their application would be rejected, justified by the right of states to prevent entry. Detention can be more or less extensive, but sometimes confines individuals to one center, effectively detaining asylum-seekers like prisoners. This issue is highly contentious as international human rights advocates have frequently pointed out how problematic the detention of asylum-seekers was (UNCHR, 2019; Amnesty International, 2020). The Asylum Information Database report “Boundaries of Liberty” describes detention as a “frequent component of asylum systems”. The problematic consequences of such detention in terms of human rights, mental and physical health are heavily



evidenced by international organizations urging governments to end the practice (UNCHR, 2019; Amnesty International, 2020). The report highlights that detention is enacted owing to various “creative terminology” and other strategies aimed to circumvent the international standards of international human rights law aimed at preventing it (Asylum Information Database, 2017, p. 6). In the European Union, detention of asylum seekers is defined as the “confinement of an applicant by a Member state [...] where the applicant is deprived of his or her freedom of movement” (Asylum Information Database, 2017, p. 8) The terms are clear: detention *deprives* asylum-seekers of freedom. Detention is aimed at preventing potential unauthorized entry in the case of rejection or to allow the removal from the territory in case of deportation. European law is clear in providing that “a person should not be held in detention for the sole reason that he or she is seeking international protection” but subsequently allows the flourishing of closed reception centers throughout Europe by tolerating legislation tweaks enacting detention (Asylum Information Database, 2017, p. 11). This issue is not isolated. Evidence of *de facto* and *de jure* detention of asylum-seekers is found, among others, in France, Greece, Spain, Portugal, Malta, the Netherlands, Belgium, Bulgaria, Switzerland, Slovenia, Italy, Austria, Romania, Serbia, but also Canada, the USA, Mexico (Asylum Information Database, 2017, pp. 16-21; Amnesty International, 2020) which all claim to be liberal democracies. In these cases, detention of asylum-seekers is provided for in asylum-policies, which is made possible by legislative tweaks around the practice which is prohibited in international law. Arbitrary detention or detention without trial is indeed made unlawful by most international human rights law and prohibited by most liberal bills of rights (Asylum Information Database, 2017). The extent and duration of the detention varies, as well as the conditions in which it takes place. In Greece, the detention conditions are so deplorable they have been the subject of several lawsuits before European Courts, whereas Switzerland is praised for the quality of its detention facilities. In any case and regardless of the conditions, detention is a violation of liberal principles of human rights. But this is also a concerning infringement on individual autonomy, regardless of the frequency of its occurrence.

Both the drive to seek asylum and the situation it results in contain heavy human rights abuse, infringement on personal freedom and replicate massive poverty. If asylum-seeking constitutes an instance of absolute deprivation, it triggers the requirements of “humanitarian minimum” established in liberal theories, which are duties for attention on a global level. Therefore, we should observe not national but international policy aimed at ending these situations. Such

requirements are absolute. The global requirements of justice apply in an immediate and irrefutable way because of the very nature of the situation, regardless of the cause or the identity of the victims. Furthermore, the right to autonomy is absolute and irrefutable. Such universal commitments to avoid absolute deprivation and autonomy-infringement should at a minimum be observed by liberal democracies. Therefore, the occurrence and proliferation of such situations immediately conflicts with the principles liberal democracies claim to defend. Such countries whose borders present such situations of absolute deprivation fail their commitments to principles of liberalism.

## **Chapter 2: Liberal theories and absolute deprivation.**

Liberal theories of global justice define clear minimums in terms of autonomy and deprivation. They all stress that at a minimum, a humanitarian baseline of assistance must be provided internationally. Moreover, autonomy is an inalienable right for liberals and any infringement upon it must be justified. What is left to determine is therefore what is required for a situation to qualify as absolute deprivation, and what justifies infringement on autonomy. Little is said about refugees and asylum-seekers in Blake (2001), Nagel (2005) and Miller (2008) but all three outline clear requirements of justice in the case of absolute deprivation. Miller (2008) and Blake (2001) make clear requirements of rights to freedom as a minimum that shall not be infringed. Miller (2008) argues that among universal requirements of justice are access to basic human rights, first of which is the right to freedom. Blake (2001) makes a similar point in his theory of autonomy which states that autonomy is a supreme right which shall not be infringed without justification.

Blake (2001) coins the terms “absolute” and “relative” deprivation. He starts with the argument that liberals have a commitment to equality (p. 257) and to poverty alleviation (p. 259). He argues that international poverty, when deemed *absolute*, should be addressed globally and eradicated. As for the definition of what constitutes absolute deprivation, Blake (2001) defines it as the “threshold to decent human functioning beneath which the possibility of autonomous human agency is removed” (p. 259). He uses requirements of equality and autonomy as the baseline and concludes that justice is owed globally to the ones who fall below the threshold of autonomy, on account of respect for the liberal principles of equality.

Nagel (2005) argues that absolute deprivation constitutes a minimum humanitarian basis that requires global attention. He argues that absolute poverty triggers humanitarian duties universally (p. 119). This “minimal concern” is defined as coming into action whenever human beings anywhere are faced with starvation, severe malnutrition, early death, and dire poverty (p. 118). Nagel (2005) asserts that such situations form an “urgent call” to be addressed globally. According to him, such requirements are not even ones of justice, but of universal moral decency. He refutes the idea that such humanitarian duties could be challenged by individual conceptions of morality and says they hold in virtue of “humanity alone.” (p. 119).

Liberal predicaments for global justice are not limited to material conditions. Theories also outline clear requirements in terms of rights and freedoms. Miller’s (2008) theory of justice is very much focused on the universal guarantee of a basic set of human rights (p. 391). He describes those as “freedoms, resources and bodily states that allow basic human needs to be fulfilled” (p. 391). Miller furthers the argument to add requirements of basic decency, in terms of material security (food, shelter, healthcare...) and immaterial rights, such as non-interference, rights to movement and expression (p. 391). Therefore, absolute deprivation is not understood by Miller (2008) in purely material terms of poverty, but also in terms of respect for rights and freedom. He argues that such requirements are “genuinely universal” (p. 391) and hold as an absolute minimum, regardless of other principles of justice and in a “non-comparative” manner (p. 394).

The theory of Blake (2001) also contains requirements for immaterial guarantees. He advances that human beings have universal entitlements to autonomy according to basic liberal commitments (p. 267). He joins Miller’s (2008) guarantee of rights to freedom by saying that autonomy is “incompatible” with coercion (p. 268). He defines autonomy in the amplest way possible: in his view, autonomy is not mere capacity of choice but the maximization of possibilities which shall not be interfered with without justification (pp. 269-272). Therefore, violations of autonomy can only be endorsed by liberal principles if it is correctly justified. This stands for “judicial” impositions of harm, where punishment is imposed by the state is “always an evil [...], something extraordinary that stands in need of special justification” (Blake, 2001, p. 275). Blake (2001) makes clear provisions for the situations which legitimize infringement on autonomy. Infringement on autonomy must be either justified or eliminated. He argues that the application of criminal and civil law is a justified form of coercion. This justification rests on the principle of hypothetical consent. Hypothetical consent implies that individuals living under the law consent to the hypothetical coercion to be imposed upon them if they were to

breach the law. Consent to coercion is therefore crucial to its legitimation, but it is conditional on the individual having breached the law it is subjected to. Hypothetical consent does not make arbitrary detention possible; it only makes it legitimate once individuals breach the law they consented to abide by. Blake (2001) clearly states that the coercive measure of imprisonment is only legitimate following an offense to the rules in the first place.

All three authors emphasize the universal nature of the minimum principles of global justice. They make note of their non-variability, whereby principles of global justice hold regardless of the cause of the deprivation, the ones responsible for it or the relationship with those subjected to it. Combining Nagel (2005), Miller's (2008) theory of basic rights and Blake's (2001) provisions for autonomy forms a coherent basis of liberal principles. Humanitarian duties are universal and require efforts to eradicate absolute deprivation in material and immaterial terms. Autonomy and freedom are basic 'immaterial' rights that shall be respected universally as part of a minimum, international threshold. Additionally, infringement on autonomy must be justified to those subjected to it. The authors require direct humanitarian action and an unequivocal, international response in case of absolute deprivation, in virtue of the offense it represents to liberal principles. Therefore, the conditions of asylum-seeking are so dire both in essence and in consequence, that they should be prevented or alleviated by liberal states.

In terms of massive, drastic poverty, abuse of human rights, and infringement on personal autonomy, asylum-seeking constitutes an instance of absolute deprivation. As argued in the previous chapter, it appears that both the essence and the resulting conditions of asylum-seeking put individuals in situations of absolute deprivation. In virtue of the liberal requirements for the humanitarian minimum, asylum-seeking should therefore trigger universal attention and global mobilization. Furthermore, asylum-seeking entails serious infringement on autonomy due to the detention applicants face at the border. According to Blake (2001), unjustified detention is inconsistent with liberal principles, regardless of the conditions of detention. Refugee crises hence constitute situations of material and immaterial absolute deprivation calling for a global response. Instead of such a response, we observe a growing number of displaced people around the world living in refugee camps alongside borders in desperate conditions. There is therefore a discrepancy between the liberal requirements of justice and the observed practice of allegedly liberal democracies at their national borders. I argue that such a discrepancy is caused by the current practice of border control which reproduces human rights abuse and drastic poverty.

But the infringement on autonomy which results from border control is itself inherent to the differentiating system, and not a mere consequence of current state practices.

### **Chapter 3: The failures of border control & the differentiating system.**

The differentiating system is the set of arguments, processes and structures surrounding the distinction between absolute and relative deprivation. It is the distinction between what triggers requirements of global justice and what does not, and the institutions which embody and perpetuate this distinction. The distinction is reproduced between refugees and migrants, where the differentiating system awards international attention to refugees and mere national guidelines to migrants. International protection to refugees is enshrined in international conventions. Thus, differentiating systems also contain the details of the threshold for international protection. This is embodied in border control: the institution responsible for determining who is a refugee and who is not. However, border control practices this difference in a way which perpetuates absolute deprivation.

The deprivation asylum-seekers encounter in refugee camps is not only material. Border control also perpetuates absolute deprivation of rights. The procedure of asylum application is extremely invasive. It requires people to disclose life stories, reiterating multiple times traumatizing narratives. Applicants are required to substantiate their stories of persecution with material evidence. When people live in makeshift camps after having crossed seas on dinghy boats and survived countless floods and fires, how are they expected to carry along evidence? The treatment of applicants is extremely dehumanizing: they are rarely informed about the progress of their applications, no time indication is given to them, access to translated information is limited, legal counsel almost in-existent.

The asylum application procedure exposes individuals to arbitrary encounters with the authorities. Encounters with law-enforcement officials can be particularly violent. In practice, border control authorities are frequently reported to treat asylum-seekers with the utmost violence, even in liberal democracies. The Immigration and Customs Enforcement Police (ICE) in the USA has been reported to perform unwanted hysterectomies on women detainees in the camps at the Mexican border (Bryant, 2020; Dickerson et al., 2020). News reports also alert on the overcrowding of detention camps of the Mexican border, and point to issues with access to

water, food, and medical care and family separations. Children seem to be particularly exposed to mistreatment, despite their protected status (Serwer, 2019; Human Rights Watch, 2020). Police brutality is reported regularly by residents of the Calais jungle, or in informal settlements of asylum-seekers around Paris. Local activists account that violent encounters with the French law enforcement is almost a daily occurrence for the camp residents (Dutton, 2018). A Human Rights Watch report finds evidence of abuse including use of chemical spray on people (including children), among other uses of physical violence (Human Rights Watch, 2017). Recent evictions of the Paris makeshift camps took place in unjustified levels of physical violence (Mulholland, 2020). In this detention period while waiting for their status to be decided upon, asylum-seekers are left to endure abusive behavior without any recourse against it. Greek authorities have even been reported to push people back into Turkish waters, going so far as removing people from the detention centers to drive them back into the sea, on dinghy boats with no motor (Kinglesey & Shoumali, 2020; Human Rights Watch, 2020).

In the current international system, asylum-seekers file applications for international protection when they reach the 'safe' host state. Conversely, immigrants are expected to be granted temporary or permanent residence before moving, and in virtue of clearly established goals (studying, working). This is inherently linked to the motivations for migration: while refugees are forced out and therefore cannot be assumed to be granted entry before leaving, migrants are widely understood to be moving for less urgent matters. The result is that asylum-seekers are gathered in diverse geographical hotspots, having been driven out by the same political violence, systematic persecutions, war and insurgency. At those entry points are created authority structures (immigration services) which determine the individual status each asylum-seeker through a procedure aimed at establishing the credibility of their claims. Evidently, the procedure is long and costly, which requires people to be put in detention for as long as their status is not regularized. Entry points into countries sometimes become overcrowded hotspots where makeshift structures can host up to 180 000 people (UNHCR, 2020). Where systems are in place for applications to be processed, the procedure can take several years. During this procedure, people live detained in conditions of deprivation.

This logic highlights the paradox created by the differentiating system. If migrants did not have a good enough claim to asylum upon arrival because of their situation of mere relative

deprivation, they sure do find themselves in situations of absolute deprivation once they reach the camps. The previously mentioned conditions of detention in refugee camps around the world gather all the characteristics of drastic poverty. Therefore, the system of border control which is meant to give priority attention to the ones in need ends up creating more need by perpetuating absolute misery. In this case, even if a person did not have a good enough claim to the refugee status when they left, they are met with conditions of such absolute deprivation once in the camp that they should inevitably become eligible to international attention as well. The paradox lies here: by the time one has spent four (or more) years waiting with no access to healthcare, water, food, clothing or education, their current status probably qualifies for international assistance. Therefore, the very system that was meant to alleviate people from their situations of absolute deprivation creates and sustains drastic poverty.

The idea of liberal principles is not that people must be deserving of international protection to wait in decent conditions. On the contrary, the requirements of an absolute humanitarian minimum would demand that decent conditions are maintained at all costs throughout any procedure. The current practice of assessment of asylum claims places people in detention for a very long time. From the moment that the applicant reaches safe ground to the decision of the asylum services, there can be years. Applying for asylum requires registration, investigation, a set of interviews which must be substantiated with evidence, first and second instance decisions, and sometimes appeal procedures. In Greece, which hosts about 50 000 asylum-seekers (International Rescue Committee, 2020), the average time between the applicant's first expression of intention to apply and the first interview is over 10 months (Asylum Information Database, 2020). This includes the fast-tracked applications of asylum-seekers from priority countries, such as Syria. But for applicants from Turkey, Iran or Afghanistan which are not considered to be so much of a priority, interview dates are currently given for 2024 (Asylum Information Database, 2020). This means that applicants wait for at least four years before they even have a chance at proving their claims. Such a time-consuming process in conditions of deprivation and detention is incompatible with an immediate call for attention: under these circumstances, the practice of border control is a violation of the liberal principles by which democracies claim to stand by.

Conditions of life in refugee reception and detention centers are far from ideal. Such long periods of detention mean long exposition to harm, material deprivation and human rights abuse for asylum-seekers. But the differentiating system requires the creation of border control to establish who presents with a situation of absolute deprivation and who deserves protection. Arguably, the material conditions border control could be improved, reception conditions could be made more humane and encounters with law enforcement less violent. Liberal states should, in virtue of their ideological commitments, provide for border control to take place in accordance with rules of the humanitarian minimum. The violent behavior of law-enforcement officials should be eliminated and replaced with consistent respect for human rights throughout the procedure. States which claim to be liberal democracies cannot let the refugee crises flourish on their territory if they involve such absolute deprivation. But the system of border control, even when improved, would require the detention of individuals. Detention fulfils the purpose of preventing unauthorized entry of applicant into the country were they found undeserving of international protection. It is necessary to enforce deportation against unauthorized entry, as other systems letting people free would fail to locate the applicants who need to be deported. The risk of not detaining asylum-seekers would be that those whose application is rejected refuse to comply with removal orders and enter the territory. Thus, detention is a fundamental issue. Therefore, improving the asylum procedure and conditions of detention as a whole would still leave a residual concern: the unjustified detention of individuals. Even the best conditions of detention deprive human beings from their freedom of movement, even when the detention is made humane and minimally strict. This is inconsistent with the liberal requirements to justify all infringements on autonomy. The differentiating system is responsible for this unjustified coercion: the attribution of international efforts *only* to cases of absolute deprivation demands preliminary assessment of the severity of the situation. Such assessment, embodied in border control, entails the unjustified detention of individuals to prevent hypothetical, future unauthorized entry. Alternatively, allowing those who do not qualify for refugee protection into the territory would defeat the differential requirements of liberal principles established in the first place. It would make the entire procedure of border control irrelevant to the status of asylum-seekers.

Detention is sometimes justified under liberal principles. Blake (2001) recounts that coercion in the form of punitive imprisonment is justified under several conditions. Consent to hypothetical coercion in the case of a breach of the law gives justification to the infringement of autonomy. Let us therefore assume that asylum-seekers, having reached the territory of a



state, give their consent to being subjected to its laws. This is debatable as, as the AIDA report points out, detention of asylum seekers can be allowed in transit zones prior to the prospective applicant's entry into the territory, even though asylum applications themselves cannot be lodged before reaching the territory (Asylum Information Database, 2017, p. 17). For the purpose of theory, we assume that asylum-seekers are present on the territory and expressed the need to apply for asylum. They thereby consent to being subjected to the laws governing asylum-procedures. Asylum-seekers are thereafter placed in detention for the purpose of the examination of their applications. This is sustained only by the *potential* breach of law that states assume applicants might commit *in the future* if their applications are rejected. Asylum-seekers are detained, regardless of the risk they present of actually entering illegally in the future. This is not justifiable for liberal principles, because it would allow individuals to be punished for offenses they have yet to commit. Hypothetical consent is, after all, *hypothetical*: it is conditional on the offense being committed. Liberal principles can in no way be understood to justify detention as preemptive punishment for an offense not yet executed. Justice systems attribute punishments in virtue of committed offenses and create safeguards such as the presumption of innocence and investigative processes to prevent the unjustified imprisonment of individuals. But asylum-seekers are imposed a different treatment and get detained prior to any assessment of guilt, prior to even any act of defiance. Indeed, detention is in most case not individualized. Asylum seekers are placed in systematic detention for the sole reason that they are applying for international protection.

Asylum systems also explain the detention of asylum-seekers by their irregular situation. The entry of asylum-seekers into a territory is considered to be "irregular". The irregular status is only resolved once the applicant is granted asylum or, alternatively, driven out of the territory. Irregularity is inherent to the nature of asylum procedures: they require individuals to reach the territory of the safe country for them to be able to lodge an application for asylum. Subsequently, asylum-seekers are forced into irregular entry into a territory, despite the existence of a procedure specific to their situation. Individuals are therefore being punished with detention for making rightful use of a procedure provided for in law. But irregular situations are different from illegal ones: they are contingencies caused by a legal vacuum which is temporary, not an offense to the law. Asylum-seekers have not broken the law, they are making use of its provisions. Border control forces them into irregularity.

Alternatively, one could argue that asylum-seekers' detention is justified because applicants consent to it when they start the asylum procedure. Therefore, by applying, asylum-seekers

would give consent to detention as a “necessary evil” for asylum purposes. But asylum-seekers only consent to detention because seeking asylum in itself is a last resort option. Consenting to detention is the applicant’s only possibility when the alternative is to renounce to asylum. And, as established previously, seeking asylum is already a last resort option. Other alternatives for safety have been exhausted: therefore, it is hardly an autonomous choice, as no alternatives are present. Furthermore, consent of the individual is itself not enough to justify infringement on autonomy, it needs to serve the purpose of punishment. Punishment is enacted in virtue of an offense and can simply not be justified for facilitating administrative procedures in the case of deportation. The reality of border control is that it maintains individuals in detention only to keep them available to the authorities, which can in no way justify such an infringement on autonomy.

Detaining asylum-seekers, at least to some extent, is made necessary under the current differentiating system. The principle of the differentiating system entails that that international protection and subsequent entry into the territory is reserved to individuals whose situation of absolute deprivation entitles them it. Such principles can only be observed with close assessment of who qualifies as absolutely deprived. If refugee protection, and entry into the national territory, is reserved to those who do qualify, then others must be rejected, removed, otherwise border control is irrelevant altogether. The removal of third country nationals, otherwise known as deportation, requires systems to detain people until the decision is made, for authorities to be able to deport those who often do not even have passports. Hence, the differentiating system and its necessary implication of detention are responsible for the wrongful infringement on the autonomy of asylum-seekers.

The differentiating system, and by extension border control, is therefore not only a harmful structure in its current practice. Its nature also poses a problem to the respect for liberal principles of autonomy. Indeed, the liberal principles of justice demand that we award international attention and thus territorial entry to those who, facing absolute deprivation, need it the most. Such a system entails two things: the necessity of an assessment based on individual characteristics, and the possibility of denying entry to those who do not qualify for international protection. Preventing unauthorized entry is therefore the goal of detaining asylum-seekers. But such a system is in contradiction with the other requirements of liberalism, such as the prohibition of unjustified autonomy-infringement. Therefore, the current system of border control which allows such unjustified detention to take place must be abolished and alternatives

created. Merely improving the conditions of border control to make it more humane will therefore not solve the issue of detention which makes border control so inherently problematic.

#### **Chapter 4- Conclusion: an urgent need for alternatives.**

There is a tension between liberal requirements of justice regarding absolute deprivation and the practice of the differentiating system. The distinction between relative and absolute poverty creates different obligations regarding migrants and refugees. This gives rise to the system of border control as we know it. The determination and assessment of what constitutes absolute deprivation at the border currently allows the perpetuation of such absolute deprivation. The differentiating system embodied in the current practice of border control, therefore fosters absolute deprivation. Fleeing from one's country of origin and being detained in refugee camps for extensive periods of time, in conditions of drastic poverty and subjected to extensive abuse of human rights, constitute conditions of absolute deprivation. Additionally, asylum-seekers are forced, by the very nature of the asylum process, into a position of irregularity which lasts until the end of the lengthy procedure. This irregular situation makes asylum-seekers vulnerable in their encounters with law enforcement. The enactment of the differentiating system therefore creates a discrepancy between the commitments of liberal states to justice and the practice at the border. As a result, states fail their commitments to liberal principles and actively recreate absolute deprivation at the border. Border control fails the vulnerable individuals it was created to protect and imposes violence and deprivation on all, irrespective of whether they qualify for asylum.

Beyond its material consequences, border control also imposes unjustified coercion. Fundamentally, the differentiating system only provides entry to the national territory to the people who are found deserving of international protection, in virtue of the liberal requirements regarding absolute deprivation. This implies the possibility of deporting those who do not qualify, as they do not constitute instances of absolute deprivation. As a result, asylum-seekers must be detained for the potential enforcement of a deportation decision in the future. This detention is however an infringement on autonomy which cannot be justified. There is therefore a fundamental wrong in border control which resides in its autonomy-infringing nature.

Respect for liberal values, the prevention of absolute deprivation and the prohibition of unjustified autonomy-infringement should be the priorities of liberal states. These commitments are so strong that they should prevent existence and proliferation of refugee camps. Therefore, the current system of border control needs a complete rethinking. First to ensure that asylum-seekers are welcomed with conditions of life that meet the minimum standards set by liberal principles. Access to basic needs should be guaranteed throughout the procedure out of compliance with the universal humanitarian minimum liberal states commit to. This means that accommodation, food, clothing, access to medical care form the minimum material goods that must be provided. Moreover, the procedure for asylum needs to be improved to eradicate its violent consequences. Intrusiveness and reimposition of trauma should be halted or limited to a minimum, and other needs such as interpretation and legal assistance shall be provided by asylum services systematically. Violent encounters with abusive law-enforcement officials need to be eliminated. These fundamental elements which lack painfully today ensure respect for a basic set of human rights. From there remains a residual issue: the one of detention. Today, asylum services in liberal states require detention to prevent the unauthorized entry of those deemed undeserving of refugee protection. Such detention is an unjustified infringement on autonomy. It assumes the guilt of individuals from their mere irregular status. It imposes a sanction before the offense has even been committed. As such, detention of asylum seekers, even in the best conditions, stands in need of justification or shall be eliminated. Therefore, alternative border control systems must be created urgently to end the refugee crisis and its perpetual deprivation of rights.

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