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Reasonable Demands: Refugees' Political Obligations

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MSc Political Science: Political Legitimacy and Justice



**Universiteit
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The Netherlands

**Reasonable Demands:
Refugees' Political Obligations**

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Abstract

Refugees occupy a unique moral and legal position in our communities. Their relationships with their host states are born out of necessity and coloured by their disenfranchisement, as refugees do not receive democratic participation rights in the same way citizens do. Given that refugees are not allowed to vote, together with their uniquely vulnerable circumstances and the coercive character of the (immigration) laws they are expected to obey, we might wonder what kind of political obligations, if any, they have. As the literature is focused on the rights of refugees, there is insufficient discussion regarding their duties. I will here investigate the political obligations of refugees by examining whether the four main theories of political obligation, consent, gratitude, natural duty, and fair play, can be applied to refugees. I will then discuss a more limited version of political obligations, based on the fair play account specifically, as I discuss a moral basis from which we may better understand both the rights and duties of refugees. Finally, I will discuss the implications of separating such obligations from participation rights, and what this may entail for other migrants and travelers.

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Introduction

Fleeing one's home to secure asylum abroad, risking life and limb in the process, is as perilous as it is difficult to navigate. Refugees face challenges such as increasingly restrictive immigration policies making it hard to enter new territories safely, violence from criminals, state-actors, and local populations, shrinking space for aid and humanitarian work, and extreme poverty (UNHCR, 2022). At the same time, host states are experiencing a 'refugee crisis,' (Baerwaldt, 2018) due to the cost of providing aid both at national levels (handling housing and support needs, language integration, naturalisation) and international levels (unfair distribution of refugees, increasing numbers of refugees, and what to do if the costs of providing aid are too high). Given the pressing nature of this crisis, understanding the relationship between refugees and their host states is especially relevant. Examining this relationship raises relevant questions regarding what refugees should be allowed to do and what they ought to be provided with once they've arrived in their host state. Should they only be entitled to absolute minimum provisions to survive, or are states obliged to allow refugees to thrive, build up social bonds, pursue a career or education, or obtain a private residence. All of these things are, after all, human rights (UDHR), and determining who is responsible for those rights after a refugee is forced to flee remains a complex question.

The current debate around refugees focusses primarily on their rights rather than duties. Frequently discussions compare the right to asylum and a state's right to protect itself and its borders (Ilgit and Klotz, 2018; Ghezelbash and Feith Tan, 2020). Other debates center refugee rights as human rights, like Tiedemann (2021), who argues that the right to asylum is implicit in other human rights, so long as asylum is meant to protect against human right's violations, or Bradley (2019), who debates the right to return and the limbo refugees end up in as acquiring citizenship and returning home are both extremely difficult. Many similar moral and legal debates all center the rights refugees (ought to) have, and contrast them with other rights, trends, or events. The question of corresponding duties, and whether refugees can be subjected to these legal structures at all remains all but entirely overlooked.

Similarly, the debate on political obligations itself centres entirely around citizens (Klosko, 1987; Hart, 1955; Rawls, 1971; Simmons, 1979, pp. 29-31). Non-citizens get left out in the current debate. Most accounts of political obligation are centered around why citizens are to obey the law, distilling various grounds on which an obligation to obey the law may be incurred. Generally, each theory requires a government and its law to be legitimate and just. In

simple terms, I take this to understand that first, no human rights are (routinely) violated, and that governing is done through rule of law, rather than at the whims of a dictator. A second requirement is that of participation rights. Citizens need to have meaningful influence over how the coercive laws they are subjected to are designed for the state to be legitimate.

This second requirement serves as a major objection to the idea that refugees bear political obligations. Other than those who have the ability to participate through democratic processes in the creation of the laws that significantly determine their lives, refugees are subjected to the laws of their host state with voting rights or alternatives.

I want to shed more light here on this complication in the political obligations of refugees, specifically examining the tension between what refugees are owed, and what they are expected to contribute in return. As such, I will here attempt to answer the question: what political obligations do refugees have, if any?

To do so, I will start this paper by examining the distinctive legal and normative status of refugees. I will then investigate whether current accounts of political obligations, and their legitimating grounds, are able to account for refugees. Ultimately, I will argue for a fair play account of political obligation as the most suitable approach. Finally, I will examine what implications applying a fair play account to refugees has for existing fair play theories, and propose my own variation.

1. The unique position of refugees

1.1 Who are refugees?

Discussing refugee's rights and duties requires us to understand and agree on when someone becomes a refugee, what sort of aid is owed to them, and what their current position in host states entails. There are a few definitions agreed on in various international treaties on when someone becomes a refugee, and therefore entitled to aid.

Most notably, the 1951 Convention Relating to the Status of Refugees argues a 'well-founded fear of being persecuted' as its primary qualifying factor for who may be considered a refugee. This does provide a clear scope and prioritises those who have the lowest chance of finding aid within their own state and are at a significant risk of great harm at home, but has been criticised for excluding those fleeing random violence or natural disasters (Miller, 2016, p. 83).

It also, much like other descriptions, specifies the second qualifying factor that the refugee must have no option to find relief or safety within her own state as, according to current international law, one's home state is primarily responsible for securing one's rights. Only when the home state fails to do so, do other states acquire any sort of legal duty to provide aid (Lister, 2013).

This definition of refugee is widely accepted, though it remains a somewhat contentious subject. Besides Miller's critique, there are arguments (Dummet, 2001, p. 37) for including other migrants, such as economic migrants, as refugees when they face such dire economic circumstances that it interferes with more basic human rights, such as the ability to pursue an education, the right to a standard of living adequate for the health and well-being of oneself and of ones family, including food, clothing, housing and medical care, and even the right to life itself (UDHR, art. 3, 25, 26), even when they are not necessarily persecuted or facing physical violence or danger, as is required under the 1951 convention definition.

For the purposes of this paper, I will use the term refugees as defined by the 1951 convention definition, with an understanding that the conclusions drawn in this paper may in the future be applied to a wider group of migrants. I will similarly assume here that the refugees are immigrating through legal channels. While legal status has little bearing on the moral requirement to care for refugees, in the case of political obligation there must be a degree of registered contact with the host government. In other words, a legal relationship must exist for

us to discuss political obligations, regardless of any other problems which may be raised by illegal entry.

The convention definition characterizes someone as a refugee based on *why* that person has left or broken ties with their home state. It does not consider the situation that person ends up in after. This is perfectly sufficient for determining when one becomes a refugee, but in the context of acquiring political obligations the later circumstances are relevant as well. I will return shortly to the position of refugees as compared to citizens, travelers, and other migrants when discussing their unique legal and moral position but will start by clarifying what I mean by refugee.

The first distinction is that between those refugees who intend to return home, and those who intend to naturalize and become citizens.

A similar distinction can be made between refugees who reside in camps, and those who are settled, where settled refugees are somewhere along the aforementioned scale of naturalization, whereas those in camps are living in temporary and unstable accommodations.

Finally, there is a distinction between refugees who already reside within a host state's borders, and those who are applying for asylum from abroad. The former actively finds themselves within the system, whereas the latter is engaging with the host state's immigration law without being forcibly subjected to that state's institutions (yet). They will not find themselves enjoying government benefits or getting pursued by local law enforcement.

These distinctions are all related, and it is important to keep in mind that the refugee experience is far from uniform. However, the current debates focus either on when someone becomes a refugee, with little consideration for what this status ought to mean after one has fled their home state or on the circumstances of (smaller sub-groups of) refugees, with little consideration for the position of refugees as an overarching group.

I am looking here at those refugees who have not yet naturalized, or are so far along this process that they are better grouped with citizens. I am also disregarding refugees who are outside of a host state's borders, as their relationship to the host government is significantly different than that of refugees within these borders. This leaves us with a majority of refugees whose circumstances are meant to be temporary in one form or another, who reside in camps of

various kinds, living within a host state, but denied the same privileges and status citizens enjoy.

While the exact practical circumstances under which we can consider someone a refugee who is eligible to incur political obligations are a grey area which is difficult to navigate, there are some baselines we can establish.

At minimum, the refugee must actually receive aid as required under international law (Buchanan, 2003), their human rights must not be (routinely) violated, and they must still be a refugee. Which is to say, at the point in the naturalization process where they have obtained the same rights and protections that citizens enjoy, they have become virtually indistinguishable from citizens, and the discussion becomes moot.

1.2 Distinguishing characteristics

If those requirements are met, we are left with a few distinguishing characteristics between refugees and other non-citizens. I will discuss three of the most important ones: involuntary residence, extreme vulnerability, and being forcibly subjected to laws which extensively influence their lives.

Refugees are categorically unable to turn to their home government for aid in living a safe and fulfilling life. They become refugees through the necessity of abandoning their homes to seek residence elsewhere. While the act of fleeing is taken deliberately, it cannot be said to be voluntary, as alternatives are taken away and pressing circumstances call for any viable survival strategy. On top of this, once refugees do cross the border into a host state, they are frequently unable to choose what state or region they want to be hosted in, further reducing agency.

Compare this to the situation of tourists or expats, who are similarly staying in host states, but are not placed in an equally unreasonable position. The most easily distinguishable case is that of a tourist, who enters a state which is not their home state and temporarily resides there for leisure purposes. The most notable distinction here being the voluntary character of taking the trip. There are also clear alternatives for them, as not going on vacation is typically not sufficiently detrimental to consider the trip a necessity. These trips are also usually of predetermined length and can be ended whenever the tourist desires to return home.

Then there is the case of other migrants, those who move to a new country to study, work, or pursue a relationship, to name some examples. While the opportunities provided by moving abroad may present a more appealing incentive than a holiday, the voluntary character remains. Crucially, if these migrants were to return to their home country, they would still be able to live lives free of persecution or human rights violations. They can rely on their own government for necessary aid in ways a refugee cannot and can similarly choose to return home whenever they desire to.

Refugees are also uniquely vulnerable. They are expected to obey all the same laws citizens do, though immigration law is the law they deal with most frequently. It dictates whether they are allowed to cross borders, prescribes to what extent they have a say in which state they are hosted in, what kind of support they receive and for how long, whether they may seek employment, seek to be reunited with family, and more. This means that immigration law exerts a far-reaching impact on refugees' lives in ways that differ from regular citizens. Refugees are frequently restrained (Hilbig & Riaz, 2022), not allowed to travel, work, or socialize freely, which limits the extent to which they are able to meaningfully progress their lives. Such restrictions are currently accepted as necessary to prevent fraud and unnecessary immigration, encourage integration, manage large groups of refugees, protect domestic resources, etc. However, they are not restrictions which are considered acceptable to enforce on citizens, as the backlash to the 2020 covid-19 measures has shown (Della Porta, 2023). Refugees are in a uniquely desperate position, and therefore forced to accept nearly any circumstances to secure their survival.

A Related concern is the way in which they are subjected to laws, as their position differs from citizens in that refugees are far more vulnerable, yet coerced into accepting rules which citizens might not. However, their position differs from other migrants and travelers as well, in that other travelers are not subjected to the same extent. The tourist on a vacation is still expected to obey local traffic rules and pay applicable VAT on their purchases, but is not dependent on the host government for food or shelter, and is not subjected to the same scrutiny and limitations. The refugees have a far more extensive relationship with the host government, meaning that their lives are far more drastically impacted by the local laws.

Some of the issues which follow from these three distinctions can and have been addressed through the lens of refugee rights. However, there is much international debate regarding what such rights ought to look like, and the discussion regarding what exactly refugees are owed is a sensitive one.

Frequently, providing aid for refugees is framed as a broader moral duty to rescue. These duties are understood in the context of natural law. Natural law knows many interpretations, but commonly accepted today are Rawls's natural duties, which apply to every person, regardless of their actions or position in society (Rawls, 1971, sec 19, 55; Richards, 1971). These duties include not harming others, mutual respect, and indeed, providing aid.

In this view, so long as the costs aren't too prohibitive, every state has a duty to provide asylum and make sure refugees human rights are secured. This is a fairly minimal requirement, where providing opportunities to rebuild life to its previous quality (through building a social network or career, providing family reunification, or supplying the necessary resources for community integration) is not necessary. After all, when the threat has passed, refugees ought to return home. Or at least, the host has no more duty to care for them.

I would argue that this is a rather narrow view on providing aid, and one which supposes that even if, after years, there is nothing in their country of origin for them to turn back to, refugees could be expelled from their host state so long as they are no longer actively persecuted. This seems counterintuitive, as one cannot be expected to simply resume their previous life after so thoroughly severing ties with their home state. At the same time, expecting someone to live in minimally sufficient circumstances for the rest of their lives is unacceptable as well. Buxton (2023) discusses the possibility of requiring host states to offer citizenship to the refugees they house. There are obvious practical and logistical problems with such an approach, but it shows the ways the international community is ill-prepared to account for long term refugees under current international agreements.

Gibney (2004, p. 4-5) offers a different objection, and contests the idea that aid obligations are only based in a duty to rescue. He raises the notion of relationships of harm, the idea that refugees may only be refugees because of foreign state intervention, by delivering weapons or contributing to tensions or unrest. In this case, the obligation to provide asylum is a reparative obligation, and requires providing the means to live a life that is similarly fulfilling as the one left behind, which reach much further than simple means of survival.

Understanding the moral duties of host states is relevant because it influences what goods or benefits they are required to provide, and in turn, what immigration law should look like.

Whether, for example, refugees should have a say in what state they are hosted in. Considering what refugees have lost in their old lives may become important, and may or may not be compensated for.

Through these narratives, it is possible to tackle some of the issues presented above. Specifically, the frequently oppressive character of much of current immigration law may be amended to reduce their vulnerability. They may be allowed to choose where they are hosted or given more freedom of movement to ease the involuntary residence. However, through enshrining refugee rights alone we cannot expect to completely eradicate these vulnerabilities, and refugees's positions remain unique.

1.3 Participation rights

There is one further distinction which sets refugees apart from citizens This is the matter of (a lack of) participation rights. Refugees are not allowed to vote, or otherwise influence the laws as they are made within their host state.

The all-subjected principle (Abizadeh, 2021) supposes that for there to be democratic legitimacy, all those who are subjected to a political power must have a right to participate in forming the laws governing them. Typically, given that most laws are targeted towards citizens, this principle affects those within a state's borders, and proposes that democratic legitimacy is inherently tied to democratic participation. Beyond the fact that the relationship between refugee and government is not a democratic one, the specific laws refugees are subjected to in the form of immigration laws are targeted to them, rather than to citizens. These laws generally exist to protect citizens, or 'the state' from untenable resource consumption. They are necessarily made to serve citizens, but refugees and other migrants are the primary subjects subjected to it.

Considering the evident lack of democratic legitimacy, as well as the unique moral circumstances of refugees' positions, we may wonder whether refugees can be justly subjected to these laws at all. This is the question of political obligation, and whether refugees can incur them in their host states. As much of the discussion so far has been centered around rights,

rather than the corresponding duties, the question of whether the relationship between host governments and refugees is legitimate at all has been largely gone by the wayside.

2. Theories of political obligation

There is currently little literature on refugees' political obligations. To provide a more complete overview of how refugees relate to theories of political obligation in general, I will be examining the four main theories of political obligation to see whether they may be applied to refugees. I will briefly touch on the theories as they apply to citizens, before seeing if they may be 'branched out' to include refugees. By way of elimination, I hope to show which theory, if any, is best suited to account for refugees.

2.1 Consent both tacit and explicit

Beginning with consent theory, as it is the most deceptively straightforward argument. Why wouldn't refugees be bound by host laws, after all, they came to the host's state of their own accord? It is a tempting mistake, but a mistake nonetheless.

The basic idea of consent theory is that people can only be bound to an authority (and their laws) by their own voluntary commitment (Simmons, 1979). The most direct way to understand consent is explicit consent, anchored in autonomy and individuals' natural right to freedom, as promoted by Locke (Lloyd Thomas, 1995). It supposes that every person has the intellectual capacity to decide for themselves what they want, and that, in principle, no one may forcefully impose their will on another. The strength of explicit consent lies in its voluntary and unambiguous nature, though this similarly proves its biggest hurdle.

Explicit consent is always a legitimating ground for political obligations, so long as the person consenting does so of free will and sound mind. Nothing prevents any refugee from voluntarily agreeing to obey the laws of their host state. There is, however, the practical objection that explicitly consenting to the law is exceedingly rare. Whilst it is possible to require all refugees to explicitly consent to obey the law before being allowed entry into a host state, such a promise would be made from a place of coercion rather than free will, invalidating it as genuine voluntary consent.

As such, it cannot be the sole legitimating ground of political obligations, as Simmons notes “a government's legitimacy or illegitimacy [would] turn implausibly on the possibility of one citizen refusing to give his consent” (p. 71).

So, as valid a legitimating ground as it is, it will need to be supplemented by further grounds.

Implicit consent has been explained in a handful of ways, all taking certain (non)actions as indicative of consent. Locke, in his second treatise (sec. 119), establishes the conventional understanding: that any enjoyment of the government necessarily constitutes consent. He describes what is best summarized as participation in a given society and political system as implicit agreement to condone that system. By voting in an election, one tacitly accepts the election as legitimate, and thus agrees to be bound by its outcome, even if that outcome is undesirable to them. As this is exactly the avenue refugees lack, we must investigate other consent-implicating acts.

The second common example is that of simply residing within state borders and choosing not to emigrate (Tussman, 1961, p. 38). The argument here is that we cannot say that residing in a state is involuntary, just because emigration is unpleasant or inconvenient. As one actively decides to remain within state borders, they implicitly accept the conditions for doing so in the form of subjecting to the local political system.

This claim has been famously rejected by Hume (MacIntyre, 1965, p. 263) who says on the subject:

“Can we seriously say that a poor peasant or partisan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires. We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her.”

This idea of voluntarily remaining bears a mirror resemblance to Miller (2016, pp. 84-85), who puts forward the claim that refugees enter host countries voluntarily, as well as to an argument by Gates and Klosko (2022), who argue a distinction between camp refugees and settled refugees. They reason that settled refugees incur political obligations under the principle of consent, as they began the process of integration by choice. This choice may have been difficult, but by their argument, not coercive (p. 5). By contrast, refugees in camps are in

temporary or transitional circumstances, though in practice these can last for decades (p. 8). They may intend to repatriate, but are unable to and therefore do not consent to incurring obligations in the same way, though they may incur obligations under fair play still.

However, while other migrants might indeed make an unpleasant, but ultimately voluntary choice to migrate, refugees do so out of absolute necessity. Fleeing one's home is not a matter of inconvenience, it is a matter of life and death. In such a situation, the lack of viable alternatives to seeking refuge abroad seems to me sufficient ground to reject this as a consent-implying action. Or, if it does imply consent, it is once more consent given under sufficient duress or coercion as to invalidate it as meaningful.

This leaves more minor actions as described by Locke, such as owning property in a state, making use of public facilities, and otherwise recognizing the legitimacy of state laws by behaving in accordance with them. These actions, in the case of refugees, are similarly coerced, as the choice to subject to state laws is borne from a lack of alternatives. Implicit consent also allows no method to handle cases of explicit dissent, as may be expected given the restrictive nature of immigration laws. However, some of the enjoyments recognized in this theory may be viably binding under a principle of fair play, which I will come back to.

2.2 Gratitude and the natural duty of justice

As established, there is very little literature on the political obligations of refugees. What little there is, though, tends to favor the legitimating ground of gratitude (D'cruz, 2014).

Again summarized by Simmons (1979), the gratitude account in a nutshell supposes that if the benefactor provides aid or goods willingly, purposefully, and thereby makes some sort of sacrifice or incurs a cost, the recipient owes a debt of gratitude. A frequent caveat to this exchange is that the good provided is not forced on the recipient against their will, as this would naturally negate any gratitude they might experience. Again, the connection to refugees seems obvious, but only at first glance. They receive aid, which they actively seek out, thus they ought to experience gratitude for this. There is, naturally, more nuance.

Gratitude is an intuitively appealing ground for incurring obligations, in that most people, having been done a favor, naturally feel inclined to express gratitude. Children are often raised to say 'thank you' upon receiving a gift, with the understanding that when someone goes out

of their way to provide you a good, you must at minimum acknowledge that you are appreciative. This acknowledgement is the simplest way to repay a debt of gratitude, and suffices for small, interpersonal debts. Typically, debts of gratitude between individuals are repaid by trading favors, or putting in some amount of effort that is sufficient, on an intuitive level, compared to the good provided. This can be sending some flowers with a thank you note, helping your friend move house when they have helped you lay your new floor, or children supporting their elderly parents as their parents supported them through childhood.

It may thus seem at times to be closer to a social norm than a moral duty, which I believe stems from the overlap in perception between gratitude as a feeling, and gratitude as an action. While duties arising from feelings are easy to object to, we can conceive of the performance of gratitude as a duty to aid those who benefit us. In simple words, the effort exerted by the benefactor ought to be repaid by a similar effort from the recipient. This has less to do with an inherent emotional response, and more with a sense of duty, that we owe a sort of aid to those who are willing to aid us in turn.

Such debts, however, remain a game of approximate value. This has long been one of the core arguments against the gratitude account in general. Determining how much is owed, and in what manner this gratitude ought to be expressed are both near impossible undertakings without making some additional assumptions. After all, who is to decide that if one owes the state a debt of gratitude, that this debt ought to be paid by accepting political obligations?

Nannerl Henry (1970) addresses this exact question, by posing that goods provided by states are frequently significant enough to require non-symbolic, non-trivial repayment, and states cannot provide such goods without its subjects obeying. D'cruz argues this account to be especially relevant for refugees, as in the case of refugees we are dealing with a group of people who actively seek aid, a good they hope to have provided to them by the host state. As this aid can only be provided by a functioning government, it is imperative that refugees accept the political obligations necessary to allow the government to function.

However, this line of argument presupposes that in repaying a debt of gratitude, the indebted must provide something the benefactor requires, at least if such an option is available. It is certainly very kind to provide the benefactor with something they need, but this is not to say that providing a non-essential good or service as repayment cannot suffice to fulfil the debt.

These are problems that I believe to be inherent to scaling up the idea of gratitude from interpersonal exchanges to exchanges with institutions. Simmons notes briefly that it “feels strange” to be grateful to a government. The account also has no explicit requirements for the benefactor. All acts that result in gratitude are forms of charity, which seems more natural to me in interpersonal exchanges. After all, an individual may feel moved to charity for any number of personal motivations. A government does not approach charity in this way, so we must understand charitable acts of institutions as any act which is morally good or desirable and incurs some sort of cost. Here we may begin to wonder what the usual duties of a government are, and whether all actions it takes must then be considered charity, or if the government is somehow more obligated to its citizens. I would argue here that the charity model is not the most suitable framing, but rather that we are here speaking of a natural duty to rescue, as the demands of providing aid for refugees go beyond simple charity.

However, when the benefactor is simply fulfilling their duties, there no gratitude owed. Much like when the benefits are provided by the benefactor by accident or coincidence, in which cases there is no effort or loss on the benefactor’s side which ought to be repaid.

It seems to me unreasonable that we should owe debts of gratitude to all who benefit us through the consequences of fulfilling their own moral duties, as they ought to fulfil those duties even when they have no special interest or desire to help us. This rings especially true in the case of refugees, who have an explicit legal right to the aid provided.

Given the transactional balance of the right to have one’s human rights secured and the duty to fulfil one’s moral obligation to aid those in need, we may again feel the inherent difficulty in applying gratitude to institutions at all. Especially given the circumstances of refugees specifically, having been forced to leave their lives behind, risk great harm, to become subjected to the host state’s law, it is intuitively difficult to imagine what refugees ought to be grateful for in these scenario’s.

Gratitude, then, does not provide us with sufficient legitimating grounds. Though, perhaps we can flip the logic of the natural duty of justice. If states are only doing their natural duty, might refugees share a similar duty to bear political obligations? This brings us to an entirely different account of political obligations, as it has been suggested by Rawls (1971), who argues that we have a natural duty to contribute to creating just institutions where there are none, and that we ought to obey those just institutions which apply to us. It is this second point we are concerned with.

There are two layers to this requirement, first, just institutions must be obeyed, which is then amended to ‘so long as they apply to us.’ (pp. 336-337) This qualifier suggests that institutions being just is not sufficient ground for us to be politically obliged to them. This is, realistically, structured as such as to not overwhelm us with obligations to *every* just institution in the world. Such an obligation would feel counter-intuitive, as governments we do not interact with, who provide us nothing would seem unreasonable if they sent us a letter requiring us to bear political obligations. This particularity requirement (Simmons 1950, Walton, 2013) shows that “applies to us” as an addition is a marvelously unclear one. If it applies to us in the sense that we receive benefits which we accept, or we agree to be governed by them, such a requirement would fold back into other accounts of political obligations (fair play and consent, respectively). If it applies to us in the general sense that we are part of the territory the institution governs, we run into issues similar to those with consent theory. If residence is the only requirement, we ought to have viable alternatives. For refugees, there is the added problem that their residence is frequently impermanent, and their participation in a society is limited. This suggests that every time anyone crosses a border, the local institutions apply to them in full, and therefore they incur political obligations. Simply existing within state borders cannot be sufficient for an institution to apply to someone, as we have seen in the way that other travelers and migrants are not faced with the same far-reaching impact of suddenly being governed by a new state each time they enter a new country.

2.3 Fair play

Having discounted the above accounts and seeing that there must be some relationship between the government and the subject incurring obligations in the form of the provision of goods or benefits, we are left with the ground of fair play. At least, if we seek to avoid philosophical anarchy. I will be largely following Klosko’s (1987) account, based on Hart (1955) and Rawls (1971).

This theory supposes that certain goods can only be provided through a large-scale cooperative scheme, which is to say, many people have to come together and contribute to provide the shared good. In turn, it would be unfair for people to enjoy these goods without having contributed to their creation, which is described as freeriding. In terms of political obligations, governments are framed as ways to facilitate this sort of cooperation. I consider this the most widely applicable, and best suited for accounting for the political obligations of non-citizens.

Fair play leans more explicitly on the notion of receiving benefits as the condition under which obligations are generated (Hart, 1955, p. 185). Klosko (1987, p. 358) illustrates this idea, as well as the intuitive logic behind it with the example of taxes. Taxes are one way to organise everyone in society contributing their share, to enable the government to provide the goods they enjoy. When asked, the reasons most cited for disliking taxes are not any aversion to contributing, in fact, most people feel it is no more than fair that they are asked to pitch in. The problems people experience is with perceived injustice, or the idea that some do not pay as much tax as they should, and are therefore freeriding. This illustrates that most people share the intuition that incurring obligations in return for enjoying goods is expected, so long as they are divided fairly.

This method of generating duties is commonly accepted, with the important caveat that, as with the gratitude account, the benefits, or goods, must be wanted. One cannot force something ostensibly nice on another and then demand payment. Rawls (1971) explains this distinction as one between accepting and merely receiving benefits. In other words, to gain the associated obligation, one must not just have gotten a benefit, they need to embrace or enjoy it to some extent. However, in contrast to both the gratitude and implicit consent accounts, the obligations under fair play are not owed to the government directly. Rather, one is obligated to other members of the cooperative scheme. One ought to obey the law not because the government desires it, but rather because it would be unfair to the rest of the community if one didn't.

This obligation to the community stems from the fact that the government incurs costs in providing benefits becomes the focal issue. These costs are shouldered by the community, as the government is merely a manifestation of a large-scale cooperative scheme. As one accepts a communally provided good, one accepts with it the duty to aid in providing it.

The tension in this theory ties in with the distinction between those who participate in a scheme, and agree to all contribute and enjoy together, and those who are simply bystanders who happen to enjoy the (publicly available) benefits (D'Cruz, 2014, p. 10). Bystanders, or outsiders, cannot be held responsible for participating in a scheme they wanted no part in, simply because they were around when it happened. This logic is clearly applicable to refugees, who, given their lack of participation rights, are very obviously outsiders to the scheme. Having been explicitly excluded from deciding what the scheme should look like, and the manner by which it should operate, one cannot be said to be a full member of such a scheme.

This argument of voluntary acceptance is the biggest hurdle in fair play theories, though Klosko (p. 355) provides a solution in the form of presumptive benefits. These are goods which must be worth the effort of providing them, which we can assume to be true for refugees receiving aid, and they so universally desirable, it can be assumed anyone will want to accept them, therefore incurring the associated obligations. He explains the latter as “necessary for a minimally acceptable life.”

If some benefits may be assumed, it seems sensible to me that the duties that follow from such benefits are based in the nature of the benefit, rather than the precise way it is acquired. D’Cruz argues in line with this that refugees may be bystanders, but they do accept the benefits. Simply put, states who provide asylum offer the good of physical safety, food, shelter, and other necessities. These things are so fundamental to minimally acceptable life that refugees have fled their home state, at great risk, to acquire them. As such, even as bystanders, they accept these benefits, and the obligations associated.

We can then say that refugees accept benefits, and are therefore obliged to the other members of the host community to contribute to the cooperative scheme. However, whilst this act of accepting benefits is enough for citizens to be considered willing participants, the same cannot be said of refugees. They remain outsiders, their lack of participation rights leading to them being structurally excluded from the community. Given that this account centers on fairness, this problem warrants further scrutiny.

One answer is to say that refugees can incur no political obligations at all. This seems unreasonable to me, as we can understand that there is a direct relationship with the host government, there are substantial benefits provided to- and accepted by them, and so long as the law is indeed just (and the host state fulfils its natural duties to provide aid and secure refugee’s human rights) it would be freeloading for them to enjoy the benefits provided while the state’s citizens bear all costs alone.

However, Gibney (2018, p. 7) makes the interesting observation that so long as refugees reside in a state, they, perhaps temporarily, add to and enrich the local culture and community. They become part of the ‘demos’ of a state through sheer presence, and as part of these communities they are capable of contributing to these cooperative schemes. As such, denying them influence over the scheme they are expected to contribute to is to prevent them from becoming a fully

realized participant in the community, and participation rights remain a limiting factor on the extent to which refugees can be expected to be part of any given collective scheme.

As refugee's position as a participant is limited, it may seem reasonable to me to propose an account of political obligation which is similarly limited.

I don't believe any plausible version of having to obey only a certain specific subset of laws, as the nature of political obligations is generally understood to be source-dependent (Klosko, 2011). Which is to say that obligations to obey the law stem not from the fact that the content of the laws are just, but rather from the fact that the source which made the laws is legitimate. This content-independence means that we cannot require that only laws are to be obeyed by refugees. If the government is just, its laws are too.

Beyond this, there are practical objections surrounding enforceability, general social chaos, as well as the impossible task of deciding which exact laws ought to be obeyed by which people. The other option, to further limit when political obligations are acquired, would require an entirely separate theory of political obligation.

Klosko and Gates (2022, p. 9) argue that as a functioning government is a necessary factor in providing benefits, a functioning government is a sort of presumptive benefit itself. They limit the obligations incurred by suggesting refugees are to support institutions insofar institutions contribute to distributing benefits. In my view, given that obligations are not owed to the government but to fellow community members, this is no different from the way fair play functions for citizens. After all, if a cooperative scheme ceases to yield benefits, the community will likely abandon the scheme.

Instead, we must operate under the understanding that from political obligations stem moral duties, but that these duties are not exhaustive. They are simply one set of considerations to take into account when deciding how to act. Moral duties from other sources, such as natural duties to rescue or to do no harm, or a moral duty to disobey unjust law (Hidalgo, 2016) may at times override those duties from political obligations, and it is in these exceptions we ought to look to understand refugees' position.

This is to say, refugees do incur political obligations according to the theory of fair play when

1. They reside (temporarily) within the host state.
2. The host government and its law are just

and legitimate. 3. They receive presumptive benefits from the host government, which other community members contribute to.

Typically, incurring political obligations like these entails a positive duty to actively contribute to the provision of these benefits. Positive duties are high-demand, and require the taking of certain actions to comply with. However, absent the ability to participate and become a full participant in the scheme, I suppose instead that refugees incur the less demanding negative duty not to prevent the provision of benefits. As negative duties only require that one does not actively obstruct other's rights to receiving benefits, the impact on refugees' lives is significantly reduced. In most cases, this form of political obligations will involve obeying the law as to not stress the system unnecessarily. This form of political obligations is better suited to explain the obligations incurred by others, such as tourists. The active duties, such as paying taxes or enlisting for military duty do not apply to them, but they are not free to violate the law as they see fit, as this would deliberately waste valuable resources.

However, refugees differ from other non-citizens, in that I believe they ought to have the explicit moral right to disobey (immigration) law in those cases where other priorities take precedent. They have no viable way to voice disagreement with the laws they are subjected to through usual legal channels and must therefore be treated with leniency when disobedience is the only avenue of rejecting unjust laws available to them.

In other words, when they are treated unjustly, the lack of provision of presumed benefits and the inability to participate regularly in changing their position, defeats the obligation to obey the law and generates a right to disobey.

3. Application to refugees

3.1 Divorcing political participation from political obligations

The question we have ultimately been engaging with is one of democratic values, and whether it is possible to have political obligations without having political participation rights. As discussed, I am inclined to say yes, with some important caveats. The first of which is an assumption I have held throughout this paper, but which I would like to address before moving forward, namely that the laws and government are just.

However, understanding that refugees are frequently mistreated helps us make sense of the difference between full political obligations, and partial obligations as I've described them. In the cases where a refugee is treated perfectly justly, they ought to contribute to the cooperative scheme which produces the benefits that support them through the political obligations they incur by accepting those benefits. By contrast, in cases where immigration law is not just, refugees are no longer bound in this way, instead acquiring a 'duty to disobey' (Hidalgo, 2016) which overrides political obligations.

Since they have no legal channels through which to challenge the unjust law they face, as they cannot vote for different representation, they may be required to challenge these laws by refusing to cooperate with them, or by operating outside of them entirely. This should not be a hall-pass to commit crime with reckless abandon, as under their limited obligations, they still have the negative duty not to prevent benefits from being distributed, or going against those parts of the cooperative scheme which do function as intended, as this risks unnecessarily harming their cooperators, in the form of fellow subjects.

Under these conditions, I think it is entirely possible to acquire political obligations outside of participation rights. Either through accepting benefits, or through express consent, as explained previously. This concept might seem more intimidating than it is, given that we are perfectly happy for children, incarcerated people, and those with severe mental impairments to be subjected to their state's laws, even when they do not have direct participation rights. It should also be noted that participation rights, or democracy, being a necessary requirement for a just government is not an absolute given. This belief may be commonly held, but it is based in distinct liberal, Western values. I am not aiming to argue here against this point, but merely to illustrate that participation rights, while a good thing, do not make an absolute requirement for any theory of political obligation.

3.2 Naturalization and enfranchisement

One other method of handling the unique position of refugees is simply to change their position. Typically, this means naturalization, or becoming a citizen. In most states, however, this is a time-consuming process of many stages and the circumstances refugees find themselves in will vary depending on where they are in this process. The idea being that the further along they get, the more comparable to citizens their legal position becomes. While this is a valuable option, and one which I would argue is necessary to have available for those

who either have nowhere to return to in the long term, or who build up meaningful lives in their host states. It does leave a (long) interim period while this process is starting up where the problems of being subjected to coercive laws remain. It also fails to account for those who have no desire to naturalize, who are simply waiting to return home as soon as possible.

To remedy this, there are proposals for the enfranchisement of refugees, allowing them participation rights without awarding citizenship (Ziegler, 2013; Dumitru, 2024). I am generally in favour of enfranchisement of refugees, as this is the most complete way to legitimize their being subjected to state law. Refugees, lacking exit options, also have a vested interest in local politics, given the extent to which their lives are tied in with the host state.

However, enfranchisement is not a replacement for a more nuanced theory of political obligations for two reasons. First is that there will always be those refugees who are staying in the sufficiently short term that we cannot consider them to have a vested interest in the politics of the host state. It is impossible to enfranchise each migrant the very second they cross a border, and so there will always remain unenfranchised edge cases who may incur political obligations. Second, enfranchisement ought to be seen in a similar light as naturalization. It places refugees somewhere along the sliding scale between completely stateless and a full citizen and we will see similar issues as with naturalization, in that the process is frequently long, arduous, with state governments sometimes actively hindering refugees in improving their position. Any institution or system in place to aid refugees is bound to have imperfections. This is not to say enfranchisement ought to be avoided, but rather that even if a system of enfranchisement exists, it is not mutually exclusive with a framework for political obligations outside of political participation.

3.3 Ramifications

While it is possible to consider political obligations separately from participation rights, it does us well to consider the potential consequences when we do. Without participation rights as necessary factor, for example, the requirement of particularity will become more difficult to manage. If we can no longer use citizenship as a marker for who political obligations to any given state apply to, we must find new ways to draw such a boundary. Residence has proven a poor way to do this, so I believe we must look to one particular consequence of citizenship. A significant relationship with the government of a state. We have already determined we cannot be bound to perfectly good and just institutions when we have nothing to do with them, and the

reverse is true as well. Once one accepts the benefits provided by a government, they become participants in the scheme which provides them, which allows them to acquire the moral obligations associated.

This seems viable to me, though only if we closely examine what we consider a significant relationship. After all, any person who sets foot abroad may be argued to enjoy the road they stand on and the streetlight that shines on them. I would argue that to a degree, this is a valid point, and we do expect any traveler to obey the local laws. From obeying traffic rules to doing business according to the host state's laws, a requirement to obey the government is not unreasonable. Things get more complex when we consider mandatory army service and paying taxes. However, even setting aside the practical consideration that those laws are typically only applicable to citizens either way, we can see how other travelers and migrants simply incur the same reduced political obligation in the negative sense, where they must obey the law insofar this promotes the government's and local societies proper functioning.

Does this then mean that obligations evaporate as soon as one crosses the border again? This seems troublesome, and is luckily not quite the case. Negative obligations may cease, so long as there is no longer any significant relationship with the government which requires one to fulfill certain obligations. Citizens practically always maintain such a relationship even when they are abroad for long stretches of time. Their citizenship grants them certain benefits in the home state, and they typically remain entwined with the home state to some degree. I would argue, however, that there are cases in which even citizens can lose their political obligations, simply by acquiring residency in a different state for long enough as to find all their needs fulfilled by the host government instead. This is often the case for those who are somewhere along the path of naturalization into a new country, but retain their original citizenship, or those who have a double passport but live their entire life in only one of the states they are a citizen in. It is difficult to imagine such people having any obligations to those states they are no longer practically a part of.

This method of structuring political obligations does well at preventing these requirements from becoming overly burdensome. We ought to keep in mind that political obligations are only one form of moral duty, and never an absolute requirement. By allowing for those who are less able or willing to become a full-fledged citizen, thereby receiving fewer benefits, to have similarly limited obligations, we prevent them from being overly burdened for the relatively few goods they have access to in return.

Conclusion

The difficulties we have discussed here, surrounding the complexities of being subjected to coercive laws even when those laws are not those of one's own government, are especially challenging when we consider the uniquely difficult position refugees find themselves in. By proposing a more limited set of political obligations, reframing them as a negative duty, we can make sense of both the fact that refugees are burdened more severely than others, and the fact that there is a strong intuitive sense that no person should be entirely free from obeying laws. Even so, the moral complexities which arise from these situations are perhaps better remedied by addressing the conditions under which refugees end up in such difficult positions. The ever-increasing number of refugees suggests that the classic Westphalian state model of hard borders and state sovereignty as highest authority is poorly equipped to serve those people who exist, by necessity or by choice, in the undefined spaces between those borders.

In this paper, I have offered one account by which we might understand the political obligations of refugees. Using the fair play model, I propose we view political obligations as a scale, where those who receive presumed benefits always incur the negative duty not to prevent benefits from being provided so long as benefits are enjoyed, but only those who receive benefits as well as democratic participation rights incur the positive duty to actively obey the government. While I have shown that a fair play account may be applied even to those who are not citizens, I have not been able here to engage with questions of practical application, such as the exact circumstances under which we can consider the circumstances of refugees sufficiently just remains a thorny topic of debate. Similarly, the distinctions between the benefits received by various groups of refugees in various host states is bound to vary by large degrees, and determining which benefits must be met at minimum remains a question for further debate. There is also the topic of 'illegal' migration, which I was not able to address due to the scope of this paper, but which raises questions regarding the duties of states and the legitimacy of immigration law. Similarly, further research into political obligations to multiple states, or whether incurring new obligations necessitates losing others would provide valuable context for this discussion.

Overall, the suggestions made in this paper may serve as the start of a conversation about how we view political obligations, both for those whose relationships to governments are less complete or traditional, and those who have full citizen status.

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