Are Those Fleeing Covid-19 Refugees?

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Samuel rarely eats these days. Last week he went three days without food. He normally relies on friends and family for his meals, but friends and family are unable to visit him amidst the Covid-19 pandemic. Samuel is also living in South Sudan, and so is unlikely to obtain reliable medical help should the need arise.

Given these conditions, he might try traveling to Uganda or Ethiopia, or possibly join family members in Kenya or Egypt.

If Samuel were to try traveling abroad, though, he would unlikely be successful. This is primarily because he would be blocked by border officials preventing any new migrants from arriving out of fear that some migrants have Covid-19. But this isn’t the only reason he would be denied entrance: if he were to try traveling, successfully enter another state, and prove he was a refugee, then some states would admit him even though he poses a risk. The problem is that he would not be recognised as a refugee. This is because, today, individuals are only recognised as a refugee if they fulfil the conditions laid out in the 1951 Convention for the Protection of Refugees and its 1967 Protocol. According to this international Convention, individuals are only refugees if they are fleeing persecution because of their ethnicity, gender, religion, social group or political opinion. Samuel is not currently fleeing persecution, but only acute poverty and the risks of Covid-19.

Many philosophers oppose the 1951 Convention’s narrow definition of a refugee. They claim the Convention should be [expanded](https://www.cambridge.org/core/books/ethics-and-politics-of-asylum/02C84E4AB273A0DC4A88A6AF15685C6D) to include all those fleeing life-threatening conditions, including famine, life-threatening unemployment, environmental disasters, general violence, and pandemics. These philosophers claim that many threaten individuals’ lives, and so many individuals ought to be granted temporary protection until returning home is safe. They claim that individuals are refugees if they are fleeing life-threatening poverty and health risks, including poverty and risks caused by Covid-19, and not only if individuals are fleeing persecution.

How plausible is this stance? Should the Convention be expanded?

The Conservative Response

One potential response is “no”: only those fleeing persecution should be guaranteed asylum. This claim could be defended by appealing to an argument about wrongs. Those fleeing persecution have been especially wronged compared to others, and states only have a duty to accept those who have been especially wrong compared to others. A Rohingya citizen of Myanmar, who is targeted by anti-Rohingya forces, is wronged far more than an American with an underlying health condition, or even Samuel with his inability to easily access food and medicine during the pandemic. Even if all three are wronged by their governments to a degree, the Rohingya citizen is wronged more than the other two. This is why she has a right to asylum abroad, but the American and Samuel do not.

A major problem with this response is that it would imply that those fleeing general violence have no right to asylum, assuming they are not targeted because of persecution. An Iraqi or Syrian refugee fleeing general violence but not persecution would have no right to asylum, assuming they are not as wronged as victims of persecution. This response is contrary to the policies of nearly all states. Nearly all states claim that Syrians and Iraqis fleeing the war have a right to some protection even if they are not as wronged as those fleeing persecution.

The Moderate Response

Perhaps we ought to adopt a moderate response. One moderate response is to claim that individuals are refugees if they [cannot be helped in their home countries](https://www.hup.harvard.edu/catalog.php?isbn=9780674088900), and must flee in order to save their lives. An individual who is fleeing persecution or war cannot be helped in their home countries – even if they are sent aid they will still face persecution and war – and so they ought to be given the option of living in another country. Those who struggle with the effects of Covid-19 can likely be helped where they are via international aid. Samuel can avoid life-threatening malnutrition if he is sent aid or a remittance to buy food from a shop.

Unfortunately, this response is unhelpful in a world where most individuals like Samuel are [not sent aid](https://www.journals.uchicago.edu/doi/abs/10.1086/695296). If Samuel could be sent aid but is not, and can only access aid if he crosses a border, then Samuel needs to cross a border to increase his chances of surviving. Moreover, individuals like Samuel are more likely to be sent remittances if some of their family members can live and work abroad, sending back some of their salaries every month. In this sense, protection for at least some individuals who are not fleeing persecution is necessary to save many lives.

Some might acknowledge that some or all individuals like Samuel should be given temporary protection abroad, but claim they are still not refugees. Refugees are only those fleeing persecution because [persecution severs the bond](https://onlinelibrary.wiley.com/doi/abs/10.1111/jopp.12071) one has with their state in a way other tragedies do not. Someone fleeing ethnic cleansing will likely feel they are not respected as citizens of their state and so have special rights to citizenship elsewhere. This same feeling is unlikely to be held by others.

This argument is consistent with the claim that some individuals fleeing Covid-19 are refugees and ought to be given citizenship elsewhere. For example, if a government decides to implement no social distancing measures while knowing this will disproportionately kill individuals living with underlying health conditions or in poverty, perhaps those with living with underlying health conditions or in poverty are victims of a type of indirect persecution: they are victims of a government that intentionally lets them die at the hands of a virus, similar to victims of a government that intentionally lets them die at the hands of a militia. Nonetheless, assuming that many victims of Covid-19 are not victims of persecution, then many will not have a right to citizenship elsewhere.

One problem with this argument is that it fails to explain why an individual has a bond with their state severed if the state fails to protect them against persecution but not hunger and viruses. At least some individuals will likely feel they are not respected as citizens if they suffer from hunger or Covid-19 due to government negligence, even if the government is not intentionally letting individuals face harm. More importantly, even if only those suffering persecution have a right to citizenship elsewhere, this is consistent with the claim that others have a right to temporary protection elsewhere. If so, this raises a question of who has such a righty and why.

The Radical Response

A radical response would be that all those fleeing for their lives have a right to asylum, assuming the odds of their death are sufficiently high. An individual with an underlying health condition has a right to residency abroad if they would otherwise have a high chance of contracting Covid-19 in their home countries and dying as a result. This still raises the question of what a “high chance” of dying means, but whatever the necessary chances of death are to qualify for asylum, these chances should be equal between those fleeing persecution and those fleeing other types of harm. In other words, if an individual has a 10% chance of dying if they return to a country with widespread persecution, and another individual has a 10% chance of dying if they return to a country with widespread Covid-19, then if the first has a right to asylum the second does as well.

One potential argument in support of this claim is more radical still. Some claim that all individuals have a moral [right to freedom of movement](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2164939) between countries. Those who make this claim sometimes appeal to the intuition that, within countries, we allow freedom of movement for reasons that seem relevant when moving between countries. An individual moving from New York to Mississippi has this right because it allows her to access a new job, meet new people, join a new religion, join a political campaign, marry her partner living in Mississippi, find a new partner living in Mississippi, and so forth. If these abilities are central reasons she has a right to move from New York to Mississippi, it seems they are reasons to have a right to move to Canada, Mexico, or anywhere else. After all, there is no reason to suppose someone is more likely to obtain her desired occupation, association, or political and religious goals in Mississippi than in Canada or Mexico, and even if she is, freedom is not about likelihood of desire-fulfilment. It is about the ability to pursue certain goals even if they are unlikely to be desired. This is why a person has the right to move from New York to Mississippi, even if their chances of desiring love, a job, and political and religious fulfilment in Mississippi are much lower than in New York.

If all individuals have a right to freedom of movement across state borders, because this is central to protecting one’s occupational, associative, and political freedoms, then it follows that anyone who is fleeing life-threatening conditions also has a right to freedom of movement.

Some might reject the above argument by rejecting the premise that individuals all have a right to freedom of movement. More importantly, those accepting this premise might acknowledge that the right to freedom of movement is not absolute. Freedom of movement can be curtailed within and between countries when this [threatens many lives](https://www.routledge.com/Unjust-Borders-Individuals-and-the-Ethics-of-Immigration/Hidalgo/p/book/9781138503120), such as during a pandemic. Perhaps freedom of movement can also be curtailed when the [costs for citizens](https://www.cambridge.org/core/journals/review-of-politics/article/aliens-and-citizens-the-case-for-open-borders/5B0946DEB5203B576657C506C58F0FD6) would be sufficiently high, even if this would not threaten many lives. If curtailing freedom of movement is ever justified, then it seems that countries also do not commit a wrong when blocking the entrance of individuals fleeing for their lives, if granting such entrance risks even more lives or places very high costs on citizens. If Canada granting entrance to everyone with underlying health conditions would place enough lives at risk, or entail high enough costs for Canadians, then Canada would act justifiably when refusing to grant everyone such entrance.

If there are cases where states act justifiably in preventing the entrance of individuals fleeing for their lives, this is consistent with the claim that countries still have duties to accept some individuals, up until accepting more would be too costly.

If so, then this raises the question of how states ought to select those they grant entrance to. They could grant entrance to whoever arrives first, and then reject newcomers when too many newcomers would be dangerous. For example, the state could

1. admit individuals with underlying health conditions arriving from states with high rates of Covid-19, testing each individual to make sure they do not yet have Covid-19 and quarantining those who do, and then
2. discontinuing this program once the costs become so high that funds would more effectively save lives by being invested in local health systems or
3. discontinuing this program once so many people enter that the risks of increased transmissions mean more lives would be saved if newcomers were denied entrance.

A similar program could be set up for those fleeing famine, war, environmental catastrophes, and persecution: states could admit individuals until the costs are too high. Costs may be too high either because the state lacks the infrastructure to admit more than a given number of individuals in a given year, or because the risks of spreading Covid-19 at the current time are too high.

This response, however, would be unfair. It would prioritise those with the means of travel before others, and might select individuals who are less in need of asylum before those in greater need of asylum. An American with an underlying health condition and money to travel abroad would be given priority before Samuel, even though Samuel is likely in greater need than most Americans with underlying health conditions.

The Prioritarian Response

A final response is for states to:

1. expand the definition of “refugee” to include all those fleeing life-threatening conditions, but
2. when faced with more refugees than they have a duty to admit, to select who is admitted by appealing to a principle of [prioritarianism](https://www.stafforini.com/docs/Parfit%20-%20Equality%20or%20priority.pdf).

Prioritarianism holds that goods ought to be distributed in a way that maximises benefits, with benefits holding less weight the better off someone is. For example, imagine a hospital has one pill which can save one life, and is deciding whether to provide the pill to Ahmad or Beatrice. Ahmad would live another two years without the pill and ten years with the pill, while Beatrice would live another three years without the pill and eleven years with the pill. Though both would benefit the same number of years, the benefits Ahmad gains are worth more than the benefits which Beatrice gains, given that Ahmad would be worse off without the pill compared to Beatrice. While Beatrice would perhaps have a right to the pill if she would live another twenty years as a result (as the extra years she gained might justify giving her the pill despite being better-off), she has no right to the pill if their benefits are similar but Ahmad is worse-off.

States could decide who it grants asylum to by using a similar prioritarian approach. If a state is deciding whether to grant asylum to an individual with a pre-existing health condition from the United States, or an individual fleeing persecution in Myanmar, the state ought to prioritise the latter if someone fleeing persecution in Myanmar would suffer far more if denied asylum than someone with an underlying health condition in the United States, and if someone fleeing Myanmar would benefit the same or more from asylum compared to someone with an underlying health condition in the United States. Similarly, if a state is deciding whether to grant asylum to the individual from the United States or to Samuel – who is not a victim of persecution but a victim of hunger from Covid-19 – then it ought to grant asylum to Samuel if the risks he would face are greater than the risks the American would face.

The argument in favour of this approach begins with a simple premise: a central purpose of asylum is to protect those whose lives are at risk, presumably because those whose lives are at risk are particularly badly off. If being badly off is a central reason one ought to access asylum, but states needn’t accept all who are badly off, states ought to determine who they grant asylum to based on how badly they are, and how much asylum will help them avoid being badly-off.

There remain some disadvantages to the prioritarian approach. Some might reject the premise that asylum’s function is to protect those whose lives are at risk. Moreover, the prioritarian approach requires establishing how badly-off someone is. This can be difficult both because we might not know how badly off someone is, and because there may be disagreement as to what constitutes being badly off. A Nuer citizen in a Dinka-majority section of South Sudan who is unable to access sufficient food during the epidemic might be badly off both because of his inability to access food and because he is a victim of wrongful discrimination if his lack of food is the result of racism. It is not clear how we weigh the negative effects of racism in South Sudan when establishing if he ought to be given asylum before others.

Though the prioritarian response has certain disadvantages, it still provides us guidance for cases where it seems someone is clearly worse off than someone else according to a range of metrics. Samuel is worse off compared to many individuals in the United States suffering from pre-existing health conditions: he lacks healthcare entirely, reliable access to any food at all, reliable shelter, and safety from the violence that occasionally breaks out in Juba. It would seem he has a right to asylum in another country before most individuals seeking to travel to avoid contracting Covid-19.

Importantly, the prioritarian approach balances the intuition that those fleeing for their lives have claims to asylum, and the intuition that many states don’t have a duty to accept all individuals fleeing for their lives. If states needn’t grant asylum to all, then we need a system of determining how states ought to accept those they accept. Prioritiarianism provides such a system.

If such a system is what justice requires, then this system would recognise some individuals as having a right to asylum to avoid the risks of Covid-19. More importantly, it would recognise a range of individuals as having a right to asylum, expanding the 1951 Convention for the Protection of Refugees without infringing on the rights of citizens or states.