

APPENDICES

APPENDIX A: DEFINING REFUGEES

This book assumes what I call the Life Claim: an individual is a refugee if their right to life is threatened in their home countries, regardless of whether it is threatened from persecution, violence, poverty or other life-threatening conditions.¹ All such refugees have a right to asylum, assuming they have no other mechanism for accessing protection, and assuming states have the capacity to accept such individuals.

The Life Claim is limited in scope, establishing a sufficient but not necessary condition: it is sufficient that a refugee's right to life is undermined, but not necessary. It is not necessary because those suffering other harms, such as life-long detention, are likely refugees as well.² The Life Claim is also neutral as to when, precisely, states no longer have the capacity to accept refugees, and so can ethically turn them away. It may be that a state lacks capacity if the costs of accepting more refugees are very high,³ or if accepting refugees endangers citizens' access to basic rights and liberal institutions.⁴ My aim here is merely to demonstrate that, however we measure capacity, states ought not to differentiate between those fleeing persecution, those fleeing general violence, and those fleeing other life-threatening conditions.

Importantly, I do not claim that all individuals fleeing life-threatening conditions are refugees. A ninety year old without access to very costly cancer treatment does not necessarily have a right to asylum abroad to obtain treatment, because the right to life needn't entail the right to access costly life-saving treatment at age ninety. In contrast, an individual who cannot access basic medical care does have a right to asylum, assuming an individual's right to life is violated if they lack access to basic medical care. Determining who precisely has their right to life violated would require a broader discussion of rights, but this is

not necessary for my purposes: I merely wish to demonstrate that those fleeing persecution do not have a special right to asylum as compared to those fleeing other equally life-threatening rights violations.

There are two common claims that are inconsistent with the Life Claim. I describe them below, along with my objections.

1. The Aid Claim

According to the Aid Claim, states have a duty to protect the right to life of individuals outside of their borders, assuming such protection does not rise above a given cost. States can often protect the right to life by sending aid, as when states send food aid to individuals suffering from severe malnutrition. For such individuals, states can fulfill their duties without granting asylum. States must only grant asylum to those who cannot be saved any other way. In general, those who are fleeing persecution and general violence cannot be saved any other way.⁵ Sometimes individuals suffering from hunger also cannot be saved any other way, because their home government is blocking the provision of international aid, and such refugees simply must obtain asylum to obtain food.⁶ Regardless, most individuals who find their right to life threatened can be helped with aid, and so states needn't grant them asylum.

The problem with the Aid Claim is that it confuses what states can do with what they will do. States can send aid, but they often do not – at least, they do not send nearly as much aid as they have a duty to send. In 2016 wealthy states' total aid was \$142.6 billion, averaging only 0.32 per cent of gross national income, far less than states can afford to send, and far less than the minimum necessary to secure poor individuals' right to life.⁷ If states are not sending sufficient aid, then those living in poverty can only save themselves through asylum. They therefore have a right to asylum.

Importantly, even if states do fulfill their duties to provide aid, in that they are sending as much aid as they can before the costs become too high, they may still have a duty to provide asylum. This is because asylum does not necessarily incur costs. If asylum does not incur costs, states cannot claim they have no duty to provide asylum because they have already incurred costs in sending aid. It would be comparable to a philanthropist donating most of her life savings to charity, and then failing to save a drowning child whom she can save at no cost. If the

philanthropist can save the child at no cost, she has a duty to do so, even if she has donated money already.

There are a number of instances where asylum involves no costs, as when refugees arrive with savings which they pay as a tax to the government, receiving services equivalent in value to what they pay. We might also imagine refugees paying into a type of insurance scheme upon arrival, with each refugee paying a given sum, and only some refugees receiving services more than this sum, such that the group as a whole is given asylum without costs. Just as well-run health insurance involves no net costs, a well-run refugee scheme – with refugees paying into the scheme – needn't involve net costs. Similarly, if a group of highly-skilled refugees is given asylum, the predicted cost of each refugee may be less or equal to the predicted sum they will pay in taxes while given asylum. If such refugees will contribute more than they gain in services, states cannot claim that costs justify no asylum. Therefore, even if states have already accepted their fair share of costs in sending aid overseas, they still have a duty to provide asylum to these no-cost refugees. This is consistent with the Life Claim, which holds that all individuals are refugees if their right to life is threatened, and states have an obligation to accept refugees if the costs fall below a given threshold.

2. *The Membership Claim*

There is a second claim inconsistent with the Life Claim, which I call the Membership Claim. It holds that refugees are those who are no longer members in their home countries, and so holding a right to membership elsewhere. True membership entails eventual citizenship, and so true refugees have a right to eventually obtain citizenship. Some individuals fleeing life-threatening conditions are still members of their home state, and so have no right to citizenship in another state. They merely have a right to temporary protection until returning home is safe.

The Membership Claim is similar to the Life Claim, because it accepts that all those fleeing life-threatening conditions have a right to asylum. It simply does not call individuals “refugees” if they will eventually be required to return home. If one accepts the Membership Claim, then replace my use of the word “refugees” with “those who cannot currently return to their home country because their lives will be at risk.”

However, I still believe the Membership Claim is wrong, and that all those whose right to life are at risk at home ought to be called refugees, and that we ought not to prioritize those fleeing persecution in granting citizenship. Let me briefly present the Membership Claim, and why it is faulty.

The Membership Claim begins with the premise that all individuals have a right to be members of a state. An individual is no longer a member if her membership has been repudiated by the state. Her membership can be repudiated when a core feature of her identity is rejected, and this can occur if she is persecuted because of her religion, race, politics, or social membership. She therefore has right to membership in a new state, rather than mere temporary asylum. In contrast to those who are persecuted, those fleeing purely natural disasters or general violence are not living in states that have rejected a core feature of their identity. Their membership has therefore not been repudiated by their government, and so they are not in need of new membership elsewhere. They have a right to merely temporary protection in another state until returning home is safe.⁸

Below is a summary of this general argument:

1. All have a right to membership in a state.
2. Those who are persecuted are targeted for a core feature of their identity.
3. Therefore, their membership has been repudiated by their government.
4. Therefore, they have a right to obtain membership in another state.
5. Those who suffer from famine or general violence never had their membership repudiated by their government.
6. They therefore do not have a right to membership in another state.

One problem with the above is the second premise. It is not true that those persecuted because of their race, religion, social membership, or political opinion are necessarily targeted because of a core feature of their identity. Many individuals do not feel that their race is a core feature of their identity, and some do not feel that their religion is a core feature of their identity. An agnostic may not strongly identify with her agnosticism, but she is still persecuted if the government threatens to

kill her unless she stops being agnostic. More generally, a person may be targeted for being of a given race, religion, or social group they do not identify with, as when individuals with one Jewish grandparent were targeted during the Holocaust, because it was presumed they were Jewish, and individuals with glasses were targeted during the Cambodian genocide, because it was presumed they were part of the suspect class of intellectuals.⁹ If being persecuted does not indicate that a core feature of a person's identity is rejected, there is no reason to believe persecution indicates a special severing of membership compared to other forms of life-threatening treatment.

There is another problem with the Membership Claim. A person can be persecuted but remain a member of the state, so long as they are persecuted by independent militias who do not represent the state. Such a person's bond with their government can remain intact if their government is doing everything to stop the militias' actions. Once the government succeeds, they can return home. If this is true, there is no reason to distinguish all those fleeing persecution from all those fleeing general disasters: both could be in need of only temporary protection.

Lister, a proponent of the Membership Claim, addresses this objection. He argues that when militias target individuals, the militias usurp the state's authority, essentially becoming the state. The state is therefore repudiating victims' membership, because the state has become the militias engaging in persecution.¹⁰ For example, when Hutu militias targeted Tutsi citizens, the power of the original Rwandan government became usurped, and the true state was represented by the Hutu militias. The state – represented by the Hutu militias – repudiated the membership of Tutsi residents, and these residents therefore had a right to citizenship elsewhere.

Such an explanation, however, rests on a view of the state rejected by many refugees themselves. When a refugee flees a militia that has usurped the government, the government may remain in exile. When refugees feel a strong bond to such governments-in-exile, and feel this government is the true representative of the state, they may plan to return to their homelands when these governments-in-exile gain power. From the refugees' own perspective, their bond with their state remains strong. Just as those fleeing famine or natural disasters still maintain a bond with their state, even if the government is powerless to stop the famine and natural disaster, refugees fleeing persecution from

militias can maintain a bond with their state, even if the government is powerless in preventing these militias from functioning.

Importantly, when one's bond remains intact, one might still have a right to citizenship in another state. This is because, even when one's bond remains intact, one cannot always experience one's citizenship in practice. All those who cannot live in their home countries, because their lives will be at risk from hunger or ill health, cannot vote in their home countries, engage in public debate in their home countries, work in their home countries, or enter and exit their home countries safely. Assuming such a circumstance will continue for a prolonged period of time, their access to citizenship is severed in practice, providing a compelling reason to access citizenship elsewhere.

We might claim, as Lister does, that those who are directly targeted by their government are more likely to require protection for an extended period of time, in contrast to those fleeing natural disasters and general violence, who can safely return home after a shorter period of time.¹¹ But that is not necessarily true: those fleeing life-threatening poverty may find that their home country cannot ensure their food security for decades, while those once targeted for their ethnicity may be able to return safely to their home states soon after. The relevant criteria for new citizenship, then, should not be based on whether one was targeted, but on how long one is required to remain abroad. If this is true, then those fleeing persecution, and those fleeing non-man-made disasters, ought to obtain similar conditions for asylum: all individuals have a right to initial protection, and then eventually obtain the right to citizenship if they have been unable to return home for a significant number of years.

There is a final objection to the Membership Claim. It is not true that one can only have one's membership repudiated by being persecuted. A person can have their membership repudiated if they are no longer benefiting from the state, even if they are not targeted by this state. This is because, more generally, a person can lose membership when no longer receiving a benefit constitutive of membership. For example, if a member of an insurance plan receives a letter informing her that no pay-outs would ever be provided, due to insufficient funds in the plan, she would no longer be a member of the insurance plan in any relevant sense. The same can be said about those leaving states unable to protect their rights to life. Assuming that being a member of a state is constitutive of receiving minimal protection from the state, these individuals are

no longer members of the state. They therefore have a right to membership elsewhere.

To account for some of the objections above, we might adopt another version of the Membership Argument. Shacknove's Membership Argument, one of the earlier versions, begins with the empirical premise that individuals experience insecurity from other humans when living outside the confines of society. They experience theft, murder, and rape in the absence of protection from clans, tribes, and states. The purpose of the state today, he argues, is to mitigate these insecurities, ensuring that citizens are not harmed by outsiders, nor harmed by each other. When the state fails to protect citizens in this manner, it no longer has a special bond with its citizens, and those harmed are no longer true citizens. Because all individuals have a right to citizenship, such individuals have a right to citizenship abroad as refugees.

Shacknove emphasizes that only those fleeing man-made harms are refugees, because the function of the state is to protect humans from other humans. He notes, however, that many natural disasters are caused by humans: humans are responsible for the failure to build infrastructure to counteract floods, responsible for a failure to reduce carbon dioxide emissions to counter climate change, and responsible for a failure to create an economy that can withstand droughts. Nearly all those fleeing economic and natural catastrophes, then, are refugees.¹²

Shacknove's account nonetheless implies that, if an individual is fleeing a disaster caused by no other human, they are not refugees. An individual suffering from a flood, virus, or drought for which nobody is responsible, and which nobody could prevent, keeps their bond with their home government according to Shacknove's account. They therefore have no right to citizenship in a new state.

Shacknove's account suffers from weaknesses similar to those plaguing the first Membership Claim. Even if one is fleeing harms from other humans, it does not follow that one's membership has been repudiated; one can retain membership if one is attacked by a militia, and one's own government remains committed to protection. Just as those fleeing a virus can retain their bond with the government, even if the government is temporarily powerless in the face of the virus, those fleeing a militia can retain their bond with the government, even if the government is powerless in the face of the militia.

More importantly, one can cease to be a member of a state that is unable to prevent entirely non-man-made disasters. Perhaps the best

example of this is an individual on a sinking island. Assuming the island is sinking for reasons unrelated to human actions, and assuming there is no way to prevent the island from sinking, and assuming there are no other territories where the state can be reconstituted, the island's residents will soon no longer have citizenship in a state. If all individuals have a right to citizenship in a state, then such individuals have a right to citizenship in another state, rather than being forced to drown as the island sinks, or living the rest of their lives as stateless people in other countries.¹³

In short, the Life Claim remains more compelling than alternative claims, which is why I adopt this claim throughout the book. And, as noted above, one can still accept the arguments throughout the book while rejecting the Life Claim. The arguments simply become narrower in scope, limited to a narrower range of individuals.

NOTES

1. As noted, this stance is widely accepted. See Michael Dummett, *On Immigration and Refugees*, London and New York: Routledge 2001 at 37; Matthew Gibney, *The Ethics and Politics of Asylum*, Cambridge: Cambridge University Press 2004 at 84; David Miller, "Immigration: The Case for Its Limits," in (eds) A. Cohen and C. Wellman, *Contemporary Debates in Applied Ethics*, Malden, MA: Blackwell Publishing 2005 at 202.
2. Luara Ferracioli, "The Appeal and Danger of a New Refugee Convention," *Social Theory and Practice* 40(1)(2014):123–44 at 125.
3. Gibney 2004 *ibid.* at 84; Kyrie Kowalik, "Defining Refugees in Terms of Justice," *Peace Review* 29(1)(2017):68–75 at 71; Miller 2005 *ibid.* at 85–93.
4. Arash Abizadeh, "The Special-Obligations Challenge to More Open Borders," in (eds) Sarah Fine and Lea Ypi, *Migration in Political Theory*, Oxford: Oxford University Press 2016; Joseph Carens, "Aliens and Citizens: The Case for Open Borders," *Review of Politics* 49(2)(1987): 251–73 at 259; Ferracioli 2014 *ibid.* at 132; and Dummett 2001 *ibid.* at 14 and 50–2.
5. Max Cherem, "Refugee Rights: Against Expanding the Definition of 'Refugees' and Unilateral Protection Elsewhere," *Journal of Political Philosophy* 24(2)(2016):183–205 at 190; Matthew Lister, "Who Are Refugees?" *Law and Philosophy* 32(5)(2013):645–71 at 660; David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*, Cambridge: Harvard University Press 2016 at 83.
6. Gibney 2004 *ibid.* at 84; Julian F. Müller, "The Ethics of Commercial Human Smuggling," *European Journal of Political Theory*, (forthcoming)

- at 12, <<http://journals.sagepub.com/doi/full/10.1177/1474885118754468>> (last accessed May 4, 2018).
7. OECD, "Development Aid Rises Again in 2016 but Flows to the Poorest Countries Dip," March 11, 2017, <<http://www.oecd.org/dac/development-aid-rises-again-in-2016-but-flows-to-poorest-countries-dip.htm>> (last accessed February 22, 2018).
 8. Lister 2013 *ibid.* at 662 and 669–70; Cherem 2016 *ibid.* at 191–2; Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*, New York: Basic Book 1983 at 48.
 9. William A. Schabas, "Problems of International Codification: Were the Atrocities in Cambodia and Kosovo Genocide?" *New England Law Review* 35(2)(2011):287–302 at 290.
 10. Lister 2013 *ibid.* at 662.
 11. Lister 2013 *ibid.* at 669.
 12. Andrew E. Shacknové, "Who is a Refugee?" *Ethics* 95(2)(1985):274–84 at 278–80.
 13. Cherem argues that such individuals are distinct from refugees, because their membership has not been repudiated; it has simply been lost. In such cases, solutions other than asylum may be more appropriate, such as ceding territory to such individuals. However, if no state is willing to cede territory – the current reality – then such individuals lack membership and require asylum. In other words, in determining who has a right to citizenship abroad, there is no principled reason to distinguish between one whose membership is repudiated and one whose membership is lost, assuming both groups cannot re-obtain the membership they no longer possess. See Cherem 2016 *ibid.* at 192.

APPENDIX B: TOTAL RETURNING, MONEY,
AND DETENTION IN ISRAEL

Month	Total returning to South Sudan, Sudan, and Eritrea	Money paid to South Sudanese, Sudanese, and Eritreans	Significant events
May–June 2012	1,200–3,000 to South Sudan	\$1,500 ¹	South Sudanese told they will be detained indefinitely or deported if they do not repatriate.
July–August	Unknown	0–100	
September	Unknown	0–100	<p>On September 16, 2013, the High Court of Justice invalidates provisions of Anti-Infiltration Law which allows for prolonged detention.²</p> <p>The government then issues a new procedure allowing the state to arrest anyone suspected of criminal acts, without trial.³</p>
October	Unknown	0–100	Human rights organizations submit petition against procedure above. ⁴
November 2012 – February 2013	Unknown	0–100	

March 2013	53	\$1,500 ⁵	<p>UNHCR submits a request to file a friend of the court brief with the High Court of Justice on March 7, 2013.⁶</p> <p>In an initial hearing at the High Court of Justice on March 12, an order is issued for the government to explain why the amendment to the Anti-Infiltration Law should remain intact.⁷</p>
April	59	\$1,500	
May	70	\$1,500	
June	75	\$1,500	State prosecutor announces that the state is unlikely to accept any claims of Eritrean nationals for refugee status. ⁸
July	164	\$1,500	
August	170	\$1,500	Hotline for Migrant Workers reports slight improvements in living conditions in detention facilities. ⁹
September	89	\$1,500	Nullification of Anti-Infiltration amendment which allows detention of asylum seekers. ¹⁰

October	180	\$1,500	Interior Minister Gideon Saar proposes plan to Prime Minister Netanyahu to raise grant from \$1,500 to \$5,000. No final decision reached and no asylum seekers released, despite High Court order. ¹¹
November	116	From mid-to late November: \$3,500	Following the human rights petition to the high court, some detainees released. Cabinet approves increasing payment from \$1,500 to \$3,500 in mid-November. ¹²
December	295	\$3,500	Knesset passes new amendment, detaining new asylum seekers for one year. ¹³
January–August 2014	Approximately: 3,312 ¹⁴ Average per month: 414	\$3,500	Asylum seekers continue to be detained. ¹⁵

Notes

1. Based on the 128 interviews conducted with returnees to South Sudan.
2. Amnesty International, "Blind to Violations, Deaf to Obligations: Israel's Human Rights Record: Amnesty International Updated Submission to the UN Universal Periodic Review, September 2013," <<https://www.amnesty.org/en/documents/ODHHR/12/2013/01/01/>>

- amnesty.org/en/documents/MDE15/015/2013/en/> (last accessed February 27, 2018).
3. Amnesty International, ASSAF, and the Hotline for Migrant Workers, "Israel's Policy towards Refugees and Asylum Seekers: Prolonged Administrative Detention, March 2013," <<http://assaf.org.il/en/sites/default/files/Israeli%20Policy%20of%20Prolonged%20Administrative%20Detention%20March%202013.pdf>> (last accessed February 27, 2018).
 4. Amnesty International et al. 2013 *ibid*.
 5. Interview with AVR official, Tel Aviv, August 7, 2013.
 6. Talia Neshet, "UN Refugee Agency Petitions High Court to Overturn 'Infiltration' Law," *Haaretz*, March 13, 2013, accessed September 1, 2015 <<https://www.haaretz.com/.premium-un-agency-to-high-court-overturn-infiltration-law-1.5233585>> (last accessed September 1, 2015).
 7. The Association of Civil Rights in Israel, "High Court of Justice Prepares to Hear Petition against Anti-Infiltration Law," <<https://www.acri.org.il/en/2013/05/29/anti-infiltration-law-2/>> (last accessed February 27, 2018).
 8. Amnesty International, June 7, 2013, <<http://www.amnesty.org/fr/library/asset/MDE15/005/2013/en/07259891-b209-4058-b370e76c3dcfce8/mde150052013en.pdf>> (last accessed September 4, 2014).
 9. Maya Kovaliyov-Livi and Sigal Rozen, "'From One Prison to Another': Holot Detention Facility," Hotline for Migrant Workers in Israel, June 2014, <<https://www.scribd.com/document/230142608/From-One-Prison-to-Another-Holot-Detention-Facility>> (last accessed February 27, 2018).
 10. Barak Ravid and Ilan Lior, "Court Invalidates Legislation Allowing Israel to Detain Migrants without Trial," *Haaretz*, September 16, 2013, <<http://www.haaretz.com/news/diplomacy-defense/.premium-1.547311>> (last accessed February 27, 2018).
 11. Ilan Lior, "Israel to Order African Migrants \$5,000 to Leave," *Haaretz*, October 30, 2013, <<http://www.haaretz.com/news/national/.premium-1.555218>> (last accessed February 22, 2017).
 12. It was unclear if this was approved in November or December. A civil servant in the Ministry of Interior recalled that the increase was "around November 2013," but some media sources report that the approval took place in the Cabinet in December. Regardless, it was after some detainees were released from detention following the High Court decision. See William Booth and Ruth Eglash, "Israel Says It Won't Forcibly Deport Illegal Migrants, But It Wants Them to Leave." *Washington Post*, January 20, 2013, and interview with AVR official, Tel Aviv, August 7, 2013.
 13. Kovaliyov-Livi and Rozen 2014 *ibid*.
 14. Based on total Sudanese and Eritreans who left the country according to Human Rights Watch as of August 2014 (6,400 to Sudan and 367 to Eritrea, for a total of 6,767), minus the total who returned in 2012 and 2013 to Sudan and Eritrea based on labor statistics. For 2012, labor

statistics provided by the Israeli Population, Immigration and Border Agency only give the total number who returned via the Office for the Encouragement of Return (2,600). This includes 1,100 South Sudanese who returned, and the remaining 1,500 are likely from Sudan, as no Eritreans were reported leaving prior to 2013. In 2013, labor statistics report 1,687 Sudanese and 268 Eritreans leaving the country, for a total of 1,955. Therefore, the total number who returned between January and August 2014 was approximately $6,767 - 1,500 - 1,955 = 3,312$. See Human Rights Watch, "Make Their Lives Miserable: Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave the Country," September 9, 2014, <<https://www.hrw.org/report/2014/09/09/make-their-lives-miserable/israels-coercion-eritrean-and-sudanese-asylum-seekers>> (last accessed September 14, 2014); Labor statistics <<http://www.piba.gov.il/PublicationAndTender/summery/Documents/summary2012.pdf>> (last accessed on September 14, 2014); and <<http://piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/563343n80.pdf>> (last accessed on September 14, 2014).

15. Human Rights Watch 2014 *ibid.*; and Kovaliyov-Livi and Rozen 2014 *ibid.*