Must Refugees Return?

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It is widely accepted that states have a right to control who enters their territory, deciding how many new workers join the economy, how many residents join the citizenry, and how many new students, patients, and pedestrians will use the state’s schools, hospitals, and streets. Even those who insist that states have no right to deny citizenship to long-term residents sometimes accept that states have right to determine who can become a long-term resident, and so who will be entitled to citizenship later. [[1]](#footnote-1)

It is also widely accepted that states, though holding the right to control immigration, must make exceptions for refugees. States do not have a right to turn away those whose life or basic liberty will be at risk if they return home, including those fleeing persecution, famine and civil war.[[2]](#footnote-2)

If states have a general right to control immigration, but refugees are an exception because their lives or liberty are at risk, perhaps states can require that refugees return home once their lives or liberty are no longer at risk. This logic, supported by a range of philosophers,[[3]](#footnote-3) is the norm in a range of countries. In 2008 Ghana required Liberian refugees to return home after the end of the Liberian Civil War.[[4]](#footnote-4) In 2013 the Kenyan government began insisting that Somali refugees repatriate, including those who had lived in Kenya most of their adult lives.[[5]](#footnote-5) Last year the German government announced that Syrian refugees would be required to return home once the war in Syria ended.[[6]](#footnote-6)

This article first considers two common objections to the claim that, if states have a right to control their borders, they have a right to require that refugees return home once returning home is safe. Section 1 presents the Consent Objection: for an individual to be required to return home, they must consent to return home, and refugees have not given their valid consent to eventually return home. Section 2 presents the Citizenship Objection: Refugees have a right to eventual citizenship in their adopted state, and with citizenship comes the right to remain.

I demonstrate the limitation of both objections, before proposing a new objection: Refugee have a right to remain because they have a right to enter reciprocal relationships with citizens. Such reciprocal relationships are easier to develop if citizens are certain that refugees will not be deported once returning is safe.

Before I begin, a number of clarifications are in order.

Throughout the article I will generally assume that states have a right to control immigration, and consider why refugees have a right to remain even if this assumption is true. However, nothing in my argumentation is dependent on this assumption: if one supports open borders, this too is compatible with my argumentation. My goal is to demonstrate why supporting states’ right to control immigration needn’t preclude refugees’ right to remain.

If refugees do have a right to remain, I assume this means states have a weighty moral reason to provide refugees the legal status to remain, and states are not morally permitted to revoke this status whenever they desire that refugees leave. In other words, states are not permitted to invoke their general right to control immigration as the sole justification for requiring that refugees eventually leave. This is consistent with the claim that there may be other justifications for requiring that refugees leave. For example, if providing refugees the right to remain created detrimental economic strife for the host country, such that citizens could not obtain basic necessities for survival, then perhaps citizens’ right to survival could trump the rights of refugees to remain.

This is a fairly standard understanding of ‘rights’ within debates on immigration ethics. For example, Joseph Carens and Kieran Oberman claim that all individuals have a right to cross borders, but they stipulate that the right to cross borders could be curtailed if this somehow undermined citizens’ access to basic necessities.[[7]](#footnote-7) Even those who claim refugees have a right to asylum might use the word ‘right’ in this non-absolute sense. For example, if a state learned that accepting millions of refugees would overwhelm basic provisions for all, then the rights of all to access basic provisions could outweigh the rights of some to access asylum.

In discussing refugees’ right to remain, I shall assume that refugee include all those whom the UN claims should not be forcibly returned, but instead given asylum. These are individuals whose lives will likely be at risk from persecution if they return.[[8]](#footnote-8) I shall also assume that refugees include those fleeing food insecurity, lack of medical care and general violence.[[9]](#footnote-9) I assume that coercing such ‘survival migrants’[[10]](#footnote-10) to leave is unethical if the state has the capacity to accept such individuals, and if accepting these migrants is the only way to ensure that they obtain basic human rights. This claim is supported not only by philosophers who believe in open borders, such as Joseph Carens,[[11]](#footnote-11) but also by those who defend states’ right to exclude immigrants, such as David Miller, Matthew Gibney and even some states themselves.[[12]](#footnote-12) As such, it serves as a ‘minimal ethical standard’[[13]](#footnote-13) for which individuals the state should provide asylum, leaving open the question of whether those given asylum must eventually return home.

Though this is my assumption, nothing in my article hinges on this point. If you believe refugees are only those fleeing persecution, or only those fleeing violence, then assume that my arguments apply to such individuals alone. My aim is not to establish who a refugee is, but whether a refugee has a right to remain when returning home is safe.

1. Consent

The first reason we might suppose refugees have a right to remain is related to consent. In general, when an individual enters a country, they normally consent to the terms of entrance, including the requirement that they eventually return home. For example, when I entered the UK on a student visa I consented to enter on the condition that I leave once my PhD was complete, however long that would take. In contrast to students, those born in a state have not consented to eventually leave, and so it would be wrong to require them to eventually leave. If refugees are like those born in the state, and never consented to eventually leave, it would be wrong to require them to eventually leave.

There are a number of reasons we might claim refugees have not consented to eventually leave. We might claim refugees have not consented because their decision to accept a visa that required them to eventually leave was not accepted with valid consent. For consent to be valid, if must be voluntary, and a decision is not voluntary if the result of coercion.[[14]](#footnote-14) Many refugees are coerced by violent militias, abusive spouses, or their home governments into leaving and seeking asylum abroad. Such refugees are therefore accepting their terms of asylum involuntarily. If so, then even if they acquiesced to asylum on the condition they eventually return home, they have not given their valid consent to eventually return home, and so should not be required to eventually return home.[[15]](#footnote-15)

The above argument, however, conflates refugees’ consent to leave their home countries and refugees’ consent to obtain asylum abroad. Even if refugees have not given their valid consent to leaving their home countries, they can give their valid consent to obtaining asylum abroad, and so can give their valid consent to the terms of asylum. This is because, more generally, even if one has not given valid consent to fleeing from a perpetrator, one can give their valid consent to protection from this perpetrator, and so can give their valid consent to the terms of this protection. Imagine an individual is running away from a gang member, and comes up to my home asking to enter, and I allow her to enter on the condition that she leave once leaving is safe. The individual running from the gang has not consented to running in the direction of my home, but she has consented to my protection, including the condition that she leave once leaving is safe. Even if refugees have not consented to fleeing their home countries, they can consent to receiving protection in a host state, including the terms of this protection.

There is a second reason we might suppose refugees’ consent to the terms of asylum is invalid. We might suppose that one’s consent is invalid if, in order to not consent, one must give up an option to which one has a right. In an example demonstrating this point, Kieran Oberman describes a government that offered dental care only to those who were unmarried. In such a world, if an individual married, it would be odd to claim she consented to give up her dental care. This is because we cannot claim an individual consents if not consenting would entail foregoing a basic right – in this case, the right to marry. Refugees cannot be said to have consented to accept visas contingent on their returning if rejecting these visas would entail giving up an option to which they have a right – in this case, the right to asylum.[[16]](#footnote-16) If they have not consented to visas contingent on their eventually leaving, it would be wrong to require that they eventually leave based on their consent alone.

The above argument, it is important to note, is not that individuals can never consent to conditions if the alternative is very poor, such as death. It is more specific: individuals can never consent to conditions if the alternative to these conditions is giving up an option to which they have a right. The options to which individuals have a right might include the option of marrying, practicing one’s religion, and accessing asylum.

Moreover, the above argument is not that governments can never set conditions for the provision of certain services; if marrying tended to cause individuals to have atrocious dental hygiene that required expensive treatment, perhaps it would be justified to limit dental care to those who were unmarried. Rather, the argument is that, if the government’s only justification for treating some individuals differently is that these individuals consented to be treated differently, these individuals have not truly consented if their alternative entailed foregoing a right. We therefore cannot claim their consent to be treated differently is a sufficient justification for being treated differently. If the government allows some individuals to remain, such as citizens born in the country, but denies other individuals the right to remain, such as refugees fleeing violence, the government cannot claim the latter should be treated differently based on consent alone.

The above argument is effective in explaining why students and migrant workers can be required to leave, but not refugees. When students consent to a visa that requires they later leave, their consent is valid because they can reject this visa without giving up an option to which they have a right, assuming students do not have a right to study in a foreign country. Similarly, when migrant workers consent to a visa that requires they later leave, their consent is valid because they can reject this visa without giving up an option to which they have a right, assuming migrants do not have a right to work abroad.[[17]](#footnote-17) In contrast, when refugees consent to a visa that requires they later leave, their consent is invalid because rejecting this visa entails giving up an option to which they have a right, assuming refugees have a right to asylum.

There is a problem, however, with the above argument. It is not true that a person cannot consent to conditions if rejecting these conditions entails giving up an option to which they have a right. Return, again, to the case of the individual fleeing a gang. This person can consent to the conditions of entering my home even if rejecting these conditions would entail giving up the option of entering my home, an option to which she has a right. Similarly, consider a patient in urgent need of emergency medical care who enters a private members-only hospital despite not being a member. The patient has a right to enter this hospital and receive urgent medical care, but if the hospital generally is permitted to block the entrance of non-members, it is permitted to hand her a consent form prior to this care, stipulating that she will only receive care if she agrees to leave once her care is complete. She can consent to these conditions even though she can only reject these conditions by giving up the option of care to which she has a right.

Some might reject the above counter-example, arguing that the hospital’s real justification for requiring her to leave is that it is a private hospital, and therefore has a right to control entrance, rather than that she has consented to leave after the care is complete. In this sense, it is not comparable to states controlling entrance. States controlling entrance are not private institutions like hospitals, and so the only justification they could have for requiring that individuals eventually leave is that they consented to a visa which requires that they eventually leave, and such consent is lacking when individuals can only reject a visa by giving up an option to which they have a right.

But this is misleading: while states controlling entrance are not private institutions like hospitals, they are political bodies that I assume have a general right to control entrance. Remember: my goal is to demonstrate that refugees have a right to remain even if states have a right to control entrance. If states have a right to control entrance the way private hospitals have a right to control entrance, then states have a right to issue visas to refugees that require refugees leave once leaving is safe. And just as a patient can consent to terms of treatment which require her to later leave, a refugee can consent to the terms of a state’s visa which require her to later leave.

There is a final reason we might suppose that refugees’ consent is not valid. In general, if X has a duty to fulfill two rights that Y posses, but X threatens to deny one right unless Y foregoes the other, then Y cannot be said to consent to forego the other. Imagine, for example, that I am injured and run to a hospital, where the doctor has two duties: provide me life-saving treatment, and allow me to remain until my condition is stable. Imagine the doctor offered me only life-saving treatment, but no right to remain until my condition was stable, asking me, ‘Do you consent to life-saving treatment and then leaving immediately after?’ If I said yes, then it would not seem that I consented to forgoing the right to remain until my condition was stable. My acquiescence to treatment alone would be no justification for the doctor denying me the right to remain. The doctor has a duty to provide me both rights, and so cannot be said to obtain my consent for one on the condition I decline the other.

If states have a duty both to grant asylum and allow refugees to remain, then states cannot claim that refugees consented to forego remaining in order to obtain asylum, any more than the doctor can claim I consented to forego the right to remain in order to obtain life-saving treatment.

The problem with this explanation is that it begs of the question of why states would have a duty to provide refugees the right to remain, the very question the article sets out to answer.

Here is one obvious answer: refugees have a right to remain because they are particularly vulnerable. Those who are particularly vulnerable ought to be given greater resources or opportunities than others. At least, they ought to be provided greater resources or opportunities if doing so helps them become less vulnerable, and more equal in various dimensions to others. For example, the state ought to distribute funds for transport disproportionately to those with mobility-impairing disabilities, ensuring that those with mobility-impairing disabilities have access to mobility that is closer to the access held by those without disabilities. Similarly, the state ought to invest greater funds for education amongst those in greater need of additional education, allowing them to obtain the fluency in reading and mathematics obtained by those who do not require this additional education.[[18]](#footnote-18)

When states determine how to distribute long-term visas – including the sorts of visas that allow individuals to remain indefinitely – they ought to provide such visas disproportionately to refugees, given that refugees are more vulnerable, having fled life-threatening conditions in their home countries. States ought to therefore grant refugees entrance with the provision that they can remain indefinitely. They have a right to remain even if others – such as students and temporary work visas – do not.

The above argument, however, does not explain why providing refugees the right to remain is necessary for assisting refugees escape vulnerability. If refugees are vulnerable because they lack security in their home countries, then granting them protection until it is safe would suffice to counter this particular vulnerability. So long as states are truly granting residency rights to refugees during the period they require asylum, states seem to be providing the assistance that refugees require.

Of course, today’s states often do not grant residency rights to those seeking asylum. States bar economic migrants from entering even if their lives would be at immediate risk from malnutrition upon returning home. States bar refugees fleeing persecution from approaching the borders of their territories, denying them the right to reach safety.[[19]](#footnote-19) Even when refugees do manage to reach safety, states often reject their claims, deporting them soon after.[[20]](#footnote-20) But were states to truly accept the refugees they have a duty to accept, perhaps they need not accept them indefinitely, if refugees are not vulnerable indefinitely.

2. Citizenship

We might suppose refugees have a right to remain not because they are vulnerable, but because they have a right to citizenship in the host country, and with citizenship comes the right to remain.

One reason refugees have a right to citizenship is because their own country of origin has denied them the sort of citizenship to which all individuals have a right. All individuals have a right to citizenship in a country that follows minimal principles of justice. A state that fails to ensure minimal levels of security, despite being able to do so, fails to follow minimal principles of justice. If refugees’ home states have failed to follow principles of justice, then refugees have a right to obtain citizenship elsewhere.[[21]](#footnote-21) Jews fleeing Germany in 1940, Tutsies fleeing Rwanda in 1994, and Nuer citizens fleeing South Sudan in 2013 were fleeing unjust states. Assuming all individuals have a right to citizenship in a just state, and a given just host states can provide refugees citizenship, and no other state is willing to provide such citizenship, then this just host state has an obligation to provide refugees citizenship. At the very least, it cannot deny citizenship based solely on its general right to control immigration.

Moreover, even when a host state is not entirely just, it ought to provide citizenship to refugees if it is much more just than the state from which refugees fled. For example, when Rwandan refugees fled to Uganda in 1994, Uganda was a more just state than Rwanda at that moment, even if a less just state than, say, Ghana. If Uganda could provide citizenship to refugees without incurring significant costs, and no other state was willing to provide this citizenship, it had a duty to provide citizenship. With citizenship comes the right to remain, and so Rwandan refugees had the right to remain.

The above argument, however, includes a controversial premise. It is not clear that individuals have a right to citizenship in a just state. It may be that individuals merely have a right to residency in a just state, or simply access to basic necessities in some state. If one holds that the right to asylum is merely the right to access residency in a just state, or basic necessities in some state, then refugees do not have a right to obtain citizenship after they have fled. They merely have a right to asylum until their home state becomes just, or until they can obtain basic necessities in their home state.

Moreover, even if refugees do have a right to citizenship in a just state, many refugees are fleeing states that are perfectly just. For example, a refugee fleeing a natural or economic disaster is not necessarily fleeing an unjust state if the state is attempting to protect citizens lives, and simply lacks the resources to protect individuals against natural or economic strife. Similarly, a refugee leaving behind a country without sufficient medical care may be leaving behind a just state that simply lacks sufficient medical resources through no fault of its own. Such was possibly the case with N, an HIV-positive woman who arrived in the UK in 1998, eventually requesting humanitarian protection on the grounds that she would lack access to anti-retroviral treatment if she returned to Uganda. Uganda was not necessarily unjust if it simply lacked the resources to provide HIV treatment to all. Assuming N was a refugee in the sense I defined – someone who has a right to remain if returning home is life-threatening – and assuming the UK could have easily permitted her to remain, she had a right to asylum, but not because she lacked citizenship in a just state. If she already had citizenship in a just state, she did not have a right to citizenship in the UK on these grounds alone.

Perhaps the reason refugees have a right to citizenship is not because they lack citizenship in a just state, but because they lack access to the practice of citizenship in any state. When N arrived in the UK she relied on the UK National Health Services (NHS) to survive, and so could not move back to Uganda and access voting rights, an essential component of what it means to be a citizen. Therefore, N had a right to citizenship in the UK, ensuring she could be a citizen in practice, and not merely on paper. [[22]](#footnote-22)

This argument, however, merely demonstrates that N had a right to vote in UK elections, and access the other benefits of citizenship, such as welfare benefits, the ability to run for local office, and assurance that she would not face deportation so long as she was dependent on the NHS for survival. She could have a right to the benefits of citizenship while she was a refugee, and then lose these rights if these benefits became unnecessary, because returning home was safe. If such a policy would give her access to the practices associated with citizenship, then she did not have a right to citizenship itself, and so did not have a right to remain if returning home became safe.

Rather than claiming refugees have a right to citizenship because of what they lost when they fled, perhaps refugees have a right to citizenship because of what they gained when they arrived.

In general, individuals gain what some have called ‘social membership’[[23]](#footnote-23) after they have lived in a country for a significant number of years. If individuals are social members, they have come to interact with others in a manner that gives rise to certain moral claims. One moral claim is relational: if an individual has come to make new friends whom she is emotionally dependent on, and who are dependent on her in turn, she has become an integral part of a relationship that is of value, and which gives rise to the claim to remain to continue this valuable relationship. [[24]](#footnote-24) Another moral claim is reciprocal: if an individual has paid taxes to the government for over a decade, or contributed to a local community center through volunteer work, she has a stronger claim to reap some of the benefits she has contributed in the past.[[25]](#footnote-25) Some of these benefits cannot be reaped without citizenship, including the benefits of accessing welfare if this is necessary, and the benefits of voting and having a say in the direction of policy. If she has a right to citizenship, she has a right to remain.[[26]](#footnote-26)

Refugees who have fled their home countries have a right to remain for similar reasons. After some years have passed, they have likely developed social ties that give rise to moral claims which non-residents do not possess. Just as long-term residents have a right to obtain citizenship and remain, long-term refugees have a right to obtain citizenship and remain.

The above logic is common in wealthier countries. In the United States refugees can apply for permanent residency after a year, and then apply for citizenship if they have lived in the country as permanent residents for at least five years.[[27]](#footnote-27) In Germany all individuals, including refugees, are entitled to citizenship if they have lived in the country as a permanent resident for eight years and fulfill certain conditions, such as proof of integration via a naturalization test.[[28]](#footnote-28) If states allow long-term non-refugees to remain, they ought to allow long-term refugees to remain.

There is a problem with the above reasoning. Even if states have a duty to provide citizenship to those who have lived in the country for more than a specified number of years, it does not follow that they are obligated to permit an individual to remain in the country for more than a specified number of years. So long as states do not permit refugees to remain in any one country for more than a given number of years, many refugees will not be social members, and so will not have a right to citizenship based on social membership alone. Nor would such a policy violate refugees’ right to protection: so long as some state was willing to provide a temporary visa, then refugees could maintain protection throughout the period when returning was unsafe. This would be possible if a given country provided refugee status for five years, after which another state would take over providing asylum for an additional five years, followed by a third country if necessary, and so forth.

Indeed, if we view refugees as all individuals whose lives would be at risk if they returned home, including those at risk from unemployment, then states currently adopt such practices. The states of Thailand, Japan, and Israel each offer migrant workers the right to work for three to five years, including workers who would otherwise die of malnutrition without such visas.[[29]](#footnote-29) Such states can defend their requirement that migrants leave by appealing to the fact that each migrant can access another visa in another state once their current visas lapse, and each migrant has not stayed long enough to gain social membership locally.

We might suppose that refugees have a right to citizenship not because they have lived in the country for many years, but because they have a right to remain in one country for many years. They have a right to remain in one country so that they can plan their futures, far easier if they know their futures will entail continued existence in one location. The reason refugees have a right to plan their futures is because, in general, humans have a right to plan their futures, a right derived from the shape one’s own life in an autonomous manner. [[30]](#footnote-30) For example, if an individual is aware that they will be forced to leave their business in three years, they will struggle to make long-term plans to grow their business. Similarly, a refugee who will be forced to move to a new country in five years will struggle to make long-term plans, given how much will change upon moving.

The above argument, while explaining why it is wrong to unexpectedly force a refugee to move to a new country, does not explain why it is wrong to eventually require a refugee to move to a new country. If a refugee is told about the countries she will live in long before she moves, she can make plans for the future in her next country of asylum. It is true that life in the new country may be very different, but a person can make plans for the future even if the future is very different, so long as they are aware that the future will be different. An individual, or example, can make plans for after they have children, or after they become elderly, or after they have graduated from university, even though life will be very different after one has had children, becomes elderly, or graduates from university. A refugee can similarly plan her life in another country of asylum every few years, so long as she is aware she will be required to move every few years. If she is required to move every few years, then she never obtains the social membership necessary for citizenship, and so never obtains rights to citizenship. If she never obtains rights citizenship, we cannot claim repatriation is unjustified because of rights to citizenship.

Now, I do not think the above policies are justified: it is wrong to require that those fleeing life-threatening conditions travel from country to country. Refugees have a right to remain in a single country that can ensure their survival, rather than forced to constantly move every few years. This is true for those fleeing both violence and malnutrition. The next section explains why it is cruel to require that refugees move every few years. It is this reason which also provides a compelling justification for permitting refugees to remain, even when returning is safe.

3. Reciprocity

This final argument begins with the premise, stated in the first section, that states ought to assist those who are vulnerable. In the previous section I assumed that refugees are vulnerable because they lack physical insecurity from bombs, wars, illness and economic deprivation. There is another type of vulnerability they might face: the ability to maintain reciprocal relationships.

A reciprocal relationship, as I define it here, occurs when X provides an offer to Y with the expectation that Y will later provide an offer back, which Y later provides with the expectation that X will later provide an offer back, which X later provides with the expectation that Y will later provide an offer back, and so forth. I put aside broader understandings of reciprocity, where X provides a good to Y which is proportionate to the good Y provided, but which X would have provided without an expectation that Y would again provide a good in the future.[[31]](#footnote-31) In the instances of reciprocity I have in mind, both X and Y would not provide their respective offers if they believed the other would not provide an offer in return, and both are aware that the other would not provide their respective offers if they believed the other would not provide their offers in return.[[32]](#footnote-32)

For an example of such reciprocity, imagine an employer provides training to an employee with the expectation that the employee will continue to work, and the employee continues to work with the expectation of a promotion in the future, and the employer later provides a promotion with the expectation that the employee will remain in the company and work. Both the employer and employee are aware that the other is providing their respective goods with the expectation that she will provide her respective goods in return. Similarly, when a bank offers a loan, it does so with the expectation that the borrower will pay the money back, and the borrower will often pay the money back with the expectation that they can then qualify for another loan in the future, itself provided by the bank with the expectation that the borrower will pay the money back, which the borrower might do with the expectation of qualifying for a loan again in the future. Both parties are aware that the other party is acting as she does – or possibly acting as she does – with the expectation that the other will reciprocate.

Reciprocal relationships are not limited to financial transactions. The awkward start of friendships and romances are full of reciprocity. If I want to be someone’s romantic partner, I might invite them out for a drink with the hope they will invite me for a drink in the future; had I been certain they would never ask me out later, I might be less inclined to ask them out myself. If I invited them out for a drink, and they wanted to enter a romantic relationship, they might invite me to another drink later, and would not have invited me for this other drink if they suspected I would not later reciprocate in turn, inviting them to some other event with the expectation they would invite me back, and so forth.

If employment, loans, and romance are easier to develop with reciprocity, they are easier to develop with certain expectations of the future. The moment we think that another will not reciprocate in the future, we have less reason to reciprocate ourselves in the present, bringing the reciprocal relationship to an end. One reason we might suppose another will not reciprocate in the future is that they will not be able to, such as when an employer suspects an employee will become ill, leave the city, or find a better job elsewhere. Another reason we might suppose another will not reciprocate is because we think *they* think *we* will not reciprocate. For example, imagine I am considering whether to give you a loan. One reason I might think you will not pay me back is because I suspect you think I will not give you another loan in the future. If I think you think I will not give you a loan in the future, then I might suspect that you will not bother paying me back now. If I think you will not bother paying me back now, I will not give you a loan now. Importantly, one reason I might think you think I will not give you a loan in the future is because I think you think I will not be able to in the future, either because I will be bankrupt, move to another city, or suddenly change professions.

The belief that another will reciprocate in the future has been termed the ‘shadow of the future’. [[33]](#footnote-33) If the shadow of the future helps develop reciprocal relationships, and such relationships help one obtain money, livelihoods, and romance, then a shadow of the future helps one obtain money, friendships and romance.

One of the disadvantages of living in a country where the risk of death is high is that the shadow of the future is short. A Nuer businesswoman in Juba who faces potential death by persecution will struggle to persuade a potential investor to provide investment for her small business, as the investor may be unsure if she will be around to generate a profit later on. A farmer suffering from severe malnutrition in Burundi will struggle to obtain a loan to buy seeds, because a lender may be uncertain the farmer will survive the next season and pay him back. A student in Syria will struggle to obtain employment if an employer fears the student will flee bombs and terrorists at the first opportunity. Even if the businessman, farmer, and student have no plans to leave, it is enough that the investor, lender, and employer suspect they will leave for them to hesitate to provide them investment, loans, or employment.

Similar problems arise in forming new romantic relationships. If romance begins when one person invites another out for a coffee, with the hope that the other will reciprocate, romance can be difficult if the other will unlikely reciprocate because they may not be around the next day. The inability to predict the future, and the suspicion that the future will end with death or displacement, makes it difficult to enter relationships that require prediction and stability.

Without relationships that require prediction and stability, an important set of interests are set back. One interest is financial: when an individual has poor access to credit, jobs, or romantic partners, she may struggle to access food, shelter, and healthcare.[[34]](#footnote-34) Another interest is intrinsic to the relationships themselves. There is a value in being part of a company where one’s work is valued enough to receive compensation in return, and this value cannot be replaced by receiving charity instead.[[35]](#footnote-35) There is value in taking a loan that one is confident one can pay back, and value in paying a loan back with the knowledge that one is credit-worthy to receive a loan in the future. Being declined credit comes with a shame that is beyond the frustration of having less capital to invest. And there is value in romance; few buy a potential partner dinner only to receive dinner back, and few are excited to give a gift because they expect a gift back. It is the relationships that dinners and gifts make possible that is of value, and not the dinner and gifts themselves.[[36]](#footnote-36)

When refugees manage to obtain asylum abroad, they have a right not only to safety, but the sort of relationships that require expectations of the future. Just as refugees have a right to legally marry, study, and work in their host countries, they have a right to the reciprocity helpful for marrying, studying, and working in their host countries. And just as the shadow of the future is important for such reciprocity in home countries, this shadow of the future is important for reciprocity in host countries. For an employer to invest in training a refugee for a job, she must know the refugee will be around to use the training to produce profit for the firm in the future. For a bank to provide credit to a refugee, it must know the refugee will be around to pay the credit back. And for a potential long-term romantic partner to invite a refugee for coffee, it helps to know the refugee will be around to offer a date back, and to then accept another date even later, and then to offer another date later still, until the stage of dating is over, and a more serious relationship unfolds.

When refugees are forced to flee their home countries, and arrive in host countries, they are often caught between two worlds: one where they struggle to form reciprocal relationships in their home countries because others are not sure if they will survive, and another where they struggle to form reciprocal relationship in their host countries because others are not sure if they will remain. If refugees have a right to asylum that protects their basic interests, because their lives are at risk in their home countries, then refugees have a right to the conditions of reciprocity that help protect their basic interests. The conditions for reciprocity are enhanced if citizens perceive a shadow of the future, in that they know refugees will likely remain, rather than be forced to leave any day.

If this is true, this has a number of implications. One is that host states ought to permit refugees to remain so long as returning is unsafe, rather than requiring them to move from country to country every five years. This is because remaining in one place enhances the shadow of the future, important for enhancing refugees’ access to reciprocity. If refugees include migrant workers fleeing life-threatening poverty, then many migrant worker programs ought to be reconsidered. It is wrong, for example, for Japan to permit migrant workers from Thailand to work for up to five years alone, and then require them to either return home or move to another country where they will work for another five years. Even if this policy ensures migrants’ survival, it denies them the shadow of the future which enhances reciprocal relationships.

Another implication is that it would be wrong to require that refugees return home once returning home is safe. This is because, if refugees are forever in a position where they can be required to return home any day, this diminishes others’ willingness to enter reciprocal relationships in the present. This phenomenon was apparent in Israel, where I interviewed refugees from Eritrea who struggled to access credit, housing and the types of jobs requiring training. Creditors, landlords, and employers were uncertain that Eritrean refugees would be permitted to remain, and so were unsure whether refugees would be able to pay back loans, pay rent, or continue working in the future. Were credit providers, landlords, and employers certain that refugees would be able to remain in the future, they may be more willing to provide them credit, housing, and employment in the present. In other words, refugees ought to be provided visas that extend into a period when returning is safe, so that they can enter reciprocal relationships when returning in unsafe.

Of course, it remains an open question as to how many years refugees have a right to remain when returning home is safe. We might imagine a government that permitted refugees to remain not indefinitely, but for five to ten years after returning was safe. This would create a relatively long shadow of the future during the period when returning was not safe, helping ensure refugees could enter reciprocal relationships during this unsafe period. For example, in 1998 it was relatively safe for some Rwandan refugees to repatriate from Uganda, but the Ugandan government nonetheless permitted many Rwandan refugees to remain for several years longer, requiring them to return only in 2013.[[37]](#footnote-37) Contrast this to Germany’ policy in 1995, when immediately after the Dayton Peace Accord was signed all refugees from the former Yugoslavia were required to repatriate. Germany is planning a similar policy for Syrian refugees, who will be required to return home the moment returning is safe.[[38]](#footnote-38) If all governments permit refugees to remain for five to ten years after returning becomes safe, as in Uganda, rather than immediately requiring repatriation, as is Germany, there will be a relatively long shadow of the future for the period when returning is not safe. A Syrian refugee living in Germany today could be confident that, even if Syria became safe tomorrow, they could stay for at least some years, and each German citizen could be confident that each Syrian refugee could stay for at least some years, encouraging enough of a shadow of the future for reciprocal relationships to unfold.

This is not to claim, it is worth emphasizing, that all individuals in a country have a right to remain in the future to access reciprocity in the present. Though all individuals would benefit from reciprocity, because reciprocity helps protect basic interests, not all individuals have a right to state assistance in accessing basic interests. When I was a student in the UK I did not have a right to government-provided welfare provisions, even though welfare is a basic interest. I had no such right because I could access such welfare provisions in my country of origin, and was not particularly vulnerable, my life not at risk if I returned home. Because refugees are particularly vulnerable, they are entitled to state services that protect their basic interests. If one basic interest is the ability to form relationships, and the right to remain into the future protects this interest, then states have a weighty reason to allow refugees to remain into the future.

If the above two implications are true – refugees have a right to remain in a single country, and the right to remain even when returning is safe – this has an important further implication: many refugees may live enough time in the country that they will become social members. They will therefore, eventually, begin to have claims to citizenship, and once they have citizenship, they will have a right to remain indefinitely. In other words, reciprocity explains why refugees have a right to remain for some time after returning is safe, and social membership explains why refugees should be permitted to remain indefinitely once they have remained long enough.

For example, imagine that the Ugandan government assured all South Sudanese refugees currently in the country that, even if the South Sudanese Civil War ended tomorrow, they would have another five years to remain in Uganda. The Ugandan government would be creating a policy that allowed South Sudanese to live in Ugandan for at least five years, and likely far longer. If refugees ended up living in Uganda for long enough, they would no longer have a mere right to remain for longer than necessary for security, but the additional right to citizenship. And once they held this right, they would have a derivative right to remain indefinitely.

Though refugees may have a right to remain, this right is not absolute. Like all discussions of asylum, there will be countervailing considerations. If a state faced a very large and sudden increase in the number of refugees arriving, perhaps it would be permitted to sacrifice refugees’ access to reciprocity by requiring that refugees return home when returning was safe. The same holds true for all state-provided services that protect refugees’ basic interests. If a state faced a very large and sudden influx of refugees, perhaps it would be permitted to deny welfare provisions to refugees, or deny them access to some public services. But states that do have the capacity to provide services that protect refugees’ basic interests have an obligation to do so. Similarly, states that do have the capacity to give refugees visas to remain have an obligation to do so, and cannot appeal to their right to control immigration to act otherwise.

4. Conclusion

It is widely accepted that states have a right to control who enters their territory, with an exception made for refugees. If states have a general right to control immigration, but an obligation to accept refugees whose lives are at risk, perhaps states may require refugees to return once their lives are no longer at risk.

I presented two common objections to this claim. The first concerned consent: refugees have not given their valid consented to the terms of their visas, including visas which require them to eventually return home. This is because their consent was not voluntary, having been forced to flee their country of asylum. I rejected this argument, demonstrating that one can give consent to the terms of an offer even if forced to accept this offer, and so refugees can consent to terms of asylum that require them to eventually leave.

The second argument concerned citizenship: refugees who have lived for many years in the country take on certain ties that give rise to new moral claims, including the claim to citizenship. With citizenship comes the right to remain indefinitely, even after returning is safe. This argument, commonly evoked in western democracies, has some truth, but is incomplete: it does not establish why refugees have a right to remain in a given country during the period when they require asylum. We might imagine a policy where refugees are required to move from country to country every five years, forever obtaining asylum, but never obtaining the ties that are necessary for obtaining rights to citizenship. We need an argument for why such a policy would be wrong.

I presented a novel argument that explained why such a policy would be wrong, and why refugees have a right to remain when returning is safe. Refugees have a right to remain in one country, and to remain when returning is safe, to develop reciprocal relationships during a period when remaining is unsafe. A refugee in Germany who cannot safely return to Syria will struggle to obtain a loan if a lender is not certain when the refugee will be required to leave. A refugee in Sudan who cannot safely return to Eritrea will struggle to start a romantic relationship if potential partners are uncertain when the refugee will be required to leave. Refugees have a right to remain because they and others need knowledge of the future, assisting them to enter relationships in the present.

1. When I write ‘widely accepted’ I mean that philosophers widely accept this claim, though of course non-philosophers may also widely accept this claim. For philosophers defending this claim, see 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; Matthew Gibney, *The Ethics and Politics of Asylum*, Oxford: Oxford University Press 2004; Christopher Heath Wellman, ‘Immigration and Freedom of Association,’ Ethics 119(2008): 109-141. [↑](#footnote-ref-1)
2. There is debate over why states must accept refugees, but one common reason is that states must accept refugees because they have humanitarian duties towards those outside their borders, and humanitarianism requires us to protect individuals at risk in their home countries. This moral responsibility, it is worth noting, is not the same as state’s legal responsibility. Legally, states need only provide protection to those fleeing persecution. For a defense of this moral rule, see Gibney ibid; Javier Hidalgo, ‘Resistance to Unjust Immigration Restrictions,’ Journal of Political Philosophy 23(4)(2015):450-470; Joseph Carens, *The Ethics of Immigration*,’ Oxford: Oxford University Press 2013 at 192-224; Miller, ibid at 202. It is worth nothing that some states also accept this moral responsibility, at least to an extent. See Alexander Betts, ‘Survival Migration: A New Protection Framework,’ Global Governance 16(2010): 361-382. [↑](#footnote-ref-2)
3. David Miller, ‘Immigration: The case for its limits,’ in (eds) Andrew I. Cohen and Christopher Heath Wellman, *Contemporary Debates in Applied Ethics*, Malden: Blackwell 2005 at 202-203; J. C. Hathaway and R. A. Neve, ‘Making International Refugee Law Relevant Again: a proposal for collectivized and solution-oriented protection,’ Harvard Human Rights Journal 10(1997):115-211. [↑](#footnote-ref-3)
4. Naohiko Omata, '“Repatriation is Not for Everyone”: The life and livelihoods of

former refugees in Liberia,’ New Issues in Refugee Research, UNHCR Working Papers 213, 2011. [↑](#footnote-ref-4)
5. The Kenyan government claims repatriating is safe; in reality, it is likely not. See Richard Hamilton, ‘Kenya to Repatriate Somali Refugees,’ BBC News, accessed on 12 September from <http://www.bbc.co.uk/news/world-africa-20819462> [↑](#footnote-ref-5)
6. Andreas Rinke, ‘German’s Merkel Says Refugees Must Return Home Once War is Over,’ Reuters, 30 January 2016. Accessed on 12 September from http://www.reuters.com/article/us-europe-migrants-germany-refugees/germanys-merkel-says-refugees-must-return-home-once-war-is-over-idUSKCN0V80IH [↑](#footnote-ref-6)
7. Joseph Carens, ‘Aliens and Citizens: The Case for Open Borders,’ The Review of Politics 49(2)(1987):251-273 at 260; Kieran Oberman, ‘Immigration as a Human Right,’ in (eds) Sarah Fine and Lea Ypi, *Migration in Political Theory: The Ethics of Movement and Membership*, Oxford: Oxford University Press 2016, at p. 33. Carens is less explicit regarding this, but seems to suggest that restricting immigration may be justified to protect public order, even though today’s levels of restrictions far surpass what is necessary to protect public order. [↑](#footnote-ref-7)
8. See the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, available at http://www.unhcr.org/3b66c2aa10.html, accessed 23 March 2016. [↑](#footnote-ref-8)
9. For example, of the millions currently fleeing Iraq and Syria, many are fleeing war rather than persecution based on their identity. See AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC), Upper Tribunal (Immigration and Asylum Chamber). [↑](#footnote-ref-9)
10. Betts 2010. [↑](#footnote-ref-10)
11. Carens 1987. [↑](#footnote-ref-11)
12. Betts 2010; Gibney 2004; Miller 2005. [↑](#footnote-ref-12)
13. Hidalgo 2015. [↑](#footnote-ref-13)
14. Joseph Millum, ‘Consent Under Pressure: The Puzzle of Third Party Coercion,’ Ethical Theory and Moral Practice 17(1)(2014): 113-127. [↑](#footnote-ref-14)
15. Under this reading, refugees fleeing non-man-made natural or economic disasters would be required to return home once returning was safe, because such refugees were not coerced into their decisions. [↑](#footnote-ref-15)
16. Kieran Oberman, ‘Immigration, Citizenship, and Consent: What is Wrong with Permanent Alienage?’ The Journal of Political Philosophy 25(1)(2017):91-107 at 105-106. [↑](#footnote-ref-16)
17. According to this argument, if students do have a right to study in a foreign country, and migrants do have a right to work abroad, then their consent to eventually leave is not valid. Similarly, their consent to other terms in their visas is not valid, such as the term that they never obtain citizenship. See Oberman 2017. [↑](#footnote-ref-17)
18. I present an egalitarian version of this view: the state ought to redistribute resources to increase equality. One could adopt a prioritarian version of this view: the state ought to prioritize the wellbeing of the worst off even when this increases inequality. Both views can serve as a premise for the claim that refugees have a right to remain. For an overview of these views, see Ronald Dworkin, "What is Equality? Part I: Equality of Welfare," Philosophy and Public Affairs 10(3)(1981): 85-246; "What is Equality? Part 2: Equality of Resources," Philosophy and Public Affairs 10(4)(1981): 283-345; Harry Frankfurt, "The Moral Irrelevance of Equality," Public Affairs Quarterly 4(2000):87-103; Liam Shields, *Just Enough: Sufficiency as a Demand of Justice*, Edinburgh: Edinburgh University Press 2016; Martha Nussbaum, Martha, 1990, ‘Aristotelian Social Democracy,’ in (eds) R. B. Douglas, Gerald M. Mara, and Henry Richardson, Liberalism and the Good, New York: Routledge 1990, pp. 203-252. [↑](#footnote-ref-18)
19. Sarah Childress, ‘US Asylum Seekers May Face Barriers from Border Patrol’ PBS, 13 December 2014. Accessed on 11 September 2017 from <http://www.pbs.org/wgbh/frontline/article/u-s-asylum-seekers-may-face-barriers-from-border-patrol/>; Matthew Gibney, ‘A Thousand Little Guantanamos: Western States and Measures to Prevent the Arrival of Refugees,’ in (ed) Kate E. Tunstall, *Displacement, Asylum, Migration*, The Oxford Amnesty Lectures 2004; Peter Tinti and Tuesday Reitano, *Migrant, Refugee, Smuggler Savior*, London: Hurst Publishing. [↑](#footnote-ref-19)
20. Liz Fekete, ‘The Deportation Machine: Europe, Asylum and Human Rights,’ Race and Class 47(1)(2005):64-48; Liza Schuster, ‘Turning Refugees into “Illegal Migrants”: Afghan Asylum Seekers in Europe,’ Ethnic and Racial Studies 34(8)(2011):1392-1407. [↑](#footnote-ref-20)
21. We might claim that, because states have failed to fulfil minimal principles of justice, the bond between refugees and their home states has been severed, and so their citizenship is of little worth. See Andrew Shacknove, ‘Who is a Refugee?’ Ethics 95(2)(1985):274-284. [↑](#footnote-ref-21)
22. I have never come across this particular argument, but Ruvi Ziegler defends refugees’ legal right to vote for this reason. See Ruvi Ziegler, *Voting Rights for Refugees*, Cambridge: Cambridge University Press 2017. [↑](#footnote-ref-22)
23. Carens 2013 at 158; David Miller, *Strangers in Our Midst: The political philosophy of immigration*, Cambridge: Harvard University Press 2016 at 123; Ruth Rubio-Marin, *Immigration as a Democratic Challenge: Citizenship Inclusion in Germany and the United States*, Cambridge: Cambridge University Press 2000 at 8. [↑](#footnote-ref-23)
24. The reason that governments ought to grant citizenship based on how long an individual has lived in the country, and not literally based on how many friends they have, is because this is less intrusive; the government needn’t call up immigrants’ friends and romantic partners to find out just how good a friend and partner they are, deporting those who are mediocre friends and partners. [↑](#footnote-ref-24)
25. Miller 2016 at 124. [↑](#footnote-ref-25)
26. This general principle – that social ties give rise to citizenship claims – is supported by a range of philosophers. See Carens 2013 at Ch. 8; Miller 2016 at Ch. 7; and Ayelet Shachar, Ch. 6 in *The Birthright Lottery: Citizenship and Global Inequality*, Cambridge and London: Harvard University Press 2009 [↑](#footnote-ref-26)
27. U.S Citizenship and Immigration Services, ‘Refugees,’ accessed on 11 September 2017 at https://www.uscis.gov/humanitarian/refugees-asylum/refugees [↑](#footnote-ref-27)
28. Federal office of Migration and Refugees, ‘Naturalization in Germany,’ accessed on 11 September 2017 at http://www.bamf.de/EN/Willkommen/Einbuergerung/InDeutschland/indeutschland-node.html [↑](#footnote-ref-28)
29. #  Robin Harding, ‘Japan opens door to temporary foreign workers,’ Financial Times 14 September 2016, accessed on 3 November 2017 at <https://www.ft.com/content/21a5aef8-7a4d-11e6-b837-eb4b4333ee43>; OECD, ‘International Migration Outlook: Sopemi 2011,’ accessed on 3 November 2017 from <https://www.oecd.org/migration/48351304.pdf>; Anelyse M Weiler, Janet McLaughlin, Donald C. Cole, ‘Food Security at Whose Expense? A Critique of the Canadian Temporary Farm Labour Migration Regime and Proposals for Change,’ International Migration 18 July 2017.

 [↑](#footnote-ref-29)
30. Robert Goodin, “Compensation and Redistribution,” Nomos 33, Compensatory Justice, 1991: 143-177 at 53-57; Anna Stilz, “Nations, States, and Territory,” *Ethics* 121 (2011): 572–601 at 582–87; Anna Stilz, ‘Occupancy Rights and the Wrong of Removal,’ Philosophy and Public Affairs 41(4)(2013):324-356 at 336-341. [↑](#footnote-ref-30)
31. Lawrence C. Becker provides this broad conception of reciprocity, common in social contract theories: ‘Reciprocity is a matter of making a fitting and proportional return for the good or ill we receive.’ Similarly, Eva Kittay provides a broad conception of reciprocity distinct from the one I have in mind: ‘Just as we [ourselves] have required care to survive and thrive, so we need to provide conditions that allow others—including those who do the work of caring—to receive the care they need to survive and thrive.’ See Larence C Becker, ‘Reciprocity, Justice, and Disability,’ Ethics 116(1)(2005):9-39 at 18; Eva Kittay, *Love’s Labor:* *Essays on Women, Equality, and Dependency*, New York: Routledge, 1999 at 106-109; Andrew Sangiovanni, ‘Global Justice, Reciprocity, and the State,’ Philosophy and Public Affairs 35(1)(2007):3-39 at 20-21. [↑](#footnote-ref-31)
32. Others have noted that such reciprocity could have evolved throughout human biological history. My argument is not based on such empirical claims: I merely claim that some relationships depend on the sort of reciprocity described by evolutionary biologists and psychologists. See Robert Axelrod, *The Evolution of Cooperation*: Revised Edition, Basic Books 2006. [↑](#footnote-ref-32)
33. Axelrod 2006 at Ch. 10. [↑](#footnote-ref-33)
34. Of course, not all reciprocal relationships are in the interests of participants. A loan could leave the borrower in permanent or long-standing debt which makes her worse off than if no loan was provided at all. But it remains the case that access to regular loans can be essential to making ends meet or growing one’s business. [↑](#footnote-ref-34)
35. On a broader understanding of reciprocity, charity could be thought of as reciprocal: If everyone gives to charity, then everyone will have access to charity should the need arise, even if few will literally receive charity from the individuals whom they donated to in the past. But even if charity is a form of indirect reciprocity, many still prefer not relying on charity, and prefer to be in employment with more direct reciprocity of the kind I have in mind. For this reason, disability rights activists emphasize that those with disabilities should not simply be given food, shelter, and care; they should be given the opportunity to contribute to society and be compensated for such contribution, assuming such reciprocity is possible. For a discussion on indirect reciprocity in the form of charity, see Becker 2005 at 20-21. For a discussion disability rights and charity, see Jerome E. Bickenbach, ‘Current Issues, Controversies and Solutions’ in (eds) Jerome E. Bickenbach and Gary L. Albrecht, *Ethics, Law and Policy,* USA: Sage 2012, pp. 67-137, especially 92-95; Doris Zames Fleischer and Friada Zames, *The Disability Rights Movement: From Charity to Confrontation*, Philadelphia: Temple University Press 2001; Arthur O’Reilly, *The Right to Decent Work of Persons with Disabilities*, International Labour Organization 30 November 2017. [↑](#footnote-ref-35)
36. The goods necessary to sustain social relations have been called ‘community goods.’ If I am not mistaken, these sorts of goods are often of a reciprocal nature, in that one would not provide goods to others if one thought others would not provide their own goods in return. For a discussion on social goods, see Jonathan Wolff, ‘Social Equality, Relative Poverty, and Marginalized Groups,’ in (ed) George Hull, The Equal Society, Lanham, Maryland: Lexington Books 2015 at 26. [↑](#footnote-ref-36)
37. It is important to note that in 2013 many were required to repatriate who would face life-threatening conditions in Rwanda, and so Uganda hardly implemented a just refugee policy. It nonetheless is true that some refugees could have returned earlier, but were not forced to do so until 2013. See Lindsey N Kingston, ‘Bringing Rwandan Refugees “Home”: The Cessation Clause, Statelessness, and Forced Repatriation,’ International Journal of Refugee Law (forthcoming). [↑](#footnote-ref-37)
38. Marina Martinovic, ‘Refugee Reloaded: Lessons from German’s Approach to Bosnian War,’ DW, 2 February 2016, accessed on 3 November 2017 at <http://www.dw.com/en/refugees-reloaded-lessons-from-germanys-approach-to-bosnian-war/a-19021249> [↑](#footnote-ref-38)