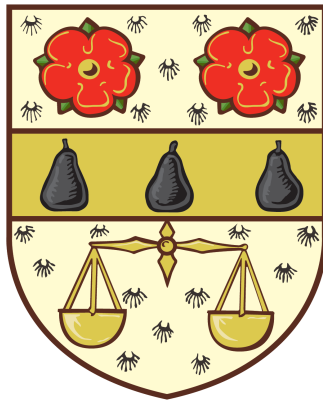


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Justice in Immigration

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*Justice in Immigration*¹

Abstract

This paper starts from the assumption that (legitimate) states have a general right to control their borders and decide who to admit as future citizens. These decisions, however, should be guided by principles of justice. But which principles? To answer this we have to analyse the multifaceted relationships that may hold between states and prospective immigrants, distinguishing on the one hand between those who are either inside or outside the state's territory, and on the other between refugees, economic migrants and 'particularity claimants'. The claims of refugees, stemming from their human rights, are powerful though limited in scope: they hold against receiving states generally rather than the specific one to which they apply for asylum. Economic migrants cannot claim a right to be admitted as such, but only a right to have legitimate criteria of selection applied to them. In the case of particularity claimants, such as those seeking redress for harms inflicted on them or reward for the services they have rendered to the state, the main question is why awarding a right to enter should be the appropriate response to their claims. The paper concludes by asking how far principles of justice can be used to establish priorities between these different categories of migrants.

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Author Biographical Note

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Introduction

Immigration currently comes high up on the list of contested topics in most, if not all, liberal democracies. What is perhaps striking is the large gulf that separates popular attitudes on this subject – inevitably reflected in mainstream political discourse – from the discussions that occur in academic settings. Broadly speaking the public assumes that states have (and should have) very considerable leeway in deciding upon immigration policy – who to admit and on what terms – subject perhaps to some obligation to admit (genuine) refugees; whereas among academics who write about immigration, border controls are usually regarded with suspicion, as potentially involving breaches of human rights, and there is a strong disposition to advocate open borders, again with a small rider to the effect that some control might be necessary if the inflow turns into a torrent.² One side sees immigration policy as not being a matter of justice at all; the other regards it as unavoidably involving injustice towards those who are excluded.

² The most influential of these academics is undoubtedly Joseph Carens, beginning with 'Aliens and Citizens: The Case for Open Borders', *Review of Politics*, 49 (1987), 251-73, and continuing through a long series of articles to culminate in *The Ethics of Migration* (Oxford: Oxford University Press, 2013). But see also M. Dummett, *On Immigration and Refugees* (London: Routledge, 2001); T. Hayter, *Open Borders: The Case Against Immigration Controls*, 2nd ed. (London: Pluto Press: 2004); H. Steiner, 'Libertarianism and the Transnational Migration of People' in B. Barry and R. Goodin (eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and Money* (Hemel Hempstead: Harvester Wheatsheaf, 1992); C. Kukathas, 'The Case for Open Immigration' in A. Cohen and C. Wellman (eds.), *Contemporary Debates in Applied Ethics* (Oxford: Blackwell, 2005); P. Cole, *Philosophy and Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000). Among dissenting views are those of M. Walzer, *Spheres of Justice* (Oxford: Martin Robertson, 1983), ch. 2; M. Blake, 'Immigration' in R. Frey and C. Wellman (eds.), *A Companion to Applied Ethics* (Oxford: Blackwell, 2003); and C. Wellman, 'Immigration and Freedom of Association', *Ethics*, 119 (2008), 109-41.

In this paper I want to suggest that immigration is indeed a matter of justice, but that we should interpret this as meaning that justice places certain constraints on the regime of immigration that a state may rightfully put in place, without, however, fully determining the shape of that regime. Within these constraints, states are free to select the policy that best realises their other goals, taking into account considerations such as economic growth, cultural diversity, population size, the age distribution of the current inhabitants, and so forth. It also follows, of course, that immigration policies may be criticised on multiple grounds: they may be badly judged, or counter-productive, or ungenerous to immigrants, without being unjust.

There is also a distinction that needs to be drawn carefully between the *justice* of an immigration policy and its *legitimacy*. Care is needed here because these two values cannot be completely separated: as I will argue shortly, it is a necessary condition of a policy's being legitimate that it should meet certain standards of justice. Nevertheless the conceptual distinction is important to preserve. An immigration policy that is illegitimate is one that the state has no right to impose; if it goes ahead nonetheless, it renders itself liable to outside sanction. Just as a state that encroaches upon the territory of one of its neighbours without adequate justification loses its immunity against outside interference, a state that pursued an illegitimate immigration policy would lose its protective moral shield. Of course, we do not yet know whether an immigration policy *could* be illegitimate. Someone may argue that the state has an unrestricted right to

choose to admit or not admit its immigrants on any grounds whatsoever, in which case the class of illegitimate immigration policies will be empty.

Whether that is indeed the case depends on how we understand the relationship between legitimacy and justice. My suggestion is that we should see illegitimate immigration policies as a sub-class of unjust immigration policies. Specifically, illegitimate immigration policies are those that directly violate the human rights of potential immigrants. In proposing this condition, I assume in common with several other recent commentators that a legitimate state must be one that adequately respects the human rights of those who are subject to its authority (this is a necessary rather than a sufficient condition).³ Now although potential immigrants may not already be subject to the authority of the state they are seeking to enter in the same sense as its own citizens (I discuss this further below), it remains the case that the state may not act towards them in ways that violate their human rights, just as it may not, for example, dump toxic waste on the inhabitants of neighbouring countries. What this condition amounts to with respect to immigrants is potentially controversial and will need further investigation. At this point I want only to suggest that a state may pursue immigration policies that are unjust without sacrificing its legitimacy, just as it may pursue somewhat unjust domestic policies without thereby becoming illegitimate. For example, a state that decides on arbitrary grounds to admit

³ See for example A. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), esp., ch. 5; A. Altman and C. Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2009), ch. 2.

immigrants from one country of origin but not another may be acting unjustly, but its policy will not be illegitimate unless it can be shown to violate the human rights of (some of) those it excludes. The full requirements of justice in immigration, therefore, are more demanding than those of legitimacy alone.

But how shall we understand these requirements? We seem to have to choose between two approaches. On the one hand, we can focus on the specific nature of the relationship between state and potential immigrant and ask what justice demands within that relationship. On the other hand, we can look more widely at questions of distributive justice, either social or global, and examine how a proposed immigration policy might bear on those questions. For example, we could ask what impact an immigration regime would have on equality of opportunity within the receiving society, or what impact it would have on global poverty. Both of these approaches seem relevant, but how should we decide which of them to follow first? This is going to depend on how we think about justice in general. In particular, it will depend on whether we think about justice relationally or non-relationally.⁴ Relational views are those that tie principles of justice to specific forms of human relationship such that the principles only apply within those relationships. If we hold a non-relational view – for example, if we

⁴ For this contrast, see A. Sangiovanni, 'Global Justice, Reciprocity, and the State', *Philosophy and Public Affairs*, 35 (2007), 3-39, section 1; M. Risse, *On Global Justice* (Princeton, NJ: Princeton University Press, 2012), ch. 1. I have expressed this contrast in my own earlier writing as one between contextualist and universalist understandings of justice: see D. Miller, 'Two Ways to Think about Justice', *Politics, Philosophy and Economics*, 1 (2002), 5-28, reprinted in D. Miller, *Justice for Earthlings: essays in political philosophy* (Cambridge: Cambridge University Press, 2013).

believe that justice always requires us to choose policies that work to the greatest advantage of the worst-off among those affected by them, regardless of any pre-existing relationships – then we will favour the second approach. What will matter is the general impact of immigration policy on levels of advantage, including but not confined to its impact on the potential immigrants themselves. In contrast, I shall assume here that justice should be understood relationally, in other words that its demands should depend upon the specific relationship in which a person stands in relation to other people or to institutions such as the state. From this perspective, the overall impact of a policy is not the only thing, or even perhaps the main thing, that matters when deciding about its justice. What also matters is how those who bear the impact stand in relation to the institution whose policy it is. Thus a state's impact on its own citizens is to be assessed differently from the impact it may make on outsiders. This is not to say that the latter impact is irrelevant, from the point of view of justice, only that it should be assessed using criteria that are not the same as those we use to assess the justice of domestic policy.

If we adopt such a relational perspective, then in thinking about the justice of immigration policy, our primary concern will be with the specific relationship between the immigrant and the state she is attempting to enter. In other words, our first question should be whether the immigrants themselves are being treated justly by the state they are seeking to join. Later we can ask about the impact that a proposed policy will have on existing citizens, or on people outside of the state who are not themselves prospective immigrants. This is not to rule

out the possibility that a policy that may initially appear just when considering only the relationship between immigrant and receiving state will be compromised when we consider its wider impact.⁵ For example, were such a policy to be severely detrimental to the human rights of those not involved in the practice of immigration itself, this would certainly count heavily against it. So an initial narrowing of focus to the direct relationship between immigrant and receiving state is not meant to foreclose wider questions of social or global justice, even though it may appear perverse to those who hold non-relational theories of justice, such as utilitarianism or the global difference principle.⁶ In the present paper I am attempting only to clarify the specific nature of the relationship between state and immigrant and the demands of justice to which it gives rise. For as I shall try to show, there are ambiguities in that relationship which need to be addressed if we are going to understand the claims that immigrants have against the state they are trying to enter. In order to gain clarity we need to create a framework into which different categories of immigrants can be placed.

⁵ Samuel Scheffler has argued that because of the role that immigration restrictions play in reinforcing global inequalities, we should hesitate to call our preferred immigration policy just even if no better policy is available. See S. Scheffler, 'Immigration and Justice', lecture delivered to the conference on Conference on Immigration, Toleration, and Nationalism, University of Helsinki, 30-31 May 2013.

⁶ See, for example, the utilitarian stance of the Singers, for whom 'immigration policy in general, and refugee intake in particular, should be based on the interests of all those affected, either directly or indirectly, whether as an immediate result of the policy, or in the long run'. (P. and R. Singer, 'The Ethics of Refugee Policy' in M. Gibney (ed.), *Open Borders? Closed Societies?: the ethical and political issues* (New York: Greenwood Press, 1988), p. 121.)

A Framework

In their relationship to the receiving state, immigrants differ along two main dimensions: first according to whether the immigrant is physically present on the state's territory, and therefore already subject to its jurisdiction, or in contrast is attempting to enter from the outside; second, according to the nature of the claim that the immigrant is making to justify his or her admission. Let me say a few words about each of these dimensions, and their significance.

In the first case, a line is being drawn between a person who is currently resident in state A and who makes an application to enter state B, and a person who is currently inside state B but has not yet been granted permission to enter. This might be because she has entered illegally, or because she has entered on a fixed-term permit that is now due to expire. Now there may also appear to be an intermediate case, which is that of somebody who is standing physically at the border between states A and B, for instance in front of an immigration official at a land border or an airport. In order to handle this third possibility, we need to know why it matters whether a person is physically present on state B's territory or not. To answer this question, we must call upon a normative account of rights to territory. On the account that I favour, a legitimate state that claims territorial rights must offer certain protections to all those who are physically present on the territory in question.⁷ Such a state claims a right of jurisdiction over a territory – that is, it claims the right to make laws and apply them to everyone *on*

⁷ See further D. Miller, 'Territorial Rights: Concept and Justification', *Political Studies*, 60 (2012), 252-68.

the territory – and to make good that claim it must at a minimum protect the basic rights of those present to a sufficiently high standard (it does not matter for present purposes exactly how that standard should be set). So, in relation to the prospective immigrant who has already arrived on its territory, the receiving state asserts its right to apply its laws to him – to arrest him if he has committed a crime, for instance – but in return it has an obligation to protect certain of his rights. I have discussed the content of this obligation in another paper.⁸ The point for now is that none of this applies to the person who applies to join state B while residing in state A. State B does not assert its authority over such a person; it does not attempt to make her subject to its laws.⁹ Whatever obligations the state has to this person do not arise as a corollary of the exercise of jurisdiction.

It is true of course that state B's decision may have a significant *impact* on the life of the state A resident. Indeed from one perspective the impact is the same whether the person involved is currently inside state B or not: either they are permitted to become a resident and perhaps future citizen of state B or they must remain in/return to presumably less attractive state A. But although impact in this sense is something we will have to consider is due course, I am assuming that this is by no means the only thing relevant to the justice of an immigration decision or policy. As indicated earlier, I take for granted here a relational view

⁸ D. Miller, 'Border Regimes and Human Rights', *Law and Ethics of Human Rights*, 7 (2013), 1-23.

⁹ Of course the state does apply its immigration rules to the person when deciding to admit her. But she is not subject to whole body of the state's law prior to being admitted, and she can at any time escape even the immigration rules by withdrawing her application.

of justice, and from this starting point the relationship between an individual person and the state under whose jurisdiction he currently falls is normatively significant. By virtue of being subject to the state's laws and policies, he has a reciprocal claim against the state that it should *at least* protect his human rights, not merely by refraining from violating them, but by making available the resources and the procedures (such as access to the legal system) that will allow him to enjoy these rights in practice.

What then about the intermediate case, the person who stands physically at the border? Such a person is not yet subject to the jurisdiction of the receiving state. It cannot tax him, conscript him, charge him for past crimes, etc.¹⁰ For so long as he continues with his attempt to enter, he must of course comply with the immigration rules that the state has imposed, but so must the person who applies to enter while resident in state A. If he meets whatever entry criteria the state has set, then he has a right to enter, but this applies equally to the person who has not yet come to the border. If he tries to enter regardless, then he may be subject to physical coercion to prevent him from doing so, but again the same can be said about the person still located within state A, the difference being only that coercion won't be applied to the latter until she comes to the border and

¹⁰ For this reason, I do not regard the relationship between state and prospective immigrant as essentially coercive in nature. This is disputed. See my exchange with Arash Abizadeh on this point: A. Abizadeh, 'Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders', *Political Theory*, 36 (2008), 37-65; D. Miller, 'Why Immigration Controls are not Coercive: a reply to Arash Abizadeh', *Political Theory*, 38 (2010), 111-120; and A. Abizadeh, 'Democratic Legitimacy and State Coercion: A Reply to David Miller', *Political Theory*, 38 (2010), 121-30.

makes the attempt. So does being at the border make any difference at all? I think that it imposes on the receiving state an immediate duty of care. This becomes most apparent if we think of someone arriving by sea on a hostile shore. If state officials are not willing to admit such a person to the territory, they must ensure that he is escorted to a place of physical safety: they cannot simply turn his boat around if it is likely to sink. The duties that apply at land borders and airports follow the same logic. They arise merely from the fact of physical proximity coupled with the capacity to assist, in the same way as does my duty to find help for someone who collapses on my doorstep; I need not take her into my house but I may, for example, have an obligation to take her to hospital or to a shelter. It goes without saying that state officials also have duties of civility towards the immigrant. In refusing entry they should explain why admission cannot be granted, they must not be abusive etc. These are general duties of respect for another human being that are triggered by the fact of physical presence.

All of this applies regardless of the kind of claim that the prospective immigrant is making, so let me now turn to this second dimension along which immigrants may differ. I suggest that they can be placed into three broad categories. First, there are refugees, people who are applying to enter on the grounds that their human rights are put seriously at risk by remaining in the state they have left or are seeking to leave.¹¹ This is a broader definition than the one that is used in the

1951 Geneva Convention, which speaks of a refugee as someone with ‘a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion’ in his country of origin, but I believe it better captures the underlying claim.¹² Second, there are applicants whose claim is simply that their interests will be better served by moving to the host society; the interests in question might be of different kinds – opportunities to find work, to acquire skills, to engage in forms of culture or religion not available in their country of origin, and so forth (I shall use ‘economic migrants’ as a convenient label for this group even though strictly speaking ‘economic’ is too narrow a designation). Third, there are immigrants who have what we might call a particularity claim against the state they are trying to enter. Such a claim might be backed up by different kinds of reason. For example, the claim might be reparative in nature: the immigrant claims that he is owed admission by way of redress for what the receiving state has done to

¹¹ There is a small terminological issue here, since the Geneva Convention definition of ‘refugee’ specifies that this is someone already ‘outside the country of his nationality’. But from an ethical perspective what is distinctive about a refugee is that she is or would be under severe threat if she lives in that country, and this is true whether she is currently trying to escape, has arrived at the border of another country, has crossed the border, or has formally been resettled elsewhere. In all these cases her state of origin cannot protect her fundamental rights, which is the basis on which she seeks asylum elsewhere. So my understanding of ‘refugee’ will be broad in this sense as well. C.f. James Souter: ‘If asylum fundamentally consists in surrogate protection, then it is the lack of protection within refugees’ state of origin, rather than the fact of their flight across a border per se, that grounds their moral entitlement to asylum’ (J. Souter, ‘Asylum as Protection for Past Injustice’, *Political Studies* (early view 2013), p. 3).

¹² Although the Geneva Convention definition has itself been broadened in later international declarations to respond to the variety of circumstances in which refugee flows may be created. On this see G. Loescher and J. Milner, ‘UNHCR and the Global Governance of Refugees’ in A. Betts (ed.), *Global Migration Governance* (Oxford: Oxford University Press, 2011), p. 191.

his own society and his life-prospects within it. Or it might be a claim of desert: the immigrant has served the receiving state in some capacity in the past.¹³ Or yet again it might be a claim for family reunification. These claims may carry different weight, but what they have in common (and what differentiates them from the first two categories) is that they are claims against *this particular state*. In contrast, immigrants who are either refugees or economic migrants may have reasons to launch their claim against one state rather than another, but the claim itself could be made against any state able to supply the resources needed to meet it (sanctuary, opportunities).

A prospective immigrant might make claims under more than one of these headings. Someone might apply for admission as a refugee while at the same time claiming that he deserves admission for his past services to the state. (This might apply to someone who has served as a translator for an army engaged in a foreign war, and who now fears for his life if he remains where he is.) But for purposes of analysis it is helpful to distinguish the three categories. I believe the distinctions drawn above will make sense even to those who wish to defend a human right to immigrate, and therefore hold that people in all three categories have a right to enter. They can take this position while at the same time granting

¹³ Consider the case of the Nepalese Gurkhas who, after serving in the British Army, have sought the right to reside in Britain after retiring. This right was granted to them by a High Court decision in 2008. According to the actress Joanna Lumley who spearheaded their campaign, 'The whole campaign has been based on the belief that those who have fought and been prepared to die for our country should have the right to live in our country'. I shall examine their case more fully below.

that those who are refugees or who have particularity claims might justifiably take precedence over economic migrants if priorities in admission have to be set.¹⁴

To sum up the discussion so far, we might construct a 3 x 3 matrix in which to place prospective immigrants, with the rows representing the categories of 'refugee', 'economic migrant' and 'particularity claimant' and the columns representing the categories 'inside the state', 'outside the state' and 'on the border'. It would then be possible to examine the justice claims of the inhabitants of each of the nine boxes separately. But this would be a long-winded exercise, and instead I shall use the rows to frame my discussion, and bring in distinctions between the columns only when they are significant. So let me begin with the claims of refugees.

Refugees

The justice claim of a refugee stems from the fact that his human rights are currently under threat. So to make sense of that claim, we must assume that all agents, individual or collective, share in a responsibility to protect the human rights of vulnerable individuals. Although, as we shall soon see, there is a problem about how this general responsibility gets assigned to particular agents,

¹⁴ Philosophers who defend open borders but nevertheless recognize the special claims of refugees include J. Carens, 'Who Should Get in? The Ethics of Immigration Admissions', *Ethics and International Affairs*, 17 (2003), 95-110; Dummett, *On Immigration and Refugees*, chs. 2-3.

the assumption itself does not seem controversial.¹⁵ At any rate, I am going to take it for granted here. The responsibility obtains regardless of national or other boundaries, which is why it can form the basis of a justice claim made by a refugee against a state that is not her own. And initially the claim appears to be a strong one, for human rights encapsulate the most urgent moral demands that one human being can make against another.¹⁶

But we must immediately take notice of two respects in which the refugee's claim is qualified. First, its scope is limited to whatever is necessary to protect her human rights. It does not extend in any immediate way to the full set of rights and opportunities that a state may make available to its own citizens. And the claim may be time-limited as well. Because it arises from a present threat that the refugee would face by remaining in her state of origin, it ceases to exist when the danger passes – that is, when it becomes safe to return to the country of origin. In other words, the refugee's claim is initially a claim to sanctuary or

¹⁵ Libertarians may argue that there is only a *negative* responsibility not to act in such a way that the human rights of others are violated, as opposed to a positive responsibility to ensure that human rights are fulfilled. They might however add that we have humanitarian reasons (as opposed to reasons of justice) to respond to cases in which human rights are put at risk by the actions of others. So the practical difference may not be so great in the cases that concern us here.

¹⁶ I rely here on the general account of human rights I have given in *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), ch. 7 and in 'Grounding Human Rights', *Critical Review of International Social and Political Philosophy*, 15 (2012), 407-27. Other prominent accounts of human rights that emphasize their moral urgency include H. Shue, *Basic Rights: Subsistence, Affluence, and American Foreign Policy*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996) and J. Nickel, *Making Sense of Human Rights*, 2nd ed. (Oxford: Blackwell, 2007).

asylum: to being provided with a place of safety where her human rights are protected for so long as she remains in danger.

Second, since the initial responsibility is global in scope – it falls on all agents who are capable of protecting a vulnerable individual’s human rights – a question arises about how it can turn into a justice claim against a particular state. In practice, of course, the responsibility is assigned by the refugee arriving at the border of the state (or entering without permission) and applying for asylum. Since it is, in general, an arbitrary matter which state the refugee chooses to approach (recall that particularity claims will be dealt with separately), it might appear problematic from the receiving state’s perspective that it should be required as a matter of justice to respond to a claim that arises in this way. However I think that the problem can be avoided so long as we are clear about what the receiving state is required to do. By way of analogy, think of the case of an individual person who is approached by someone in desperate need. This is also a demand that falls arbitrarily on the person approached. But he is nonetheless required to respond to it, as a matter of justice. What he is required to do, however, is to find a way in which the need can be met, and this may be a matter of calling upon other people, or on competent institutions, to provide the necessary support. He is not required to carry the burden single-handed. Returning to the case of a state against which a claim for asylum has been lodged, the state’s first responsibility is to establish, using a reliable procedure, whether the claim is justified. This is not the place to investigate what form such a procedure should take, what kind of evidence must be

collected, etc., but the essential aim is to identify individuals who belong to groups that are under threat in their society of origin by virtue of religious affiliation, sexual orientation, political dissidence etc., or are unable for other reasons to lead a minimally decent life while remaining there. Once this is established, the state must decide how to respond. It may decide to admit the refugee on a temporary or permanent basis. But it may also provide asylum outside of its borders by agreement with another state, on condition that the human rights requirements are fulfilled there.

Such agreements are particularly appropriate when we reflect that the initial responsibility to protect human rights was general in form, which suggests that the burden of discharging it should be shared fairly among capable parties. Ideally, then, refugee flows would be managed by an international body applying burden-sharing principles and assigning refugees to particular receiving states on that basis. In practice such a scheme may be hard to devise because of disagreement about how to weight the relevant principles.¹⁷ In the absence of an international procedure, states may legitimately try to limit their responsibility to what they reasonably judge to be a fair share of the total burden. One way to do this, as just indicated, is to enter into bilateral or multilateral

¹⁷ For discussion, see 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; P. Schuck, 'Refugee Burden-Sharing: A Modest Proposal', *Yale Journal of International Law*, 22 (1997), 243–97; D. Anker, J. Fitzpatrick and A. Shacknove, 'Crisis and Cure: a Reply to Hathaway/Neve and Schuck', *Harvard Human Rights Journal*, 11 (1998), 295–310; T. Kritzman-Amir, 'Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law', *Brooklyn Journal of International Law*, 34 (2009), 355–93, Part I.

agreements for placing refugees in different safe havens. In practice, this will often mean richer countries paying poorer countries to accommodate refugees, as a glance at the current world-wide distribution of refugees suggests. Is this objectionable? Might individual asylum-seekers have a justice claim to be admitted specifically to the state where they lodge their claim to asylum?

It is difficult to see what might justify such a claim. As I have argued, by applying to a particular state, they create an obligation on the part of that state to assess their refugee status and to provide immediate human rights protection. But the state has discretion over whether to do more than this in any given case. It does not seem that the interest a refugee might have in moving to one state rather than another could be sufficient to ground a claim of justice against the favoured state. What is crucial is that the destination offered should provide adequate protection for the refugee's human rights. This may be affected by her expected length of stay: accommodation in a purpose-built refugee camp may be adequate if the period of asylum is likely to be short, for example, but if it will stretch many years into the future, then human rights such as the right to work, to practise religion, to raise a family and so forth will become more relevant. At some point, only full integration into the receiving society may provide sufficient opportunities, in which case the general standard of life in that society becomes a relevant factor when destinations are being decided.

Another issue is whether a state that wishes to accommodate refugees up to a maximum number but to arrange for the remainder to be placed elsewhere is

entitled to choose which refugees to take in, on the basis of criteria such as work skills, or whether it must use a random method of selection. Here I think it matters whether what is being offered is only what justice requires – protection of human rights for as long as proves to be necessary – or something more than that. A state that offers more – for example gives refugees permanent rights of residence with the possibility of moving towards full citizenship – may use relevant criteria to select them, of the same kind as it uses for economic migrants. It is providing a discretionary benefit over and above what justice itself demands, so provided the distribution of this benefit is governed by defensible principles, no injustice is done to those who are not chosen. Clearly an arrangement of this kind works to the advantage of those who are selected, and some of those who are rejected and offered asylum elsewhere will be worse off than they might have been if a randomised method of selection had been used, but such comparative considerations do not come into play when the underlying claim is one of human rights. We do not violate the human rights of some merely by doing more than human rights require for others, provided the others are chosen on relevant grounds. On the other hand, if state chooses only to provide the bare conditions of asylum, then if it is going to take in some and transfer others elsewhere, this selection should take place using random methods such as a lottery or first-come-first-serve.

I have argued that states are only required as a matter of justice to carry a fair share of the burden of admitting refugees, which entitles them to make arrangements to transfer refugees to other places of safety once that quota has

been exceeded. However given that the initial process of establishing refugee status and then arranging transfer may itself be quite costly, how far may states go in deterring initial applications? At present, states (such as the UK) which are among the more popular destinations for asylum seekers expend considerable effort in preventing refugees from reaching their borders.¹⁸ They have imposed ‘carriers’ liability’ on airlines and other transport providers, requiring them to check that their passengers have entry visas and levying high fines if this is not done. Since it may be difficult for refugees to obtain documentation while still in their countries of origin, the effect may be to prevent genuine claims for asylum from being lodged at all. This is clearly indefensible at the bar of justice. In principle there is nothing wrong with having a monitoring system for refugees within the country of origin, but it must be possible for the people concerned to get access to the system without fear of reprisals – and this can be problematic.

In my discussion of the justice claims of refugees, I have stressed that asylum should be regarded in principle as a short-term measure that lasts until human rights conditions have improved in the refugee’s country of origin. In practice, however, the period of asylum may stretch to the point where the refugee acquires a claim to permanent residence in the receiving state. The rationale for this is that a decent human life requires relatively stable conditions such that the

¹⁸ For analysis of the range of measures employed, see M. Gibney and R. Hansen, ‘Asylum Policy in the West: Past Trends, Future Possibilities’ in G. Borjas and J. Crisp (eds.), *Poverty, International Migration and Asylum* (Basingstoke: Palgrave Macmillan, 2005). For vivid descriptions of how this works in practice, see J. Harding, *Border Vigils: Keeping Migrants out of the Rich World* (London: Verso, 2012). For a critical appraisal, see M. Price, *Rethinking Asylum: History, Purpose and Limits* (Cambridge: Cambridge University Press, 2009), ch. 6.

person in question can plan for the future, develop a career, educate her children and so forth, which cannot happen if there is an ongoing possibility of removal at short notice. So beyond a certain point, hard to specify exactly, the refugee can claim residence, and eventually admission to citizenship, as a matter of justice. This claim is not unconditional. The host state can lay down (reasonable) conditions for acquiring these rights, as it can for all categories of immigrants.¹⁹ These will include observing the law, and adjusting in other ways to the public culture of the receiving society. But providing these conditions are met, it is a matter of justice that rights of permanent residence and access to citizenship should be granted in due course.

Economic Migrants

I turn next to explore the constraints of justice that apply to immigration policies for economic migrants, those whose human rights are not at risk by remaining in their country of origin but who have a personal interest in moving to the new society for employment or other reasons.²⁰ In so labelling them, I already make one assumption, which is that their human rights are not infringed by the very fact of being subject to immigration controls – in other words that there is no

¹⁹ For partially but not completely overlapping accounts of what these reasonable considerations are, see J. Carens, 'The Integration of Immigrants', *Journal of Moral Philosophy*, 2 (2005), 29-46 and D. Miller, 'Immigrants, Nations and Citizenship', *Journal of Political Philosophy*, 16 (2008), 371-90.

²⁰ I shall restrict the discussion to those who immigrate with the intention of becoming permanent members of the receiving society – i.e. I shall not consider temporary migrants and guest-worker programmes because these deserve a full, separate treatment for which there is not sufficient space in this essay.

general human right to immigrate. I have defended this assumption elsewhere and will not repeat the full defence here.²¹ In brief, I understand human rights to be rights whose joint fulfilment provides their bearer with the opportunity to live a minimally decent human life, and the right to cross borders is not an essential member of that set. Most people can lead decent lives while remaining in their present countries of residence, and although in the case of refugees the right to move to a new society becomes instrumental to protecting their human rights generally, this does not make the right to immigrate *itself* into a human right, any more than there is a human right to the anti-malarial drug chloroquine, say, because for some people this is what is needed to fulfil their human right to health care.²² So although economic migrants can properly demand that the state they are trying to enter should respect their human rights while in the process of making a decision – so should not, for instance treat them inhumanely while they

²¹ Most fully in D. Miller, 'Is there a human right to immigrate?' in S. Fine and L. Ypi (eds.), *Migration in Political Theory: The Ethics of Movement and Membership* (Oxford: Oxford University Press, forthcoming), and more briefly in Miller, 'Border Regimes and Human Rights'.

²² My claim is that the following argument form is invalid:

There is a human right to X
 For some people, having Y is necessary to securing X
 Therefore, there is a human right to Y.

Those people who need Y have a human-rights-based claim to receive it. But this is not the same as having a human right to Y. If there were such a right, then everyone would have a right to Y whether they needed it or not, and this is indefensible.

are present on the state's soil – they cannot appeal to human rights as the basis for their claim to enter.

For this category of immigrant, states are not under constraints of justice with respect to how many to admit; they can close their doors entirely if they choose to do so. But they may be constrained in the selection criteria they use if they choose to admit some but not others. This is less strange than it might appear at first sight. Justice may not require the provision of some good or service, but if the good is going to be provided, it may dictate how it should be distributed; in particular it may outlaw certain forms of discrimination. To borrow Michael Blake's example, a state is not required as a matter of justice to supply each citizen with a car, but if it decides to go into the business of providing cars, it cannot then provide them to white people but not to blacks.²³ But it might be said in reply here that this stems from a general principle of equal treatment that a state is required to follow in its dealings with citizens, and since we are here following a relational approach to justice, it cannot be assumed that the same principle will apply to the state's interactions with outsiders. Why, therefore, should a state not select economic migrants on any basis it likes, even including race? Intuitively we feel that there is something wrong about this, but why exactly should it be regarded as unjust?

One reason that might be proposed is that there is a human right against discrimination, and this applies to all policies that discriminate between people

²³ M. Blake, 'Immigration and Political Equality', *San Diego Law Review*, 45 (2008), p. 970.

on the grounds referred to in the relevant international documents, such as the International Covenant on Civil and Political Rights, which prohibits (in Article 26) discrimination on grounds such as ‘race, colour, sex, language, religion, political or other opinion,etc’. But this right clearly stands in need of interpretation. Its scope cannot be deduced from the formal statement in Article 26. There are presumably many contexts in which one or other of these criteria may properly be used for purposes of selection. It would not, for example, be considered a breach of human rights if a political party decides to draw up an all-women short list among candidates in a particular constituency, if a public broadcaster selects only among those able to read the news in Welsh, or a church confines membership to those who belong to its own faith. But these are examples of discrimination on the grounds of sex, language, and religion respectively. Indeed the European Convention on Human Rights goes to the other extreme when it confines the right against discrimination to discrimination in securing the *other* rights and freedoms set out in the Convention, which would fail to exclude many instances of discrimination that we would intuitively find objectionable. Somewhere in between, we want to be able to identify cases in which discrimination impacts on a person’s life in such a way that it falls below the threshold of minimal decency; this would allow us to identify the scope of the human right against discrimination. But as I have argued elsewhere, this would not cover invidious discrimination among economic migrants.²⁴ The human rights approach is not going to provide the answer we are looking for.

An initially more promising avenue is to argue that selecting immigrants on grounds of, say, race or religion is an injustice to some existing citizens, namely those who belong to the group or groups that the immigration policy disfavors.²⁵ By discriminating in this way, the state appears to be labelling these people as second-class citizens. As Michael Blake has put the point, 'the state making a statement of racial preference in immigration necessarily makes a statement of racial preference domestically as well'.²⁶ This will often provide states with strong reasons not to pursue discriminatory admissions policies, but a limitation of this approach is that it would not apply to a state that was already religiously or ethnically homogeneous and whose members wished it to remain so.²⁷ Notice also that the argument hinges upon the injustice that is done to existing citizens whose status is lowered by the discriminatory policy, not on any wrong that is done specifically to the excluded candidates for admission. We might therefore think that the focus is in the wrong place: the primary injustice of a discriminatory immigration policy is the one done to those whom it excludes, while the signal it sends out to existing citizens is a secondary (though still

²⁴ See Miller, 'Border Regimes and Human Rights', section V.

²⁵ It is followed by Joseph Carens, in 'Who Should Get in? The Ethics of Immigration Admissions', *Ethics and International Affairs*, 17 (2003), 95-110, and at greater length in M. Blake, 'Discretionary Immigration', *Philosophical Topics*, 30 (2002), 273-89, and M. Blake, 'Immigration'. I also used the argument in an earlier discussion, Miller, *National Responsibility and Global Justice*, ch. 8.

²⁶ Blake, 'Discretionary Immigration', p. 284.

²⁷ This is conceded by Blake in 'Discretionary Immigration', p. 285. See also Walzer, *Spheres of Justice*, pp. 35-51 and the discussion in Blake, 'Immigration'.

important) matter. But given the assumption that no economic migrant has a prior right to be admitted, what explains that injustice?

We need to consider the kind of claim that an economic migrant can lodge against the political community that she is seeking to enter. For reasons already given, she cannot claim that she has a right to enter such that the state is obliged to admit her. But typically she will have a strong-interest-based claim to lodge: given the degree of personal dislocation that migration involves, she must anticipate becoming considerably better off by moving to the new society – for example by virtue of being able to find work that is not available where she currently lives. So if the state is going to turn down her request, it must provide a relevant reason for doing so. The argument here relies on what I have elsewhere called the weak cosmopolitan premise, ‘the idea that we owe all human beings moral consideration of some kind – their claims must count with us when we decide how to act or what institutions to establish – and also that *in some sense* that consideration must involve treating their claims equally’.²⁸ Suppose that an immigrant could be admitted at absolutely no cost to the receiving state, but at considerable advantage to him. Then to turn the application down arbitrarily would mean that no consideration at all had been given to this person and his interests – he had been treated as though he were morally worthless. So if the weak cosmopolitan premise is accepted, then an

²⁸ Miller, *National Responsibility and Global Justice*, p. 27.

immigration policy that admits some but not others must offer relevant reasons to those excluded.

What could count as a relevant reason here? The criteria used to select among economic migrants must connect plausibly to the general goals of the political community. It is legitimate to favour those who are predictably going to be more valuable members of the community, for example those who will bring in skills for which there is a high demand, or those who can contribute actively to its cultural or political life.²⁹ Now these reasons are, in a sense, internal to the receiving community, since they depend upon the values contained in its public culture (economic development, democratic politics, etc.). So there is no guarantee that they will also count, directly, as reasons for the immigrant whose claim is refused. Yet he must in turn recognize the interest that the citizens of the receiving state have in political self-determination, and therefore in using immigration policy as one of several means to further the goals that they have chosen to pursue collectively. What matters is that the reasons are given

²⁹ C. f. Carens who (accepting for purposes of argument that states have a right to limit immigration) argues that a state that uses 'potential economic contribution' as a criterion for admission 'is selecting immigrants on the basis of its perception of the national interest. But since the country is morally free not to take any immigrants at all from the pool under consideration here, the fact that it is guided by its own interests in its selection of some for admission cannot be a decisive objection', ('Who Should Get In?', p. 108).

sincerely, and are comprehensible, not that the immigrant must be able to accept them as reasons for *him*.³⁰

How can this approach be used to explain the injustice of (invidiously) discriminatory immigration policies, such as those based on race or gender? The use of such criteria cannot be linked in any remotely plausible way to the values that a political community may wish to pursue. So someone who is refused entry on one of these grounds is having her interests set back without being given a reason that could justify her in being treated less favourably than her counterpart – a white male, say. She is being denied equal consideration, in violation of the weak cosmopolitan premise.

How far can this line of argument be taken? Consider the case of discrimination on grounds of religion. A political community may regard it as one of its objectives to promote the religion that most of its members adhere to, and therefore decide to give preference in admissions to those who already belong to that particular faith. A religious preference of such a kind would not be acceptable in a liberal democracy since it would violate the equality of citizens.³¹

³⁰ Here I stand a little apart from Blake's argument in 'Immigration and Political Equality', which in other respects I mirror quite closely. Blake says 'when the state selects only some prospective immigrants for admission, it must rely upon reasons that reflect the moral equality of all prospective immigrants – reasons that ought to be accepted in the end even by those excluded' (p. 971). I would replace 'reflect' with 'are consistent with', but the more salient point is that prospective immigrants may have (reasonable) views about the basis of public policy that are different from those held by members of the host state, in which case they will not accept as valid the substantive reasons that the state offers. But they might nonetheless accept that it is legitimate for the state to act on the basis of reasons that its own citizens hold.

But in a theocratic state it might count as a good reason. So there is unavoidably a contextual element to this aspect of justice in immigration. A policy that would count as unjustly discriminatory when applied by one state may not count as such when applied by another that can link the discrimination to the sincerely-held aims of its members.

Overall, then, justice only supplies relatively weak constraints on admission policies for economic migrants. They have no general right to be admitted; and the grounds on which they can be selected or rejected may be quite wide, depending on the values that are endorsed by the public culture of the receiving state.

Particularity claimants

I turn finally to consider the class of potential immigrants whose claim is that they already have a particular relationship with the receiving state that justifies their request to be admitted. One example would be a group of people who have been explicitly promised admission under certain circumstances: their right, and the state's corresponding obligation, is so clear as not to warrant further discussion here. I will also not discuss family reunification claims, important though these are in practice. The reason is that, along with others, I regard these claims as arising from the right of *existing* citizens to have the opportunity for a

³¹ I agree therefore with Carens when, discussing policies used by liberal states in the past to exclude immigrants on the basis of religion, he states that 'no plausible interpretation of liberal democratic principles is compatible with the exclusion of people on such grounds' ('Who Should Get In?', pp.104-5) while emphasizing that the argument as stated applies only to liberal democracies.

family life, and therefore to be able to bring their spouses and other immediate family into the country.³² In other words, they are really claims of social justice stemming from citizenship, rather than claims that arise from the relationship between state and prospective immigrant, which is the focus of this essay.

I shall consider two possible ways in which particularity claims to immigrate may arise: as claims to reparation, and as claims of desert. In the first case, a right to immigrate is being asked for as a way of redressing some wrong that the receiving state has inflicted on the prospective immigrant; in the second case, the claim is that the person deserves to join the society by way of reward for some service she has performed on its behalf. The logic of these claims is plainly different, so they need to be treated separately.

Immigration as a form of reparation has been defended by James Souter, who applies it specifically to asylum seekers.³³ The argument he makes is that if a state is responsible for the harm involved in making somebody into a refugee, then it owes them reparation, and granting asylum is very often the most fitting way in which this can be done. This argument seems valid, but notice that by focusing on asylum-seekers, it raises the question of whether reparation is really the main source of the justice claim here. One could instead present the situation as follows: the refugee has a claim for human rights protection which potentially

³² See Carens, 'Who Should Get In?', pp. 96-99; M. Lister, 'Immigration, Association, and the Family', *Law and Philosophy*, 29 (2010), 717-45.

³³ Souter, 'Towards a Theory of Asylum as Reparation for Past Injustice'.

could be lodged against any state that could offer her asylum, but if one state is chiefly responsible for bringing the condition of refugeehood about, then that state will also bear remedial responsibility for correcting it.³⁴ The idea of reparation may be less important than the idea of singling out some state as the one that bears the relevant responsibility. In order to disentangle reparation as such from the general responsibility to protect human rights, we should focus on cases in which the person claiming reparation is *not* a refugee. Instead her claim is that she has been harmed by the state in such a way that allowing her to immigrate is the only, or at least the best, way of repairing the harm.

Considered abstractly, this clearly makes sense as a claim of justice. In general, there is no problem in considering states as agents whose members bear collective responsibility for the harms that they cause.³⁵ This can be so even if the harms are brought about as a side-effect of policies that are beneficial as a whole. There may be slightly more difficulty in finding agreement across cultures as to what constitutes 'harm',³⁶ but I propose to set that problem aside here, and to assume that we harm somebody when we wrongfully damage some of their

³⁴ C.f. D. Miller 'Distributing Responsibilities', *Journal of Political Philosophy*, 9 (2001), 453-71 where I propose this way of understanding remedial responsibilities.

³⁵ As I have argued in *National Responsibility and Global Justice*, chs. 5-6. See also D. Butt, *Rectifying International Injustice* (Oxford: Oxford University Press, 2009), esp. ch. 6

³⁶ For discussion of the idea of a global harm principle, see A. Linklater, 'The Harm Principle and Global Ethics', *Global Society*, 20 (2006), 329-43, and R. Vernon, *Cosmopolitan Regard: Political Membership and Global Justice* (Cambridge: Cambridge University Press, 2010), ch. 7.

important interests (and that these interests refer to such things as their livelihood, their health, and so forth).

The bigger difficulty, I believe, is to show why granting the right to immigrate is the appropriate response to harmful behaviour. Suppose for example that one state inflicts environmental damage on the territory of another: one of its ships causes an oil spill that pollutes the coastline, or it diverts water from a river that is needed for agricultural production. Clearly it has harmed many of those who live within the affected state. But the right way to make reparation would be to remedy the damage directly – to clean up the oil spill, or to restore the river to its previous volume – and meanwhile to offer compensation to those whose livelihoods have been impaired. Since the purpose of reparation is to return the victims as nearly as possible to the position they would have been in had the wrongful event not occurred, it is better to try to rectify the situation on the ground than to move them to entirely new surroundings.³⁷ However there could be cases in which full physical reparation is impossible, with the result that the affected territory is less able to support human life, and then reparation might appropriately take the form of providing entry rights to at least some of its inhabitants.

³⁷ Against this, Souter argues that reparation in the form of asylum provides *immediate* protection of rights, whereas programmes of aid and development (and the same would apply to restoration programmes of the kind discussed here) take longer to implement (Souter, 'Towards a Theory of Asylum as Reparation for Past Injustice', pp. 12-13). This shows, however, that on-site reparation would need to be accompanied by forms of compensation to cover the victim's short-term losses if it is to be morally preferable to asylum.

At first sight, an even clearer instance of immigration as a form of reparation would be territories that become unable to sustain human life as a result of global warming, where no physical form of repair is possible. The complication is that here the harm is the joint product of the behaviour of many states, so it is unclear why a right to immigrate could be asserted against any one state in particular. But perhaps, in the absence of an agreed scheme for resettling those whose land has become uninhabitable, a right to reparation could be asserted against any state that has contributed significantly to the warming.³⁸ By way of analogy, one might think of compensation claims launched by sufferers from lung cancer against tobacco companies collectively, where it is not necessary to prove that P's cancer was caused by smoking company A's cigarettes in particular; the companies have been required to pay into a common fund in proportion to their relative share of the overall market for tobacco products.(check on this)

What next of desert as a source of particularity claims to immigrate? The problem here will be to show that immigration rights are an appropriate way of recognizing the deserts of non-citizens who have conferred benefits on the receiving state. The most relevant examples seem to be cases of military service. The French Foreign Legion, for example, has a rule whereby anyone who has

³⁸ There are of course other grounds on which one can argue that people driven from their land as a result of climate change have rights of resettlement elsewhere. For one such alternative, see M. Risse, 'The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth', *Ethics and International Affairs*, 23 (2009), 281-300.

served in the legion ‘with honour and fidelity’ for three years or more is entitled to apply for French citizenship.³⁹ For those who cannot wait that long, there has been since 1999 a further law according to which those who are wounded in battle while fighting for France can apply immediately – becoming ‘Français par le sang versé’. Although no doubt incentive considerations also played a part in the introduction of these measures, they have a clear desert rationale: how better to recognize and reward those who are willing to shed their blood for the country than to give them the right to live there (in the French case as full citizens)?⁴⁰

As noted earlier, a similar case was made, successfully, on behalf of Gurkhas who had served in the British Army and in retirement wanted to move from Nepal to Britain. But the experience of a number who have since moved has proved to be an unhappy one, and the British Gurkha Welfare Society has been campaigning for enhanced pension rights which would allow retired Gurkhas to live comfortably in Nepal rather than having to rely on meagre state-provided pension and housing benefits in the U.K..⁴¹ This suggests that what foreigners who have contributed military service to the state really deserve is something

³⁹ See <http://www.legion-recrute.com/en/faq.php#f4>.

⁴⁰ Or as the Legion’s own statement puts it, ‘La République peut-elle mieux témoigner sa reconnaissance qu’en offrant à ces combattants étrangers touchés dans leur chair de devenir Français à part entière ?’, http://www.legion-etrangere.com/modules/info_seul.php?id=165.

⁴¹ See ‘Was Lumley Campaign Good for Gurkhas?’ at <http://www.bbc.co.uk/news/world-south-asia-13372026>.

like ‘the conditions for a comfortable life’, rather than the right to immigrate as such. While immigration might indeed be the only way of providing these conditions in some cases, it does not seem that there is an internal link between desert and reward such that the only way in which desert of this kind can properly be recognized is by awarding the ex-soldier rights of residence and/or citizenship.

This brief review of particularity claims reveals that they often carry considerable weight, but do not always translate into rights to immigrate. Although it may be perfectly clear which state is the proper target of the claim, its content – in the sense of what, specifically, is required to meet it – is less determinate. Plausible alternatives to immigration rights may therefore present themselves. Perhaps, then, our conclusion should be that particularity claimants may need further reasons beyond reparation or desert to back up their requests to immigrate. This thought is taken up in the following section.

Conclusion: weighing the justice claims of immigrants

Justice in immigration requires in the first place that the state should respond fairly to the claims of individual people who want to join it. As we have seen, these claims can be of different kinds, depending on how, physically, the would-be immigrant is positioned vis-a-vis the state, and the reason she gives for admission. Since states are likely to want to place limits on the overall volume of immigration, and these may well be lower than would be necessary to meet all claims, we should consider how competing claims might be adjudicated. Could

they, for example, be placed in lexical order such that all immigrants in category A must take priority over the rest, then we move to category B, and so forth?

We have seen that refugees and particularity claimants have, in general, stronger claims to be admitted than economic migrants. But does either of these two categories take precedence over the other? It is difficult to say so confidently. Refugees have very strong claims to be admitted *somewhere*, based on their human rights, but may not have strong claims against *this particular state*. Particularity claimants may have strong claims to be shown favourable treatment by a particular state, but it's less clear that the favourable treatment must consist in being granted the right to immigrate. What we can say, however, is that those who fall into the intersection of the two categories – qualify for refugee status, but also can make reparative claims or claims of desert against the receiving state – should have lexical priority. This itself is not a trivial finding, because these may not be the immigrants who the state most wants to attract: for example they may not possess (or may no longer possess) skills that the existing citizens are most in need of. So by saying that justice requires their admission, we will be placing clear but limited constraints on the state's preferred immigration policy.

Is there more to be said about precedence as between refugees and particularity claimants? Let us put some flesh on otherwise dry bones. Suppose we are the U.K. Border Agency and we have (for some reason) to make a choice between two applicants for admission: a refugee from South Sudan, who can credibly show that her life is in danger because she has been an outspoken critic of the

regime, but who has no previous connection to the UK, and a young man from Iraq who worked as a translator for the British Army during the Gulf War, but who can no longer find work (so he is poor but not yet in desperate straits). Who should be taken first? Well, perhaps the Sudanese, since time is of the essence and she needs immediate help. But maybe she can claim less than the Iraqi eventually: if the Agency has made an arrangement for refugees from Sudan to be accommodated in neighbouring Kenya, that may offer sufficient protection for her human rights. The Iraqi man, on the other hand, may have a desert claim that can only be redeemed if he is provided with the opportunities that come with being allowed into Britain. If those judgements are correct, we cannot construct a simple order of priority beyond the top category noted above.

Moreover, we cannot entirely ignore those questions about social and global justice that I have been bracketing off so far. There may be social justice reasons for admitting particular classes of immigrants, such as those who help to provide essential welfare state services that for some reason locals are unable or unwilling to provide. There may also be global justice reasons *against* admitting those very same immigrants if the effect is to deprive people elsewhere of services that are essential to safeguard their human rights.⁴² These reasons will come into play when criteria of selection are being formulated for economic migrants, and also, as argued above, for some asylum seekers. So justice in immigration will very often be a matter of weighing claims. A just immigration

⁴² Though this argument has to be made with considerable care, as Kieran Oberman has shown: see K. Oberman, 'Can Brain Drain Justify Immigration Restrictions?', *Ethics*, 123 (2013), 427-55.

policy will be one that establishes an unconditional right of admission for a small group of refugees, while beyond that it is a matter not only of developing consistent criteria of selection, but of responding to claims *appropriately*, with treatment that matches the circumstances of each prospective immigrant.