MEMBERSHIP AND EXILE

Inclusion in the state and the political rights of refugees

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ABSTRACT

This thesis argues for a new normative understanding of refugeehood built around the concept of *membership*. I argue that, as a matter of legitimacy, all individuals require membership in a political community that is able to protect their basic rights. In our current way of organising the world, this means membership in the state. Refugees, I contend, are those who lack such membership and thus lack the effective guarantee of protection and security. Therefore, as a matter of legitimacy, refugees require new membership *elsewhere*. The first section of the thesis builds this new normative standard. Here I argue that the concept of membership already underpins many discussions in the political theory of refuge. I, therefore, aim to draw out and define the conception of membership that is most useful for thinking through refugeehood and exclusion from the state. I call this membership as *effective citizenship* which depends on three conditions: formal citizenship, the capacity of the state, and individual social standing. I then show that lacking membership in this sense is the central predicament of refugeehood, arguing that we should expand the definition of refugeehood beyond those who suffer persecution. In chapter four, I fully outline *the membership view of refugeehood*. The second section applies this view to three different spaces: the state of asylum, the state of origin, and the refugee camp. Here I focus specifically on refugees' claims to political inclusion. By conceptualising refugeehood as a lack of membership in the state, I show that refugees are entitled to new citizenship elsewhere and substantive political inclusion under conditions of voluntary return. I also show that a focus on membership gives us another reason to reject refugee camps as legitimate forms of refugee protection. I conclude by considering whether it is possible to imagine membership beyond the state.

INTRODUCTION

In his 1983 work *Spheres of Justice*, Michael Walzer writes that the first thing we distribute to one another is membership in a political community. This membership determines where we live, what kinds of entitlements we have, and how we are understood by our fellow members. All questions of justice, Walzer argues, follow from this first question of political membership. And so, without membership in any state, the individual lives in a "condition of infinite danger."[1]

We can see this infinite danger in the lives of those who are excluded from state protection: refugees and the forcibly displaced. In the last five years, 18,548 people have died attempting to cross the Mediterranean.[2] At the same time, the European Union expanded its extraterritorial border controls, solidified the status of its border police, and criminalized humanitarian assistance.[3] Many believe these deaths to be the direct result of EU policies, which prevent rescue operations and push migrants and refugees back to torturous conditions in Libya. Hassiba Hadj Sahraoui of Médecins Sans Frontières stated in 2020 that "the responsibility for these deaths lies squarely with EU member states, as the concrete and inevitable outcome of their murderous policies of non-

[1] Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), 32.
[2] IOM, "Missing Migrants Project," 2021, https://missingmigrants.iom.int/.
[3] For more discussion of how the European Union excludes asylum seekers see David Scott FitzGerald, *Refuge Beyond Reach* (Oxford: Oxford University Press, 2019).

assistance and the active blocking of NGO rescue ships."[4] Of course, the EU is not alone. Australia infamously warehouses refugees on small islands in deathly conditions abroad while they wait for their asylum claims to be considered.[5] One refugee said, after years of being detained on the island of Nauru, "it is better to be killed from one bullet than being slowly killed every day."[6] Refugees who arrive by boat – no matter how valid their claim to sanctuary – are barred from ever permanently settling in Australia.[7] The UK Home Office has recently suggested that it will adopt a similar policy for refugees arriving by boat across The Channel.[8]

While making it nearly impossible for refugees to arrive spontaneously, there remain essentially no safe and legal pathways for refugees to enter liberal-democratic states. Since 1994, resettlement offers each year have never exceeded 1% of the total number of refugees.[9] During the presidency of Donald Trump, the United States entirely banned the resettlement of refugees from many Muslim countries. The administration claimed that the admission for refugees was "detrimental to the interests of the United States."[10] This was done in the name of protecting the US from "foreign terrorists." During the COVID-19 pandemic, states have retracted their asylum policies even more, with the US effectively closing its southern border on public health grounds. Even those who do successfully reach the territories of states in the Global North are offered only temporary

[4] MSF, "Carnage in the Mediterranean Is the Direct Result of European State Policies," November 13, 2020, https://www.msf.org/eu-policies-blame-refugee-shipwrecks-central-mediterranean.
[5] For up to date information about the situation in Australian off-shore asylum centres such as Nauru, see Amnesty International, "Nauru Overview" (Amnesty International, 2021), https://www.amnesty.org/en/countries/asia-and-the-pacific/nauru/.
[6] Amnesty International, "'It's Better to Die from One Bullet than Being Slowly Killed Every Day' – Refugees Forsaken on Nauru," Amnesty International, August 4, 2016, https://www.amnesty.org/en/latest/news/2016/08/australia-cruel-fate-of-refugees-forsaken-on-nauru/.
[7] Library of Congress, "Refugee Law and Policy: Australia," 2020, https://www.loc.gov/law/help/refugee-law/australia.php.
[8] Jamie Grierson and Peter Walker, "UN Official Raises Concerns over UK Offshore Asylum Plan," *The Guardian*, March 18, 2021, https://www.theguardian.com/uk-news/2021/mar/18/gibraltar-isle-of-man-rule-out-housing-asylum-seekers-uk.
[9] FitzGerald, *Refuge Beyond Reach*, 3.
[10] Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States" (Federal Register, January 27, 2017), https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states.

and precarious forms of protection. No state automatically extends citizenship to refugees and almost all do their best to find reasons to repatriate them as soon as possible.[11]

Because of this exclusionary system implemented and dominated by powerful states, most refugees spend their lives in the Global South, often in neighbouring states to their country of origin.[12] This does not mean that South-South migration is always the second choice for refugees. Indeed, many may wish to remain close to their previous state in a region with a similar language and set of cultural practices. However, because of continuing global inequality, these countries often lack the capacity (and sometimes the will) to assist or properly integrate the number of refugees that they receive. For instance, the Kenyan Government has recently threatened to close its two largest refugee camps, Dadaab and Kakuma, which house around 400,000 displaced people.[13] Likewise, Turkey has warned that it will release refugees across the border into Europe while also forcibly returning them to unsafe conditions in northern Syria.[14] Refugees therefore almost inevitably live for long periods of time without proper protection from any state: warehoused in camps and settlements, or living in cities, but remaining always economically, politically, and socially excluded. It is evident that those seeking asylum face not only severe risks stemming from the cause of their displacement but also the endemic failure of other states to assist them.

In the face of such extreme injustice, turning to political theory may seem frivolous. But understanding the system that underlies this exclusion is necessary for learning how to resolve it.

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[11] See for example the discussions of German ministers on when Syrians could be forcibly repatriated: Deutsche Welle, "Germany Mulls Sending Migrants Back to Syria," *Deutsche Welle*, November 16, 2018, https://www.dw.com/en/germany-mulls-sending-migrants-back-to-syria/a-46336147.

[12] Throughout this thesis, I will use "state of asylum" to refer to the country in which the refugee is seeking or has sought asylum and "state of origin" to refer to the country from which the refugee has fled.

[13] Deutsche Welle, "Kenya to Close 2 Refugee Camps next Year," *Deutsche Welle*, April 29, 2021, https://www.dw.com/en/kenya-to-close-2-refugee-camps-next-year.

[14] Levent Kenez, "Turkey Accepts New Financing Agreement with the EU on Condition of Keeping Refugees in Its Territory," *Nordic Monitor*, May 4, 2021, https://nordicmonitor.com/2021/05/turkey-accepts-a-new-financing-agreement-with-the-eu-on-the-condition-of-keeping-refugees/; Human Rights Watch, "Turkey Forcibly Returning Syrians to Danger," July 19, 2019, https://www.hrw.org/news/2019/07/26/turkey-forcibly-returning-syrians-danger.

Many political theorists conceptualise the refugee's predicament as a kind of humanitarian crisis; the forcibly displaced face extreme misfortune and states have obligations to assist them on these grounds.[15] On this picture, the state's duties to rescue and protect refugees derive from their general duties to help needy outsiders. The core contribution of this thesis is instead to conceptualize refugeehood as a wholly political predicament.[16] That is, this thesis argues that refugees are those who lack political membership in any state and therefore lack the secure protection of their basic rights. As Hannah Arendt put it, refugees are "people forced to live outside the common world."[17] Refugees suffer from Walzer's condition of "infinite danger" precisely because they lack membership anywhere. In other words, defining who exactly counts as a member of the state is central to understanding the predicament of refugeehood. Refugees are not only displaced from their homes, their jobs, their communities: they are displaced from the system of state protection altogether. This is in line with Long's view that "the search for solutions to refugee situations is thus in part a struggle of the politically excluded for political inclusion."[18]

This thesis contributes to the political theory of refuge in several ways. In what follows, I argue for a new normative understanding of refugeehood based around a conception of membership and its role in legitimizing the international system of territorially bounded states. I contend that it is a basic condition of global legitimacy that all individuals enjoy membership in a state. I then

[15] Matthew Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004); Mollie Gerver, *The Ethics and Practice of Refugee Repatriation* (Edinburgh: Edinburgh University Press, 2018); Alexander Betts and Paul Collier, *Refuge: Transforming and Broken Refugee System* (London: Penguin Books, 2017); David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016).

[16] I am, of course, not the first person to conceptualise the refugee's predicament as a centrally political one. See, for instance, Hannah Arendt, *The Origins of Totalitarianism* (London: Penguin Random House, 1951); Emma Haddad, *The Refugee in International Society: Between Sovereigns* (Cambridge: Cambridge University Press, 2008); Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998). In political theory, Matthew Price, Max Cherem, David Owen, and Matthew Lister take similar politically informed approaches to refugeehood; the political view and the surrogate membership view. We will discuss this in chapter one.

[17] Arendt, *The Origins of Totalitarianism*, 395. My conceptualization of membership is similar but importantly different to Arendt's, as she depends on a particular understanding of politics and public space. Some, including Seyla Benhabib, have interpreted Arendt as grounding a right to international membership. I will discuss this further in chapter two.

[18] Katy Long, "Voting with Their Feet A Review of Refugee Participation and the Role of UNHCR in Country of Origin Elections and Other Political Processes" (UNHCR Development and Evaluation, 2001), 1.

argue that refugees ought to be understood as those who lack such membership. Most importantly, I argue that once we conceptualize refugees as those who lack membership anywhere, it follows that refugees require political inclusion elsewhere. This view builds on recent state system legitimacy approaches to migration governance and can be viewed as a reinterpretation of David Owen's understanding of the refugee protection regime as a kind of legitimacy repair mechanism.[19] I, therefore, outline and defend *the membership view* of refugeehood and consider its consequences for global refugee protection, with a focus on political rights.

The refugee question has received significant attention from political theorists over the past decade, with many seeking to determine who counts as a refugee and what kind of protection refugees are entitled to.[20] While adding to this literature, I hope to make three novel contributions. First, in centring the notion of membership in my account, my view also helps us to unpack a central question of political philosophy: what does it mean to be a member of a political community? Second, and relatedly, this way of defining refugeehood allows us to see that the refugee question is not separable from other forms of exclusion from the state. As I will argue in chapter two, the conception of membership as a form of effective citizenship drawn upon in the political theory of refuge can be extended to cover and explain other forms of oppression and domination. Therefore, refugeehood is continuous with other ways in which membership can be undermined or denied.

[19] David Owen, *What Do We Owe to Refugees?* (Cambridge: Polity, 2020); David Owen, "In Loco Civitatis," in *Migration in Political Theory: The Ethics of Movement and Membership Eds. Sarah Fine & Lea Ypi* (Oxford: Oxford University Press, 2016), 269–91; David Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," in *The Political Philosophy of Refuge Eds. David Miller & Christine Straehle* (Cambridge: Cambridge University Press, 2019), 19–38; Daniel Sharp, "Immigration and State System Legitimacy," *Critical Review of International Social and Political Philosophy*, December 8, 2020, 1–11, https://doi.org/10.1080/13698230.2020.1860416.

[20] For instance see: Andrew Shacknove, "Who Is a Refugee?," *Ethics* 95, no. 2 (1985): 274–84; Matthew Lister, "Who Are Refugees?," *Law and Philosophy* 32 (2013): 645–71; Owen, "In Loco Civitatis"; Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*; Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*; Matthew Price, *Rethinking Asylum: History, Purpose, and Limits* (Cambridge: Cambridge University Press, 2009).

Third, my focus on membership also allows us to attend to an often-ignored question in the political theory of displacement: the political rights of refugees and where they are entitled to them. As refugees require new membership on grounds of legitimacy, my view demands a far more rigorous standard of political inclusion than is currently recognized by many dominant theories of asylum. In contemporary refugee protection, the forcibly displaced are rarely treated as political subjects. Instead, the current refugee protection regime views them as needy individuals who merely require the temporary protection of their basic rights. Generous states may offer refugees a slightly speedier path towards citizenship, as some do.[21] But the idea that refugees are *entitled* to new membership in a new state may seem absurd to many. Likewise, refugees are often excluded from formal political inclusion in their countries of origin; although some states with external voting mechanisms do enfranchise refugees abroad, many lack the means or the will to do so. The same can be said for political participation in the governance of refugee protection itself. The United Nations High Commissioner for Refugees (UNHCR), the agency responsible for overseeing refugee protection, has no formal mechanisms for refugees to engage in top-level decision making. In confined protection settings – such as refugee camps or urban settlements – refugees have little say in key decision making. Some camps have councils led by refugees who act as elected representatives, but more often than not they are kept from having an impact beyond the distribution of food and shelter.[22] This lack of political voice in the state of asylum, the state of origin, and in various alternative protection settings, paints a difficult and problematic picture that political theorists need to consider; refugees are politically excluded from almost every space where inclusion could feasibly be offered.

[21] David Owen, "Refugees, EU Citizenship and the Common European Asylum System A Normative Dilemma for EU Integration," *Ethical Theory and Moral Practice* 22 (2019): 347–69, https://doi.org/10.1007/s10677-019-09973-x.
[22] Killian Clarke, "When Do the Dispossessed Protest? Informal Leadership and Mobilization in Syrian Refugee Camps," *Perspectives on Politics* 16, no. 1 (2018): 617–33. More expansive political structures are found in some camps. For more on this, see Kirsten McConnachie, *Governing Refugees* (London: Routledge, 2014).

Before I offer an outline of the chapters to come, I want to briefly discuss some of the other motivations for this project. In recent years the idea that refugees should be viewed as political agents in their own right has finally taken hold in refugee and forced migration studies. This growing literature highlights refugees' acts of resistance, protest, and negotiation.[23] Alessandro Monsutti argues that mobility *itself* is "a political act subverting classical forms of state territoriality and contesting the distribution of wealth."[24] This political agency turn might be viewed as a welcome reaction to the dominant portrayal of refugees as submissive victims, which is the prevalent cultural image of the refugee. Such a characterisation may be found in Georgio Agamben's conception of the refugee as *homo sacer:* an extreme instance of the *bare life* that lies beneath the citizen or subject.[25] This recent political turn goes beyond 'bare life' and paints refugees, instead, as political agents in their own right. This approach is also reflected in growing scholarship on 'acts of citizenship' as a way of reconceptualising citizenship beyond formal status, often focusing specifically on the political resistance of refugees and migrants.[26] Acts of citizenship are "[d]eeds through which actors and their actions irritate or subvert everyday routines or scripts, and thereby claim rights that have either not yet been formally granted… actors thereby constitute themselves and others as rights-claiming subjects."[27] Such work highlights protest as a form of 'citizenship practice' and constitutes the individual as a claim-making agent.[28] Focusing on migrant and refugee resistance elevates political action and agency outside of formal institutions, such as the nation-state, and instead draws attention to subversive and peripheral political movements.

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[23] Alex Dowdall, "The Greatest Parliament of Men": Refugees' Petitions to the League of Nations, 1919-1938" (Refugee Studies Centre Conference: Democratizing Displacement, New College, Oxford, March 18, 2019); Clarke, "When Do the Dispossessed Protest? Informal Leadership and Mobilization in Syrian Refugee Camps."
[24] Alessandro Monsutti, "Mobility as a Political Act," *Ethnic and Racial Studies* 41, no. 3 (2017): 44.
[25] Agamben, *Homo Sacer: Sovereign Power and Bare Life.*
[26] Rutvica Andrijasevic and Bridget Anderson, "Conflicts of Mobility: Migration, Labour and Political Subjectivities," *Subjectivity* 29 (2009): 363–66; Leanne Weber and Sharon Pickering, *Globalization and Borders* (Basingstoke: Palgrave Macmillan, 2011); Peter Nyers and Kim Rygiel, *Citizenship, Migrant Activism and the Politics of the Movement* (London: Routledge, 2012); Aleksandra Lewicki, "'The Dead Are Coming': Acts of Citizenship at Europe's Borders," *Citizenship Studies* 21, no. 3 (2017): 275–90.
[27] Lewicki, "'The Dead Are Coming': Acts of Citizenship at Europe's Borders," 276; Engin Isin, *Citizens without Frontiers* (New York: Bloomsbury, 2012).
[28] Lewicki, "'The Dead Are Coming': Acts of Citizenship at Europe's Borders."

This thesis is partially a reaction to this literature and the difficult questions that it leaves unanswered. Attending the membership question as I do, attempts to take seriously the refugee's political predicament, whilst also recognizing the power of the state in how political life is organized. There are, therefore, I believe, a few reasons to be sceptical of how this political agency turn portrays the relationship between individuals and the state. First, refugees are not always depicted as passive victims.[29] Indeed, even now refugees are more often portrayed as duplicitous individuals, attempting to jump queues, subvert border controls, and make "bogus" asylum claims. Passivity may have dominated the cultural imagination of refugeehood, but it is certainly not the only way in which they are understood. Second, in characterising all refugee action as an expression of political agency, we might misrepresent the precarious position in which refugees often find themselves. That is, whilst refugees seek to resist many of the institutions that maintain their destitution, their efforts are often unsuccessful. This is not because refugees are inept political actors. Of course not. It is instead because of the power wielded by institutions that bar refugees from protection. Moreover, discussions of political agency outside the state bring to the fore questions about the value of mutual recognition. That is, we need to ask how such political action is framed when refugees often go unrecognised by any formal political community. Whilst refugees do of course make powerful claims against the state, they are often ignored and excluded. What does this political agency amount to, then, when refugees and forced migrants (and indeed, all of us) remain at the mercy of the state? The state remains the central and most powerful institution

[29] During the Cold War refugees fleeing communism were often presented as "political heroes and courageous defenders of freedom"; Vanessa Pupavak, "Refugees in the 'Sick Role': Stereotyping Refugees and Eroding Refugee Rights" (United Nations High Commission for Refugees (UNHCR), 2006), https://www.refworld.org/docid/4ff159d32.html [accessed 17 July 2020].
We might also recall the figure of the 'Refugee Warrior', a much-cited example being Tutsi refugees who invaded Rwanda from Uganda and eventually overthrew the regime in 1994. The politicized image, then, is perhaps equally problematic. First, romanticizing the refugee figure is often an expressive act - the US accepting Cuban refugees during the Cold War was an expression of anti-communism. See Anthony Zolberg, "Refugee Warriors: A Problem of Our Time," in *Escape from Violence (Eds. Aristide Zolberg, Astri Suhrke and Sergio Aguayo)* (Oxford: Oxford University Press, 1989).

in our political world – perhaps even more so for those who are pushed outside of its boundaries. While perhaps not wishing to endorse the state as the envoy of justice, we should nevertheless always seek to take it seriously.

In what follows, I do not explicitly engage with this literature. However, part of the reason I attempt to take membership so seriously is in reaction to this political agency turn in refugee studies and its consequences for thinking about displacement. In highlighting the role of membership in the state, I attempt to move beyond the idea that individuals can claim rights without some kind of recognition by power. Ultimately whether refugees' political claims and rights are taken up and protected securely depends on whether they are included in the state. Refugees are, of course, as politically engaged as any other set of people, and often more explicitly so give their predicament of displacement. It was a mistake for refugee studies to conceptualise forced migrants as those who need to be offered assistance rather than as political agents who will demand what they are entitled to. However, it is also a failure to view the state as something we can ignore. It remains the core institution through which rights and protection are guaranteed. We have, to some extent, no choice but to work within it.

This thesis views refugees as products of a system of territorially bounded states that mediate access to security and rights through membership in political communities. I, therefore, argue for a definition of refugeehood centred on membership. That is, refugees are *individuals who lack membership in any political community and can only be protected through recourse to the international order of states and the provision of membership elsewhere.* I should emphasise here that my argument does not seek to endorse the state system as a whole. Instead, it is an attempt to think through the minimum conditions of legitimacy to ensure refugee protection in our current, messy world. Some may find this position overly conservative, arguing that by centring the state I reify it. However, in what follows I take it that the state remains the central institution in political life. As such, inclusion by

such power is necessary for the protection of basic rights. Even if we object to the system as it stands, refugees should not remain excluded while others sit comfortably included and protected. I come back to this question at the conclusion of the thesis when I consider whether membership beyond the state is possible. But now, an overview of everything to come.

Overview of argument

The thesis is divided into two sections. Section I, *Membership and Refugeehood*, contains four chapters. This section aims to lay the theoretical groundwork for the second section by developing and defending the membership view of refugeehood.

In **chapter one**, I outline the main debates in the political theory of refuge. Here I argue that membership is an already underlying concept in discussions of refugeehood in political theory. However, I contend that the idea of membership itself is poorly defined and under-theorised. This chapter therefore outlines and evaluates current definitions of refugeehood and draws out the ways in which the concept of membership is used. I begin with Andrew Shacknove's highly influential definition of refugeehood which argues that we should define refugees by the severing of a minimally sufficient bond between an individual and her state. I then focus on *the political view* and *the legitimacy views,* showing that both of these arguments suffer from two problems: (1) they depend on an undertheorized concept of membership and (2) they tie that focus on membership to the supposedly special harm of persecution. I then continue this argument by evaluating David Owen's recent work on differentiating three types of refugee protection: asylum (understood as surrogate membership), sanctuary, and refuge. He makes this distinction by arguing that persecuted individuals are owed asylum because their membership has been stripped through suffering the special harm of persecution. I argue here that Owen cannot maintain this distinction and that we should, again, focus on the fact of membership loss itself rather than the source of that loss.

However, despite these worries, I argue that Owen's legitimacy view of refugeehood is the best available approach to refugeehood and the corresponding duties of states. The following two chapters aim to remedy these worries: the undertheorizing of membership and the reliance on the supposedly special nature of persecution.

In **chapter two**, I outline and defend a conception of membership. Here I consider the literature on citizenship, arguing that membership is a different but related concept. In doing so, I distinguish between two forms of membership that are used in the political theory of migration: *membership as belonging* and *membership as effective citizenship*. I argue that the latter view of membership as a form of effective and functioning relationship is used by many when discussing refugees and the forcibly displaced. On this understanding, when an individual is a member of the state, she enjoys the secure guarantee of her basic rights. The remainder of the chapter develops a definition of membership that depends on the claimability of rights. Membership in the state requires formal entitlements as well as social and political standing. Membership can therefore only be guaranteed in political communities when (1) individuals have formal status in the political community, (2) the state has the relevant capacity and institutions to be able to uphold the rights of the individual, and (3) they have sufficient social and political standing for these entitlements to function as they should. Therefore, when one loses their membership, the rights and entitlements that citizenship is meant to guarantee fail to be realized.

In **chapter three**, I tackle the claim that persecution is the only way that an individual can lose or lack her membership in the state. As we will see in the first chapter, proponents of the political view and legitimacy views of refugeehood argue that persecution is a special moral harm that repudiates an individual's membership in the state. This chapter aims to consider various approaches to defining persecution and applies the definition of membership from chapter two. First, I outline the relationship between persecution and membership as it is understood by Owen

and Price. Second, I consider Price's discussion of persecution in greater depth, focusing on how he conceptualises the relationship between persecution and the repudiation of membership. I do so by considering, again, the idea of recognition and discuss how targeted persecution can be defined as non-recognition by the state. Third, I distinguish between the *denial* of membership and the *lack* of membership, arguing that individuals can lack membership without having been persecuted. I conclude that persecution is not the special moral harm that proponents of the political and legitimacy views often take it to be. Persecution violates the third condition of membership – the standing condition – but there are other ways in which membership can be undermined. Therefore, we should not use it as a proxy for determining who is entitled to asylum but should instead focus on the fact of lack or loss of membership itself.

In **chapter four**, I explicitly outline defend *the membership view,* drawing on the conceptual work from the previous chapters. This chapter aims to consolidate the arguments made in the thesis so far and put forward my argument for a new definition of refugeehood based on the concept of membership. Here I consider the way in which the membership view complements and builds upon David Owen's legitimacy repair view of refugeehood. I therefore argue that membership in a state is a basic legitimacy condition for the international order of states and that refugees are those who have been excluded from such membership. Therefore, refugees are individuals who lack membership (as effective citizenship) in any political community and can only be protected through recourse to the international order of states and the provision of membership elsewhere. Here I argue for a distinction between refugees and forced migrants: refugees are those who have lost their membership, whereas forced migrants must cross a border for their own safety but otherwise maintain membership in their state. The consequences of this are spelt out in the following section.

Section II, *Political Rights in Exile,* considers the question of how we should think about refugees' claims to political rights in light of the view defended in the first section of this thesis. It comprises four chapters in which I focus on enfranchisement and naturalization.

In **chapter five**, I introduce the aims and argument of the second section of the thesis. I give a general overview of the literature on political rights, considering what is distinctive about political inclusion. I outline typical arguments in favour of political entitlements in various settings: the all-affected interests view, the coercion view, the stakeholder view, and the social membership view. I will use these approaches throughout the second section to think through the obligations of various institutions. Importantly, in this chapter, I am not specifically arguing against or in favour of any of these views. Rather, I contend that refugees have a special claim to political inclusion based on their lack of membership. The aim here, then, is not so much to undermine these accounts but to show that they can be superseded in the case of refugees. Such an approach shows that a refugee's claim to political inclusion is overdetermined; it can be grounded both in existing approaches to political inclusion as well as from the conceptualization of refugeehood itself.

In **chapter six**, I consider the political rights of refugees in the state of asylum. First, I sketch the history of refugee political inclusion in the state of asylum. This section shows, first, that refugee naturalization has always been (at best) piecemeal in nature. That is, refugees *are* sometimes offered citizenship, but this is usually for discrete, self-interested reasons. There has therefore never been a strong norm of naturalization for refugees. However, this section also shows that refugee naturalization is not so rare as it first appears. Instead, there are examples of mass naturalization being proposed as a durable solution to displacement, most notably by Fridtjof Nansen in the interwar years as part of a League of Nations. This section will also provide an overview of current practice, showing that there is wide variation in policy. No state offers immediate citizenship to refugees, and Scotland is the only country that enfranchises refugees after completing a successful

refugee status determination. Second, I outline what current normative approaches to political inclusion (discussed in the last chapter) can tell us about the rights of refugees in the state of asylum, considering the all-affected interests, coercion, social membership, and stakeholder approaches. Here I argue that, whilst these offer a strong account of why refugees should be enfranchised and naturalized, these arguments often cannot capture the particularities of refugeehood. Third, I consider the implications of the membership view, arguing that refugees require formal citizenship to access new membership in their state of asylum. Developing on my argument from chapter four, I spell out why exactly formal inclusion is required for membership. I also consider how my view differs from David Owen's account of refugee naturalization. However, I also show here that my view does not imply that refugees can only be offered asylum by democratic states. Instead, refugees require political and social status in equal standing with other members within the particular political community, above some minimum threshold. The final section considers some further implications of my approach, for instance, the possibility of citizenship in a state other than the one in which the refugee is currently residing or by a supra-national institution, such as the European Union or United Nations. I argue that whilst these are possibilities, there are good reasons why the state of asylum is the most appropriate provider of membership in many cases. When this is not the case, other states have a collective duty to ensure that secure membership is offered elsewhere.

In **chapter seven** I consider the political rights of the refugee in her state of origin, in particular the possible approach of external voting mechanisms. I consider here whether external voting mechanisms might be a way of re-establishing membership in the state of origin. First, I outline the history and practice of external political representation and how it applies to refugees. Here I distinguish between individualized and group political inclusion, as well as formal and informal political engagement. Here I also justify a narrowing of focus to specifically consider individual formal inclusion in national elections and referenda. Second, I outline the existing discussion of

external voting in political theory, considering the expansive turn in normative approaches to enfranchisement. Here, I outline why refugees might have a particularly strong claim to retain voting rights in exile. Finally, I will outline what the membership view implies for inclusion in the state of asylum, arguing that it can help us to rethink what is required in cases of refugee repatriation or return. I follow Katy Long and Megan Bradley in arguing that repatriation should be viewed as a political process rather than a physical one: refugees can regain membership in their state of origin without having to physically return.[30] The final section considers objections and replies, most saliently worries dual nationality about double voting.

In **chapter eight** I consider the refugee camp as a test case for possible forms of membership beyond the state. First, I will consider what we mean by 'refugee camp.' Here I will show that much philosophical work on camps relies on the dominant cultural understandings, rather than how camps function in practice. Second, I will outline the more recent literature on politics and political activity in refugee camps. Here I will again consider the distinction between membership *as belonging* and membership *as effective citizenship*, arguing that refugee camps can clearly function as spaces of political belonging and activity, but the question remains as to whether they can offer a more substantive form of membership. Third, I will consider the question of voting in refugee camps, arguing that whilst refugee camps should be democratically run by refugees, this is not enough to satisfy the need for membership. Fourth, I will consider whether camps could theoretically satisfy this condition, arguing that membership-providers must have autonomy, be recognised as distinct political units, and have the means to provide residents with the secure and ongoing protection of their human rights. Therefore, if camps *could* provide membership, they are no longer camps: in process of providing membership, they become a kind of city-state. Here I outline a potential camp that could meet such a condition, the Pikpa camp in Lesvos, Greece. The

[30] Katy Long, *The Point of No Return* (Oxford: Oxford University Press, 2013); Megan Bradley, *Refugee Repatriation: Justice, Responsibility, and Redress* (Cambridge: Cambridge University Press, 2013).

final section of this chapter confronts Nick Van Hear and Robin Cohen's recent proposal for *Refugia,* a "utopian" solution to mass displacement. Here I argue against institutionalising camps as membership-providing bodies. Instead, I argue that there are reasons of justice to instead offer refugee integration into our usual membership institution: the territorialized nation-state.

The **conclusion** of the thesis aims to consider whether there is any way to imagine an alternative political community. Here I continue to ask whether membership is available to refugees beyond the state and outline some other more radical solutions to the question of membership for refugees, for instance through trying to guarantee membership in other ways. I end with scepticism about a new way forward, arguing that my approach of re-absorbing refugees into the current frameworks of protection is a better way to guarantee their security.

METHODOLOGY

This thesis is primarily a work of normative analytic political theory which also draws on the broader literature in refugee and forced migration studies.[1] Normative political theory is primarily concerned with "conceptual, normative, and evaluative questions concerning politics and society, broadly construed."[2] The best characterisation, in my view, of what it feels like to do this kind of conceptual work was offered by Nozick in the preface to *Anarchy, State and Utopia:*

> All those things are lying out there, and they must be fit in. You push and shove the material into the rigid area getting it into the boundary on one side, and it bulges out on another. You run around and press in the protruding bulge, producing yet another in another place. So, you push and shove and clip off corners from the things, so they'll fit, and you press in until finally almost everything sits unstably more or less there: what doesn't gets heaved *far* away so that it won't be noticed.[3]

[1] In my view, the distinction between political theory and political philosophy is a product of the academy, rather than much of a genuine methodological difference. Particularly when engaging in non-ideal or real-world political philosophy. For the sake of the thesis, I use the term political theory.
[2] Christopher List and Laura Valentini, "The Methodology of Political Theory," in *The Oxford Handbook of Philosophical Methodology Edited by Herman Cappelen, Tamar Szabó Gendler, and John Hawthorne* (Oxford: Oxford University Press, 2016), 525.
[3] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), xiii.

To me, this is almost exactly what it has felt like to write this thesis. In what follows, however, I will sketch how I have approached various aspects of this pushing and shoving. In particular, I will work through three key distinctions, outlining where I stand on each of them. These are: ideal or non-ideal, practice-dependent or practice-independent, and applied or engaged.

To begin, I should note that some political theorists – particularly those working on migration – have now begun to do empirical fieldwork alongside their normative analysis. Mollie Gerver, for instance, undertook interviews for her project on repatriation, and Anver De Shalit recently undertook what he called "reflective public equilibrium" for his work on immigration and cities.[4] I did not undertake fieldwork in my thesis, particularly because my work would suffer from a 'boundary problem', given that I argue in what follows for a reshaping of the concept of refugeehood. However, although what follows does not feature this kind of empirical material, it is informed by historical and political analysis. It is to that extent a work of *non-ideal* or *real-world* political theory. Indeed, working on the political theory of refuge essentially demands non-ideal theorising; the very fact that refugees exist means that we live in a non-ideal world.[5] Joseph Carens helpfully distinguishes between what he called *realistic* and *idealistic* approaches to work on migration. He writes:

> The realistic approach wants to avoid too large a gap between the ought and the is and focuses on what is possible given existing realities. This approach, however, inhibits us from challenging fundamentally unjust institutions and policies. The idealistic approach, in contrast, requires us to assess current reality in light of our highest ideals. Its weakness is that it may not help us answer the question of how to act in this non-ideal world.[6]

[4] Gerver, *The Ethics and Practice of Refugee Repatriation*; Anver DeShalit, *Cities and Immigration: Political and Moral Dilemmas in the New Era of Migration* (Oxford: Oxford University Press, 2018).
[5] Joseph Carens, "Realistic and Idealistic Approaches to the Ethics of Migration," *International Migration Review* 30, no. 1 (1996): 156–70.
[6] Carens, 156.

The realistic approach, then, aims to offer prescriptions on what can be done in the here and now – it avoids a potentially large gap between what is and what ought to be. This thesis fits into this former category. It, therefore, takes many features of the current system of states for granted and engages in "problem solving under a particular constraint."[7] Most importantly, I assume that states have the right to exclude outsiders and that this is an important feature of state sovereignty. Given that states are unlikely to implement total freedom of movement, accepting this is a key component of attempting to have some real-world application. Of course, I accept that states are also highly unlikely to implement the normative recommendations made in this thesis. In many ways, any kind of argument for the expansion of refugee protection is often viewed as overly idealistic – in the past decade, powerful states have restricted their immigration and asylum policies rather than opening them up. Whether states are willing to accept my view is not a sufficient reason to reject it, though it does provide us with reasons to think that the current system is even more unjust than we had previously imagined.

I am also assuming that the territorially bounded state has the potential to be a legitimate social arrangement: it may be that the state is a fundamentally unjust way of organising our political world, but that will not be my focus here. Some, notably Phil Cole, view this kind of project as mistaken at the outset. That is, I am framing the refugee as a kind of "problem" for the international order of states as opposed to thinking how the system itself may be problematic. Cole argues that "what we need to do is to flip this perspective around and see the refugee as the active *subject* of the Refugee Question – that is both asking it and actively seeking an answer to it – and that the citizen of the nation-state be constructed as the problem, a problem that needs to be solved in the interests of the refugee."[8] Kukathas makes a similar point, writing that "I am not sure

[7] List and Valentini, "The Methodology of Political Theory," 527.
[8] Phil Cole, "Framing the Refugee," November 2016, https://www.e-ir.info/2016/11/25/framing-the-refugee/.

that a solution [to the refugee question] can be found that does not require a serious diminution in the importance of the state, and of membership of states."[9] I agree with the challenge here – that in attending to the question of how we should resolve refugeehood altogether, reorganising political life would be the most complete solution. However, I do not challenge the overall ordering of society as such in this thesis. Centrally, there is the question of feasibility. Although it might seem hugely unlikely that states accept my proposal to offer immediate citizenship to refugees in the coming decades, it is even more unlikely that they will choose to re-order global society in its totality. A certain amount of realism is therefore required. However, in what follows I do attempt to refrain from positioning refugees as any kind of "problem." Instead, I frame refugeehood as an obvious symptom of a particular kind of political arrangement: the system of territorially bounded sovereign states. Therefore, while I do take this system as given, I do not necessarily endorse it. I come back to the question of life beyond the state in the conclusion of this thesis, asking whether the concept of membership and the approach to refugeehood that I outline opens up space for thinking about new kinds of political organisation. Although, as you'll see, I'm not optimistic about this possibility.

Because of the constraints that I've set out so far, my work could be viewed as engaging in a *practice-dependent approach* to political theorising. That is, the conditions of legitimacy and justice that I outline only arise in a specific kind of social and political system part of determining what justice demands involves interpreting the practice in question. Even Rawls, often taken to the archetypal idealistic political philosopher, takes certain practices as given and (arguably) views the conditions of justice as arising from such practices.[10] In the *Laws of Peoples,* for instance, he begins with "the

[9] Chandran Kukathas, "Are Refugees Special?," in *Migration and Political Theory: The Ethics of Movement and Membership (Eds. Sarah Fine and Lea Ypi)* (Oxford: Oxford University Press, 2016), 266.
[10] This is a recent reinterpretation of Rawls's overall project and one that I find convincing. For more on this, see: Aaron James, "Constructing Justice for Existing Practice: Rawls and the Status Quo," *Philosophy & Public Affairs* 33, no. 3 (2005): 281–316.

international political world as we see it."[11] As Aaron James puts it, a practice-dependent approach does not simply mean taking the unalterable facts of human life as our starting point – for instance, basic facts about human needs – but also "forms of social organization that could well be fundamentally reorganized or abandoned, given enough time and favourable circumstances."[12] In our political theorising, we must take these kinds of social arrangements as a given in order to understand what justice requires *for us,* as opposed to those living under some other way of organising political life. As Rawls puts it "[c]onceptions of justice must be justified by the conditions of our life as we know it or not at all."[13] There are two kinds of practice-dependent approach, of which I adopt the second. First, the *interpretivist* approach which argues that justice consists in how we value and understand a specific practice.[14] Justice is therefore a standard understood internally through interpretation. Second, the *institutionalist* approach rejects this view and instead adopts, first and foremost, a non-practice dependent commitment to the equality of persons. However, the institutionalist argues that we need to consider the shape and scope of current practice in order to determine what this commitment demands of us: "what we owe to each other given our fundamental moral equality depends on the specific types of institutions in which we participate."[15] Importantly, accepting the existence of the international system of states as my starting point, this account does not suffer from the same problem of *scope* as some similar practice-dependent accounts. That is, some who take the domestic as their initial framework, for instance, those adopting a Rawlsian understanding of the "basic structure", risk arbitrarily excluding some of the coverage of the presumption of liberal equality.[16] In considering the global

[11] John Rawls, *Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 83.
[12] James, "Constructing Justice for Existing Practice: Rawls and the Status Quo," 295.
[13] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 454.
[14] Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," *Journal of Political Philosophy* 16, no. 2 (2008): 137–64, https://doi.org/10.1111/j.1467-9760.2007.00291.x.
[15] Laura Valentini, "Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism," *Journal of Political Philosophy* 19, no. 4 (2010): 409, https://doi.org/10.1111/j.1467-9760.2010.00373.x. For a longer discussion of the distinction between interpretive and institutional approaches see Valentini, "Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism."
[16] Valentini critiques institutional approaches concerning distributive justice for this problem of initial scope: Valentini, "Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism," 416.

institution, my approach has full coverage and so does not suffer from this short-coming. As noted earlier, I am not arguing that the international system of state is the optimal way in which to organise global governance. Instead, I take this institution as my starting point and ask *given this arrangement* what constraints on legitimacy apply and how this effect states' duties to refugees.

The relationship between ideal/non-ideal and practice-dependent/practice-independent methodology is a messy and developing literature in political theory. However, I view these debates as to some extent orthogonal to one another. That is, we could adopt an ideal practice-dependent or a non-ideal practice dependent account. My approach is non-ideal because it assumes a certain political arrangement *and* non-compliance within that system: (1) it assumes the state system as it exists and (2) it assumes that refugees exist as a result of non-compliance or a lack of capacity.

Another helpful distinction here is between what we might call *applied philosophy* and *engaged philosophy*.[17] Applied theorizing involves establishing a prior and separate theory which is then applied to specific real-world problem. The real world here, then, serves as a space for theory testing. Engaged philosophy, however, aims to involve the real-world in this first step of theory development.; it considers real-world puzzle or problem from the offset and develops a theory around it. This thesis is a project of *engaged philosophy*. I begin with a real-world problem – the existence of people who are forced from their homes as a product of our international system of territorially bounded states – and use it to develop theoretical concepts. The latter chapters of the thesis then demonstrate the implications and complications of this view regarding the political rights of refugees.

[17] Johnathan Wolff, "Method in Philosophy and Public Policy: Applied Philosophy versus Engaged Philosophy," in *The Routledge Handbook of Ethics and Public Policy Ed Annabelle Lever and Andrei Poama* (London: Routledge, 2018).

I should also say something about how I approach the development of definitions and concepts in this thesis. One of my core aims is to pull out and unpack a central idea underlying existing discussions of refugeehood: namely, the concept of *membership*. I am therefore engaging in what Mary Midgley has called *philosophical plumbing*. She writes: "plumbing and philosophy are both activities that arise because elaborate cultures like ours have, beneath their surface, a fairly complex system which is usually unnoticed, but which sometimes goes wrong. In both cases, this can have serious consequences. Each system supplies vital needs to those who live above it. Each is hard to repair when it does go wrong, because neither of them was ever consciously planned as a whole."[18] *Philosophical plumbing* therefore involves ripping up the floorboards and thinking about the underlying concepts that determine our thinking on the surface. There are a few questions to be answered when thinking about how we approach putting a forward particular definition or concept. Here I want to briefly outline an important distinction made by Sally Haslanger, who discusses three ways to approach definitions.[19] First, *conceptual* projects investigate our normal concept of X. Second, *descriptive* projects determine what X is usually applied to. Third, *analytical* or *ameliorative* projects aim to determine "what is the point in talking about X at all?" This third approach aims to situate definitions of X within our broader political projects. Therefore, "ameliorative projects… require actively making decisions about what to mean with our words." The first section of the thesis outlines and defends normative definitions of particular concepts: membership and refugeehood respectively. Here, I am engaging in analytical and ameliorative approaches. In doing so, I hope to offer an account that is both normatively convincing and has practical force. I am thus not attempting to put forward an account of how the terms 'refugee' and 'membership' are commonly used. Instead, the hope is – like most projects in political theory – to argue for a specific interpretation or conception of an idea, to help us make better sense of the harms that refugees face and states' duties towards them.

[18] Mary Midgley, *Utopias, Dolphins, and Computers: Problems of Philosophical Plumbing* (London: Routledge, 1996). 139
[19] Sally Haslanger, "Gender and Race: (What) Are They? (What) Do We Want Them to Be?," *Nous* 34, no. 1 (2000): 31–55. Also discussed in Kate Manne, *Down Girl* (London: Penguin Books, 2018), 42.

A final word should be said on how I have approached the overall tone of what follows. Principally, we should note the importance of refugee voices in the political theory of displacement. As Sarah Fine has highlighted, theorising about displacement can often involve speaking about refugees rather than thinking *with* them. She writes: "philosophical work on this subject is often conducted from the perspective of people who are not themselves refugees and have limited experience of the challenges faced by people seeking asylum. It has a tendency to take on an 'us' and 'them' quality (even where that is seemingly 'benign', e.g., 'what should we do for them?')"[20] Although much more needs to be done to think through how refugee voices can be included in a more radical way, I still hope that throughout the thesis I have avoided positioning refugees as "outsiders" in both theory and practice. I have been attentive to this challenge when writing and editing.

[20] Sarah Fine, "Refugees and the Limits of Political Philosophy," *Ethics & Global Politics* 13, no. 1 (January 1, 2020): 8, https://doi.org/10.1080/16544951.2020.1735017.

SECTION ONE

Membership and Refugeehood

CHAPTER ONE

The Political Theory of Refuge

Questions generated by the existence of forced displacement have received a great deal of attention from political theorists in recent years. This chapter outlines and discusses some of the core debates, in particular the dual questions of *who counts as a refugee* and *to what protection is the refugee entitled*. In doing so, I map the current terrain and set out some important worries. In what follows, I will give reasons to favour a state system legitimacy view of the refugee protection regime. I argue that these more political understandings of refugeehood are the best approaches available to us for several reasons. First, they take the current system of global governance seriously and, second, they account for the collective duties that states have towards the displaced. The critiques offered here, therefore, aim to highlight how existing views might be re-interpreted for the better. I thus defend a new popular account of refugeehood developed by David Owen.[1] However, I point out two important flaws in his position: (1) the lack of a proper theorization of the concept of membership and (2) a related over-reliance on the importance of persecution. The following two

[1] Owen, "In Loco Civitatis"; Owen, *What Do We Owe to Refugees?*; Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge."

chapters will then take these flaws head-on, one by one, before outlining a new legitimacy view of refugeehood that overcomes them in chapter four.

As we will see in what follows, these flaws are also shared by many other accounts of refugeehood. Most notably, the lack of a shared conception of membership is endemic in the literature on displacement. This is problematic, given that the idea of membership is often central to many understandings of refugeehood. We will encounter several arguments in this chapter, most notably *the humanitarian view, the political view* and *the legitimacy view*. The latter two approaches adopt a similar view on membership and persecution but nevertheless differ importantly in their structure. I will later argue that we have duties to assist refugees precisely because they lack membership in any state that is able or willing to protect their basic rights, and that these duties are owed on grounds of international legitimacy. However, before we can attend to that argument in chapter four, we will need to lay some important groundwork. To begin, then, the terrain so far.

Who is a refugee?

There is little doubt that many theorists treat refugees as 'special.'[2] By this, I mean that even those who defend the state's right to exclude voluntary migrants still claim that states have obligations to assist refugees.[3] Doing so, as Joseph Carens puts it, "treats the obligation of states to admit refugees as an exception to the general rule that states are free to control entry and resettlement."[4] Christopher Heath Wellman likewise points out that:

> [W]hile theorists may vehemently disagree as to whether a country has a right to design and enforce its own immigration policies, even those who affirm a state's general right to exclude foreigners

[2] For a discussion of the question of whether refugees are "special" (distinct from other necessitous strangers) see: Kukathas, "Are Refugees Special?"
[3] For example, David Miller and Christopher Heath Wellman both fit into this category.
[4] Joseph Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), 194.

> typically make an exception in the case of refugees. It is one thing for the United States to refuse to admit a Russian ballerina who would like to study and perform in New York… but is another thing altogether for it to turn away a political dissident who rightly fears persecution by the oppressive regime in her home state.[5]

Refugees are thus usually treated as distinct from voluntary migrants: those who are able to choose when they attempt to move across borders. From the perspective of the state, the question of who counts as a refugee is an important one, as it draws the boundary around whom the state can legitimately exclude from its territory. Likewise, the question is of course very important from the perspective of the forced migrant herself. Refugees are often singled out as being entitled to a particular set of rights in the state of asylum – those who fall outside of this definition may be left without international protection. So, as with many normative questions concerning refugees, the stakes here are high. Getting our answer to the two questions of 'who is a refugee?' and 'to what is the refugee entitled?' wrong could lead either to over-inclusion and the potential exhaustion of the refugee regime, or under-inclusion, with those entitled to protection being left to their fate. As Shacknove puts it:

> An overly narrow conception of "refugee" will contribute to the denial of international protection to countless people in dire circumstances whose claim to assistance is impeccable. Ironically, for many persons on the brink of disaster, refugee status is privileged position. In contrast to other destitute people, the refugee is eligible for many forms of international assistance, including material relief, asylum, and permanent resettlement. Conversely, an overly inclusive conception is also morally suspect and will, in addition, financially exhaust relief programs and impune the credibility of the refugee's privileged position among host populations, whose support is crucial for the viability of international assistance programs.[6]

[5] Christopher Heath Wellman, "Immigration," Stanford Encyclopaedia of Philosophy, 2019, https://plato.stanford.edu/entries/immigration/.
[6] Shacknove, "Who Is a Refugee?," 276.

Whilst we should be careful to get the answers to these questions right, we should also not allow current institutions of refugee protection to constrain our moral thinking on this issue. That is, if the normative arguments point us in a more radical and inclusive direction than current practice recognizes – as I believe they do – then our conclusion may be that the institution of refugee protection simply needs a radical makeover as well.

Many trace the roots of our contemporary understanding of refugeehood back to the Huguenots, who fled to protestant states in the mid-1680s, following Louis XIV's issuing of a proclamation that withdrew their right to religious freedom. The word 'refugee' itself entered the English language at this time; the French word *réfugié* was used specifically to describe Huguenots fleeing France.[7] Of course, the practice of offering asylum to those fleeing persecution began long before the 17th century. Matthew Price traces the history of asylum to Ancient Greece, where individuals could claim sanctuary from their pursuers in places of worship.[8] More commonly, however, normative discussions of refugeehood often begin by looking back to the formal declarations of the rights of refugees and asylum seekers from the mid-20th century. The Universal Declaration of Human Rights (UDHR) was the first international legal document to recognize the right to seek asylum. Article 14 proclaims that "everyone has the right to seek and enjoy in other countries asylum from persecution."[9] This legal development was quickly followed by The Geneva Convention on the Status of Refugees in 1951 which enshrined the rights of refugees in international law. The Geneva Convention also led to the creation of the International Refugee Organization (IRO) to be replaced with the United Nations High Commissioner for Refugees (UNHCR), which is still the leading UN body on refugee issues today.[10] The Geneva Convention

[7] Phil Orchard, *The Right to Flee* (Cambridge: Cambridge University Press, 2014), 1.
[8] Price, *Rethinking Asylum: History, Purpose, and Limits*, 26–27.
[9] United Nations, "Universal Declaration of Human Rights," 1948, https://www.un.org/en/universal-declaration-human-rights/.
[10] Before the IRO was created, the League of Nations High Commissioner for Refugees was responsible for refugee protection. I will discuss this in more depth in chapter six.

definition of a refugee is still used in current practice and often provides a starting point for normative theorizing on the question of who counts as a refugee. The Geneva Convention defines a refugee as someone who:

> [O]wing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself to the protection of that country.[11]

The first thing to notice about the Geneva Convention definition is its restrictiveness. It defines a refugee as someone with a well-founded fear of *persecution,* which must also be related to a specific trait – race, religion, nationality, membership of a particular social group, or political opinion – known as a 'protected characteristic.'[12] The definition also stipulates that a refugee must be outside of her country of nationality, further restricting the definition to those alienated from their state. Whilst interpretations of persecution and protected characteristics have become increasingly broad in recent decades, there are still many forced migrants who do not receive Geneva Convention refugee status.[13] For example, most Syrian refugees in the EU states instead receive 'subsidiary protection' rather than full Convention protection.[14] Moreover, the Geneva Convention historically excluded many forced migrants from assistance as it previously included explicit geographical and temporal limits. Only those displaced within Europe before January 1951 qualified for protection. As a result, forced migrants in the British Colonies, for instance, those

[11] UN General Assembly, "Convention Relating to the Status of Refugees" (United Nations, July 28, 1951), 14, https://www.refworld.org/docid/3be01b964.html.
[12] For a discussion of protected characteristics, see: Joseph Rikhof and Ashley Geerts, "Protected Groups in Refugee Law and International Law," *Laws* 8, no. 4 (2019).
[13] For instance, many LGBTQ refugees now receive protection under the Geneva Convention as a broadening of the interpretation of 'particular social group'. For discussion on this see: Massimo Prearo, "The Moral Politics of LGBTI Asylum: How the State Deals with the SOGI Framework," *Journal of Refugee Studies*, no. feaa047 (July 21, 2020), https://doi.org/10.1093/jrs/feaa047; Sarilee Khan and Edward Alessi, "Coming Out Under the Gun: Exploring the Psychological Dimensions of Seeking Refugee Status for LGBT Claimants in Canada," *Journal of Refugee Studies* 31, no. 1 (2018): 22–41.
[14] Asylum in Europe Database, "Differential Treatment of Specific Nationalities in the Procedure," accessed April 14, 2020, https://www.asylumineurope.org/reports/country/germany/asylum-procedure/treatment-specific-nationalities.

resulting from the partition of India and Pakistan (then East and West), did not receive Convention protection. Lucy Mayblin's *Asylum after Empire* notes that "there were extensive discussions at the UN about the injustice of having a narrow geographical conception of the right to asylum."[15] Despite these concerns, the British Government argued for the geographical limits, precisely because they did not want the Convention to apply in the colonies. These restrictions were lifted in the 1967 Protocol Relating to the Status of Refugees, and now refugee claims are not restricted by time or geography. This historic restrictiveness is likewise reflected in the mandate of UNHCR, which at the time of its formation was given only limited powers and was founded as a "non-political agency."[16] As Gil Loescher puts it, "UNHCR was created by Western governments in such a way that it would neither pose a threat to their sovereignty nor impose new financial obligations on them."[17]

The Geneva Convention is of course also only part of the historical picture of refugee protection. Two other important regional instruments on refugee protection were created in the 20th century: The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa and The Cartagena Declaration on Refugees, which applies to Latin America.[18] Both of these instruments take a much more expansive definition of refugeehood. For instance, the OAU Convention begins with the Geneva Convention definition of refugeehood but continues that:

> The term "refugee" shall *also* apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his

[15] Lucy Mayblin, *Asylum after Empire* (London: Rowman and Littlefield International, 2018), 146.
[16] United Nations, "Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428 (V) of 14," 1950.
[17] Gil Loescher, "UNHCR's Origins and Early History: Agency, Influence, and Power in Global Refugee Policy," *Refuge* 33, no. 1 (2017): 78.
[18] Cartegena Declaration, "Regional Refugee Instruments & Related, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama," November 22, 1984, https://www.refworld.org/docid/3ae6b36ec.html.

country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.[19]

This again underlines the fact that particular definitions of refugeehood arise under specific circumstances. The Geneva Convention was restrictive at least partly because of the refugees to whom it was responding (and those the signatories sought to exclude). So, whilst the Geneva Convention may be a good starting point for thinking about normative definitions of refugeehood, it should not be remembered as a universal and unproblematic document. Instead, as we have seen, it excluded many from protection and safeguarded the interests of powerful Western states.

Shacknove's rejection of the Geneva Convention

Andrew Shacknove's 1985 paper, 'Who is a Refugee', defends a far more expansive understanding of refugeehood, which arguably led to the broader definitions that are dominant in the normative literature today. In doing so, Shacknove defended the OAU and Cartagena Convention definitions of refugeehood, seen above. Shacknove's starting point was a critique of the Geneva Convention definition, which he argues is overly restrictive. His main contention is the Convention's assumption that persecution and alienage are always manifestations of a severed bond between an individual and their state. Instead, Shacknove argues that we reach a more expansive definition of refugeehood by removing these two restrictions. The Convention definition, he argues, makes the following implicit argument:

(a) a bond of trust, loyalty, protection, and assistance between the citizen and the state constitutes the normal basis of society;
(b) in the case of the refugee, this bond has been severed;
(c) *persecution* and *alienage* are always the physical manifestations of this severed bond; and

[19] Organization of African Unity, "Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ('OAU Convention') 1001 U.N.T.S. 45" (OAU, September 10, 1969), https://www.refworld.org/docid/3ae6b36018.html.

(d) these manifestations are the necessary and sufficient conditions for determining refugeehood.[20]

Shacknove contends that "neither persecution nor alienage captures what is essential about refugeehood."[21] Instead, he argues that the central feature of refugeehood is the breakdown of the minimally sufficient bond between an individual and their state. Persecution and alienage are not necessary features of this severed bond but are instead just two ways in which it can manifest. Before considering his arguments for each of these cases, we should outline what Shacknove takes to be the "minimally sufficient social bond" that must exist between an individual and her state. Taking his lead from the history of political thought, in particular Hobbes and Locke's social contract accounts, Shacknove argues that the role of the state is to protect humans from other humans; "the primary purpose of civil society is to reduce each person's vulnerability to every other."[22] The bond between an individual and their state breaks down when a state is no longer willing or able to protect its citizens from human harm. To Shacknove, only those whose displacement is caused by *other humans* are refugees – however, he does (at length) show that many events that we might view as natural disasters, such as famine, are exacerbated and compounded. When your state no longer fulfils its minimal function of protection, you are a refugee.

Shacknove goes onto reject the third premise of the Convention's implicit argument; that persecution and alienage are always exclusively the physical manifestations of this severed minimal bond. First, on persecution, he argues that this is a "sufficient but not necessary condition for the severing of a normal social bond."[23] The minimal social bond between a citizen and her state can be undermined in many other ways. He argues that "[persecution] accounts for the absence of

[20] Shacknove, "Who Is a Refugee?," 275.
[21] Shacknove, 277.
[22] Shacknove, 278.
[23] Shacknove, 277.

state protection under tyrannical conditions where a government is predatory but says nothing about the opposite, chaotic, extreme where a government (or society) has, for all practical purposes, ceased to exist."[24] Since an individual can lose the protection of her state without being persecuted – such as through total state failure – persecution cannot be a necessary condition of the severing of the minimal bond. Second, alienage is also not a necessary condition of refugeehood. Instead, alienage is only one manifestation of "the access of the international community to persons deprived of their basic needs."[25] Shacknove continues that "what is essential for refugee status, distinguishing refugees from other deprived persons, is either the willingness of the home state to allow the access to international assistance or its inability to prevent such aid from being administered."[26] He, therefore, claims that we only need to determine whether an individual has her *basic needs* protected to establish whether she is a refugee. According to Shacknove, if an individual does not have her basic needs protected and has no other recourse than to seek protection from the international community, then she is a refugee. Lack of basic needs acts as a proxy for the breakdown of any reliable relationship with one's state, a relationship that should usually guarantee security and protection. Given his rejection of persecution and alienage, Shacknove defines refugees as *persons whose government fails to protect their basic needs, who have no remaining recourse other than to seek international restitution of these needs, and who are so situated that international assistance is possible.*[27]

[24] Shacknove, 277.
[25] Shacknove, 283.
[26] Shacknove, 283.
[27] Shacknove, 284.

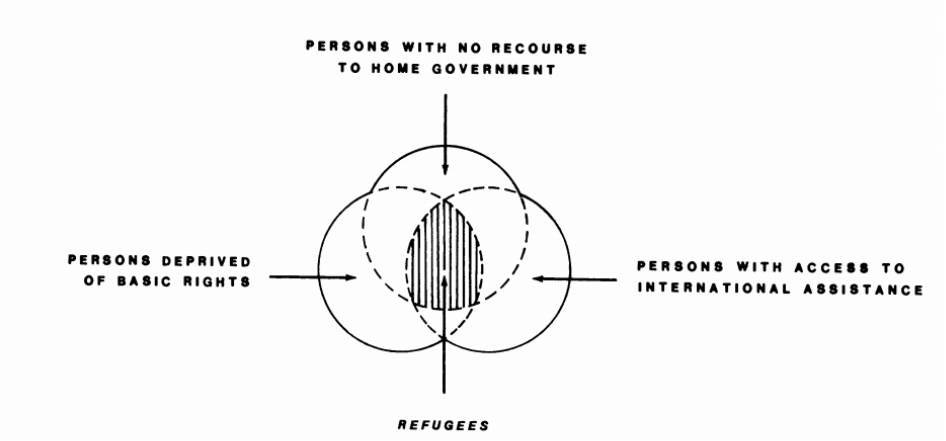


Figure 1. Shacknove's definition of refugeehood

In some ways, this view synthesizes the two dominant accounts that I will outline in a moment: *the humanitarian view* and *the political view*. Or, as Owen puts it, Shacknove's view attempts "to reconcile the humanitarian and the political pictures by linking the humanitarian focus on basic needs to the political focus on membership."[28] I should note here that this thesis is partially an attempt to do something similar. I will later argue that refugees are those who no longer enjoy membership in their state and have no recourse but to seek international protection. This account will be fully outlined and defended in chapter four.

Although Shacknove's expansive account has been highly influential, there are reasons to question his view. First, respondents argue that Shacknove's view fails because he believes that we can develop a definition of refugeehood without having to consider to what remedies the refugee might be entitled. He claims that "a conception of refugeehood is prior to a theory or policy of entitlements and is, I believe, sufficiently important and controversial to warrant independent analysis."[29] Owen dismisses the possibility of considering the conception of refugeehood on its own. He writes: "Shacknove's attempt to provide a cogent intellectual foundation for the

[28] Owen, *What Do We Owe to Refugees?*, 40.
[29] Shacknove, "Who Is a Refugee?," 277.

contemporary refugee regime is ultimately unsuccessful… The roots of its limitations lie in Shacknove's decision to focus on the *concept* of refugeehood rather than on the *institution* of refugeehood."[30] Matthew Lister makes a similar point, arguing that in failing to distinguish between, on the one hand, the content and scope of an obligation and, on the other, the content and scope of an underlying principle that justifies it, Shacknove's account fails.[31] This methodological flaw leads both Lister and Owen to adopt narrower definitions of refugeehood, which we will discuss later on. However, although Shacknove may have himself failed to explicitly adopt an institutional view, we may be able to read an institutional approach into his account. For instance, his focus on the minimal conditions of state protection perhaps implies or even demands a specific account of the function of states and, therefore, the function of refugee protection more broadly. I will come back to this in chapter four, but for now, we should simply keep this methodological critique of Shacknove in mind. Before turning to these more restrictive views, we should keep our focus on the broad approaches that have been popular in the literature until recent years.

The humanitarian view

The humanitarian view holds that the central normative feature of refugeehood is the individual's urgent need for protection. Proponents of this view, like Shacknove, reject the Convention's emphasis on persecution. For instance, Michael Dummett argues that "the qualification laid down by the Convention for being entitled to claim asylum is too restrictive: all conditions that deny someone the ability to live where he is in minimal conditions for a decent human life ought to be grounds for claiming refuge somewhere."[32] David Miller likewise defines a refugee as someone "whose human rights cannot be protected except by moving across a border, whether the reason is state persecution, state incapacity, or prolonged natural disasters."[33] Without the restrictive focus

[30] Owen, *What Do We Owe to Refugees?*, 40.
[31] Lister, "Who Are Refugees?," 659.
[32] Michael Dummett, *On Immigration and Refugees* (London: Routledge, 2001), 37.
[33] Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*, 83.

on persecution, the category of people who qualify for protection becomes much broader. The more pressing matter for proponents of the humanitarian view, then, is the urgency of the claim to protection. Mollie Gerver defends this kind of view, outlining what she calls the 'Life Claim'. On her account "an individual is a refugee if their right to life is threatened in their home countries, regardless of whether it is threatened from persecution, violence, poverty or other life-threatening conditions."[34] The threat to one's life is a *sufficient condition* for refugeehood. Matthew Gibney is also a strong proponent of humanitarianism. In *The Ethics and Politics of Asylum* he argues that "states have an obligation to assist refugees when the costs of doing so are low."[35] This humanitarian principle is built upon more general moral obligations that states and individuals have to assist others in need.

So, how does the humanitarian view conceptualize the state's obligations to refugees? According to Owen: "the humanitarian picture sees the point and purpose of the international refugee regime in offering relief for the suffering of persons whose state has failed to secure their basic needs and in communicating the commitment of the international order to the moral equality of human beings."[36] Therefore, this approach grounds the state's obligations to refugees in the language of *rescue.* States have an obligation to assist refugees because of the general, charitable obligation to assist those in need, particularly when the costs of doing so are low.[37] Therefore, most humanitarians conceptualize the state's duties to refugees in a minimal way. Refugees, on this view, do not have an immediate entitlement to new membership or political inclusion. As long as they are able to lead a minimally decent life in their state of asylum then states are fulfilling their

[34] Gerver, *The Ethics and Practice of Refugee Repatriation*, 225.
[35] Gibney, 2004, 231
[36] Owen, *What Do We Owe to Refugees?*, 41.
[37] This low cost approach is outlined in Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees.*

obligations.[38] Most humanitarians also accept that refugee protection is typically temporary. States of asylum only have obligations to refugees whilst they cannot return home.[39]

Many popular discussions of states' duties to refugees depend on the language of rescue. For instance, Betts and Collier's *Refuge: Transforming a Broken Refugee System* draws on Peter Singer's thought experiment of the drowning child.[40] Singer states: "If I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will mean getting my clothes muddy, but this is insignificant, while the death of the child would presumably be a very bad thing."[41] Betts and Collier claim that this is analogous to the refugee case. They write: "we ground the ethical case for helping refugees in the duty of rescue because it is a moral norm that is widely accepted, and *it is all that is needed*."[42]

It is worth noting that the humanitarian view must be at least partially correct. That is, part of the reason why states (or even individuals) have duties to assist refugees is because of the existence of general moral duties to help anyone in serious danger. Part of what grounds the obligation to, for instance, rescue refugees making dangerous journeys across the Mediterranean, is simply that they face extreme peril, and the costs of helping them are low. We should bear in mind, then, that these different approaches to considering what grounds our duties to refugees are not necessarily exclusive. They might instead be at least partially overlapping.[43] However, there are several reasons to be sceptical of the humanitarian view's ability to give us a complete account, particularly when considering the approach taken by Betts and Collier. For instance, they argue that refugee flows from Syria cannot be blamed on Western states:

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[38] Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*; Dummett, *On Immigration and Refugees*.
[39] As we saw in the introduction, humanitarians often accept that refugees might *develop* claims to new membership during their protection, following Joseph Carens's social membership argument. We will discuss this further when focusing on the question of citizenship for refugees in chapter six.
[40] Peter Singer, "Famine, Affluence, and Morality," *Philosophy and Public Affairs* 1, no. 3 (1972): 229–43.
[41] Singer, 231.
[42] Betts and Collier, *Refuge: Transforming and Broken Refugee System*, 99.
[43] I take this to be why David Owen considers different "pictures" of refugeehood in his work. See specifically chapter one of Owen, *What Do We Owe to Refugees?*

> A lingering vestige of colonialism is that Western commentators are inclined to explain whatever happens anywhere as being due to Western actions, but Syria was a long-standing autocracy… Occasionally refugee movements do involve Western complicity – Vietnam, Kosovo, and Iraq, for example – but that isn't the case here.[44]

This might be true in a minimal way – that no direct line can be drawn between Western intervention and the displacement of Syrians. However, this account and the humanitarian view more generally fail to take seriously the broader relationship between the international state system, writ large, and the very category of refugeehood. Refugees and states are not conceptually separable; refugees only exist because of the international system of territorially bounded states. As Emma Haddad puts it, "refugees are an inevitable if unintended consequence of the nation-state system; they are the result of erecting boundaries, attempting to assign all individuals to a territory within such boundaries, and then failing to ensure universal representation and protection."[45] The charge, then, is that in conceptualizing states duties to refugees as grounded exclusively in obligations of *rescue,* we fail to take seriously the relationship between states and refugees. Whilst Betts and Collier are particularly vulnerable to this objection because of how explicitly they reject a responsibility-based account, other proponents of the humanitarian view are similarly at risk. Since the humanitarian view fails to recognize the relationship between refugees and states, it cannot give us a complete account of our duties to refugees.

The political view

A second, perhaps more conservative view, does attempt to take the international state system as its theoretical starting point when considering the correct definition and institution of refugeehood. Proponents of *the political view* generally defend the Geneva Convention definition of a refugee.[46] They argue, in particular, that the Convention's focus on persecution is correct because

[44] Betts and Collier, *Refuge: Transforming and Broken Refugee System*, 99.
[45] Haddad, *The Refugee in International Society: Between Sovereigns*, 59.
[46] Price, *Rethinking Asylum: History, Purpose, and Limits*; Lister, "Who Are Refugees?"; Ruvi Ziegler, *Voting Rights of Refugees* (Cambridge: Cambridge University Press, 2017). This view has also been called The Membership View, for

it is a distinctive moral harm which undermines the individual's membership in their state. Therefore, Matthew Price – a key proponent of the political view – states that refugees:

> [D]o not merely experience insecurity; they are targeted for harm in a manner that *repudiates their claim to political membership*. They are thus not only refugees, but also exiles – people who have been expelled from their own political communities.[47]

On this view, persecution is a necessary condition of refugeehood. Being a victim of persecution, then, is tantamount to being denied your membership. Refugees are therefore viewed as *de facto* stateless persons, whose claim to asylum is based on this lack of membership anywhere.[48] When someone is said to be *de facto* stateless, they lack an effective nationality. That is, "in cases of *de facto* statelessness, a person has legal nationality but is unable to enjoy the rights associated with such status."[49] The aim of the institution of asylum in this case is to restore the refugee's membership, or as Owen puts it, "the political picture sees [the point and purpose of the institution of refugeehood] in restoring the political standing of those unjustly denied that standing through persecution and an expression of international condemnation of that denial."[50] Importantly, Price argues that asylum is a specific policy tool that allows states to condemn those who have persecuted their citizens. The importance of the institution of asylum for Price comes from its expressive function. Offering asylum to the persecuted person, and therefore offering them a route to new or surrogate membership, is a way for states to express condemnation. To make this point, Price draws upon Rawls's distinction between *burdened* and *outlaw* states.[51] Burdened states are those who recognize individuals as members but are unable to protect or assist them, for instance, due to lack of state capacity. Outlaw states, on the other hand, are those who actively persecute their

instance by Mollie Gerver in *The Ethics and Practice of Refugee Repatriation* (2018). However, as I will later argue for a membership-based definition of refugeehood, I will use the more dominant title of *the political view* here.

[47] Price, *Rethinking Asylum: History, Purpose, and Limits*, 13.

[48] David Owen, "Citizenship and the Marginalities of Migrants," *Critical Review of International Social and Political Philosophy* 16, no. 3 (2013): 326–43.

[49] Lindsey Kingston, *Fully Human* (Oxford: Oxford University Press, 2019), 63.

[50] Owen, *What Do We Owe to Refugees?*, 41.

[51] Rawls, *Law of Peoples*, 5; Price, *Rethinking Asylum: History, Purpose, and Limits*, 72.

citizens or particular groups of citizens. Price argues that "citizens of burdened societies lack protection of their basic rights, but they retain their *standing as members*. The appropriate stance of outsiders to burdened societies is to lend assistance, not to condemn their failings. Asylum is an inappropriate tool for addressing the needs of those fleeing burdened societies."[52] In the case of persecution, the state deserves condemnation for purposefully targeting its citizens. In such cases, Price maintains, the individual loses political standing in the community and thus they are owed asylum in the form of surrogate membership. He writes:

> Providing *surrogate membership* to persecuted people reflects an attitude of condemnation and sanction that outsiders ought to take toward an outlaw state. When a state of refuge welcomes persecuted people as members, it gives effect to the condemnation expressed by asylum by treating them as *political orphans* in needs of adoption by a new political community.[53]

Price and other proponents of this view argue that other forced migrants who do not face persecution are still owed protection, perhaps even through admission into another state.[54] Asylum, understood here as a form of surrogate membership and speedy access to new citizenship, is only owed to persecuted people. The claim is thus less radical than it first appears; those fleeing natural disasters or indiscriminate warfare are still owed some form of protection, such as entry and the provision of basic goods. However, they are not owed the more substantial protection afforded to those who have suffered persecution. The political view there aims to make a distinction between refugees and other displaced persons in need of protection. Michael Walzer similarly distinguishes refugees from "necessitous strangers".

> Both are distinct from immigrants. Necessitous strangers are 'destitute and hungry' people fleeing generalized catastrophes. Their needs can be met 'by yielding territory' or 'exporting wealth' while

[52] Price, *Rethinking Asylum: History, Purpose, and Limits*, 73; Lister, "Who Are Refugees?"
[53] Price, *Rethinking Asylum: History, Purpose, and Limits*, 167.
[54] Ziegler, *Voting Rights of Refugees*; Lister, "Who Are Refugees?"

> withholding membership. Yet refugees are ''victims of . . . persecution' whose 'need is for membership itself, a non-exportable good.[55]

The political view has the benefit of taking seriously the relationship between refugees and states; proponents of this approach accept that refugees would not exist without the system of territorially bounded states and aim to redress the gaps that this system generates. We might therefore think that this approach is preferable to the humanitarian view which grounded the duty to assist refugees in the language of rescue. However, a potential concern with the political view is its failure to properly explain why persecution is so special. That is, why is it exactly that persecution strips individuals of their membership or political standing and, moreover, can membership and political standing be lost in any other way? Cherem, for instance, states that "refugee claims arise from persecution and the resultant loss of national protection, not simply from need."[56] But this assumes that "loss of national protection" is always and only a result of persecution. This premise is largely stated and restated rather than defended by Price, Lister, and Cherem.[57] However, why it should be viewed as *prima facie* true is far from obvious. We will come back to this in detail in chapter three when I take head-on the relationship between persecution and membership. We will also discuss it in a moment when considering David Owen's differentiation between three types of refugee. For now, though, we should simply note that a defence of why exactly persecution strips someone of their membership in the state has not yet been well-developed.

Furthermore, we might worry about Price's reliance on the apparent expressive function of asylum. Price argues that an individual is owed asylum when condemnation against her state is appropriate. We owe asylum partially because it allows us to condemn outlaw states and restore some kind of international order. However, first, we might worry that the expressive function of asylum is

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[55] Walzer, *Spheres of Justice*, 44–45.
[56] Max Cherem, "Refugee Rights: Against Expanding the Definition of a 'Refugee' and Unilateral Protection Elsewhere," *Journal of Political Philosophy* 24, no. 2 (2016): 191.
[57] Price, *Rethinking Asylum: History, Purpose, and Limits*; Lister, "Who Are Refugees?"; Cherem, "Refugee Rights: Against Expanding the Definition of a 'Refugee' and Unilateral Protection Elsewhere."

something that we actually want to avoid. For instance, there are many examples of states using asylum as an ideological tool, most famously the United States offering expedited asylum to Cuban refugees fleeing communism.[58] Although states may in reality use asylum in such a way, it is not obvious that we want to build our normative account around that fact. Second, we might also worry that this reasoning is indirect. That is, the claim to asylum is not necessarily to do with the position of the refugee herself. Instead, the claim depends on whether asylum is the appropriate resource from the international policy toolkit with regards to condemnation. If two individuals are in substantively the same predicament, but one was persecution and one was not, is it unfair to claim that only one of them is entitled to asylum? Again, we will come back to this more in chapter three. Third, Price builds his account from a historical perspective. He argues that asylum has always been a political, expressive institution and uses this as support for a normative account. But there are some parts of the refugee protection regime which were explicitly developed to be non-expressive. For instance, we might question whether the idea of the expressive function of asylum fits well with the history of the UNHCR whose mandate explicitly states that the Commissioner's position is of "an entirely non-political character."[59] Of course, there's an open question has as to whether any asylum regime can actually avoid being expressive. Many have questioned UNHCR's "non-political" approach, arguing that this supposed humanitarian neutrality is both impossible and ill-advised.[60] Whilst UNHCR is a political agency, it nevertheless does not fit well with Price's picture of the refugee regime being purposefully condemnatory in nature.[61] Likewise, there are other areas of the refugee regime that even more explicitly reject the supposed expressive function of asylum. For instance, Article 2.2 of the OAU Convention on Refugees states that "The grant

[58] John Scanlan and Gil Loescher, "U.S. Foreign Policy, 1959-1980: Impact on Refugee Flow from Cuba," *The Annals of the American Academy of Political and Social Science* 467 The Global Refugee Problem: US and World Response (1983): 116–37.
[59] United Nations, "Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428 (V) of 14," 4.
[60] David Forsythe, "UNHCR's Mandate: The Politics of Being Non-Political" (New Issues in Refugee Research: Working Paper, 2001), https://www.unhcr.org/3ae6a0d08.pdf.
[61] Of course, this leaves open the possibility of asylum being expressive in different ways. For instance, James Souter and Joshua Hobbs argue that asylum can express solidarity with refugees. James Souter and Joshua Hobbs, "Asylum, Affinity, and Cosmopolitan Solidarity with Refugees," *Journal of Social Philosophy* 51, no. 4 (2020): 543–63.

of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State."[62] There are therefore several examples of African states asking other countries to accept their citizens as refugees. This raises questions about the historical picture of refugeehood that Price is drawing on in his analysis.

However, the most salient worry for our purposes is the lack of a proper theorization of political membership itself. That is, despite basing his account of refugeehood on a lack of membership (arising exclusively from suffering persecution), Price never fully outlines what this relationship actually is. In places, he refers to it as a status, a form of political standing, and its loss as a form of *de facto* statelessness. However, the lack of an explicit account of membership leads to confusion around its place in his account and its apparent exclusive relation to persecution. This potential confusion over his foundational concept, then, can easily lead to misunderstanding or misinterpretation. Of course, Price's is not the only view lacking a theory of membership – political theorists and philosophers more generally use the term in a vague and often unhelpful way. But given its centrality to discussions of refugeehood, it is a specific problem for those working on the political theory of refuge.

Before we move onto discuss the legitimacy view, we should take stock of what we have learnt so far regarding refugeehood and membership. The humanitarian view does not develop its account around an idea of membership. Instead, it defines a refugee as someone who is in urgent need of protection and grounds the duty to fulfil that protection in the language of rescue. However, the other views that we have seen from Shacknove and proponents of the political view, do draw on ideas of membership. Shacknove develops the idea of a minimally sufficient bond between an individual and her state and argues that an individual is a refugee when this bond has been broken. The political view contends that refugees are those who have lost their membership through

[62] Organization of African Unity, "Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ('OAU Convention') 1001 U.N.T.S. 45."

suffering the distinctive moral harm of persecution. Once we have considered a final approach, we will be able to see where we stand.

The legitimacy view

David Owen argues that we need to rethink the function of the refugee protection regime in order to reconsider the normative foundations of refugeehood.[63] Owen argues – as we have seen in his rejection of Shacknove – that we cannot consider the *conception* of refugeehood without thinking first about the larger *institution*. So, the question that we need to ask and answer, according to Owen, is what function does the refugee regime play in the international system of states? His overall aim is to defend "a view of the international refugee regime which is not constructed in terms of humanitarian obligations owed to strangers but, rather, in terms of political obligations that arise as conditions of the political legitimacy of the international order of states considered as a global regime of governance."[64] The view that he defends understands the function of the refugee regime as a "legitimacy repair mechanism, which allows states to act collectively to ensure mutual legitimacy. He argues this by making several claims. First, he contends that the international system of states as a structure of global governance needs to meet a basic standard of legitimacy. He proposes that we set this standard at the level of human rights. The international system of states is only legitimate as a whole if everyone has their rights protected by some state. If the international system of states is not legitimate, then neither are states as individual units. Therefore, individual states have a reason to care about the legitimacy of the structure of global governance as a whole, because its failure leads to them lacking legitimacy as well: "the political legitimacy of modern states cannot be separated from the political legitimacy of these wider relations of governance."[65]

[63] Owen himself occasionally calls this a "political legitimacy view" of refugeehood. For our purposes here, I will call it a "legitimacy view" in order to separate it from the political view that I just discussed.
[64] Owen, "In Loco Civitatis," 270. Importantly, this means Owen's view of asylum rests on a particular international political theory. That is, Owen adopts a potentially Lockean or Grotian account of the international order. This is something that many scholars might immediately wish to reject: for instance, Betts and Collier appear to be relying instead on a Hobbesian understanding of the international state system. A duty of rescue account may therefore be required if one rejects this part of Owen's view.
[65] Owen, 272.

Second, to determine who requires protection in this way, Owen makes a similar distinction on Price between burdened and outlaw states. He argues that refugee protection is only required when individuals need membership in a new state in order to have their basic needs met. Owen describes this as the distinction between *supplementing* state protection and acting as a *surrogate* for state protection; in the latter case, states have an obligation to stand *in loco civitatis*.[66] There are some states, such as those who are unable to fulfil the basic needs of their citizens due to natural disasters or lack of capacity who require support from the international community rather than the extension of surrogate membership. In such cases, only assistance is required. However, in the case of states that persecute their citizens, the appropriate remedy is *surrogacy*. That is, the international system of governance needs to provide new membership to those who have suffered persecution. Doing so condemns the action of that persecuting state and helps to restore the legitimacy of the system of global governance. Therefore, the crucial feature of the picture that Owen is offering here is that being a refugee is "conceptually tied not to migration but to the requirement that acting effectively to secure the basic rights of those threatened entails that the international order of states stand *in loco civitatis*."[67]

Owen offers an account of the refugee protection regime that he takes to be compatible with the *grundnorm* of sovereignty and non-intervention.[68] Thus, a final condition is added to his view; that an individual is only a refugee if she can be assisted without violating this norm. Therefore, as Owen puts it, "such a view not only presents the institution of refugeehood as playing both reparative and expressive roles but also identifies the central connection between this institution and the political legitimacy of the international order of states."[69] After all this then, Owen defines

[66] Owen, 280.
[67] Owen, 279.
[68] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 30.
[69] Owen, "In Loco Civitatis," 280.

a refugee as: "[O]ne whose basic rights are unprotected by their state and can only be protected through recourse to the international society of states acting *in loco civitatis*, where it can so act without breaching the constitutive norms of the regime of governance."[70]

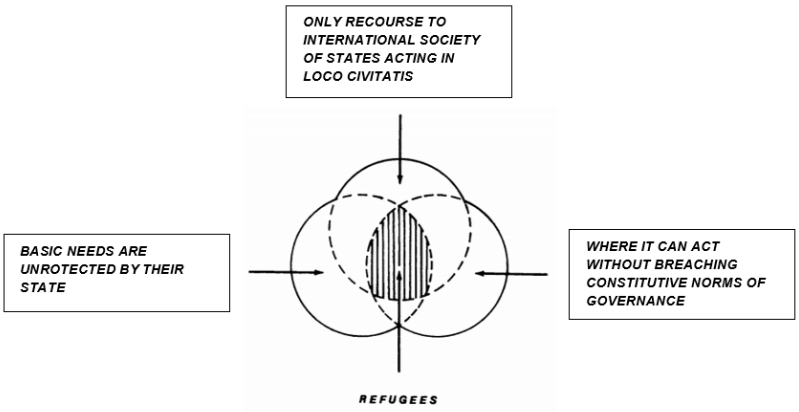


Figure 2. Owen's definition of refugeehood

Although Owen does not explicitly defend Price's view on persecution here, he does so implicitly by relying on the notion of surrogacy. That is, Owen argues that refugees are those who require more than entry and temporary assistance. However, as we see in a moment when discussing Owen's later distinction between different types of refugee, he does also adopt the view that persecution is a distinctive moral wrong that helps us to single out those who are in need of asylum. Owen posits that persecution amounts to the loss of political standing in any state; those who are persecuted have their membership in their country of origin repudiated. Persecution, therefore, comes to act as a proxy for determining who exactly requires surrogate protection rather than only supplementary assistance from the international community. Since (persecuted) refugees do not have membership in any state, the international state order has a collective obligation to ensure that such individuals receive membership in a new state, in the form of asylum. States have this duty, not because of the obligation to rescue individuals in need, but because of the duty to uphold the legitimacy of the international state system and thereby the legitimacy of one's own state.

[70] Owen, 280.

Offering the refugee 'surrogate membership' in the state of asylum allows for the guarantee of human rights protection to be restored. The refugee protection regime works to *repair* the legitimacy of the regime of states as a whole by giving those without membership a new form of membership elsewhere. Notably, this distinction between surrogacy and supplementation appears to rely a great deal on persecution and the expressive function of asylum. If we do not find it convincing that asylum has (or should have) this function, then this might be a reason to reject parts of Owen's view. It is also worth noting here that much of the argument I make later on is congenial to Owen's approach. However, the focus on persecution – which Owen develops from the political view – means that this account is more restrictive than it should be. The focus on persecution is partly due to the lack of a shared theory of membership. To see this, let us turn to a more recent proposal by Owen in which he argues that we ought to distinguish between different types of refugee. I will finish by saying why I still think an approach like Owen's is the right way forward.

In his recent paper, 'Differentiating Refugees', Owen distinguishes between three forms of protection for refugees: asylum, sanctuary, and refuge. He does this "within the general scope of the fundamental principle of *non-refoulement* in order to reconcile the pragmatics of refugee protection with the differentiation of normative claims at stake within this general status."[71] Non-refoulement, the principle of international law which holds that states cannot return individuals to countries where their lives will be in serious danger, applies differently in each of the protection contexts that Owen outlines. Asylum (understood as entitlement to surrogate membership) is owed only to those fleeing persecution. Sanctuary and refuge are instead temporary forms of protection, required for non-persecution-based harms. In the case of sanctuary this may be as a result of one's country being a war zone, whereas refuge may be necessary due to a short-term

[71] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 19.

flood.[72] This account, again, turns on the relationship between persecution and the denial of membership. To see whether his view is convincing, we will work through each of the categories in turn.

	Who is owed?	**What is owed?**
Asylum	*Refugees* (defined as people fleeing persecution who have therefore been denied their political membership)	• New membership in a state "where there are good reasons to be confident that their security, liberty and welfare will be protected."[73] • Forced repatriation never acceptable
Sanctuary	Those fleeing generalized violence or a breakdown in the public order	• A space "where one is protected against the threats to one's basic liberty and welfare."[74] • No immediate claim to new membership • No return as long as "the relevant conditions persist."[75]
Refuge	Those fleeing discrete or specific events such as a natural disaster.	• Claim to "immediate humanitarian relief."[76] • No claim to membership • Repatriation as soon as reasonably possible.[77]

Figure 3. Owen's typology of refugee protection

Asylum

For Owen, asylum is only owed to individuals who have been persecuted. He argues that "being persecuted for one's religious or political beliefs, or because one is a member of an ethnic or social group, is a distinctive wrong and also a serious harm."[78] For Owen, persecution is tantamount to the denial of membership:

[72] Owen, 23; Owen, 25.
[73] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 32.
[74] Owen, 33.
[75] Owen, 33.
[76] Owen, 36.
[77] Owen, 35.
[78] Owen, *What Do We Owe to Refugees?*, 54.

> Central to the grant of asylum is the acknowledgement that a refugee is subject to the threat of persecution in his home state and thus that his *standing as a member of the political community is wrongfully denied.* Asylum refugees are wrongfully made *de facto stateless*; hence the relevant form of reparation is to provide, first, surrogate membership and, second, reasonably rapid access to membership of a new state.[79]

Therefore, as persecuted people are those who have lost their membership in a political community, a new form of membership is precisely what they are owed. There are a few reasons for this. First, as we know, Owen is at least partially drawing on Price's idea that asylum is an expressive act. In granting a refugee new membership, the state of asylum is expressing condemnation towards the state of origin for persecuting its citizens.[80] Second, Owen's legitimacy repair view of the refugee protection regime maintains that all individuals require political standing somewhere.

> In a world in which effective state membership is a practical condition of political standing, it is a duty of the international order of states to ensure that all persons enjoy such standing – and when it is denied through persecution to provide protection in a way that reaffirms the right to such standing – and this is what the legal status of asylum as a distinctive type of refugee status should be conceived as providing.[81]

The loss of political standing that results from persecution therefore must be remedied by offering the refugee membership in a new state. Being rendered *de facto* stateless means that the refugee has no recourse other than to seek surrogate international protection. Notably, Owen claims that "the harm consists in the fact that in *being thus rendered de facto stateless, one is made acutely vulnerable to both*

[79] Owen, 71.
[80] Owen, 55.
[81] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 32.

the contingencies of circumstance and the dominating agency of others."[82] The fact that this is recognized as the central harm will be important later on. So, in summary, persecuted people are those who lack membership, and states have an obligation to legitimacy to ensure that all persons enjoy membership in some state. Therefore, states have an obligation to offer asylum in the form of new membership to persecuted people.

Sanctuary

Sanctuary is owed to those who are victims of collateral damage, such as indiscriminate warfare, generalized violence, or the collapse of state infrastructure.[83] Therefore, "the grant of sanctuary acknowledges the responsibility of the international community to persons whose citizenship has not been denied but has become *ineffective or inoperative* as a result of the breakdown of public order in their home state."[84] Owen's focus on persecution necessitates this distinction. As no persecution has taken place, the appropriate remedy cannot be asylum (understood, remember, as the claim to new membership). Instead, the claim of the, individual in this case, can only be to assistance for as long as ongoing protection is needed. As Owen puts it:

> In contrast to the claim to asylum, the relationship to *membership* is rather different. While in both cases we may say that membership has become ineffective or inoperative, in the sense that it does not play the protective or enabling roles which define its normal functioning, in the case of the claim to asylum, this harm *is the product of a specific wrong* (the targeted denial of political standing) that demands redress, whereas this is not the case with regard to claims to sanctuary.[85]

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[82] Owen, 31.

[83] An interesting point to note here is that the idea of "collateral damage" is generally rejected in conflict studies and political violence literature. Instead, many argue that the dynamics of conflict reflect that in most cases, generalized violence or warfare is selected by those in power and pursued despite knowing the risks. Therefore, it may be that generalized violence (in actually being selective) also repudiates an individual's membership without persecution having taken place. I will come back to this in chapter three when discussing persecution. For more on this, see Stathis. N Kalyvas, "Micro-Level Studies of Violence in Civil War: Refining and Extending the Control-Collaboration Model." Terrorism and Political Violence 24, no. 4 (September 2012): 658 68. https://doi.org/10.1080/09546553.2012.701986.

[84] Owen, *What Do We Owe to Refugees?*, 76.

[85] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 33.

It is worth asking here whether the distinction between asylum and sanctuary is convincing. For Owen, the fact that targeted persecution has taken place in the case of asylum is what grounds the more substantive claim. However, remember that Owen states that the harm of persecution "consists in the fact that in being thus rendered de facto stateless, one is made acutely vulnerable to both the contingencies of circumstance and the dominating agency of others."[86] In the case of those fleeing indiscriminate warfare or the breakdown of their state, we could surely make the same claim. Here, the key point for Owen seems to be that in the case of asylum the individual's membership or political standing is actively *denied* rather than merely lacking. There are a few reasons for making this distinction between the targeted denial of membership and merely ineffective membership, and Owen seems to move between them.

First, this distinction may be grounded in Owen's focus on the expressive function of asylum. As we saw above, Owen's legitimacy repair view of the institution of refugeehood adopts Price's argument that offering asylum is at least partly expressive. However, this is an implausible explanation to rely on for a few reasons. Primarily, it is unclear why offering surrogate membership rather than merely giving sanctuary would be necessary to condemn rogue states. If offering sanctuary amounts to admitting individuals, as well as respecting and protecting their human rights, why does this not amount to condemnation? Perhaps, Owen could reply, it is something to do with the way in which the policy is carried out. However, then Owen (and Price) would be vulnerable to the claim that whether or not offering surrogate membership fulfils this expressive function also depends on how it is carried out. In any case, it is not clear why offering membership is always expressive and why offering sanctuary is never expressive as this distinction appears to assume. Moreover, we might also worry about the use of the expressive function of asylum at all.

[86] Owen, 31.

As I have mentioned previously, the expressive function of asylum may, in fact, be something that we want to avoid as it leads to the unnecessary politicization of refugee protection. Finally, we might object to the expressive function of asylum being used to ground the distinction between the denial of membership and the mere lack of membership because it provides us with the wrong kinds of reasons. When considering whether an individual is owed sanctuary or asylum, looking to whether or not the act of the state of origin requires condemnation appears to be the wrong thing to consider. It makes more sense to think about whether the individual refugee is entitled to new membership herself, rather than using an indirect justification. All of the above, I think, gives us reason to reject the expressive function of asylum as a potential grounding for Owen's distinction between the denial and lack of effective membership.

Second, in wanting to maintain this distinction between claims to asylum and sanctuary, Owen could rely on an argument that the provision of new membership is more appropriate in the former case. This is a more promising approach than the focus on the expressive function of asylum, though Owen's account itself does not give us an argument for it. Instead, as we have seen, he notes that the distinct wrong of persecution is that it makes one "acutely vulnerable both to contingencies of circumstance and to the dominating agency of others."[87] However, this harm is not the result of having one's membership denied, but merely the fact of lacking membership. The individual who lacks membership because of the collapse of her state is just as vulnerable to "the contingencies of circumstance and the dominating agency as others."

A third route for Owen might be more promising. In aiming to maintain the distinction between the denial and mere lack of membership, Owen could argue that those who are not persecuted remain *entitled* to political membership somewhere. That is, when someone is persecuted, they lose

[87] Owen, 31.

their membership altogether. Therefore, their only option is to seek international surrogate protection. However, in the case of the individual who has been forced to flee due to indiscriminate warfare, even though they do not currently hold 'effective' political membership, they nevertheless have somewhere in the world where they can theoretically claim it in the future. Owen may therefore argue that the persecuted refugee does not have a claim to eventual membership anywhere, and this is why new membership is only appropriate in this case. Whilst this might look like an attractive option, I do not believe that it is open to Owen. We should remember from his above argument for the legitimacy repair view that the international community has a duty to ensure that everyone has effective state membership somewhere: "In a world in which effective state membership is a practical condition of political standing, it is a duty of the international order of states to ensure that all persons enjoy such standing."[88] Note, it is simply a duty to ensure that people can claim membership in the future. It is unclear, then, why asylum refugees alone have a claim to new membership. If we take Owen's legitimacy repair view at face value, it is all those who currently lack membership that are owed new membership elsewhere.

To see why this is important, consider those who are stateless, not because of the active denial of political membership through state-sponsored persecution, but because of gaps in the laws regulating the transfer of citizenship. For example, 700,000 migrants of Burkinabé descent in the Côte d'Ivoire, who were not eligible for Ivorian nationality after independence in the 1960s.[89] These individuals manifestly have a claim to formal membership in the state for the same reason that refugees have a claim to surrogate membership – international legitimacy requires that everyone has membership *somewhere*. If Owen wants to say that in these cases there is a 'denial' of membership in the same way as political persecution, then it seems the idea of what counts as a

[88] Owen, 32.
[89] UNHCR, "The Lost Children of Côte d'Ivoire," The UN Refugee Agency, 2021, https://www.unhcr.org/ibelong/the-lost-children-of-cote-divoire/.

'denial' of membership is being inflated. Rather we might think that the most plausible reading of these cases is that it is not the *denial* of membership as a distinctive moral wrong that justifies surrogate membership, but the mere *lack* of membership, whatever the cause.

This final reading is, I believe, the most plausible. However, if that is the case, then – as we have just seen – Owen's distinction between sanctuary and asylum appears to collapse. After all, Owen admits that sanctuary refugees also lack effective political membership. It is therefore difficult to see why asylum as surrogate membership is exclusive to persecuted refugees. Instead, on this reconstruction of Owen's view, those who do not have membership in their state – either through active denial or mere lacking– are therefore owed asylum and membership in a new state. Before coming to some conclusions, let us look at Owen's final category of refugee protection.

Refuge

Owen argues that refuge is only owed to those who are fleeing discrete and specific events "where a person is so situated that she can save herself from the threat to her basic rights posed by the event in question by seeking immediate shelter across an international border."[90] The forced migrants that fall into this category are therefore entitled to immediate humanitarian assistance. In terms of non-refoulement, states can potentially forcibly repatriate individuals who have fled these discrete events once doing so is safe. The question to consider here is whether the distinction between refuge and sanctuary is something that we can maintain. First, it is not obvious why we should draw such a sharp line between generalized violence and discrete events, such as natural disasters. Owen's argument seems to assume that acute environmental displacement tends to be short-term, whereas the harms in need of rectification in cases of asylum and sanctuary are of a different kind. But it is not clear that this is the case. Indeed, conflicts involving large-scale

[90] Owen, *What Do We Owe to Refugees?*, 61–62.

persecution of a particular group can often be rectified through the overturning of a rogue government, something that may take less time than rectifying the results of a natural disaster.[91] If Owen is trying to make this kind of distinction in terms of duration, he would need to do more to defend it. Second, it is possible that Owen is trying to argue that there is a distinction in *kind* between the two cases. We saw above that Owen views persecution as a special moral harm, which supposedly justifies the distinction between asylum and sanctuary. However, he does not have the same conceptual distinction to draw upon here. Indeed, one's membership can still be ineffective in this case – for instance, if the state in question is unable to assist due to lack of infrastructure or capacity. If we think one's membership can become ineffective through events such as natural disasters, then it seems like the core wrong that Owen posits might still apply, the wrong whereby "one is made acutely vulnerable to both the contingencies of circumstance and the dominating agency of others."[92]

If this is the case, then the differential treatment between sanctuary and refuge seems to collapse as well. If this core wrong is shared by all three 'types' of refugee, and it is that core wrong that requires rectification, then differential treatment between refugees on the grounds of how they came to lose or lack their membership is not justifiable.

* * *

Having considered the main arguments concerning the conception and institution of refugeehood, I hope my point about the centrality of membership is becoming clear. Membership is a murky

[91] Matthew Gibney makes a similar point to this regarding poverty, arguing that economic harms can often be much harder to undo than particular policies of rogue governments. Matthew Gibney, "Refugees and Justice Between States," *European Journal of Political Theory* 14, no. 4 (2015): 448–63.
[92] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 31.

concept which underpins many of our discussions about states' duties to refugees. Shacknove's view of refugeehood depends on an understanding of membership and the minimal bond between a citizen and their state. The political view defines refugees as those who have lost their membership and political standing through suffering persecution. The same argument is present in Owen's legitimacy repair view, as well as his distinction between the different types of refugees. Only those who have lost their membership through suffering persecution are entitled to asylum, understood as surrogate membership in a new state. Likewise, as we saw at the beginning of the chapter, other thinkers build their understandings of refugeehood and statelessness on the concept of membership as well.[93]

As we saw earlier, the humanitarian view of refugeehood can be charged with failing to take seriously the relationship between refugees and states; it does not sufficiently recognize the fact that refugees are products of the international system of global governance that allocates individuals to particular territorially bounded political communities. Refugees result from the gaps created by this system. Therefore, in taking this fact as his starting point, Owen's legitimacy repair view is preferable to humanitarianism as a complete explanation of the grounds for states duties towards refugees. In doing so, it makes several powerful contributions. Most notably, it ties the very notion of refugeehood explicitly to our existing political system. Because of this, the legitimacy view understands the protection of refugees as a collective endeavour. However, as we have seen, his is perhaps unsatisfying on two counts. First, along with many other approaches, this view lacks a proper theorization of the concept of membership. This is a common problem throughout the political theory of refuge. Second, and relatedly, the view depends on the idea that is a special moral harm that strips the individual of such membership. Whether this is in fact persuasive has serious consequences for the scope of such an account. The following two chapters will take each of these gaps as their starting point, with the aim of offering a new legitimacy-based account of

[93] Walzer, *Spheres of Justice*; Sarah Song, *Immigration and Democracy* (Oxford: Oxford University Press, 2019).

the refugee regime in chapter four; one that avoids these two concerns. I have therefore begun to set the scene for the main argument of this thesis. That refugees are those who lack membership in any state and can only be protected through the provision of membership elsewhere. Before I give a full outline and defence of this view, I will explain and defend a conception of membership in the following chapter.

CHAPTER TWO

The Meaning(s) of Membership

We saw in the last chapter that the concept of membership plays an important underlying role in the political theory of refuge. Before I can put forward an argument for a membership-based view of refugeehood, I need to spell out exactly what membership is in this context.[1] Theorists have drawn links between refugeehood and membership before. For instance, Sarah Song claims that "the duty to protect refugees can often only plausibly be met by taking them in because the need is not for safety, food, and shelter but *political membership itself*."[2] As we have already seen, Michael Walzer likewise argues that "men and women without membership anywhere are *stateless persons*."[3] Importantly, one dominant account of refugeehood argues that refugees are those whose membership has been stripped from them through suffering the special harm of persecution.[4] However, despite the term's common usage, we lack a shared theoretical understanding of what

[1] This chapter draws on the distinction between a concept and a conception. As Valentini and List put it, "concepts are less fully specified than conceptions." The concept of membership is broad and generic. The specific conception of membership that I will defend in this chapter applies to the questions of refugeehood and membership in the state. Importantly, this conception can exist without undermining the more general concept. List and Valentini, "The Methodology of Political Theory," 532.
[2] Song, *Immigration and Democracy*, 111.
[3] Walzer, *Spheres of Justice*, 31.
[4] Price, *Rethinking Asylum: History, Purpose, and Limits*; Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge"; Cherem, "Refugee Rights: Against Expanding the Definition of a 'Refugee' and Unilateral Protection Elsewhere."

membership actually is. Whilst this gap remains, all of these arguments are vulnerable to criticism or misunderstanding. As Mary Midgley would put it, some serious philosophical plumbing is therefore required.[5]

Of course, when we speak of membership in the state, sometimes referred to as *political membership*, we usually think of citizenship. However, this chapter shows that membership in the state and citizenship are not one and the same, although they are importantly related. Here I will therefore outline and defend a specific conception of membership. The aim is to understand the idea of membership as it is used by proponents of the views we discussed in the previous chapter: most notably, Matthew Price and David Owen. I recognize that other areas of discussion in political theory will think of membership in a different way. I will attend to these different conceptions of membership before arguing that political membership – that is, membership in the state – is something distinct and central to theorizing about displacement.

This chapter proceeds as follows. First, I begin with the general concept of membership and how it relates to different kinds of groups. Here I note that the type of group can affect the underlying interpretation and conditions of membership. I give a brief account of what kind of "group" I take the state to be, arguing that political membership in the state is something distinct from other kinds of association. Second, I outline the two dominant ways in which membership in the state is discussed in the political theory of migration: (1) membership as *belonging* and (2) membership as *effective citizenship*. I argue that it is this second more idiosyncratic understanding of membership that underpins the arguments that we saw in the previous chapter. I spend the remainder of the chapter focusing on this latter conception of membership and its relation to citizenship. Third, in developing the idea of membership as *effective citizenship,* I outline approaches to citizenship that

[5] Midgley, *Utopias, Dolphins, and Computers: Problems of Philosophical Plumbing.*

already draw on the concept of membership. I argue that there are two approaches here: those that treat citizenship and membership as synonymous and those that treat membership as a kind of functioning citizenship.[6] I argue that the second approach is preferable as it allows us to make sense of the predicament of refugeehood, as well as other instances of marginalization and oppression that occur *within* the boundaries of formal citizenship. Here, I draw on Margaret Somers's *Genealogies of Citizenship*, which argues that victims of Hurricane Katrina were made internally stateless through the loss of state protection. Fourth, having established that citizenship and membership can be (at least partly) conceptually decoupled, I go onto defend an account of membership. I argue that membership is a status that allows the individual to claim their rights as a matter of political standing. Membership, therefore, depends on (1) the formal extension of citizenship (2) the capacity and institutions of a given state and (3) the social and political standing of the individual. Membership demands formal recognition through the provision of citizenship, but it is not reducible to it. When one loses or lacks membership in a state, they are in a position of infinite danger.[7]

Membership and the state

Membership in its most everyday sense is status in some group or association. The word "member" derives from the Latin *membrum,* which means limb or part of the body. "Member" entered the English language from Old French in around the 14th century, denoting the idea of being part of a community of people.[8] In particular, it came to stand in for being a part or portion of a set (or body) of people joined in common action. This was most obvious in the use of the term "member" for the individuals belonging to the Church, referred to as the *Corpus Christianum* (the Christian

[6] Functioning citizenship is a term used and developed in Kingston, *Fully Human.*
[7] As we saw in the introduction, this phrase if borrowed from Michael Walzer's discussion of membership and statelessness in *Spheres of Justice.*
[8] Etymology Dictionary, "Member," accessed March 25, 2021, https://www.etymonline.com/word/member.

body), or simply the community of all Christians. Members were considered as an extension and constituent part of the whole body.[9]

Today we use the terms member or membership to refer to status in many different kinds of groups and associations. In our everyday language, one can be a member of a family, a football club, a political party, and a nation all at once. These forms of membership can include many variations and hierarchies within them. A child is a member of a family even if she does not get to decide the family's finances. Likewise, I can be a member of a private golf club without being on the decision-making committee. In some associations, membership requires recognition or formal inclusion: for instance, I can only be a member of the golf club if I am actually allowed to join and play by those with decision-making power. However, other forms of membership require no formal action at all. For instance, one can perhaps be a member of the queer community without having to take a test or get a membership card. It can also sometimes be very difficult for people to shake their membership, so to speak; you are often considered to be a member of your family whether you like it or not. This variation speaks to the fact that the way in which membership is conceptualized depends on the kind of group or body of individuals in question.

In *Justice and the Politics of Difference,* Iris Marion Young distinguishes between different kinds of collectivity. An *aggregate* is understood by Young as simply a way of grouping people together by some often-arbitrary characteristic, for instance, by eye colour.[10] A thicker grouping is an *association* or a "formally organized institution, such as a club, corporation, political party, church, college, or union."[11] When individuals are members of an association in this sense, they often opt-in or

[9] I am not committed to the idea that etymological tracing is totally necessary for understanding the meaning of concepts as they're used in contemporary political practice. For instance, Reinhardt Koselleck understands this as a core project in the history of ideas. For our purposes here, understanding where the term 'member' comes from is more interesting than it is obviously necessary. For instance, see: Koselleck, Reinhart and Michaela Richter. "Crisis." *Journal of the History of Ideas*, vol. 67 no. 2, 2006, p. 357-400. *Project MUSE*, doi:10.1353/jhi.2006.0013.
[10] Iris Marion Young, *Justice and the Politics of Difference* (Princeton and Oxford: Princeton University Press, 1990), 43.
[11] Young, 44.

purposefully engage with the group. Indeed, as we saw above, membership in an association might require formal recognition from other members. The final collective that Young considers is a *social group*. For Young, a social group is not simply a collection of people. Instead, such people "are fundamentally intertwined with the identities of the people described as belonging to them."[12] Women constitute a social group; what it means to be a woman is partly to be constituted by your group membership. Likewise, my family constitute a specific social group. Part of what it means to be me simply is to be a member of my family. Social groups therefore often have what Martin Heidegger calls the quality of "*thrownness"* (geworfenheit) or as Young puts it "one *finds oneself* as a member of a group, which one experiences as always having been."[13] This thicker understand of a group seems to correspond to the kinds of membership that are difficult to shake. It is hard (though not impossible) for me to stop being a member of a social group precisely because I am partly constituted by that group membership.

From the above it is evident that "membership" as a simple term is used in multiple and often overlapping ways. I can be a member in more senses than one and, indeed, a member of multiple aggregates, associations, and social groups all at the same time. For our purposes of understanding membership in the state, we need to think through what kind of group the state actually is. Here I am going to briefly sketch what kind of body I take the state to be and then go on for the remainder of the chapter to consider what we mean by membership in the state.

It is fair to say that any brief outline of the nature of the state is likely to be controversial. The question of how we should understand the state is a central debate in political theory. For our purposes here, I am going to attempt to take as neutral a position as possible, although all

[12] Young, *Justice and the Politics of Difference.*
[13] Martin Heidegger, *Being and Time* (Harper Collins 2018, 1927); Young, *Justice and the Politics of Difference.*

definitions of the state are always ideological.[14] First, we should distinguish between states, governments, nations. Governments are the officials who lead the state, headed for instance by the Prime Minister in the United Kingdom. Governments can be elected, self-appointed, hereditary, but all fundamentally shape the direction of policy. The nation refers to a "group of common identity."[15] Where Government refers to the specific set of individuals who make policy decisions, the nation denotes a broader set of individuals who make up the polity, thought to share a kind of commonality. These commonalities could be a shared language, culture, or set of public ideals. The, nation, therefore, refers to a broader group who think of themselves as somehow related to one another.[16] Nations often have the quality of social group thrownness: I am partly constituted by my membership in the nation, and I am thrown into this grouping.

The state is much more difficult to define. The state is often thought to be distinguishable from the nation, at least in principle. The word "state" first came to refer to a political collective through Renaissance advice to Princes, the most famous example being Machiavelli's *The Prince*. In these texts, writers would give advice to Princes on how to protect and maintain their "state", meaning their "state of affairs."[17] There is much debate around whether the state refers to the institutions that make up a given closed society: the parliament, the police, the law courts, the schools, for instance. Or, on the other hand, whether it refers to the entire sovereign body of people – the state just is the collection of individuals that make it up.[18] For my purposes, I am going to think of the state in this former institutional sense. Therefore, rather than capturing the cultural core of the in-

[14] In his 2013 lecture on Genealogies of the State, Quentin Skinner laments the tendency in political science to attempt to come up with a neutral definition of the state saying that "this is an illusion." I accept that my definition here cannot be neutral, but it does need to at least be operable and congenial to the approaches to membership that I will outline in the remainder of the chapter. By the term 'ideological' here, I do not mean this is a pejorative sense. Instead, it is ideological to the extent that it is always shaped by background commitments that mould and change our perceptions of the world and its structures.
[15] David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 124.
[16] The idea of the nation is often thought to be fundamentally exclusionary. We will come back to this later on when thinking about the loss of membership.
[17] Quentin Skinner, "Genealogy of the State" (Northwestern University, 2013).
[18] Hobbes importantly considered the state to be a kind of "fictional person" that results from the multitude, although this is entirely artificial. Skinner, 2013.

group, the state is the background against which politics operated. The state is a set of institutions that oversees a particular grouping of individuals: it is the structure against which people act.

I, therefore, adopt a definition of the state offered by Harold Laski in *Authority in the Modern State*. Paraphrasing Laski, Kalmo and Skinner argue that "when we speak about the state, we are merely referring to the prevailing system of sovereign authority together with an associated apparatus of bureaucracy and coercive force which force operates over some determinate territory."[19] Importantly, states – understood in this territorial way – are the primary institutions through which protection and security are guaranteed. In the history of political thought, the state has often been conceptualized as an agent of protection.[20] After the institutionalization of human rights in the twentieth century, states also became the main legal and political guarantors of human rights.[21] This conception of the state as responsible for the protection of the human rights of a specific set of individuals is importantly tied to, and dependent on, a particular vision of the international order as one that responds to the claims and needs of those people. As Charles Beitz puts it: "the central idea of international human rights is that *states* are responsible for satisfying certain conditions in their treatment of their own people and that failures or prospective failures to do so may justify some form of remedial or preventive action by the world community or those acting as its agents."[22] Beitz argues that human rights provide a normative standard for external legitimacy; that is, for determining when external agents have a reason to 'interfere' in the context of a given state.

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[19] Hent Kalmo and Quentin Skinner, *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (Cambridge University Press, 2011), 42; Harold Laski, *Authority in the Modern State*, 1919, 32. Laski's definition of the state pushed back against the idea that they state is a kind of 'person', something dominant in Hobbes's account of the state.

[20] Hobbes for instance viewed the state and an absolute sovereign as the only way to secure peace and protection. Locke likewise viewed the state as a necessary vehicle through which individual's natural rights could be upheld. Therefore, this conceptualisation of the state as the protector of rights is older than the new human rights governance regimes.

[21] We might also think of states as the main transgressors of human rights. Indeed, the fact that independent states are the main bodies through which rights are secured may worry us. But for now, as we're not critiquing the state as such, we can accept this tension without too much worry.

[22] Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), https://doi.org/10.1111/phc3.12521. Emphasis mine.

However, we can also view human rights as placing a minimum standard on how states can treat individuals. Henry Shue argues that the provision of basic rights, rights without which an individual cannot live, provide such a minimum threshold.[23]

In the first instance, then, states are the bodies responsible for protecting human rights.[24] At this point, it is worth noting the *reach* of the modern state. The world is almost entirely broken up into territorially bounded states and, whilst nations might creep across and beyond borders, states often have a more specific boundary.[25] This highlights the importance of the state as a central political concept and, likewise, demonstrates the problem of being expelled from such a system. Membership in the state then, will not be like membership in a golf club. If I'm expelled from my golf club, I can go to another quite easily, or I can continue my life, simply playing in my local park when I want to. If I'm expelled from membership in the state, the consequences for me will be much more dire: as the state is the primary guarantor of protection and human rights, lacking membership in the state will have serious and often devastating effects.

The distinctions that I have just set out are of course bound to be over-simplified and abstract. All of the concepts outlined here are instead deeply related to one another, in particular the nation and the state. Indeed, we might think that "the concept of the nation-state has so thoroughly conjoined the state with the nation that it is almost impossible to think of one without the other"[26] Whether we can think of the state as separable from the nation will be important later on for

[23] Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy: 40th Anniversary Edition* (Princeton: Princeton University Press, 2020).
[24] Beitz adopts a two-tier system of human rights, arguing that when states fail to uphold the rights of individuals, there is (and should be) recourse to the international level.
[25] It is a matter of debate as to whether there is any unclaimed land left on the planet. Some argue that Bir Tawil, a small desert between Egypt and Sudan, is the only *terra nullius* on Earth. It is unclaimed by any country and has no official long-term residents. Another potential example is Antarctica, where there is a moratorium on claims to territorial sovereignty under the Antarctic Treaty system. Of course, Antarctica is not exactly habitable and so perhaps does not provide a genuine non-state option.
[26] Aradhana Sharma and Akhil Gupta, *The Anthropology of the State*, Blackwell Readers in Anthropology (Blackwell Publishing, 2006), 7.

considering what it means to be a member in the state; lacking political membership in the relevant nation may also undercut the individual's ability to claim recognition from the state. For now, these distinctions will help us to push forward in considering what it means to be a member in the state.

Three concepts of political membership

There are two dominant conceptions of membership in the political theory of migration literature. This section outlines both of them, arguing that the latter understanding of membership as effective citizenship underpins the views discussed in the previous chapter. These two approaches to membership are not meant to be exhaustive.[27] However, they are the most prominent ways in which theorists conceptualise membership in the state.

The first use of the term "membership" which is dominant in the political theory of migration is *membership as belonging*. That is, when one is a member in this sense, she has a cultural, social, or political affiliation with a particular country. Importantly, this kind of membership can be held without formal recognition. However, it is usually thought to generate a claim to formal inclusion. There are several debates within which this use of "membership" is dominant. The most obvious case is Joseph Carens' *social membership* view. Discussing the claims of irregular migrants to citizenship, Carens argues that individuals become entitled to formal recognition by the state because they have developed social membership. In other words "the theory of social membership asserts that people can be members of a society even when they are not citizens and that their membership gives them moral claims to legal rights."[28] Therefore, membership on this account is *normatively prior* to citizenship.[29] Even more clearly, Carens puts it: "I deliberately use the term

[27] Other understandings of membership might appear, for instance, in the literature on political obligation and the duties of compatriots. However, since refugeehood is our main concern in this thesis, the political theory of migration literature is the best place to start.
[28] Carens, *The Ethics of Immigration*, 160.
[29] Carens, 161.

'members' rather than 'citizens' because being a member of a society and having the moral claims of a member is not dependent upon having the formal status of a citizen. Indeed, one of the ways states may act unjustly is by denying citizenship to people who are members."[30] For Carens, residence and time are key to social membership. For one to properly be considered a member, she must often have spent a significant or impactful period of time in the society.[31] The deeper her ties of membership, the stronger claim is to formal inclusion. Membership then, on this view, is a kind of social belonging or affiliation. There are other debates in which this approach to membership is used – for instance, in discussions around nationality. We saw above that the "nation" refers to a specific cultural collective. I can therefore be a member of a nation without necessarily holding formal citizenship. Instead, my membership relies on my affiliation, cultural practices, and associations. Again, it may be that national membership entitles me to membership in the state.

Importantly, this way of understanding political membership is *not* what I am concerned with here. It is also, I argue, not what theorists like Owen and Price are referring to in their discussions of refugeehood. This seems to be the case for several reasons. Most obviously, when discussing refugees, it does not make sense to say that they always lack any affiliation with their state. That is, Price and Owen do not argue that refugees lack political identity. Indeed, it's not unreasonable to think that refugees who have been expelled by a rogue, persecuting Government may feel even more strongly patriotic to the overall project of their state than those who have not been displaced.[32] Their displacement may involve them even more deeply in the politics of their state of

[30] Joseph Carens, "Migration and Morality: A Liberal Egalitarian Perspective," in *Brian Barry & Robert E. Goodin (Eds.), Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (University of Pennsylvania Press, 1992), 29.

[31] There's a debate as to whether time or residence are the relevant factors here. For instance, Carens notes that in some cases the time threshold can be lowered when individuals are present for important life periods such as childhood. Some underlying standard of the relationship between the individual and their state is therefore really doing the work here, with these conditions acting as a proxy.

[32] For discussions of the political agency and acts of refugees see Clarke, "When Do the Dispossessed Protest? Informal Leadership and Mobilization in Syrian Refugee Camps"; Monsutti, "Mobility as a Political Act"; Dowdall, "The Greatest Parliament of Men": Refugees' Petitions to the League of Nations, 1919-1938."

origin. Refugees *qua* refugees do not lack this prior membership or membership as *belonging*. There are, of course, many refugees who are treated as if they don't belong to a particular community. For instance, Rohingya refugees are expelled from Myanmar at least partially because they are not recognized as being members in this sense. As we will see later in the chapter, this lack of belonging can often undermine an individual's claim to formal protection. All we need to note here is that this lack of political affiliation is not always the case for every refugee, even those who have been persecuted. Instead, as I outline below, membership is a thicker and more complex concept related to the guarantee of rights and the functionality of citizenship.

A second use of the term membership, specifically "political membership" is often used to refer to those included in the *demos* of the state as opposed to the citizenry. For instance, a long-term resident in a state who does not yet hold citizenship might still be described as having political membership, even though they lack full status. David Owen in fact draws such a distinction when discussing political membership and national citizenship.[33] Whilst this is a valuable distinction that I come back to in the second section of the thesis, this is again not what I am principally concerned with here. It is also not what those discussing refugees lacking membership are referring to in the previous chapter. If this were the case then displaced people who remained enfranchised in their state of asylum, even if they had been persecuted, would no longer count as refugees. Likewise, anyone not enfranchised in their state – for instance, those living in benign monarchies – would presumably count as refugees. So, although a distinction between the demos and the citizenry is productive, it is not the meaning of membership that I develop here.

The third use of the term "membership" in the political theory of migration applies the concept in a different way. It is this latter conception that underpins arguments for *the political view* and *the*

[33] David Owen, "Transnational Citizenship and the Democratic State: Modes of Membership and Voting Rights," *Critical Review of International Social and Political Philosophy* 14, no. 5 (December 1, 2011): 641–63, https://doi.org/10.1080/13698230.2011.617123.

legitimacy view that we saw in the last chapter. On this approach, instead of being normatively prior to citizenship, membership is importantly tied to citizenship and the guarantee of protection and security. Indeed, many in this literature simply use membership as a synonym for something like effective or functioning citizenship. Therefore, when one is a member of a state, she is formally entitled to protection *and* actually enjoys such protection. Her citizenship is functioning and working as it should.

Membership as effective citizenship

The remainder of the chapter will interrogate this understanding of membership. To begin, in order to understand the nature of membership as effective citizenship, we should get a grasp on the meaning of citizenship itself. The literature on citizenship is often both confusing and confused because it is discussed across disciplines and with distinct empirical or moral projects in mind. Here, when outlining the idea of citizenship, I will draw on literature in political theory and philosophy, but also critical theory and political sociology. It is important to do so for several reasons. First, as we shall see, the distinctions between membership and citizenship that are implicitly drawn upon by proponents of the political view do not match up well with discussions in political philosophy alone. Instead, to develop an account of how these approaches understand membership as effective citizenship, we need to look elsewhere for inspiration. Second, it is often unclear whether discussions of citizenship are descriptive or normative. That is, some theorists are offering an account of how citizenship functions in the real world, whereas others are attempting to give a standard of how citizenship *ought* to be. It seems clear that we cannot be purely normative here; we are aiming to give an account of how refugeehood interacts with citizenship in the real world. Therefore, we need to understand how citizenship functions in the current systems of political organization.

Citizenship in its most basic sense is usually conceptualized as formal status in a polity, typically the state. It is the method by which states determine responsibility for individuals or, as Brubaker characterizes it, "an international filing system, a mechanism for allocation of persons to states."[34] Citizenship is therefore a metric of allocation, as well as an instrument of exclusion and closure.[35]

The two most prominently discussed approaches to citizenship in political philosophy are the schools of liberalism and republicanism. Liberal approaches to citizenship focus on formal legal status, defining it as the provision of an equal "bundle" of rights to individuals, such that they can pursue varying understandings of the good life.[36] This view is often described as a thin approach, as it emphasizes formal status and little else. This understanding of citizenship offers space for individuals to pursue their own goals; citizenship is therefore instrumental to helping individuals pursue their vision of the good life.[37] Republicans agree with liberals that formal status is important. However, they propose a thicker understanding of citizenship as dependent upon freedom as self-governance. On this view, "citizenship is constituted as both a legal status and intersubjective recognition of equality, and entails the active commitment, or civic virtue of citizens."[38] Republican views share a common assumption that freedom relies on participation in the institutions of the state. Citizenship, on the republican view, is much more active than liberal ideas of citizenship; it is not simply about an equal bundle of individual rights. Instead, to be a citizen is to be an active part of some political collectivity.

[34] Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992), 31.
[35] Margaret Somers, *Genealogies of Citizenship: Markets, Statelessness, and The Right to Have Rights* (Cambridge: Cambridge University Press, 2008), 5. Brubaker, *Citizenship and Nationhood in France and Germany*.
[36] Iseult Honohan, "Liberal and Republican Conceptions of Citizenship," in *The Oxford Handbook of Citizenship, (Eds. Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink)* (Oxford: Oxford University Press, 2017), 84; Rainer Bauböck, *Immigration and the Boundaries of Citizenship* (Monographs in Ethnic Relations, 1991).
[37] Ziegler, *Voting Rights of Refugees*, 96.
[38] Honohan, "Liberal and Republican Conceptions of Citizenship," 85.

We should also consider the communitarian understanding of citizenship. One prominent communitarian, Michael Sandel, argues that liberal conceptions of justice depend on the notion of an atomized individual, which he takes to be ontologically mistaken; it does not make sense to speak of the individual as *prior* to the community in which she is situated. Instead, Sandel argues that we should understand ourselves as "members of this family or community or nation or people, as bearers of this history, as sons and daughters of that revolution, as citizens of this republic."[39] Communitarian accounts of citizenship argue that citizenship is not merely a formal legal status, nor a tool for self-governance, but a form of identity and belonging. Communitarians seek to "emphasize the obligations of citizenship and sees membership as a prerequisite for rights."[40] Therefore, while liberal theories of citizenship emphasize individual rights, communitarian theories emphasize obligations to a community. For instance, Amitai Etzioni's *The Spirit of the Community,* in which he argues for rebalancing rights and obligations:

> Claiming rights without assuming responsibilities is unethical and illogical […] To take and not to give is an amoral, self-centred pre-disposition that ultimately no society can tolerate […] Hence, *those most concerned about rights ought to be the first ones to argue for the resumption of responsibilities*. One presumes the other.[41]

Communitarian theories of citizenship therefore also emphasize belonging to a community rather than access to individual rights. An individual must belong to a community before she can claim the rights and obligations that go along with citizenship. This is therefore similar to the understanding of membership as belonging outlined earlier on. Citizenship here functions as an important feature of identity – it is not merely a legal status or a tool for political self-governance.[42]

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[39] Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1998), 179.
[40] Michael Lister and Emily Pia, *Citizenship in Contemporary Europe* (Edinburgh University Press, 2008).
[41] Amitai Etzioni, *The Spirit of the Community: Rights, Responsibilities, and the Communitarian Agenda* (New York: Crown Publishing, 1993), 9–10.
[42] Citizenship therefore has the quality of a *social group*, as outlined by Iris Marion Young, as it constitutes and shapes the individual.

We are citizens because we *belong* to a country, we share in its culture and history, and feel attached to it. So, to summarise the story so far: liberalism emphasizes the provision of equal rights, republicanism emphasizes political self-rule, and communitarianism emphasizes identity and the obligations of belonging to a community.

More recent discussions of citizenship have arguably turned away from how to define it and instead consider where exactly citizenship is located. That is, can one only be a citizen of the state or is citizenship possible on a smaller or larger scale? The most obvious example of this is the consideration of *global citizenship,* sometimes called political cosmopolitanism. Some advocate for cosmopolitanism in the form of a world state and global democracy.[43] Relatedly, theorists also debate the continued relevance of the state to the concept of citizenship. There are those who emphasize the continued importance of citizenship, given the continuing power of the state as a system of political rule.[44] There are also those who argue for its growing irrelevance, most notably advocates of *postnationalism*.[45] Postnationalists argue that the historical core of citizenship, the possession of nationality, is no longer central to accessing the protection of rights. Instead, some claim that national citizenship has been superseded by new and diverse forms of local and supranational belonging.[46] Rights have become decoupled from citizenship, with residents now enjoying similar bundles and entitlements to citizens, and those rights being upheld and enforced by transnational or local institutions.[47] Identity has also become decoupled from nationality as individuals make multiple, disparate connections in an increasingly globalized and mobile world.

[43] David Held, "Cosmopolitanism: Ideals and Realities," in *The Changing Contours of Political Community (Ed. Barry Holden)*, Global Democracy: Ket Debates (London: Routledge, 2000), 17–31.
[44] Brubaker, *Citizenship and Nationhood in France and Germany*; Randall Hansen, "The Poverty of Postnationalism," *Theory and Society* 38, no. 1 (2009): 1–24; Will Kymlicka, "Immigration, Citizenship, Multiculturalism: Exploring the Links," *The Political Quarterly* 74, no. 1 (2003): 195–208.
[45] Yasemin Soysal, *Limits of Citizenship* (Chicago: Chicago University Press, 1994); Christain Joppke, "Transformation of Citizenship: Status, Rights, Identity," *Citizenship Studies* 11, no. 1 (2007): 37–48.
[46] Soysal, *Limits of Citizenship*.
[47] Soysal, 164.

Therefore, practices of citizenship have begun to take "transnational or non-national or extra-national form or direction."[48]

However, whilst the importance of national citizenship may have appeared to be diminishing in importance a decade ago, it has potentially regained significance in recent years. With the contemporary retraction into a more national, exclusionary politics, citizenship is valuable as a 'protective shield' against exclusion.[49] Kibreab notes that "non-nationals, particularly refugees, are denied many of the rights enjoyed by nationals and are consequently considered as 'other,' removed from the political, social, economic and cultural life of host societies."[50] The value of national citizenship, particularly to those who do not have it, should not be understated. Whilst politics undoubtedly happens outside of formal citizenship, we should also be careful to emphasize that having citizenship somewhere is often a matter of life and death. We might instead think that, rather than the state becoming less important to the concept of citizenship, the local and global are simply growing in relative importance.[51] In any case, the question of where exactly citizenship is located remains open.[52] Though when I talk about citizenship here, I mean citizenship in the state.

There is also a distinction to be drawn out between discussions of the various *elements* of citizenship rather than discussions of the idea of citizenship as a whole. Jean Cohen outlines the three elements of citizenship that appear in the literature: the political principle of democracy, the juridical status of legal personhood, and membership as a form of identity or belonging.[53] First, citizenship is

[48] Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton: Princeton University Press, 2006), 27.
[49] Ziegler, *Voting Rights of Refugees*, 91.
[50] Gaim Kibreab, "Citizenship Rights and Repatriation of Refugees," *International Migration Review* 37, no. 1 (2006): 47.
[51] Yashai Blank, "Spheres of Citizenship," *Theoretical Inquiries in Law* 9 (2007): 411.
[52] I will discuss this further in the final chapter and conclusion of the thesis which considers the potential of membership-providing institutions outside the state.
[53] Jean Cohen, "Changing Paradigms of Citizenship and the Exclusivity of the Demos," *International Sociology* 14, no. 3 (1999): 245.

importantly related to democracy as citizens are those who traditionally exclusively vote for the policies and parties of the state. A relevant distinction here may be between citizens and 'subjects'; those who are formally included under the jurisdiction of the state but without any right to participate – such as is the case in empires. Of course, this link between citizenship and democratic inclusion is becoming less relevant in the present day, as voting rights tend to be extended to long-term residents in liberal democratic states.[54] Second, citizenship importantly gives an individual legal personhood. Cohen writes that this means that citizenship "carries a set of legally specified rights including the all-important ability of the legal subject to sue in court and to claim the state's protection."[55] Third, citizenship can constitute a form of belonging or identity. Membership is "an exclusive category that forms the basis of a special tie and affords a social status and a pole of identification that can itself become a rather thick and important identity able to generate solidarity, civic virtue, and engagement."[56] As Cohen points out, theorists often highlight, emphasize, or lean on one of these different aspects of citizenship more than the others. Disagreements within the literature on citizenship, then, might arise because certain theorists highlight one element of citizenship more than another. Our main focus, then, concerns what the most important component of citizenship is, rather than how we should define citizenship as a whole. As Cohen rightly points out, political philosophers have not been very successful in noticing this methodological flaw. Instead of continuing in the same vein, she argues that we should disaggregate the various components of citizenship – only when we conceptually separate the three elements can we begin to see the various ways in which institutional arrangements can be restructured. She writes:

> Once we take the step of dissociating legal personhood from citizenship status in a discrete state, once we see that the various dimensions of citizenship are open to a variety of new combinations,

[54] See, for instance, Luicy Pedroza, *Citizenship Beyond Nationality* (University of Pennsylvania Press, 2019).
[55] Cohen, "Changing Paradigms of Citizenship and the Exclusivity of the Demos," 248.
[56] Cohen, 248.

> the appropriate institutionalizations of each level can come into view so that new meaning can be given to the dimensions of legal standing, democratic participation, identity and belonging.[57]

Once we recognize that citizenship is made up of various, potentially separable components we need not argue for these components to be guaranteed by the historical institution of the nation-state.

The above brief overview of ongoing debates about citizenship shows that its meaning is both complicated and contested. The discussion so far has not meant to be exhaustive – doing so would require another thesis. However, it has aimed to show that our approach to membership and refugeehood needs to be mindful of these various debates. For now, we will move onto those theorists who discuss the concept of membership in their theorizations of citizenship to help us to map our own path forward.

Citizenship as membership

Many theorists treat membership and citizenship as synonymous, or at least as deeply intertwined concepts. For example, Dominique Leydet states that, according to most accounts of citizenship, "a citizen is a *member* of a political community who enjoys the rights and assumes the duties of *membership*."[58] T. H. Marshall's essay 'Citizenship and Social Class' defines citizenship as *full membership of a community*.[59] Those who may be better known to political theorists do this as well. Ayelet Shachar states that we should take seriously "the significance of citizenship as *full membership* in a political community of equals."[60] She goes onto argue – when considering the allocation of citizenship through birth – that "we will find the strict reliance of birthright transmission of

[57] Cohen, 258.
[58] Dominique Leydet, "Citizenship," Stanford Encyclopedia of Philosophy, 2017, https://plato.stanford.edu/archives/fall2017/entries/citizenship.
[59] Thomas Marshall, *Citizenship and Social Class and Other Essays* (Cambridge: Cambridge University Press, 1950).
[60] Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, MA: Harvard University Press, 2009), 2.

entitlement in the assignment of the valuable good of *political membership*."[61] Therefore, according to Shachar, when someone has citizenship, they enjoy membership as well. Many others take citizenship to be, at its core, a type of membership. For instance, Rainer Bauböck argues that citizenship is a *membership-based concept*; at its conceptual core, citizenship *is* "membership of a political community."[62] It seems clear then, that many use the term membership to define citizenship, treating them as deeply interrelated or interdependent concepts.

Others argue, rather than membership and citizenship being one and the same, that membership is a precondition for the functioning of citizenship. Margaret Somers's *Genealogies of Citizenship* argues that membership is a necessary component of citizenship. She draws on the concept of recognition – which we will discuss further on – to argue that recognition as a member is required for an individual to enjoy the status of citizenship. She writes:

> My focus on membership and inclusion as ontological pre-conditions for recognition blurs the radical dichotomy between citizen and human rights. If recognition is the precondition not only to citizenship but also to human rights, and membership is the prerequisite to recognition, then human rights are both rooted in what endows us with our humanity – the recognition that comes only from attachments and inclusion.[63]

Somers separates the concepts of citizenship and membership; on her view, the latter is a precondition for the former. Notably, Somers is also tied to the idea that membership loss constitutes citizenship loss. That is, if one is not recognized as a member of a political community then she is *ipso facto* not a citizen either. This is what motivates Somers's later argument that victims of Hurricane Katrina were rendered *internally stateless persons* in the United States; they "had become

[61] Shachar, 3.
[62] Rainer Bauböck, "Political Membership and Democratic Boundaries," in *The Oxford Handbook of Citizenship, (Eds. Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink)* (Oxford: Oxford University Press, 2017), 65.
[63] Somers, *Genealogies of Citizenship: Markets, Statelessness, and The Right to Have Rights*, 7.

de facto internally stateless superfluous people. Rightlessness and exclusion from civil society go hand in hand." The victims of Katrina were not recognized as members of the United States, she argues, because of the contractualization of citizenship under market fundamentalism. As these individuals were not seen to be fulfilling their part in the marketized social contract, they were not viewed as entitled to the bundle of rights that are meant to be accessible to all citizens.[64] In other words, because they were not seen as members, their citizenship failed them when they needed it the most. Lindsey Kingston takes a similar approach, arguing that the lack of 'functioning citizenship', which she takes as the essential feature of statelessness, is a denial of an individual's status as "fully human."[65] Access to membership, therefore, according to Kingston, depends on 'hierarchies of personhood.' Focusing on such hierarchies allows us to see how political membership can fail to function even when formal citizenship remains. Again then, membership is seen as a prerequisite for functioning citizenship.

No consideration of citizenship and refugeehood would be complete without touching upon Hannah Arendt's discussion of "the right to have rights." In *The Origins of Totalitarianism* Arendt argues that abstract human rights did little to protect refugees – she critiques the collapse of human rights into the rights of citizens, arguing that refugees were "a practical demonstration of the totalitarian movement's cynical claims that no such thing as inalienable human rights existed." Arendt claims that refugees are deprived of 'the right to have rights' because of their lack of place in the world." She writes:

> The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective...This extremity, and nothing else, is the situation of people deprived of human rights. They are deprived, not of the

[64] Somers, 19.
[65] Kingston, *Fully Human*.

> right to freedom, but of the right to action; not of the right to think whatever they please, but of the right of opinion.[66]

On Arendt's account of political life, this rightlessness is about being excluded from the public sphere – "a life without speech and action" Arendt says in *The Human Condition*, "is literally dead to the world; it has ceased to be human life as it is no longer lived among men."[67] Seyla Benhabib interprets Arendt's discussion of rightlessness as directly related to the conception of membership; "it is a moral claim to membership and a certain form of treatment compatible with the claim to membership."[68] Indeed, others interpret Arendt's argument as relying on some reference to social recognition. For instance, Frank Michelman argues that:

> As matters have actually developed . . . the having of rights depends on receipt of a special sort of social recognition and acceptance – that is, of one's juridical status within some particular concrete political community. The notion of a right to have rights arises out of the modern-statist conditions and is equivalent to the moral claim of a refugee or other stateless person to citizenship, or at least juridical personhood, within the social confines of some law-dispensing state.[69]

The fact that human rights are instituted and administered through bounded political communities means that, when expelled from their political communities, refugees were not able to access the rights to which they were supposedly entitled.

Many use Arendt as the starting point for their theorizing about citizenship, particularly when discussing displaced persons, whereas political theorists tend to reject her view. Carens, for

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[66] Arendt, *The Origins of Totalitarianism*, 388.
[67] Hannah Arendt, *The Human Condition: A Study on the Central Dilemma's Facing Modern Man* (New York: Doubleday Anchor Book, 1959), 176. Quoted in Nanda Oudejans, "The Right to Have Rights as The Right to Asylum," *Netherlands Journal of Legal Philosophy* 43, no. 1 (2014): 11.
[68] Seyla Benhabib, *The Rights of Others* (Cambridge: Cambridge University Press, 2004), 56.
[69] Frank Michelman, "Parsing 'A Right to Have Rights,'" *Constellations: An International Journal of Critical and Democratic Theory* 3, no. 2 (1996): 203. Quoted in Benhabib, *The Rights of Others*, 56.

instance, argues that Arendt used the phrase "the right to have rights" to refer to the particular situation in Europe during the interwar period and was not offering a definition of citizenship.[70] Kieran Oberman reiterates this point, arguing that the most important rights are no longer citizenship rights but human rights enshrined in international law, something which came into effect after Arendt coined the phrase.[71] The reason for this, I think, is that Arendt's view comes with significant theoretical baggage. For instance, Arendt scholars take her understanding of "the right to have rights" to be reliant on her later clarified (and controversial) distinction between the private and the public sphere.[72] Moreover, Arendt's concept of politics in itself is not straightforward and relies on her idiosyncratic understanding of action as *praxis*. If the concept of membership that we are developing here is to be as ecumenical as possible, Arendt can point us in the right direction, but she cannot take us all the way.[73] However, a lot of what I will say in this thesis is Arendtian in nature: I share her view that lack of a political place in the world can have serious consequences for the protection and security of rights.

Another important work that highlights the social nature of political status is Judith Shklar's *American Citizenship*. Shklar discusses the notion of 'standing', noting that failing to treat someone as a political equal is to deny their value as a fellow human being. In her discussion of the right to vote she writes: "not to be heard is not to exist, to have no visibility and no place politically."[74] This idea of standing is dependent upon one's being recognized as a member of the political

[70] Carens, *The Ethics of Immigration*, 93–94.
[71] Kieran Oberman, "Immigration, Citizenship, and Consent: What Is Wrong with Permanent Alienage," *Journal of Political Philosophy* 25, no. 1 (2017): 92.
[72] For a discussion of this distinction see Shiraz Dossa, 1988, *The Public Realm and The Public Self: The Political Theory of Hannah Arendt*, Waterloo, Ontario: Wilfred Laurier University Press.
[73] In particular, I think relying too much on Arendt implies that I buy into her conception that personhood and humanity is created by political institutions. For instance, Étienne Balibar argues that Arendt's idea "is not that only institutions create rights, whereas, apart from institutions, humans do not have specific rights, only natural qualities. Her idea is that, apart from the institution of the community (… in the sense of the reciprocity of actions), there simply are no humans." Etienne Balibar, "(De)Constructing the Human as Human Institution: A Reflection on the Coherence of Hannah Arendt's Practical Philosophy," *Social Research* 74, no. 3 (2007): 733.
[74] Judith Shklar, *American Citizenship: The Quest for Inclusion* (University of Utah: The Tanner Lectures on Human Values, 1989), 411.

community. Shklar continues: "most white men had the vote, and to be represented meant to be spoken for, but it was also a matter of being there, being heard, having a sense of "somebodyness."[75] Nonrecognition as a member of the political community amounts to a rejection of an individual's 'somebodyness'. Citizenship thus comes to act as a proxy for social and political respect. She writes:

> Standing is a vague notion, implying a sense of one's place in a hierarchical society, but most Americans appear to have a clear enough idea of what it means, and their relative social place, defined by income, occupation, and education, is of some importance to them.[76]

Shklar argues that the struggle for equal citizenship in America was not only a struggle for the ability to exercise those rights, but also a struggle for the standing that goes along with holding those rights as equally regarded members of a society. This highlights the way in which formal status can signal respect and informal inclusion, something which is important for the functionality of citizenship.

Given the above, there are two approaches to citizenship and membership present in the literature which have important but divergent implications understanding refugeehood. First, some simply define citizenship *as* membership; citizenship and membership in the political community are one and the same. Second, one could adopt Somers's position – to claim that membership and citizenship are related but independent concepts. That is, without membership in a political community one's citizenship becomes essentially empty. I argue that this second route of partially decoupling membership and citizenship is more convincing. This emphasises the fact that membership is not only a legally guaranteed good but also a socially guaranteed good – it depends

[75] Shklar, 399.
[76] Shklar, 387–88.

on the social recognition of others rather than mere formal status. I will develop this account more fully in the next section, but to see why Shachar's view might be mistaken an example would be useful. Take the case of Black Americans during the Jim Crow era. After the introduction of the 14th Amendment to the United States Constitution, brought in after the Civil Rights Act of 1866, Black Americans formally held citizenship in the United States.[77] However, we surely cannot claim that they were viewed as *members* in the same way as their white counterparts. They were barred from working, buying houses, and most could not exercise their voting rights until 1965.[78] As Judith Shklar puts it "the equality of political rights… was proclaimed in the accepted presence of its absolute denial."[79] Of course, we might also want to argue that Black Americans lacked citizenship as well as membership – they held a thin form of legal personhood, but not equal citizenship. Instead of being citizens, then, such individuals were subjects of the law. However, even post-1965 when Black Americans could finally be said to have equal legal status with whites, we can still question whether they were viewed as members in this fuller sense. That is, even when their formal status had been affirmed, the thicker status of being a full member was still exclusionary.

Therefore, citizenship and membership seem to come apart. Citizenship in the formal sense does not guarantee membership. If you have citizenship in the state, you do not necessarily enjoy membership. Membership is something additional to citizenship, though it importantly relies upon it.

[77] United States Constitution, Amendment XIX. This informally overturned the previous Dread Scott v. Sandford decision in 1857 (prior to the civil war) which held that Blacks were not citizens and therefore could not make appeals or sue in court.
[78] Rhonda Jones and Charles McKinney, "Jim Crowed – Emancipation Betrayed: African Americans Confront the Veil (Eds. Alton Hornsby Jr)," in *A Companion to African American History* (Oxford: Blackwell Publising, 2005), 271–82.
[79] Shklar, *American Citizenship: The Quest for Inclusion*, 387.

Let us quickly turn back to the literature on refugees that we considered in the last chapter to see where we stand so far. As we saw, proponents of the political view argue that refugees are those who have been stripped of their membership through suffering the special moral harm of persecution. This view is also shared by David Owen's legitimacy view. Refugees are not merely displaced, they are also *de facto* stateless persons.[80] Importantly, these arguments presuppose some distinction between citizenship and membership. Owen and Price do not argue that refugees are literally denationalized. Rather than being formally stripped of citizenship, it is the refugee's membership that is denied. These arguments already rely on a decoupling of the concepts of citizenship and membership. We have also shown, in the discussion above, that decoupling these concepts seems to make better sense of the predicament of individuals who have been described as "second class citizens" in their states – for instance, in the historic case of Black Americans in the United States.

The three conditions of political membership

Now that we have seen how citizenship and membership can come apart, we can begin to develop an account of the conditions of political membership: that is, what are the minimum standards for someone to hold membership in the state? In the examples that I have relied on so far, I have attempted to draw on shared understandings of membership that I believe are already relied upon in the ways that we think about citizenship and refugeehood. However, the remainder of this chapter will develop a more fully fleshed out account of the concept of membership as effective citizenship. In particular, I will spell out three conditions that must obtain in order for an individual to enjoy membership in the state. Overall, I argue that membership is a status that allows the individual to claim her rights as a matter of standing. Therefore, when individuals lack membership, they are unable to claim their rights in a secure and guaranteed way. My view here is not that those without membership *never* have their human rights respected. Many states do respect

[80] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge"; Price, *Rethinking Asylum: History, Purpose, and Limits*.

the rights of refugees and other marginalised groups. However, to be without membership is to lack to have one's claims securely recognized in a political community. When one is not able to do this, she is "acutely vulnerable to both the contingencies of circumstance and the dominating agency of others."[81] To lack membership is therefore to be in a condition of structural vulnerability. There are several ways to think about this vulnerability. For instance, although some states do respect the rights of refugees on their territory, we might think that this protection suffers from a lack of *modal robustness.*[82] That is, there are relevantly close possible worlds in which such rights aren't protected or secured. A modally robust conception of security would require that an individual enjoys protection in this world as well as close possible worlds – in other words, it would require that her protection in this world isn't accidental or random. To have membership in a state, then, is to enjoy a kind of robust security, rather than depending on good will of friendly states.

First, what do we mean by a 'claim'? As Joel Feinberg puts it "to claim that one has rights is to make an assertion that one has them, and to make it in such a manner as to demand or insist that they be recognized."[83] He continues that rights are an especially good form of "moral furniture" in giving individuals the support to make these kinds of claims against others.[84] It is also the foundation of respect for human dignity: "to respect a person then, or to think of him as possessed of human dignity, simply is to think of him as a potential maker of claims."[85] Notice that there are at least two agents here – those making the claim, and those potentially recognizing the claim. Feinberg assumes that a legal right is enough to ensure the recognition of such a claim. However, as we have touched upon already, there are cases in which people are formally entitled to make such claims and yet they lack the relevant uptake. In cases where membership is lost or lacking, an

[81] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 30.
[82] For more on the idea of modal robustness, see Christian List and Laura Valentini (2016) "Freedom as Independence", *Ethics,* 126 (4). Pp.1043- 1074.
[83] Joel Feinberg, "The Nature and Value of Rights," *The Journal of Value Inquiry* 4 (1970): 251.
[84] Feinberg, 252.
[85] Feinberg, 252.

individual *can* make claims. What is lost is not their ability to protest, argue, or be political agents.[86] What is lost is the ability to have those claims recognized and guaranteed in a secure way. I argue that membership depends on three important conditions:

1. *The citizenship condition:* The political community (usually the state) must formally recognize the individual as entitled to equal treatment before the law through the provision of formal citizenship.
2. *The capacity condition:* the state in question must have the capacity and institutions available to uphold the basic rights of every individual that they are responsible for.
3. *The standing condition:* The individual must be recognized as having a minimum level of social standing, comparable with others in the same community.[87]

All three of these conditions must be met in order for an individual to hold membership in the state. In other words, they are required for the individual to enjoy *effective citizenship*. In what follows I will progress through each of these conditions, discussing why each of them are necessary.

1. The citizenship condition

As membership is understood here as a thicker relationship than citizenship, it importantly depends on formal recognition in the state. This might seem obvious, but it is worth underlining. If membership is understood as *effective citizenship,* then it relies on the extension of formal citizenship; you cannot have effective citizenship if you do not enjoy citizenship in this thinner sense. In this way, my conception of membership is distinct from membership *as belonging*. That

[86] This can be linked back to my discussion in the introduction about the political agency turn in refugee studies. I believe this literature potentially failed to take seriously the kind of mutuality required for one's right to be secure.
[87] We might think of these last two conditions as relating to (and guaranteeing) the functioning of the first condition. The citizenship condition formally entitles the individual to protection. The capacity and standing conditions ensure that those formally entitlements are actually substantively guaranteed.

view of membership claims that individuals become entitled to citizenship through developing social ties. My view claims that membership comes after citizenship: membership requires citizenship. Such formal citizenship does two things. It ensures the formal guarantee of rights and therefore gives individuals legal access to certain necessary institutions and procedures. It also signals an individual's standing in the community (therefore relating to the third condition). This point is made by Rainer Baubock, discussing two reasons why individuals have an interest in citizenship. "The first one is that individuals have a basic interest in such membership both for instrumental reasons (in order to gain protection of their fundamental rights) and intrinsic reasons (because membership contributes to their self-respect and equality of respect by others)."[88] This will remind us of Cohen's claim that that citizenship "carries a set of legally specified rights including the all-important ability of the legal subject to sue in court and to claim the state's protection."[89] This heightened form of protection is, therefore, necessary for one's rights to be properly secured.

This condition has the important implication that, if an individual is stripped of her formal citizenship, she loses her membership as well. If membership relies on citizenship, then those who lack citizenship are not members anywhere.[90]

2. The capacity condition

The capacity condition holds that, in order for membership as effective citizenship to be guaranteed, the state in question must be actually willing and able to protect the individual's basic

[88] Rainer Bauböck, "Morphing the Demos into the Right Shape. Normative Principles for Enfranchising Resident Aliens and Expatriate Citizens," *Democratization* 22, no. 5 (July 29, 2015): 825, https://doi.org/10.1080/13510347.2014.988146.
[89] Cohen, "Changing Paradigms of Citizenship and the Exclusivity of the Demos," 248.
[90] This might point us towards some interesting implications about the stripping of citizenship. For instance, denationalization might therefore be thought to have a symbolic and a practical function in denying someone's membership in the state. This similarly links together the predicament of statelessness and refugeehood in a more substantive way than is often acknowledged. I will come back to this when discussing the membership view in chapter four.

rights. This is because, whilst the citizenship condition singles out individuals as formally entitled to rights, this second condition ensures that the background framework is in place for this entitlement to function. As mentioned above in our discussion of Feinberg, claims depend on a claim hearer or receiver. There are several different ways of thinking through what capacity means in this context. The notion of a 'failed state' often pivots on the ability of the government to control its citizens, for example, through taxation or policing. An inability to do so amounts to a failure of sovereignty; although the state nominally has control, they lack power over the territory. State failure might also be categorized as an inability to provide basic services, for instance, by building roads or providing medical care. Of course, again we should note that while some states do nominally have such systems in place, they fail to function in any kind of consistent or secure way. Rather, what is important is not only that such systems exist but that they actually work. This standard is reflected in refugee law. For instance, in a 2001 legal case, it was claimed that "[w]hatever the law provides, and the officials attempt, if the country of nationality is unable, as a matter of fact, to afford protection ... the conclusion may be reached that "protection is unavailable" in the person's country of nationality."[91] So the question should not be whether the state *could* hypothetically protect its citizens, but whether it in fact actually does.

It is of course difficult to set a level at which the appropriate background institutions are in place. It seems true though that, as Miller puts it, "intuitively we can distinguish between cases in which a well-functioning legal system provides an environment in which most residents are able to go about their lives without the threat of personal violence, theft, destitution, and so on and cases where the opposite is true."[92] Effective citizenship relies on the background conditions being such that institutions are able to securely uphold their basic rights.

[91] Re Minister for Immigration and Multicultural Affairs; Ex parte Miah [2001] HCA 22 (3 May 2001) [198].
[92] Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*, 59.

3. The standing condition

The standing condition holds that, in order for an individual to enjoy effective citizenship, she must have a reasonable level of social and political standing in the state. This is a similar argument to the one made by Margaret Somers and develops on her use of the concept of recognition with regards to membership. We have already seen cases in which individuals fail to be recognized as worthy of protection and therefore lose or lack the ability to have their claims heard. Whilst such individuals formally hold citizenship, their formal status is ineffective because their membership is not recognized or is even repudiated. Membership depends at least partially on the social – the ways in which individuals see and treat others.

Bauböck argues that membership is inherently relational; it depends on the relationship between the individual and others. He writes: "membership status can only be generated through (formal or informal) recognition by others. I cannot be a member of a group none of whose members recognizes me as a member."[93] Somers also draws on this understanding of membership as social inclusion when discussing the victims of Hurricane Katrina. She writes: "by social inclusion I mean the right to *recognition* by others as a moral equal and to be treated by the same standards and values and due the same level of dignity and respect as other members."[94] The concept of recognition is therefore important for us to understand what exactly it means for an individual to enjoy a certain level of social and political standing.

In *The Politics of Recognition* Charles Taylor argues that many political struggles depend on recognition—the claims of women, people of colour, migrants, and other oppressed groups are often centred on the demand to be recognized as moral equals. Those who face misrecognition

[93] Bauböck, "Political Membership and Democratic Boundaries," 65. As we saw at the beginning of this chapter, there is a question here of whether this is actually the case in all groups. For example, being a member of the queer community could be case of 'membership' that depends solely on self-identification. However, in the case of state membership, this seems to be true.
[94] Somers, *Genealogies of Citizenship: Markets, Statelessness, and The Right to Have Rights*, 6.

"can suffer real damage…if the people or society around them mirrors back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition... can be a form of oppression."[95] Taylor distinguishes between two meanings of the politics of recognition; first, recognition of equal dignity and, second, recognition of difference. Often thought of as a sparking moment for the political theory of multiculturalism, the *politics of difference* "is connected with social movements in which the principal issues are identity-related: examples might be campaigns to protect and celebrate the distinct ethnic identity of the Roma or Taylor's own example of the Québécois."[96] Theories of recognition also often highlight its psychological element. Charles Taylor and Axel Honneth draw on Hegel's argument that the self is partially constituted through the recognition of and from the other. For Hegel, it is mutual recognition with other autonomous agents that allows you to become an autonomous agent yourself.[97] Non-recognition, for Taylor and Honneth, can therefore amount to a failure in the constitution of the self.[98]

The *identity model* of the politics of recognition outlined above emphasizes the psychological element of recognition and non-recognition. Fraser argues that there are two significant problems with this approach: first, the problem of the *displacement of distribution* and, second, the problem of *reification*.[99] The problem of displacement relates to the identity models claim that recognition is the primary value of political justice. It therefore wrongly frames all forms of oppression and injustice as problems of recognition and identity, rather than economic distribution. She argues

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[95] Charles Taylor, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition (Ed. Amy Gutmann)* (Princeton: Princeton University Press, 1994), 25.
[96] Maeve Cooke, "Beyond Dignity and Difference Revisiting the Politics of Recognition," *European Journal of Political Theory* 8, no. 1 (2009): 77.
[97] Georg Wilhelm Friedrich Hegel, *The Phenomenology of Spirit, 1807* (Oxford: Oxford University Press, 1979).
[98] Taylor, "The Politics of Recognition," 26; Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge: Polity Press, 1995). Similar argument are made by post-colonial scholars and critical race theorists long before Taylor and Honneth made them explicitly about recognition. For instance, see Franz Fannon using the concept of "false consciousness" to apply to the oppression of colonized peoples, as well as W.E.B Du Bois on "double consciousness" and the construction of Black identity in the US. Franz Fanon, *The Wretched of the Earth, 1961* (London: Penguin Books, 2001); W.E.B Du Bois, "On Being Ashamed of Oneself: An Essay on Race Pride," *Crisis* 40, no. 9 (1933): 199–200; W.E.B Du Bois, *The Souls of Black Folk, 1903* (Boston, MA: Bedord Books, 1997).
[99] Nancy Fraser, "Rethinking Recognition," *New Left Review* 3 (2000): 108.

that "under these conditions, the idea that one could remedy all maldistribution by means of a politics of recognition is deeply deluded: its net result can only be to displace struggles for economic justice."[100] The problem of reification stems from the identity view's focus on identity itself, rather than the political construction or deconstruction of identity. Fraser writes: "Ironically, then, the identity model serves as a vehicle for misrecognition: in reifying group identity, it ends by obscuring the politics of cultural identification, the struggles within the group for the authority—and the power—to represent it."[101]

In contrast to the identity model of the politics of recognition, Fraser proposes the *status model* which avoids these two problems. Rather than focusing on identity, the status model centres on participatory parity in a community. From this perspective:

> What requires recognition is not group-specific identity but the status of individual group members as *full partners in social interaction*. Misrecognition, accordingly, does not mean the depreciation and deformation of group identity, but social subordination—in the sense of being prevented from participating as a peer in social life. To redress this injustice still requires a politics of recognition, but in the 'status model' this is no longer reduced to a question of identity: rather, it means a politics aimed at overcoming subordination by establishing the misrecognized party as a full member of society, capable of participating on a par with the rest.[102]

It is this form of recognition as being a full partner in social interaction that is necessary for membership in the state. In order for one's citizenship to function, an individual needs to be considered as an agent with a certain level of social status. Without this status, her rights will fail to be recognized. Indeed, persecution is often understood to be central to refugeehood perhaps

[100] Fraser, 112.
[101] Fraser, 112.
[102] Fraser, 113.

for this very reason – because to be persecuted is to be rejected and exiled from one's community. It is tantamount to a denial of social and political equality.

In order to understand what recognition is in the case of effective citizenship let's consider what it is not. First, recognition is not mere 'identification.'[103] We can identify an individual without necessarily thinking of them as someone of equal moral regard and concern. Recognition is also not 'acknowledgement.' Acknowledgement is a thinner concept that does not require a commitment to parity, it is "something less ambitious than the wholesale affirmation."[104] So recognition is a thicker concept than mere identification or acknowledgement. Instead, to recognize an individual is to view them as an equal party in the political community. As Somers puts it: "the foundational right [is] to political and social *membership*… it is only this primary right of inclusion and membership that makes possible the mutual acknowledgement of the other as a moral equal."[105]

The nature of recognition also becomes clearer when we consider instances of its denial. For instance, Lindsey Kingston, considering the plight of *de jure* stateless persons, argues that "denied recognition and rights protection, [the stateless] are often caught in a state of limbo that prevents them from accessing the right of place and purpose necessary for achieving a life of dignity."[106] Michael Agier also references the idea that refugees are those who do not enjoy recognition in any state. Writing particularly on refugees residing in camps he writes: "the non-recognition of refugees and those asking for help produces, at the end of the day, people whose every right is rejected; they stubbornly ask for the right to life and find no state in which this minimal human right is

[103] Peter Ricoeur, *The Course of Recognition* (Cambridge, MA: Harvard University Press, 2005), 5–16.
[104] Mattias Iser, "Recognition," The Stanford Encyclopedia of Philosophy, 2019, https://plato.stanford.edu/archives/sum2019/entries/recognition/>.
[105] Somers, *Genealogies of Citizenship: Markets, Statelessness, and The Right to Have Rights*, 6.
[106] Kingston, *Fully Human*, 58.

extended to them."[107] Agier's claim is a strong one and, given that he was writing about refugees living in camps, this is understandable. However, my point here is slightly more subtle. I do not argue that refugees never have their rights protected – many of course do. Instead, the claim is that to lack recognition of equal status in some community is to lack the ability to *claim* one's rights as a matter of political standing and have these claims securely guaranteed. That is, the denial of recognition does not only amount to a potential lack of protection, but it also undermines one's ability to claim protection. This is where inclusion in the nation and inclusion in the state become importantly interlinked. As Arendt noted in *The Origins of Totalitarianism,* part of the story of mass displacement was the nation overtaking the state. That is, the cultural, imagined community came to stand in for the supposedly neutral institution that was meant to guarantee rights equally to all. Recognition of being part of the national in-group is central to having your rights recognized in the state.

Therefore, membership as effective citizenship relies on a minimum level of social standing. Importantly, here we only need to capture the kind of social status that is necessary for the institutions of citizenship to function as they should. The relevant condition is therefore not total equality. Indeed, there can be variations above this minimum standard of social recognition. The important thing for our case is to recognise the acceptable level such that individuals are taken seriously as bearers and claimants of rights. Only then can they hold effective citizenship in the way that is required. This means that membership can be guaranteed in states that do not meet our ideal standards of justice. For instance, Rawls offers an account of "decent hierarchical societies" within which human rights protection might still be guaranteed.[108] He imagines a country in which Islam is the dominant religion and therefore only Muslims can hold elected office. Even while this is the case, other religious groups can freely practise and have their basic rights respected

[107] Michael Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government* (Cambridge: Polity Press, 2011), 11. Quoted in Kingston, *Fully Human*, 21.
[108] Rawls, *Law of Peoples*. 77-79

and guaranteed at all times. Although this is not an ideally organised society, it nevertheless meets the standing condition. Everyone has the relevant social status that allows their rights to function as they should, even though there is not total equality. Likewise, we can imagine other cases – such as benign monarchies – in which rights can be guaranteed when the level of standing in the community is unequal. Therefore, the standing condition does not require one to live in a totally equal society. What matters for our account is that people do not fall below some minimum level such that their claims to rights and security are no longer taken seriously.

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When one is a member of a state, she does not only hold formal citizenship. She is also able to securely and consistently claim the rights and goods that formal citizenship is meant to guarantee. Membership, therefore, is conceptualized here as *effective citizenship*. As I've noted throughout this chapter, there are other potential ways to understand membership. Indeed, the content and parameters of membership rely heavily on the kind of group under discussion. Membership in the state is the important focus for refugeehood and exclusion from protection. Membership as effective citizenship, then, is the best way to plug the conceptual gap left open in the political theory of refuge. Last chapter we saw that many theories of displacement relied on some notion of membership. The approach that I have just defended, I contend, is the correct interpretation of membership and its relation to refugeehood. In the following chapters, I apply this understanding of membership. First, I will consider the relationship between membership and persecution. Then I will outline the membership view of refugeehood, which defines refugees by their lack of membership anywhere. In the second section, we will see what it takes for membership to be rebuilt elsewhere.

CHAPTER THREE

Persecution and Exile

The concept of persecution is central to the history and practice of refugee protection. The Geneva Convention on the Status of Refugees explicitly states that refugees are to be defined as those who have "a well-founded fear of *persecution* on the basis of race, religion, nationality, membership of a particular social group or political opinion."[1] As we saw when discussing the humanitarian view in chapter one, many political theorists reject the claim that persecution is a necessary condition for entitlement to asylum. Instead, only an urgent need for assistance on any grounds is required.[2] However, in recent years, those who adopt a more political understanding of refugeehood have begun to (re)defend the centrality of persecution. These theorists – such as David Owen, Max Cherem, and Matthew Price – do so by making a particular claim about what persecution does to the individual; persecution is a special moral harm that strips the individual of her membership in

[1] UN General Assembly, "Convention Relating to the Status of Refugees."
[2] Gerver, *The Ethics and Practice of Refugee Repatriation*; Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*; Shacknove, "Who Is a Refugee?"; Dummett, *On Immigration and Refugees*; Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*.

the state.[3] The persecuted person, then, is essentially *de facto* stateless, since the persecution does the work of revoking her membership and therefore rendering her citizenship ineffective.

Exactly how persecution strips an individual of her membership in the state is, as of yet, underexamined. Instead, those who adopt what I will call the *persecution-membership premise* simply state it as a non-controversial claim, rather than offering a fully-fledged account of its meaning or grounding. Moreover, proponents of the humanitarian conception of asylum often fail to take this argument sufficiently seriously. This chapter aims to fully consider the view that persecution strips an individual of her membership in the state, thereby confronting the second worry that I outlined at the end of chapter one. The aim here is not to restate previous arguments made by proponents of the humanitarian view. In fact, as I will discuss in a moment, I think that such arguments often miss something important about these political and legitimacy approaches and their claims about membership. Instead, my goal is to fully unpack and consider the persecution-membership premise.

Of course, being able to offer an interpretation of the persecution-membership premise depends on giving convincing definitions of persecution and membership respectively. In attempting to offer the most ecumenical account, this chapter takes its lead from the proponents of the views in question. I hope I have done this somewhat convincingly for the concept of membership in the previous chapter. This chapter will therefore adopt Matthew Price's explicit definition of persecution. The chapter will proceed as follows. First, I will consider the function of the persecution-membership premise and the role it plays in various arguments. Second, I will outline a definition of persecution commonly used in the political theory of displacement, taking my lead from Matthew Price. Third, I will briefly discuss the human rights approach to definition

[3] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge"; Price, *Rethinking Asylum: History, Purpose, and Limits*; Ziegler, *Voting Rights of Refugees*; Lister, "Who Are Refugees?"

persecution, a view popularized by James Hathaway. Whilst I will argue that this conceptualisation of persecution says something important about membership, I argue that does not itself offer a convincing definition of our common or historical notion of persecution. Finally, having defended Price's account of persecution (or something very similar to it) I will consider the persecution-membership premise and how should be interpreted. I argue that whilst there is a good argument to be made for the persecution-membership premise, there is no reason to accept its exclusivity. That is, persecution involves denying an individual's social and political standing, therefore undermining her membership in the state. However, there are two other conditions outlined in the previous chapter for determining when an individual lacks membership in the state. Therefore, there is no reason to think that persecution is *special*. I end by suggesting other ways in which an individual can lose or lack membership in the state: persecution by non-state actors, failure of state protection, the destruction of the state itself. Persecution, I will conclude, is not a special moral harm in this regard.

At first glance, the argument in this chapter might appear overly specific. However, focusing on the relationship between persecution and membership in these arguments can help us to think through broader questions in the political theory of refuge, as well as help to unpack the arguments made by Price, Cherem, and Owen, who all give the persecution-membership premise central place in their thinking. Exactly why this is the case, and whether it is successful, is worth knowing in order to understand their views more precisely.

Membership and persecution in the political theory of refuge

Many theorists have rejected the centrality of persecution in their normative theorizing about refugees. Shacknove argued that persecution is but one manifestation of the essential character of

refugeehood; the severing of a minimal social bond between an individual and her state.[4] Since Shacknove, many have likewise argued that persecution is sufficient but not essential to refugeehood. Chandran Kukathas warns that the Convention adopts a very narrow definition of a refugee which implies that "people fleeing war, natural disaster, or famine on this definition, are not refugees."[5] Mollie Gerver has also recently defended a view of refugeehood based on the threat to life and freedom, which does not depend on the source of harm.[6] This dismissal of persecution can broadly be categorized as part of the humanitarian approach to refugeehood. Those who adopt this approach view refugee protection as just one way in which states fulfil their international obligations of assistance more generally.[7]

However, the idea that persecution is necessary for entitlement to asylum has regained popularity, most prominently in the work of Price, Cherem, and Owen.[8] As we saw in chapter one, Price is a proponent of *the political view* of refugeehood whereby refugee protection serves an expressive function that shapes the behaviour of states.[9] Price borrows Rawls's distinction between burdened and outlaw states.[10] Burdened states fail to meet their obligations to their citizens, but not because they are actively wronging them. Outlaw states, on the other hand, actively target certain citizens. Outlaw states, therefore, require condemnation, whereas burdened states require assistance. This is persecution's first function in Price's account; it singles out states that require condemnation rather than support. However, persecution is also supposedly special for a second reason: *it strips an individual of her membership in the state.* According to Price, refugees:

[4] Shacknove, "Who Is a Refugee?," 277.
[5] Kukathas, "Are Refugees Special?," 255.
[6] Gerver, *The Ethics and Practice of Refugee Repatriation*, 224.
[7] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge." Notably, Shacknove is often (wrongly, I think) placed in this humanitarian camp. In fact, as we will see later on in the paper when we come back to Shacknove, his view is more similar to my own membership-based view.
[8] Price, *Rethinking Asylum: History, Purpose, and Limits*; Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge"; Owen, *What Do We Owe to Refugees?*; Owen, "In Loco Civitatis."
[9] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge."
[10] Rawls, *Law of Peoples*.

> Not only face a threat to their bodily integrity or liberty; they are also effectively expelled from their political communities. They are not only victims but also exiles. Asylum responds not only to victims' need for protection, but also to their need for political standing, by extending membership in a new political community.[11]

This view is shared by Cherem and Owen. Cherem writes:

> Refugees are distinctive because their country of origin has effectively *repudiated their membership* and the protection it affords. The status on which almost all their other rights hinge is gone.[12]

Likewise, Owen writes:

> In a world in which effective state membership is a practical condition of political standing, it is a duty of the international order of states to ensure that all persons enjoy such standing – and when it is *denied through persecution* to provide protection in a way that reaffirms the right to such standing – and this is what the legal status of asylum as a distinctive type of refugee status should be conceived as providing.[13]

Persecution functions differently in the various accounts. As we have seen, Price's central concern is the expressive function of the asylum regime. For Owen, when an individual lacks membership in a state through suffering the harm of persecution, the international community has a duty to act *in loco civitatis*.[14] Owen's legitimacy-based view of refugeehood argues that the legitimacy of the state system as a whole depends on the protection of human rights. States, therefore, have an obligation to ensure that rights are protected because, if they do not, the legitimacy of the entire international

[11] Price, *Rethinking Asylum: History, Purpose, and Limits*, 243.
[12] Cherem, "Refugee Rights: Against Expanding the Definition of a 'Refugee' and Unilateral Protection Elsewhere," 191.
[13] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 32.
[14] Owen, "In Loco Civitatis."

system comes into question. For Owen, then, the refugee regime functions as a kind of legitimacy repair mechanism. Refugee protection is necessary to ensure that global legitimacy is maintained. Owen explicitly adopts Price's idea that persecution ruptures an individual's membership in the state. It is this lack of membership that singles out the persecuted for the receipt of a higher level of protection in the form of asylum.

So, the central function of persecution in these accounts is to determine which individuals have had their membership denied. Importantly, these accounts do not claim that persecution is just one way in which an individual can lack membership, but that it is the *only* way that this can occur.

Proponents of the humanitarian view have not precisely responded to the persecution-membership premise. Instead, they react to the centrality of persecution in a slightly different way. Typically, they argue that persecution is not the only way in which an individual can be severely harmed and, of course, this seems obvious. For instance, Kukathas rightly notes that persecuted refugees and those fleeing economic hardship can face comparable levels of harm: "There are many refugees whose plight is more serious than that of most economic migrants; yet there are also many would-be economic migrants who face greater threats to their well-being than do some refugees."[15] Likewise, Thomas Pogge argues that he "cannot see why the moral importance of admitting political refugees should be any greater than that of admitting so-called economic migrants. For one thing, the politically persecuted are not, in general, worse off than the desperately poor. Being imprisoned for one's beliefs is not, in general, worse than working 16-hour days while being permanently hungry."[16]

[15] Kukathas, "Are Refugees Special?," 258.
[16] Thomas Pogge, (1997) 'Migration and Poverty'. In: Bader V. (eds) *Citizenship and Exclusion*. Palgrave Macmillan, London. https://doi.org/10.1057/9780230374591_2, 15.

These arguments miss the point of the centrality of persecution in two ways. First, the claim of the persecution-membership premise is not that victims of persecution are exclusively entitled to entry, it is that they are exclusively entitled to *asylum*, understood as a distinctive kind of protection. The centrality of persecution for Price and Owen, then, is not exclusively about admission but about the kind of protection that is received after entry. Indeed, Owen has recently clarified this exact point by differentiating between different 'types' of refugee depending on the cause of their flight. Refugees are owed asylum – in the form of speedy access to new membership – only when they have been persecuted. Therefore, arguments like those from Pogge and Kukathas wrongly characterize the focus on persecution as pertaining to admission alone.

Second, in missing this distinction, defenders of the humanitarian view often fail to take seriously the relationship between persecution and membership that underpins the political and legitimacy views. That is, the claim of the persecution-membership premise is not that persecution is the only kind of harm that should worry us, but that it is a special harm because of the result that it produces; the resultant loss of membership. This is because "in a world in which state membership is the basic condition of political standing, it is a duty of the international order of states to ensure that all persons enjoy such standing when it is denied through persecution."[17] This is not to say that Price and Owen's argument is successful, but rather to point out that the dismissals of the centrality of persecution have not yet properly confronted these arguments.

So, the two questions that I want to answer in the remainder of this chapter are (1) does persecution strip an individual of her membership in the state and, if so, how? And (2) can membership in the state be lost in any other way? I will argue that my account of membership, outlined in the previous chapter, does a good job of explaining exactly how the two concepts

[17] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge," 32. Emphasis added

interact. That is, persecution undermines membership because it violates the standing condition. It violates the individual's social status and therefore undermines her access to security. However, I also argue that persecution is not the only way in which this harm of membership loss can come about. Therefore, our focus ought to turn to the predicament of losing or lacking membership itself – I turn to this in the following chapter.

The concept of persecution in refugee protection

In the history of political thought, persecution has not received a huge amount of attention. Christenson suggests that this is because persecution is an inherently irrational act and is "antithetical to reasoned political thought."[18] This seems unlikely: political theorists consistently discuss concepts that are "antithetical to reasoned political thought" such as cruelty, oppression, discrimination, injustice, and evil (to name only a few). Instead, it seems that the meaning of persecution was simply presumed self-evident and has therefore often been mentioned but not fully examined. In the *Leviathan,* Hobbes states that persecution is used against enemies of the commonwealth.[19] This reflects a distinction between persecution and punishment; the goal of persecution is to achieve public unity against 'outsiders' as opposed to internal public order. Persecution is done "in the name of the dominating group", for example, Stalin's persecution of the kulaks in the name of the rural proletariat.[20] As Christenson notes, "these ideologies involve accepting the existence of and justifying persecution in the name of a group personality, a group ghost, a communal mask, more real than the personalities of the persons who compose the group."[21] Later, Locke's *Letter Concerning Toleration* touches on the topic of persecution, discussing attacks against those accused of heresy.[22] Again, Locke does not explain what persecution is, other

[18] Ronald Christenson, "The Political Theory of Persecution: Augustine and Hobbes Midwest," *Midwest Journal of Political Science* 12, no. 3 (1968): 420.
[19] Thomas Hobbes, *Leviathan, 1651* (Cambridge: Cambridge University Press, 1991), chap. 28; Christenson, "The Political Theory of Persecution: Augustine and Hobbes Midwest."
[20] Christenson, "The Political Theory of Persecution: Augustine and Hobbes Midwest," 420.
[21] Christenson, 420.
[22] John Locke, *A Letter Concerning Toleration* (London: Routledge (1992), 1689), 22–25; Jaakko Kuosmanen, "What's So Special About Persecution?," *Ethical Theory and Moral Practice* 17, no. 1 (2014): 129–40.

than stating that it is a particularly severe kind of harm. Arendt also draws on the concept of persecution in *The Origins of Totalitarianism* when discussing the forced expulsion of the Jewish people, but likewise does not tell us precisely what persecution is.[23] Therefore, to think through different accounts of persecution, we need to turn away from the history of political thought and towards international refugee law.

As mentioned above, persecution takes pride of place in the contemporary landscape of refugee protection. The Geneva Convention states that refugees are individuals who have been persecuted for a specific reason. In part, this is symptomatic of a broader legal focus on persecution which is often singled out as a particularly egregious form of harm. For instance, the Nuremberg Principles categorise persecution as a crime against humanity, alongside murder, torture, enslavement, and forced disappearance.[24] More recently, the Rome Statute of the International Criminal Court likewise defines persecution as a crime against humanity.[25] Some argue that the focus on persecution in refugee protection only developed during and after the Second World War. For instance, Coles argues that the persecution focus in the definition of a refugee was "specifically devised for a particular geographic problem at a particular time."[26] Indeed, James Hathaway argues that the concept of refugeehood was fundamentally reshaped to involve individualised persecution in the 1930s-50s, when the protection regime moved away from its more humanitarian beginnings. However, Jane McAdam contends that the concept of persecution was actually central before the Second World War, for instance in the British Aliens Act 1905.[27] McAdam states that the centrality

[23] Arendt, *The Origins of Totalitarianism*. "The Decline of the Nation -State and the End of the Rights of Man"
[24] UN General Assembly, "Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal," December 11, 1946, https://www.refworld.org/docid/3b00f1ee0.html [accessed 18 August 2020].
[25] United Nations, "Rome Statute of the International Criminal Court, 17 July 1998, in Force on 1 July 2002, United Nations, Treaty Series, Vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, Http://Treaties.Un.Org.," 1998.
[26] G. J. L Coles, "Approaching the Refugee Problem Today," in *Gil Loescher and Laila Monahan (Eds), Refugees and International Relations* (Oxford: Oxford University Press, 1989), 374–75. Quoted in Jane McAdam, "Rethinking the Origins of 'Persecution' in Refugee Law," *International Journal of Refugee Law* 25, no. 4 (2014): 669.
[27] McAdam, "Rethinking the Origins of 'Persecution' in Refugee Law."

of persecution in refugee law was not a reaction to new circumstances during and following the second world war but was present much earlier on. Even so, persecution became explicitly linked to refugeehood in international law only relatively recently, and the international agreements following the Second World War certainly cemented its importance.

No international legal document formally defines persecution. At first glance, this might seem like a significant flaw in the framework of refugee protection. However, many interpret the lack of formal definition as a benefit of the Convention, allowing for flexibility and development over time. As Atle Grahl-Madsen's classic work on refugee status notes:

> It seems as if the drafters have wanted to introduce a flexible concept which might be applied to circumstances as they might arise; in other words, that they capitulated before the inventiveness of humanity to think up new ways of persecuting fellow men.[28]

The lack of legal definition in various international instruments, including the Geneva Convention, can therefore be viewed as tactical.[29] There are, however, two broad approaches to persecution in the practice of refugee protection. First, the traditional approach which views persecution as a serious harm targeted at an individual or group. And second, the more recently developed human rights approach, which defines persecution as the absence of state protection from human rights violations more generally. Political theorists of refugeehood almost always implicitly (and sometimes explicitly) adopt the former approach whereby persecution is viewed as a targeted and

[28] Atle Grahl-Madsen, "The Status of Refugees in International Law, Vol. I, 1966, UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees" (Geneva, January 1992). A similar point is made by Paul Weis in Paul Weis, "The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis" (UNHCR, 1990), https://www.refworld.org/docid/53e1dd114.html.

[29] Some more recent instruments have attempted to give a more substantive account of persecution. For instance, the European Union Qualification Directive (2004) Article 9 lists 'Acts of Persecution' in an attempt to give examples of the scope of the concept. European Union, "COUNCIL DIRECTIVE 2004/83/EC" (Official Journal of the European Union, April 29, 2004).

deliberate harm. Let us take a look at each of these approaches before considering the relationship between persecution and the loss of membership.

The traditional approach

The traditional approach conceptualizes persecution as severe and targeted harm. Etymologically, the word persecution comes from the Latin root *persequī,* which means to hunt, follow, or pursue.[30] Someone is a victim of persecution, then, when they are targeted or picked out to be harmed for some specific reason. This is the most straightforward reading of persecution as found in the Convention. Although this interpretation does not give us a way to characterize the harm, it does capture this idea of being selected due to some characteristic. Price's interpretation of persecution follows this traditional approach. He posits two conditions for an act to constitute persecution. First, the harm must be sufficiently severe or serious. Second, the harm must have been committed for illegitimate reasons.

(a) serious harm

According to Price, persecution is not simply any kind of harm, it is a particularly egregious or shocking form of harm. For instance, involving torture, enslavement, or arbitrary imprisonment.[31] These kinds of serious harms go beyond mere annoyance or harassment. As Kuosmanen notes "the persecuted are persons who are being discriminated against and are being harassed in a very specific way. They are not facing light harassment or discrimination that targets non-basic needs. Instead, they are facing harassment and discrimination of the worst."[32] It is difficult to say exactly what makes a harm serious. Price admits that "seriousness is a judgment call, and different judges might reasonably reach very different answers. Precedent serves as a guide to judges in deciding

[30] Kuosmanen, "What's So Special About Persecution?," 130.
[31] Price, *Rethinking Asylum: History, Purpose, and Limits*, 107.
[32] Kuosmanen, "What's So Special About Persecution?," 138.

whether harm passes the requisite threshold of seriousness but cannot constrain them entirely: factual variations are endless."[33] Therefore, there may be some actions that always amount to serious harm, but often this depends on how they are carried out and how many times they occur. Indeed, a harm could be serious not because it is particularly violent in and of itself but because it is inflicted with persistence. For instance, if an individual is continually rejected from buying a house because of her race, this might constitute persecution. If it happens once but she has other options available to her, we might think it does not meet the threshold. Our notion of serious harm, then, must include these kinds of elongated cases. In Swiss law, the definition of persecution includes measures that entail an "unbearable psychological pressure." Or as one Judge put it, "measures that make it impossible for the affected person to lead a life in dignity in their country of origin."[34] Therefore, our understanding of whether a harm is 'serious' concerns the kind of harm but also the persistence of the harm.

(b) for illegitimate reasons

The second condition persecution plays the more important role in Price's argument; for the harm to count as persecution it must occur for *illegitimate reasons*. States can harm their citizens for legitimate reasons, for instance, imprisonment for a serious crime. This is of course harmful to the individual, but it does not constitute persecution. Imprisonment when no crime has been committed, or an unfairly lengthy sentence for a minor discretion might constitute persecution, however. Price argues that the second half of the Convention definition of refugeehood – which sets out the grounds of race, religion, nationality, political opinion, or membership of a particular social group – implicitly draws on this notion of illegitimacy. These grounds are important as they represent important characteristics of the individual; they are things that we could not and should

[33] Price, *Rethinking Asylum: History, Purpose, and Limits*, 108.

[34] Article 3(2) of the Federal Law on Asylum (Swiss Classified Compilation of Federal Legislation, 142.31): "*Sont notamment considérées comme de sérieux prejudices la mise en danger de la vie, de l'intégrité corporelle ou de la liberté, de même que les mesures qui entraînent une pression psychique insupportable* […]"

not expect an individual to change about themselves in order to avoid harmful treatment. If one of these characteristics is the reason that an individual is being targeted, then the harm is illegitimate and therefore persecutory.[35] Of course, there are some egregious harms for which justification is never possible and that therefore always fail the legitimacy requirement. For instance, forced disappearance, torture, or genocide. In this sense, then, the nexus requirement in the Geneva Convention is too narrow. As Price puts it "some harms are so serious that their infliction for any reason is inconsistent with the presumption of legitimacy."[36] A state can never commit genocide for 'legitimate reasons'. Such a crime is never justifiable.

Focusing on legitimacy also plays a broader function in Price's argument. He explicitly ties the meaning of persecution to his conception of asylum as a form of international sanction. Price claims that "persecution is conduct so at odds with the principle of communal self-determination that a presumption of legitimacy cannot be justified, and external interference is warranted."[37] Therefore, persecution is a harm that requires international condemnation or intervention.[38]

Kuosmanen takes a slightly different approach, arguing that the severe harm in question must be committed for discriminatory reasons in order for it to count as persecution. Persecution, therefore, amounts to "an asymmetrical and systemic threat of severe and sustained harm that is inflicted discriminatorily and unjustly."[39] Of course, discrimination and illegitimacy go hand in hand. If a serious harm is committed for discriminatory reasons, it is to that extent illegitimate. All infamous examples of persecution follow this pattern. The Holocaust was a targeted, discriminatory act of persecution and genocide. Myanmar's attacks on Rohingya Muslims target them because of their religion and ethnicity. These cases constitute persecution because they are

[35] Price, *Rethinking Asylum: History, Purpose, and Limits*, 109.
[36] Price, 110.
[37] Price, 106.
[38] Price, 107.
[39] Kuosmanen, "What's So Special About Persecution?," 138.

serious harms committed for discriminatory, unjust, and therefore illegitimate reasons. Therefore, "the threat in persecution is systemic and the victims are targeted specifically. In other words, the failure of human reciprocity in persecution is widespread and involves discrimination. This leaves the persecuted in a particularly vulnerable situation."[40]

It's important to note that the combination of the two conditions (severe harm and discriminatory or illegitimate reasons) explains why persecution constitutes a wrong. An additional layer to this injustice, at least in most cases of state persecution, is that it is committed by the very agent that it meant to protect the individual's interests. To this extent, persecution is not only unjust but is also exceptionally cruel. Judith Shklar in *Putting Cruelty First* defines cruelty as "the wilful inflicting of physical pain on a weaker being in order to cause anguish and fear, however, is a wrong done entirely to *another creature.*"[41] Cruelty, then, is a grievous form of harm because it is purposeful. When an individual is persecuted by their country, they have not been the victim of a mere accident. Instead, the state is the agent of intentional harm. This cruelty is an additional condition that, in real-world cases, is what singles out persecution out as a particularly egregious and shocking wrong.

The human rights approach

James Hathaway's human rights approach to refugee protection has been hugely influential in recent years. Hathaway's thesis combines the tradition of human rights law with international refugee law, arguing that the two should be synthesized to reach a better conceptual understanding of each. Asylum should therefore be viewed as a form of surrogate protection whereby external states step in when human rights are violated. Hathaway, therefore, approaches persecution from this perspective, arguing that a core component is the failure of state protection. Persecution is

[40] Kuosmanen, 138.
[41] Judith N. Shklar, "Putting Cruelty First," *Daedalus* 111, no. 3 (1982): 17. Also appears in *Ordinary Vices,* Chapter One.

"injury… inconsistent with the basic duty of protection owed by a state to its population."[42] Persecution, then, is defined as a violation of human rights for reasons of race, religion, nationality, membership of a particular social group of political opinion or, as Hathaway and Foster put it, the "sustained or systemic denial of basic human rights demonstrative of a failure of state protection."[43] Therefore, "the surrogate protection of the refugee regime is triggered by the failure of the state of origin to guarantee basic human rights to the detriment of the refugee."[44] Refugee status is there "for those who do not enjoy a protective relationship with a state."[45]

Importantly, Hathaway conceptualizes persecution as related to a lack of internal protection. A refugee is not merely a victim of human rights abuse but is "excluded from the national community."[46] As such, refugees are distinct from other needy individuals because "it is impossible for them to work within or even to restructure the national community of which they are nominally a part in order to exercise those basic human rights."[47] Surrogate protection is reserved for those who are "unable to vindicate her human rights within her home."[48] The human rights approach adopts a far broader understanding of persecution than the traditional approach. Persecution here is conceptualized as a lack of internal protection where the bond between the individual and her state is effectively broken. It occurs either when the state actively persecutes its citizens *or* when it can no longer protect individuals from persecution by non-state actors. In these latter cases, the failure of the state to protect the individual from serious human rights violations is enough to qualify for refugee status. In cases of non-state persecution, "the legal presumption of a refugee's justified unwillingness to avail herself to the protection of her country reflects a rupturing of the

[42] James Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991), 103–4.
[43] James Hathaway and Michelle Foster, *The Law of Refugee Status (Second Edition)* (Cambridge: Cambridge University Press, 2014), 185.
[44] David Cantor, "Defining Refugees: Persecution, Surrogacy and the Human Rights Paradigm," in Chapter 14, B. Burson and D.J. Cantor (Eds.), *Human Rights and the Refugee Definition: Comparative Legal Practice and Theory* (Brill, 2016), 355.
[45] Hathaway and Foster, *The Law of Refugee Status (Second Edition)*, 289.
[46] Hathaway, *The Law of Refugee Status*, 137.
[47] Hathaway, 135.
[48] Cantor, "Defining Refugees: Persecution, Surrogacy and the Human Rights Paradigm," 356.

state-citizenship relationship based on its inability to provide internal protection from persecution by non-state agents."[49]

Price, unsurprisingly, rejects the human rights approach, arguing that some violations of human rights are not severe enough to raise worries about legitimacy. For instance, someone living under a benign monarchy has not been persecuted, even though their right to vote is not being upheld. Therefore, for these reasons, "legitimacy rather than human rights must remain the touchstone in determining what constitutes persecution."[50] Of course, these two concepts are not unrelated; legitimacy is often conceived of as respect for human rights. Caleb Yong argues that states have international legitimacy if they protect the rights of their citizens and respect the rights of non-citizens.[51] Price might be right, however, that some rights violations do not generate legitimacy worries in the same way as others, for instance, in the case of voting. The human rights approach would therefore need to tell us which rights violations count, and in what form. However, Hathaway *does* clarify the nature of the human rights violations that would need to occur in order for some individual to qualify for asylum. For instance, Hathaway makes a distinction between basic rights from which no derogation is permitted and rights which the state could be in the process of realizing, such as the right to vote.[52]

There's a more obvious problem with Hathaway's concept of persecution that is evident once we note the cruel nature of the harm in question. That is, by defining persecution as the absence of state protection from human rights violations, we seem to lose much of its essential feature; persecution is no longer cruel or targeted, it is simply defined by its outcome. Broadening the idea of persecution in this way arguably bends the concept beyond recognition. If persecution is just

[49] Cantor, 363.
[50] Price, *Rethinking Asylum: History, Purpose, and Limits*, 122.
[51] Caleb Yong, "Justifying Resistance to Immigration Law: The Case of Mere Noncompliance," *Canadian Journal of Law and Jurisprudence* 32, no. 2 (2018): 468.
[52] Hathaway, *The Law of Refugee Status*, 106–24.

the absence of human rights protections, then it loses its shocking and targeted nature, something that our everyday use of the concept seems to demand. Of course, in approaching this question from a legal perspective, Hathaway and Foster have to work within the framework of the Geneva Convention. In order to broaden to whom asylum is owed in practise, this concept must be stretched. This is not a damning critique of their account, but it should perhaps worry political philosophers trying to unpack and understand the concept of persecution without the same kinds of legal and institutional constraints in mind. This approach therefore could hit upon the correct standard of who is owed asylum, but it would be wrong to call all such cases 'persecution'.

Although the human rights approach might not give a convincing definition of persecution, it still has something interesting to teach us. Here, Hathaway and I are in agreement that there something distinctive about the refugee's relationship with the state. This is similar to Shacknove's view that refugee status occurs when the minimal social bond between a citizen and her state has been destroyed.[53] However, I believe that there are many ways in which this relationship can be destroyed without persecution having taken place at all.

The loss of membership

Now that we have a better picture of how persecution is defined, let's consider the persecution-membership premise in detail. In the last chapter, I developed an approach to the concept of membership which I hope Price and Owen would in principle accept. On this view, someone is a member of a political community when she enjoys the secure guarantee of her human rights. I stipulated three conditions for an individual to enjoy membership: (1) formal citizenship (2) the capacity and institutions of the state and (3) the social and political standing of the individual. This final condition showed that membership is a socio-political notion, related to (but distinct from) the formal-juridical status of citizenship. Membership, understood as effective citizenship, does

[53] Shacknove, "Who Is a Refugee?"

not merely depend on the formal status afforded by citizenship. Instead, it depends on a complex combination of social and political factors which determine whether someone is recognized as entitled to those rights, even if she (formally speaking) is in fact entitled to them.

Now that we understand persecution and membership respectively and have in particular noted the discriminatory and cruel nature of persecution, we can now see why the persecution-membership premise might be convincing. Targeting someone for harm on the basis of some characteristic is to essentially deny them the equal and fair treatment to which they are formally entitled. To pursue an individual in this way is *ipso facto* to deny their standing as a member; in other words, persecution violates the third condition of membership. The discriminatory and targeted nature of the harm in question means that all cases of persecution are tantamount to the denial of membership. Indeed, in many cases, they are explicitly so. Once we understand that membership is about social and political recognition, and persecution is about denying such recognition, the relationship between the two concepts becomes clear. There are a few things to note here. First, this definition of persecution is essential to the success of the persecution-membership premise. Without accepting the discriminatory or illegitimate nature of persecution, we would not find such a tight link between persecution and membership loss. Second, the fact that this premise appears to work with the concept of membership that I defended in the previous chapter shows (I hope) that I have offered an ecumenical interpretation of membership. Therefore, if we accept the two definitions that I have outlined, at least part of the persecution-membership premise appears to be right.

We should remember here, though, that Owen, Price, and Cherem's argument is not just that persecution strips the individual of her membership in the state, but that it *exclusively* performs this function. Price, Owen, and Cherem, all hold that persecution is special; it is the only way in which an individual can lose her membership and therefore become entitled to asylum (understood,

remember, as a distinct form of protection and not merely entitlement to entry). Notably, Owen is slightly less certain on this point. Owen uses persecution primarily to single out individuals who are entitled to asylum, as opposed to sanctuary or refuge.[54] In the case of asylum-refugees (persecuted people), Owen argues that such individuals require the highest level of international protection; this is because their membership has been denied through suffering persecution. Sanctuary-refugees, however, lack *effective* membership. They still maintain some form of membership in the state, but it is temporarily ineffective. To me, these two predicaments seem fundamentally the same, particularly when we centre the experience of the refugee rather than focusing on the condemnatory function of asylum. From the position of the refugee, lacking effective membership is substantively the same as lacking any form of membership whatsoever. Indeed, it is not obvious what the difference between membership and effective membership is meant to amount to at all. Persecution is doing the work here in Owen's argument – it helps us to pick out those for whom membership has been actively denied. But if the lack of effective membership is just as concerning as the denial of membership, then the difference in cause no longer seems important. If what we are concerned with is the position of the refugee, then persecution is not special. Those who are forced to flee indiscriminate violence or environmental disaster can lose membership as well.

There is one final argument concerning the special nature of persecution that is worth considering here. Max Cherem follows Price and Owen in claiming that persecuted refugees are special because their membership has been denied. However, he also thinks that persecution underpins a further difference between the refugee and those forced across borders by other harms: that for the persecuted refugee, other options are not available. That is, the persecuted refugee can *only* be assisted by the provision of membership outside the state, whereas the non-persecuted refugee

[54] Owen, "Differentiating Refugees: Asylum, Sanctuary and Refuge." I have made a similar critique of Owen in 'the duty of naturalise refugees', *Critical Review of International Social and Political Philosophy,* 2021.

can theoretically be assisted in many different ways: "Refugee-like outsiders need (often temporary) safe-haven or suffer a plight remediable by aid. But only new membership will do for refugees."[55] In making this argument, Cherem follows Michael Walzer's classic discussion of membership in which he likens refugees to stateless persons. Walzer here claims that victims of persecution have a need for "membership itself, a non-exportable good."[56]

There are several ways to reply to this worry. First, this argument seems to rest on an assumption about the longevity of the harm faced – that individuals fleeing persecution are permanently expelled whereas those fleeing generalized violence only require temporary protection. I think this is a mistake. Persecuting governments can sometimes be easier to overthrow than incompetent or failing states and therefore the need for protection can often be permanent in the latter case. Matthew Gibney makes a similar point in replying to Price:

> Convention refugees are often produced by regimes in their dying days (look at Libya under Gaddafi) and wars (and generalised insecurity) can drag on for many years, as can corrosive poverty. Indeed, the kind of generalised violence and impoverishment that gives rise to forced migrants is often traceable back to poor governance. And if bad governments are likely to be long lasting, so are the features that flow from them.[57]

So, if Cherem's argument depends on such an assumption, it seems to be obviously false. Second, it is important to note that whilst those fleeing generalized harm *could* be assisted in different ways from those facing persecution, they often are not. For instance, for those fleeing severe economic deprivation, assistance could hypothetically have been given in other ways, such as through the offering of development aid. However, in most cases, such economic or development assistance

[55] Cherem, "Refugee Rights: Against Expanding the Definition of a 'Refugee' and Unilateral Protection Elsewhere," 191. This is similar to Owen's claim that grounds the different categories of forced migration.
[56] Walzer, *Spheres of Justice*, 48.
[57] Gibney, "Refugees and Justice Between States," 454–55.

is not forthcoming. Therefore, unless assistance is actually offered in this alternative way, Cherem's point seems less convincing. Just because the non-persecuted *could* be helped in other ways, does not mean that they aren't entitled to more substantive protection when these alternatives are not actually available.[58]

I have argued so far that the persecution-membership premise is at least internally consistent. However, the idea that persecution *alone* causes membership loss is mistaken. Instead, there are many ways in which someone can come to lack membership. Similar cases have been discussed before, most notably by Lister and Shacknove. My addition here is to make explicit the substantive similarity between all of these predicaments. In all such cases, the refugee lacks membership in the state.

Persecution by non-state actors

One problem for those who adopt the persecution-membership premise is the existence of persecution by non-state actors. In drawing such a tight link between persecution and membership, such arguments assume that the persecutor is also the guarantor of membership. We know that this is not the case; many acts of persecution are committed by one's fellow citizens. Typically, refugees are given legal protection from non-state persecution, if the claimant can show that the state was unwilling or unable to protect them. For instance, in the United States, many Colombian refugees receive protection from persecution at the hands of the FARC because the Colombian Government is unable to protect them. This approach broadly follows the failure of state protection model (the human rights approach, outlined above). However, the unwilling or unable proviso poses another problem for Price's account. Of course, he can explain why we should

[58] This point is echoed in a debate between Kieran Oberman and David Miller. Kieran Oberman, "Reality for Realists: Why Economic Migrants Should Not Just 'Go Home and Wait for Assistance'," *European Political Science*, 2018, 649–66, https://doi.org/10.1057/s41304-016-0095-2.

condemn a state that is able but unwilling to help its citizens; such a state would be failing to uphold its duties, presumably on some discriminatory basis. However, Price cannot explain why asylum should be offered to individuals like those fleeing the FARC. If the Government is willing but unable to assist individuals in this case, then the state does not require condemnation. Price, therefore, accepts that those who are victims of non-state persecution in such cases should not be offered asylum.[59] This is in spite of the fact that those who are victimized by the FARC are, to all intents and purposes, in the same vulnerable position as those who happen to be persecuted by states.

In such cases, Lister contends that states have their power usurped and that, therefore, persecution by non-state actors essentially amounts to persecution by the state. The persecutor in these cases becomes the *de facto* authority. Although this might be true in some instances of non-state persecution, it is not obviously relevant to others. When a militia has taken over, then they may have *become* the guarantor of membership. However, consider the case of a woman fleeing domestic violence – it is not obvious that her abuser has become a *de facto* state authority in this instance. So, although this approach might explain some cases of non-state persecution, it cannot explain all of them. Therefore, it seems to membership can be lost – an individual can lack the kind of relationship that they require with a state – without the active denial of membership by that state taking place. Instead, refugees like those fleeing non-state persecution can be in the same position vis-à-vis their membership as individuals fleeing state persecution.

Failure of state protection

Another way in which membership can be ruptured is through the failure of state protection, even if no persecution occurs. The ability for an individual to claim her rights in some political

[59] Matthew Lister, "The Place of Persecution and Non-State Action in Refugee Protection," in *The Ethics and Politics of Immigration: Core Issues and Emerging Trends (Ed. Alex Sager)* (Lanham, Maryland: Rowman & Littlefield, 2016).

community depends on that community having the capacity to uphold those rights. This is not because the state has persecuted such individuals, but because they are unable to fulfil the function of recognizing these rights. One cannot successfully claim rights from an institution that is unable to uphold them. There are several different ways of thinking about what failure of state protection means. The notion of a 'failed state' often pivots on the ability of the government to control its citizens, for example, through taxation or policing. An inability to do so amounts to a failure of sovereignty; although the state nominally has control, they lack power over those within the territory. State failure might also be categorized as an inability to provide basic services, for instance, by building roads or providing medical care. Of course, again we should note that while some states do nominally have such systems in place, they fail to function in any kind of consistent or secure way. Rather, what is important is not only that such systems exist but that they actually work. Others have similarly noted that "[w]hatever the law provides, and the officials attempt, if the country of nationality is unable, as a matter of fact, to afford protection ... the conclusion may be reached that "protection is unavailable" in the person's country of nationality."[60] So the question should not be whether the state could hypothetically protect its citizens, but whether it in fact actually does.

As I have already noted – if it is the predicament of the refugee herself that should concern us – this again seems to be a case in which someone can lack membership in the way that I have outlined. Lacking membership can therefore come about without any persecution taking place at all. There are several examples of this kind of breakdown of state protection. For instance, in *Survival Migration,* Alex Betts recounts the stories of those who are forced to flee for their lives, not by war or persecution, but by general economic and political failure. For instance, between 2000 and 2010 around 2 million Zimbabwean's fled to South Africa. Although some of them had faced

[60] Re Minister for Immigration and Multicultural Affairs; Ex parte Miah [2001] HCA 22 (3 May 2001), 198.

individualized persecution by Mugabe's regime, many had simply been running from generalized conditions of severe deprivation. As Betts puts it: "[the survival migrants] were fleeing a desperate situation of economic and political collapse, in which almost no viable livelihood opportunities existed to sustain even the most basic conditions of life."[61] My claim here is that such individuals are in the same position regarding their membership in the state as those fleeing individualized persecution. Therefore, failure of state protection, such as in the case of Zimbabwe, leaves refugees in a substantively similar position as the persecuted refugee. This is not to say that the crisis in Zimbabwe was not political in nature. There is good evidence of malfeasance in this and similar cases which could be seen as cruel and self-interested on the part of the Government. However, many of those fleeing Zimbabwe were escaping the fallout of these problematic policies, rather than fleeing individualized persecution. We saw an argument along these lines from Shacknove who claimed that "[persecution] accounts for the absence of state protection under tyrannical conditions where a government is predatory but says nothing about the opposite, chaotic, extreme where a government (or society) has, for all practical purposes, ceased to exist."[62] My point here is similar. The loss of a minimal relationship between an individual and her state can come about in far more ways than through persecution alone. Persecution is a sufficient but not a necessary condition.

To be clear, as I have already noted, persecution is a particularly grievous and cruel form of harm that actively denies the individual her membership in the state. I do not want to underplay the severity of persecution and the effects it can have on an individual. Instead, the aim here is to point out that the strict relationship between persecution and the loss of membership, posited by defenders of the persecution-membership premise, is not plausible. If a state is unable to recognize an individual's rights because they lack capacity, the refugee is in qualitatively the same position as

[61] Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithica, New York: Cornell University Press, 2013), 4.
[62] Shacknove, "Who Is a Refugee?," 277.

the refugee whose rights have been actively denied. If membership is about the *claimability* of such rights, then it is unimportant whether this is because they have been rejected or simply because they cannot be heard. In such cases, the second condition of membership has been violated rather than the first.

Total state loss

The total destruction of a state also ruptures membership. If there is no state to recognize and uphold your rights, then membership in that state is not possible. For instance, Lister notes the case of Montserrat, a small island in the Caribbean that was made almost entirely uninhabitable by volcanic activity in the 1990s.[63] There was no state for the individuals to return to. Therefore, Lister notes "while "repudiating the membership" of refugees by societies that persecute them is an important source of the kind of harm that grounds an asylum claim… it is not the only possible or actual source of this sort of harm."[64] Likewise, the destruction of small island states due to sea-level rise might soon produce other cases of total state loss. If the territory of the state is completely submerged, the individuals belonging to that state no longer have a space in which to claim rights. If the infrastructure of the state physically does not exist, then membership cannot be substantiated. This could be thought of as an extreme version of the failure of state protection outlined above. Of course, in such cases, these refugees might be owed something over and above individualized new membership; they might require ceded territory to form a new state of their own.[65] At least at minimum, though, they are entitled to membership somewhere.

All of this underlines that membership in the state requires a kind of *mutuality*. It is not enough to simply assert formal entitlements to rights. Instead, there must be some institution that can

[63] Lister, "The Place of Persecution and Non-State Action in Refugee Protection," 5–6.
[64] Lister, 6.
[65] Rebecca Buxton, "Reparative Justice for Climate Refugees," *Philosophy* 94, no. 2 (2019): 193–219, https://doi.org/10.1017/S0031819119000019.

recognize and uphold such rights. If the responsible body no longer exists, then membership is surely undermined. Once we recognize the mutual nature of membership, then, we can see clearly that the loss of membership occurs in multiple ways without persecution ever having taken place.

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The aim in this chapter was to understand the persecution-membership premise and the broader role that it plays in the normative arguments concerning refugeehood. In doing so, we considered various definitions of persecution and utilized the concept of membership developed in the previous chapter. I argued that once we have unpacked the two core concepts at play, we can see why the persecution-membership premise might be internally convincing. The discriminatory and targeted nature of persecution itself denies the individual's social and political standing – it violates the third condition of membership that I outlined in chapter two. However, as the second half of this chapter has shown, this loss of membership can come about in numerous other ways. For instance, through the failure of the failure of state protection. If what we are concerned about is the predicament of the refugee and how to best resolve it, then persecution is just one cause of refugeehood among many. Instead, we should accept that persecution is a sufficient condition of membership loss, but not a necessary one. Therefore, as I have been arguing throughout the thesis so far, our normative account of refugeehood and its institution must centre the notion of membership itself. In the next chapter, I turn to offer my membership view of refugeehood in full.

CHAPTER FOUR

The Membership View

This chapter offers a full statement of the membership view of refugeehood. Here I outline what I hope this new understanding of refugeehood can achieve and consider some objections and replies. As mentioned at the outset of this thesis, the membership view is built on what has come before and is the backbone of the discussions ahead. If the approach is at all convincing, which I hope it is, it allows us to show that refugees are entitled to political inclusion in many different contexts. Getting the membership view clear, then, is important for what comes next. Importantly, the membership view is a re-interpretation of David Owen's popular "legitimacy repair" view of refugeehood that I have already discussed. In chapter one, I noted that this view has several benefits over more humanitarian approaches to displacement – it takes the relationship between states and a larger system of governance seriously, as well as showing that states have specifically collective duties to assist refugees. In this chapter, I aim to amend this view based on what has come so far and to offer a more expansive understanding of what legitimacy requires. My argument comprises of two steps: showing that legitimacy requires all individuals have membership (understood as effective citizenship) somewhere, and then offering an account of refugeehood as

capturing all individuals who have lost their membership and require international protection in the form of new membership elsewhere.

I have begun to set the scene for the membership view in the previous chapters. Chapter one considered the various approaches to defining refugeehood already present in the literature, arguing that many accounts already draw on the concept of membership but do not fully unpack it. Chapter two considered the concept of membership more fully, offering one possible interpretation; the aim here was not to give the final word on what membership is in all contexts, but rather to offer one conception of membership in the state that fits with how the notion is currently used in the political theory of refuge. I defined membership as *effective citizenship* and argued that it depends on three conditions: formal citizenship, the capacity or institutions of the state, and the standing of the individual. The last chapter discussed the relationship between membership and persecution, arguing that whilst persecution does strip an individual of her membership in the state, this is not a necessary condition for the loss or lack of membership. Now we are in a position to offer a full account of the membership view and to take head-on the objections and replies that I have been putting aside so far.

The membership view is part of a family of state system legitimacy views of migration governance.[66] These views argue that a state's legitimacy is "conditional on its playing some role in a legitimate state system, characterized by global cooperation on migration."[67] Such accounts

[66] It is worth noting that I take state system legitimacy views to be importantly separable from views about the justifiability of territorial invasion. For instance, some set legitimate intervention at the standard of human rights violations. Others, such as Michael Walzer, argue that states can be internally illegitimate while maintaining external legitimacy. In my discussions of legitimacy here, I do not take a position on this and I also do not think it is required of my account (or any other state system legitimacy views). There may plausibly be different standards of legitimacy for different mechanisms of intervention – it seems right that external intervention, for instance through invading a country's territory, would require a much higher standard. Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy & Public Affairs* 9, no. 3 (1980): 209–29.
[67] Sharp, "Immigration and State System Legitimacy," 2.

view migration governance as necessary conditions of individual and collection state legitimacy. As Daniel Sharp argues, legitimacy views consist of three steps:

> The theorist first identifies some legitimacy problem, either for the state system or the states that constitute it, and then articulates some legitimacy condition that must be met to resolve it. They then argue that the state system's failure to meet this condition impugns both its legitimacy and the legitimacy of the states that make it up. Finally, they contend that fulfilling the legitimacy condition requires states to create and comply with a fair global migration regime of a certain kind and that this entails that states have important migration-related duties grounded in the conditions of their own legitimacy.[68]

The membership view is a state system legitimacy view insofar as it is a reinterpretation of Owen's own legitimacy account. As we have seen, Owen contends that the normative character of the refugee protection regime can be reformulated around the legitimacy of the international order of states as a whole. For Owen, the state system has a dual focus: a commitment to state sovereignty as well as a commitment to universal human rights protection. Owen argues that this system can only function legitimately in cases where "division of labour in which securing the human rights of particular persons is primarily to be achieved by way of their allocation to particular states."[69] The international state system, Owen argues, is only legitimate if all individuals have their basic rights protected. A few points on this claim, which I carry into my argument. First, though it may seem like a high bar, this is a standard that states themselves profess to – states have routinely committed to the need for the protection of universal human rights, most obviously in the Universal Declaration of Human Rights and other expansive international legal commitments. Second, many moral and political theorists take human rights to be the kind of moral minimum of legitimate governance; many take human rights as an appropriate benchmark for assessing the

[68] Sharp, 2–3.
[69] Owen, *What Do We Owe to Refugees?*, 45.

legitimacy of individual states.[70] If this is the case, then that moral minimum can be transferred to larger systems of governance; the minimum for each individual state is also presumably the minimum for their collective conduct as well.

There are two possible ways of interpreting this claim about ensuring the protection of human rights, the second of which is more plausible. First, we might think that for the international order to be legitimate, all human rights must be protected at all times. This would be an incredibly demanding standard meaning that, in all likelihood, no system of states could ever achieve legitimacy. If this is what Owen means, it seems odd to give such an unattainable ideal of legitimacy in the first place. Importantly Owen does soften this standard in several places, he does so by appealing to conditions of feasibility – he only claims this to be the standard if it is a "practical possibility of a regime of global governance."[71] I think we can therefore conclude that, since Owen is offering a practical interpretation of the refugee regime, this is not what he means. Instead, a second interpretation is more plausible: in order for the international order of states to be legitimate, each individual must have secure status in *some authority capable of protecting their rights*. This is a less demanding standard and something that the states acting collectively could conceivably achieve. What matters then is whether states are generally disposed to protect rights. All individuals therefore must stand in some relationship to some state that is able to uphold and protect their rights. Indeed, Owen talks about this kind of dispositional approach:

> To the extent that states are not disposed to secure the basic rights of (some of) their citizens or lack the capability to do so, this constructs a legitimacy problem not only for the states in question, but also for the international order of states as a regime of global governance. It does so since it points to the failure of this regime to secure conditions under which states are generally capable of, and disposed to,

[70] The best known proponents are this view are John Rawls and Ronald Dworkin, both of whom argue that human rights are a standard by which to determine the legitimacy of a system of governance.
[71] Owen, *What Do We Owe to Refugees?*, 45. Footnote 17

> comply with the norm of basic rights protection whose universal provision underwrites the claim to legitimacy of the international order.[72]

This dispositional standard is often applied to individual states as well. As John Tasioulas puts it: "whether or not any particular state is legitimate depends upon the obtaining of a certain kind of relationship between the state in question and its putative subjects."[73] I argue that this relationship is best understood as membership as *effective citizenship*. Although ensuring membership for all may seem unachievable, it is less burdensome than ensuring all individuals have their rights protected at all times. It is the relationship of rights protection constituted by effective citizenship that is central to legitimacy, rather than the perfect protection of human rights at every possible moment. Others also accept that membership in the state is essential. For instance, Peter Spiro argues that "membership in the state remains supremely important; by far the most important associational attachment of individuals."[74] Bauböck agrees that "membership in a polity is a necessary condition for human autonomy and well-being."[75] Setting the minimum standard as membership in a state is therefore not unprecedented. Many already accept its importance.

The legitimacy of individual states depends on the legitimacy of the international system of governance as a whole; "the political legitimacy of modern states cannot be separated from the political legitimacy of these wider relations of governance."[76] Therefore, individual states have duties of legitimacy to support this global system of governance insofar as it ensures the basic rights of all individuals; their being situated within the broader regime of governance leads to collective responsibility. Owen thus argues that we can understand the refugee protection regime

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[72] Owen, 45–46.
[73] John Tasioulas, "Human Rights, Legitimacy, and International Law," *The American Journal of Jurisprudence* 58, no. 1 (June 1, 2013): 10, https://doi.org/10.1093/ajj/aut001.
[74] Peter Spiro, "Stakeholder Theory Won't Save Citizenship," in *Democratic Inclusion: A Pluralist Theory of Citizenship* (Manchester: Manchester University Press, 2018), 204.
[75] Rainer Bauböck, *Democratic Inclusion: A Pluralist Theory of Citizenship* (Manchester: Manchester University Press, 2018), 40.
[76] Owen, "In Loco Civitatis," 272.

as a form of legitimacy repair mechanism, whereby states step in to fulfil the function of those states who are not fulfilling the basic rights of their members. The function of this regime is therefore to be "a substitute for the state in addressing those whose basic rights protection is best served by flight from, or non-return to, the state."[77] States, therefore, have a duty of legitimacy to accept and engage in this mechanism of legitimacy repair – without such a mechanism, the legitimacy of the whole international system of governance would falter.

The addition that I make to Owen's account is two-fold. First, in unpacking the underlying concept of membership I contribute the conditions that must be met in order for an individual to lack or enjoy such membership. Second, contra-Owen, I argue that persecution is not the only cause of lacking membership. Instead, once we understand the concept of membership at play, we see that it applies to a much broader set of displaced people than those who have suffered persecution. We saw in chapter one that Owen distinguishes between different causes of displacement when considering what refugees are owed. Owen's original legitimacy view relies on persecution being a special moral harm for entitlement to asylum as surrogate membership. My membership-based legitimacy view rejects this and instead accepts any cause of membership loss might qualify an individual for asylum: the important question for this account is simply whether an individual lacks membership and therefore lack the kind of relationship required for a legitimate state system.

The membership view can therefore be stated as follows:

> The international system of territorially bounded states is only legitimate insofar as all individuals enjoy membership in some state. States have a collective responsibility to ensure the fulfilment of this legitimacy requirement because they are embedded in shared

[77] Owen, *What Do We Owe to Refugees?*, 47.

> systems of governance. When individual states fail to ensure such membership for whatever reason, this creates a legitimacy gap for the entire state system. Therefore, states have a collective duty of legitimacy to ensure that secure membership is guaranteed to all.

The membership view's definition of refugeehood is as follows:

> Refugees are individuals who lack membership (as effective citizenship) in any political community and can only be protected through recourse to the international order of states and the provision of membership elsewhere.[78]

This is closely related to Owen's definition of refugeehood which holds that refugees are "persons whose basic rights are unprotected by their state and can only be protected through recourse to the international order of states acting in loco civitatis."[79] The membership view explicitly ties having your basic rights unprotected to lacking membership in the state. It also explicitly ties acting *in loco civitatis* to the provision of new membership elsewhere, rather than any other form of status. Let us now turn to the two sections of this definition of refugeehood in more detail.

(1) ***an individual who lacks membership in any political community***

The central focus of my definition of refugeehood is this idea of lacking membership. I hope that the previous two chapters have gone some way to show what exactly I think it means to be without membership in any state Most importantly, in chapter two I set out three conditions for an individual to enjoy membership. The failure of any of these conditions constitutes a lack of membership. First, an individual might lack formal citizenship in the state. Second, the state might

[78] In theory this definition is open to different interpretations of membership. That is, I outline a particular understanding of effective citizenship, though others might take a more or less stringent approach. They could therefore plug in a new conception of membership to this view.
[79] Owen, "In Loco Civitatis," 280.

lack the capacity or institutions to protect the individual's basic rights. Third, the individual might lack the requisite social and political standing for her entitlement to rights to function as it should. An individual might have a claim based on all of these conditions, though any of them are sufficient on my account. The aim of this conceptualization of membership is to show that social and political norms *combined* with formal status and entitlements help to determine whether someone requires international protection; whether someone is a member is to do with her entitlement to rights, but also to do whether those rights are actually upheld in a sustained and stable way. This being the case depends on more than their mere legal, formal inclusion. It also depends on the informal social and political contexts that shape our lives and how we interact with one another.

Of course, an immediate worry might be that this is a vague and difficult standard to apply. Ultimately, I accept that it may sometimes be difficult to determine when someone lacks membership, though I reject that this is a damning problem for my account. I have already shown why the use of persecution as a proxy for lacking membership is mistaken and argued that we need to look at the predicament of the refugee herself instead. There will always be some hard cases when determining who exactly counts as a refugee – there are hard cases even when we have the concept of persecution to rely on. Sometimes it will be very easy to tell whether someone lacks membership in their state: the Rohingya are an obvious example here – the state not only actively persecutes them, thus denying their social and political standing, but it also actively strips them of citizenship, rendering them legally stateless. In other cases, it will be difficult to determine.

One important thing to notice is that there could be cases of forced migration outside of the category of refugeehood as defined above. I, therefore, follow Owen in making a distinction between different categories of forced migrant. However, rather than there being three categories (asylum, sanctuary, and refuge) I only draw the distinction between those forced across a border with or without retaining their previous membership. That is, people can in some cases be forced

across borders without necessarily lacking membership in their state of origin. For instance, we might imagine someone pushed across a border by a freak flood. She maintains her formal citizenship in the state, the state of origin has the capacity to assist and resolve her situation as quickly as possible, and she retains the requisite social standing in order for her claim to be recognized by her state. She, therefore, maintains the necessary relationship required by concerns of legitimacy and is simply outside of the state for a period of time. Her state of origin can work with the receiving state to remedy her predicament. In spite of her displacement, then, this individual does not qualify for the provision of new membership elsewhere because her relationship with her state of origin remains intact. This therefore largely mirrors Owen's category of those requiring *refuge*. However, on the membership view, Owen's categories of *sanctuary* and *asylum* collapse in on one another. This is because in both cases, the refugee lacks membership in her state of origin and therefore generates the kind of legitimacy gap with which we are concerned. As the last chapter demonstrated, the loss of membership can come about in many ways other than suffering persecution and it is this predicament that should be our focus.

(2) ***and can only be protected through recourse to the international order of states and the provision of membership elsewhere***

This condition clarifies that new membership is owed to those who cannot be (or are not) helped by other means, in an efficient and meaningful way. By this I mean that, in some cases, it may be possible to ensure the provision of membership in the individual's original state, without having to offer them new membership elsewhere. For instance, we might imagine a case in which an individual is living a state which lacks the capacity to meet her basic rights for a short period of time. Perhaps a short term but serious flood has made it difficult for the state to reach her community and give them the assistance that they need. She, therefore, lacks substantive membership (as effective citizenship) in that state because it fails to satisfy the second condition of membership; it lacks capacity. The individual retains formal status and the requisite social and

political standing required to have her rights protected under usual circumstances. In such a case it seems that offering such an individual new membership elsewhere is essentially useless in her current predicament. Even if she was given citizenship elsewhere, she cannot access any of the protections offered by another state either – they suffer from the same access problem. There is still, importantly, a kind of legitimacy gap created by this predicament. There is an individual who lacks membership and requires protection. The international system of states has an obligation to step in and assist with the restoration of membership, for example through helping the state in question to access their citizens as quickly as possible. Such individuals, on my account, do not qualify as refugees because the best way to help them is through local assistance as opposed to international status. The provision of new membership elsewhere therefore must be situated in a broader network of general legitimacy repair mechanisms related to membership and its regeneration *in situ*.

There are also clear cases where the provision of new membership is the only way in which the system of states can meet the original legitimacy condition. In instances of persecution, the state has actively repudiated the individual's membership and therefore making any claims against them redundant. Given that the state is the agent of persecution, there are no remaining ways in which an individual can claim protection from them. Therefore, in such cases, it is evident that no remaining recourse is available. An objector might reply that there are, in fact, other ways in which one can seek protection in a persecuting state: for example, perhaps by joining opposition forces to attempt to overthrow the state. In the long term this might be a successful way in which an individual can again become entitled to the protection of their basic rights. This approach is unappealing. First, joining opposition forces is not exactly a means of seeking protection – often it instead puts the individual directly in harm's way. Second, the individual often has no reasonable evidence that such efforts will actually succeed; if there is no way of knowing that protection will be given at all then this is not a reasonable alternative. Likewise, it also demonstrates that what

constitutes a 'reasonable alternative' often relies on a number of hypothetical scenarios that in fact have no impact on the refugee's immediate access to protection.

However, it is not the case that we can forgo the extension of membership in cases where an individual could hypothetically be assisted in a different way. For instance, some tie the need for refugee protection to the condition that assistance could not be given in any other form. To demonstrate this, imagine the case of a refugee who is fleeing his country because of desperate poverty. Some would argue that there are, in fact, other ways in which such an individual *could* be helped. For example, through development assistance from other countries, or a reduction in corruption in his state of origin. Therefore, in some sense, the refugee could be helped in another way and therefore does not have a right to assistance. Of course, from the position of the individual in need of protection, this kind of hypothetical assistance is useless. The fact that development aid or a reduction in corruption *could* resolve the cause of flight in the long-term has no bearing on whether the individual is in need of protection now. Therefore, whether there is a reasonable alternative in re-establishing depends on an individual's immediate access to actual feasible and comparable options – not options that would put the individual in more danger or rely on wholly hypothetical assistance.[80] Instead, my claim is that new membership is required when an individual cannot enjoy membership in her previous state, whatever the cause.

Having clarified the main definitions in my account, I will now consider some potential benefits of the view before turning to objections and replies.

[80] This point mirrors a debate between David Miller and Kieran Oberman on the conditionality of protection. For discussion of this see: Oberman, "Reality for Realists: Why Economic Migrants Should Not Just 'Go Home and Wait for Assistance'."

Benefits, objections, and replies

There are several ways in which the membership view helps to clarify the conceptual terrain in the political theory of refuge and beyond. First, because of the focus on the relationship between the individual and her state, the membership view shows that the gap between Shacknove's conception of refugeehood and Owen's approach is not as large as it first appeared.[81] We remember from chapter one that Shacknove's account of refugeehood argues that refugees are those whose minimal bond of state protection has been broken. He posits that refugees are those who lack the protection of their basic rights. Again, here, I think the notion of membership allows us to recast Shacknove's view in a new light. Whilst Shacknove is commonly interpreted as a proponent of humanitarianism, I think we could recast his argument as likewise based on legitimacy. As we noted earlier, Shacknove himself does not attempt to give a full "picture" of refugeehood. Instead, he argues that we can consider the definition of refugeehood whilst pushing to one side the question of remedies and entitlements; Lister and Owen offer this as a reason to reject Shacknove's view altogether.[82] However, I think we can simply accept that Shacknove is wrong about this, but it does not mean that a supplementation of his account cannot offer us a fuller picture. Indeed, if the basic methodological point is that all definitions of refugeehood come with corresponding accounts of remedies and entitlements, then it should not be too damning to Shacknove that he fails to do this second step; we simply need to do it for him. Many take Shacknove to be the first to explicitly adopt a humanitarian approach to refugeehood. That is, the institution of refugeehood here depends upon the duty of rescue to assist people in need. The refugee protection regime, then, is just one mechanism to fulfil this important obligation of international assistance. However, now that we have discussed membership and its relationship to the state in more detail, we are in a position to show that Shacknove's account can also fit with a legitimacy-based view. Indeed, Shacknove's account focuses heavily on the proper relationship between the individual and her

[81] Shacknove, "Who Is a Refugee?"
[82] Lister, "Who Are Refugees?"; Owen, *What Do We Owe to Refugees?*; Owen, "In Loco Civitatis."

state; something which his interlocutors often ignore. As we discussed in chapter one, he ties his account of basic rights to Hobbesian and Lockean views of the state – that the function of a state is to protect human beings from one another. If we focus on this aspect of his account, then Shacknove appears to be speaking to the idea of the proper functionality of the state itself, rather than looking at single instances in which the state might fail individuals. That is, he is not conceptualizing refugeehood as related to single, discrete instances of lacking the protection of basic rights, but instead something more systemic. The membership view could therefore be conceptualized as a way of pulling two apparently disparate views of refugeehood closer together.

Second, the membership view helps us to think through the relationship between refugeehood and statelessness in a more coherent way. That is, on this view refugeehood essentially is *de facto* statelessness. Granted, given the qualification about membership elsewhere being the best form of protection available, some stateless people would not necessarily qualify for new membership from an alternative state if the establishment of membership *in situ* is forthcoming. However, the above argument concerning the legitimacy of states and the requirement to ensure membership for all can just as easily be applied to people who lack formal citizenship in any state.

Third, and relatedly, the membership view allows us to see that refugeehood is continuous with other forms of harm and oppression as opposed to a special category in its own right. That is, in tying refugeehood to the provision of membership in the state, we can see what refugeehood exists on a broad spectrum of the denial of rights and standing in a community. I take this relationship between refugeehood and other forms of harm to be a benefit of my account, in being able to situate exile within a broader system of social and political injustice.

Now to finish my clarification of the membership view, I turn to two brief objections and replies.

Objection 1: How can we know who has membership and who does not?

One of the potential downsides of the membership view is that it is overly vague. In relying on the concept of membership, my approach makes it all the more difficult to tell exactly who is a refugee (that is, who qualifies for membership elsewhere) and who is not. How are we meant to know whether an individual lacks membership and is therefore entitled to international protection? In depending on membership, one might argue that this is a particular problem for me, I have introduced a vague notion to the definition of refugeehood and therefore made it even more difficult to draw the line between those who are entitled to assistance and those who require help in a different way. However, as mentioned above, I do not think this objection is special to my view. For instance, consider the view discussed in the last chapter which centres persecution in defining refugeehood. As we now know, persecution is also an underdefined and poorly theorized concept, with various possible interpretations. Just as it is difficult to tell who has membership and who does not, it is hard to tell who has been a victim of persecution and who has not. So, anyone who raises this objection against my view would have to be willing to accept that it applies to more traditional accounts of refugeehood as well. Of course, the real question here is whether the view is so vague as to be essentially meaningless. I do not think that this is the case. As I made clear in the previous chapter, there are some clear cases of membership loss, such as those arising from persecution (by both state and non-state actors) and the destruction of state infrastructure. There are other fringe cases, just as there are in all approaches to defining refugeehood. So, whilst I accept the vagueness charge, I do not think it is enough to undermine my approach.

There's also a broader question here about what we want a definition of refugeehood to do. My approach here, along with all others, is not intended on its own to settle every individual case. This is also true for the Geneva Convention definition of refugeehood. Instead, this definition is spelt out and operationalized in bodies of law and an enormous number of additional guidelines. The wording on the Convention definition was not enough to give us an answer to every imaginable

hard case. What a definition does, at most, is provide a framework for approaching individual cases. Anything more demands too much of a definition and distorts the way in which they are used in actual practice. My approach here is therefore not to attempt to have the final word on every case. Instead, the definition helps us to understand to core of refugeehood and takes a step in the right direction.

Objection 2: This account is too broad

Some might argue that, given my focus on membership, my account expands the concept of refugeehood beyond recognition and includes many people that obviously should not be included. That is because, given that membership depends on the claimability of rights in certain settings, the overwhelming majority of people do not enjoy full membership anywhere. Full membership, it would seem, is often only afforded to rich white men living in liberal democracies. One might argue that, if my account is correct, everyone else would qualify for refugee protection in form of new membership.

This objection depends on a misunderstanding. I do accept that membership is a high standard; it is more substantial than formal citizenship, but it is not the same as full justice or perfect equality. As I clarified in chapter two, it is not simply that an individual either has full membership or lacks any membership whatsoever. Instead, gradations can exist above the threshold of membership. Therefore, I can be a member of my state even if I am not recognized in exactly the same way as someone who is more or less privileged than me – there can be differences within the category of membership. What concerns us here is the individual who lacks the minimum standard of membership that is required for my account. That is, when someone holds none of the secure guarantees of membership, then she qualifies for refugee protection. This is the case when one of the three conditions of membership as effective citizenship is violated; that is, when she lacks any kind of stable relationship with a state such that rights are rendered insecure. So, this account is

broader than Owen's original legitimacy account as well as other political accounts of refugeehood. This is the case because I reject the special relationship between persecution and the lack of membership. However, it is not obviously more broad than popular humanitarian conceptions of refugeehood that we discussed in the first chapter. These views tie qualification for asylum and protection elsewhere simply to severe harm or a violation of human rights. And, often, proponents of these accounts reject more political understandings of refugeehood on the basis that they are overly restrictive. For some, then, the more expansive nature of my legitimacy view is a benefit rather than a burden.

Objection 3: why not the robust protection of human rights?

A final worry might be that I offer the wrong standard of international legitimacy. That is, instead of setting the threshold at the level of membership, we could instead accept something like 'the robust protection of human rights.' On such an account, refugees could be assisted without the extension of membership elsewhere. For instance, through Geneva Convention status or other forms of legal protection. Such a model would look far more similar to the current refugee protection regime and would not have such radical implications. My answer to this worry is somewhat complicated. I accept that we should set the standard of legitimacy at the robust protection of human rights. However, on my account, membership *is* the robust protection of human rights. My reasons for thinking this have been set out more fully in chapters two and three where I considered what it means to lack membership in any state. As we know by now, those without membership in a state live in a position of serious structural vulnerability. Lacking membership, therefore, is tantamount to lacking the secure protection of rights. Someone might reply that, with better legal guarantees for migrants and refugees, such a system may be more successful. What we need to do then is ensure that there are proper institutional rights for refugees, outside of what it means to be a member. This is potentially true. However, there are a few reasons to be sceptical. First, there are quite strong legal protections for refugees in certain areas, for

instance, on *non-refoulement*. Despite this, much refugee policy seems broadly discretionary. There are two ways in which one might use the term 'discretion' here that I want to distinguish between. First, some state might have discretion if the law in question is such that there is room for interpretation. That is, it can perhaps be interpreted and executed in a number of different ways. However, a state might also hold *de facto* discretion. In these cases, the content of the law is not up for interpretation but there are not the legal checks and balances in place to hold states to the nominally accepted legal standard. So, a law, in this latter instance, is discretionary to the extent that states do in fact exercise discretion over whether they abide by the law, whether or not they are supposed to.

States do not have the legal entitlement to expel refugees whenever they wish. Instead, they are subject to the international legal norm of *non-refoulement* which holds that states cannot return refugees when doing so would threaten their life or freedom.[83] However, even with the existence of such a strong norm in place, states do still often violate it. So, even though states are not in principle entitled to expel refugees whenever they wish, the practice of refugee protection is such that they often have the power to do so with little consequence. Consider, for instance, the case of the forced repatriation of Afghan refugees from Germany, which led to many refugees seeking protection for a second time.[84] Refugee advocacy groups continuously argued that returns were unsafe. However, the German government pursued the policy of returns with the assistance of the UN Migration Agency (IOM). In cases such as these, decisions around refugee policy are often made to suit the state's political interests without necessarily abiding by international law, particularly if they are powerful international actors. This gives us reason, I believe, to be sceptical

[83] United Nations, "The Principle of Non-Refoulement under International Human Rights Law" ((UN OHCHR), 2018), https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf.
[84] Pro Asyl, "Escape Again: Afghan Refugees Deported from Germany Are Forced to Flee a Second Time," Pro Asyl, February 19, 2018, https://www.proasyl.de/en/news/escape-again-afghan-refugees-deported-from-germany-are-forced-to-flee-a-second-time/.

about strong legal guarantees without a more permanent form of status. In chapter six I will come back to this question, offering further reasons to think that membership is the correct standard for ensuring secure protection. For now, though, I simply underline that robust protection of human rights *is* the provision of membership in the state.

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The membership view outlined in this chapter offers a more expansive state system legitimacy view of refugeehood. It claims that, as a condition of international legitimacy, all individuals in this system require membership in a political community that is able to guarantee their rights. Refugees, on my view, are those who have lost such membership and therefore – as a matter of legitimacy – require a new one. This does two important things. First, by relying on a particular conception of membership it expands the current legal definition of refugeehood. That is, anyone who lacks membership is entitled to new membership elsewhere. I, therefore, reject the reliance on persecution as a proxy for membership loss. Second, this view has radical implications for the kinds of solutions that are available to displacement. In particular, as I will show in the following section, it has serious consequences for the political rights of refugees and where they are entitled to them. Refugees on my view, then, are not simply entitled to temporary protection. Instead, they require robust and new forms of membership in other states.

SECTION TWO

Political Rights in Exile

CHAPTER FIVE

The Political Rights of Refugees

In the introduction to this thesis, I outlined what I take to be a serious political and moral predicament facing many refugees: they are often barred from formal political inclusion anywhere. Although some states do allow refugees to vote, for instance by meeting residency requirements or through external voting mechanisms, the vast majority of the forcibly displaced remain politically excluded. Practitioners have been mindful of refugees' lack of political voice for several years. For instance, in 2001 the Executive Committee of UNHCR (ExCom) stated that refugee protection should aim "to empower refugees and people of concern in shaping their destinies... refugees should be considered as "subjects" in the search for durable solutions and be considered as resourceful and active partners, rather than "objects" or passive recipients of assistance."[85] In the last few years, some political and legal theorists have also turned their attention to the political

[85] Executive Committee of the High Commissioner's Programme, "Reinforcing a Community Development Approach. EC/51/SC/CRP.6.," February 15, 2001.

rights of refugees, though mostly focusing on the state of asylum.[86] This second section of the thesis will aim to extend that analysis by applying the membership view and seeing where else it takes us.

Before discussing the political entitlements of refugees in various settings, I had to determine and defend a definition of refugeehood. This is because, as noted in chapter one, it is not possible to separate the remedies to which refugees are entitled from the chosen conception of refugeehood itself. Therefore, the first half of this thesis outlined a new approach to thinking about refugeehood built around an understanding of membership. We saw in the last chapter that the membership view leads to a far more expansive understanding of refugeehood than is currently adopted by other legitimacy-based views, while retaining many of their strengths. Having defended the membership view, this second section of the thesis aims to consider the rights and remedies to which refugees are entitled. I focus in particular on political inclusion here for two dominant reasons. First, political inclusion for refugees has received limited attention in discussions of displacement. As we noted in chapter one, many popular views of refugeehood are humanitarian in nature; they understand obligations to assist refugees as based on more general duties of rescue. We also noted that such views imply a humanitarian standard for the remedies to displacement. That is, refugees are entitled to the temporary protection of their rights, for as long as this is required. Political inclusion for refugees, on this picture, is separable from the protection of their basic rights. Other views of refugeehood that we discussed in the last section do have something to say about the political rights of refugees. However, as I demonstrated in chapters one and three, we have good reasons to amend such approaches in favour of the membership view. Although in recent years theorists have begun to think through the political rights of refugees, they have done

[86] Ziegler, *Voting Rights of Refugees*; Dana Schmalz, *Refugees, Democracy and the Law Political Rights at the Margins of the State* (London: Routledge, 2020); Felix Bender, "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?," *Citizenship Studies*, September 20, 2020, 1–16, https://doi.org/10.1080/13621025.2020.1825625.

so only on the basis of existing theoretical approaches to democratic enfranchisement. For instance, by applying the all-affected interests view of the coercion principle which we will discuss in a moment. Few have aimed to understand political inclusion as *built into* our conception of refugeehood. That is, the membership view begins with the question of membership and therefore implies that refugees *qua* refugees are owed political rights in various settings. Second, implications for thinking through political rights are the most novel contribution of the membership view. That is, the membership view accepts that refugees require the protection of their basic rights, but it also specifically ties this to the provision of political status. Rather than focusing on the already accepted claims of refugees to basic protection, I focus here on defending the more radical contributions of my argument.

This second section of the thesis shows that refugees are entitled to political inclusion to a much greater extent than is currently recognised in both theory and practice. The overarching argument in the chapters that follow, then, is that if legitimacy requires that refugees (and indeed everyone) enjoy membership *somewhere,* then we need to think through how membership can be rebuilt. Perhaps most radically, I argue that refugees are entitled to immediate membership elsewhere, in the form of citizenship.

The following section is divided into four chapters. In this first chapter, I give a general overview of the literature on political rights, considering what is distinctive about political inclusion. I will outline typical arguments given in favour of political entitlements in various settings: the all-affected interests view, the coercion view, the stakeholder view, and the social membership view. I will be using these approaches throughout the second section to think through the obligations of various institutions. Importantly, I am not specifically arguing against or in favour of any of these views. Rather, I contend that refugees have a special claim to political inclusion based on their lack of membership. The aim here, then, is not so much to undermine these accounts, but to

show that they can be superseded in the case of refugees. Such an approach shows that a refugee's claim to political inclusion is overdetermined; it can be grounded both in existing approaches to political inclusion as well as my membership view.

The following three chapters outline various institutions or spaces in which refugees may be entitled to political inclusion: the state of asylum, the state of origin, and the refugee camp. In chapter six, I argue that refugees are entitled to immediate citizenship and that the best candidate institution is usually the state of asylum. This is because citizenship, although not the same as membership, is a prerequisite of the kind of substantive recognition that refugees often lack. Therefore, in order for membership to be restored, citizenship is a first necessary step. However, I also clarify that membership in a democracy is not a necessary condition to meet my legitimacy standard. Instead, refugees require a level of standing which secures the protection of their rights. This leaves open space for societies arranged in other ways. This implies that the state's duties to refugees may differ depending on the state in question: liberal democracies will be required to do more than other states, as they will have to meet a higher existing standard of inclusion.

In chapter seven, the state of origin, I argue that the membership view has particular consequences for refugee return. That is, if return is ever to be successful, political and social inclusion is a necessary part of voluntary repatriation. This echoes similar arguments made by Megan Bradley and Katy Long, who contend that repatriation is a political rather than a physical process. This chapter gives us an argument for external voting in the case of refugees in particular, as a way of rebuilding this relationship. In non-democracies, other possible measures could be taken from abroad. Again, if membership is to be reinstated in the state of origin, such political inclusion is often a necessary first step.

In chapter eight, I consider whether refugee camps can ever function as guarantors of membership. If they could, then some formulations of the camp might offer a genuine solution to displacement. I argue, however, that as long as camps remain under the control of host states, camps cannot perform this function. I also argue that *even if* camps could perform this function, they would no longer be camps in the relevant sense. Instead, membership-providing camps would come to look more like city-states. I argue that there are reasons of justice to avoid instutitonalizing such an approach, focusing my critique here on the recent *Refugia* proposal. Therefore, the membership view provides another reason to question the moral and political legitimacy of the refugee camp.

Each chapter will begin with an empirical exegesis of the refugee's political rights in the setting in question. I then turn to the normative puzzle at hand: do refugees have a claim to political inclusion in this particular space? What I will propose is a radical reconsideration of the way in which we think about the claims and entitlements of refugees: that they require substantial political inclusion in many settings based on their need for membership. Therefore, the refugee regime as it currently stands is failing in an even more potent way than we had imagined.

Importantly, the membership view is not meant to be an all-encompassing theory of enfranchisement or the claim to naturalization. Instead, it tells us something specific about the refugee's political status in various settings. The aim, then, is not to argue for an expansive principle of political inclusion more generally. Rather, the refugee *qua* refugee is our focus here. Of course, my approach may have implications for other populations, but they are not my focus in the following chapters.

This introductory chapter will proceed as follows. First, I will give an outline of political rights in the broader human rights framework. Here I will consider the ways in which political rights are often thought of as different from other more basic rights. Second, I will then move onto discuss

various approaches to the right to vote and the right citizenship in the political theory literature. I will not discuss here what these views say about refugee inclusion. I will instead do so in the chapters that follow on each specific institution.

What are political rights?

Political rights are often discussed as a distinct category of human rights. In particular, the right to vote, and the right to run for elected office, are often conceptualised as tied to the political status of citizenship. In order to hold political rights in a certain place, individuals need to first hold formal political status. This is evident from the Universal Declaration of Human Rights, which states in Article 21 that:

> 1. Everyone has the right to take part in the government of *his country*, directly or through freely chosen representatives.
> 2. Everyone has the right to equal access to public service in *his country*.

The emphasis on *his country* shows that the Declaration presumes that individuals hold status somewhere. Political rights are therefore dependent on prior conditions of inclusion. The International Covenant on Cultural and Political Rights (ICCPR) makes this link even more explicit. In Article 25 it states that:

> Every *citizen* shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic

> elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.[87]

Therefore, the right to vote in a particular is dependent on the possession of formal status in a community. Article 15 of the Universal Declaration goes some way to remedy this by stipulating that "everyone has the right to a nationality."[88] However, the legally binding ICCPR does not replicate the right to a nationality and instead offers this provision only to stateless children.[89] Moreover, the ICCPR also contains articles that enshrine the political rights of collectives to determine their own affairs. Article 1 states that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development."[90] It is not difficult to see how individualised political rights can conflict with these broader group rights to collective self-determination.

We also do not typically think of political rights as being *nonderogable* – that is, political rights do not belong to the category of human rights that can never be violated under any circumstances, such as the right not to be tortured. Indeed, we often do not think of non-democratic states as being *ipso facto* rights violators. As David Miller notes: "In the practice of international law, states are not condemned for violating human rights merely because they do not allow people to vote in free elections – this by itself is not regarded as sufficient grounds for sanctions, or stronger forms of interference."[91] So, although individual political rights are enshrined in the Universal Declaration and ICCPR, they are viewed as somewhat optional. The right to vote in a particular place is understood as a privilege, one that an individual cannot simply be entitled to in every case. To this extent, Jeremy Waldron argues that it is wrong to think of political rights as being

[87] UN General Assembly, "International Covenant on Civil and Political Rights" (United Nations, Treaty Series, vol. 999, p. 171, December 16, 1966), https://www.refworld.org/docid/3ae6b3aa0.html [accessed 10 January 2021.
[88] United Nations, "Universal Declaration of Human Rights."
[89] UN General Assembly, "International Covenant on Civil and Political Rights."
[90] UN General Assembly.
[91] David Miller, "Is There a Human Right to Democracy?," *CSSJ Working Papers Series, SJ032*, 2015, 3.

dependent on the individual. Instead, such rights are about the existence of particular political communities. Political rights, then, "are to be understood instead as establishing the basis on which large numbers of right-bearers act together to control and govern their common affairs."[92] Because of this, the right to vote functions as a kind of power. As Waldron puts it: "it is to perform an action which (if enough others also perform it) alters the assignment of rights and duties in the community."[93] In the case of political rights such as voting or citizenship, not everyone has the right to vote in any given country's election. The UDHR and ICCPR of course recognize not that everyone should have political rights in all places, rather it is important for people to have political rights recognized in *their* state. Since political inclusion depends on pre-existing status, formal inclusion in a state becomes even more important. As I have already mentioned in the previous chapter, many states accept that each individual has a right to nationality in at least one country.

The extent to which political rights are tied to citizenship status has of course been noted by political philosophers. In *The Jewish Question,* Marx commented on the distinction between the rights of man and the rights of the citizen, stating that, these are "political rights, rights which can only be exercised in community with others."[94] This point is later echoed by Arendt when discussing the *rightless,* or those who have been expelled from political communities.[95] The actual picture is, of course, far more complicated: Seyla Benhabib argues that in light of globalization and more expansive freedom of movement, political rights have become "unbundled" from citizenship.[96] As such, long-term residents and other non-citizens are often entitled to vote in their state of residence. Of course, political rights and citizenship have almost always been "unbundled" in this sense, as being a citizen rarely guaranteed voting rights. Instead, this entitlement often

[92] Jeremy Waldron, "Participation: The Right of Rights," *Proceedings of the Aristotelian Society* 98 (1998): 308.
[93] Waldron, 308.
[94] Karl Marx, "On the Jewish Question," Deutsch-Französische Jahrbücher 1844, https://www.marxists.org/archive/marx/works/1844/jewish-question/.
[95] Arendt, *The Origins of Totalitarianism.*
[96] Benhabib, *The Rights of Others.*

depended on gender, race, class, hereditary status, or property ownership. Benhabib is right, however, that many states now extend the franchise beyond formal citizenship. Instead, long-term residents are viewed as being entitled to a political voice. Given this historic unbundling, much of the literature in political theory focuses on voting rights separately from citizenship. That is, it considers the question of enfranchisement separately from the question of who is entitled to citizenship. Much of the literature that I outline here assumes a distinction between citizenship and inclusion in the demos. In what follows, I will outline dominant approaches to answering two questions: who is entitled to vote and who is entitled to naturalization? Doing so will set the scene for the chapters to come and help us to begin to determine whether refugees are entitled to distinctly political remedies.

Who is entitled to vote?

Most arguments concerning who should be entitled to vote where take place within the debate of the democratic boundary problem.[97] This problem, as Dahl puts it, concerns "how to decide who legitimately make up 'the people'... and hence are entitled to govern themselves."[98] As such, the proposals that I discuss below put forward a condition that has to be met in order for an individual to be entitled to vote. The most dominant candidates for democratic inclusion are whether someone is affected or coerced by political decision-making. Perhaps the best-known account of enfranchisement is the all-affected interests (AAI) principle. This principle builds on the basic assumption that if an individual is affected by the outcome of some political decision, then they ought to have a say in the institution that makes that decision.[99] This was recognized (at least partially) in Roman Law which determined that *quod omned tangit ab omnibus approbari debet, "what effects everybody must be approved by everybody."*[100] There are several potential versions of such a principle.

[97] Frederick Whelan called this 'the boundary problem' in democratic theory, whereas Dahl calls this the "problem of inclusion"; Whelan, Frederick G. 1983. "Prologue: Democratic Theory and the Boundary Problem." In *Nomos* 25, 13–47. New York: New York University Press.
[98] Robert Dahl, *After the Revolution?: Authority in a Good Society* (Yale University Press, 1991), 60.
[99] Dahl, *After the Revolution?: Authority in a Good Society*.
[100] Schmalz, *Refugees, Democracy and the Law Political Rights at the Margins of the State*, 70.

Robert Goodin for instance argues that there are two possible interpretations of the AAI, *actually* affected interests and *potentially* affected interests, the first of which is implausible: "[W]hose interests are 'affected' by any actual decision depends upon what the decision actually turns out to be."[101] He therefore concludes that instead, "[m]embership in the demos ought to extend to every interest that would probably be affected by any possible decision arising out of any possible agenda."[102] The AAI is therefore radically inclusive. In absorbing everyone who is potentially affected by any possible decision, it extends far beyond the normal boundaries of the political community. Goodin accepting this, arguing that the AAI view gives us good reason to favour a global demos. There are others, though, who attempt to limit the scope of this principle. For example, Ian Shapiro argues that "those whose *basic interests* are most vitally affected by a particular decision have the strongest claim to a say in its making."[103] Such an account attempts to limit the overly expansive nature of the AAI, although it is not obviously successful. For instance, Sarah Song critiques Shapiro's view arguing that, first, it must depend on some controversial account of basic and non-basic interests and, second, it would still lead to a hugely expansive approach. She writes:

> The proportional approach might be even more radical than an approach that is insensitive to variations in the kind or degree of impact. For instance, consider US trade decisions that affect the basic interests of many Latin Americans while affecting much less important interests of many US citizens. In such a case, the proportional view entails that Latin Americans should have a greater voice in trade decisions than US citizens.[104]

[101] Robert Goodin, "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (2007): 52, https://doi.org/10.1111/j.1088-4963.2007.00098.x.
[102] Goodin, 61–62.
[103] Ian Shapiro, *Democratic Justice* (New Haven: Yale University Press, 1999), 37. Quoted in Sarah Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State," *International Theory* 4, no. 1 (2012): 49, https://doi.org/10.1017/S1752971911000248.
[104] Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State," 50.

As such, the amended version of the AAI may actually be more radical than Goodin's global demos. Two more critiques are worth briefly mentioning here: First, we can counter the AAI can be made from a more methodological starting point. Importantly, it questions the boundaries of existing political structures rather than taking them as a given. As Felix Bender puts it, "the all-affected principle asks not only 'who' ought to be included in an already given political unit but asks about the scope of the boundaries (and their justification) themselves."[105] Therefore, at least for certain purposes, the AAI is a difficult starting point; for those (like myself) who take the territorially bounded system of states as a given, the AAI is perhaps not useful. Second, it is not obvious why being affected by a political decision mandates that an individual need to have a vote in the institution. Rather, it may be that affected individuals only need their interests to be taken into account in some way.[106] Indeed, Rainer Bauböck precisely argues that being affected by a political decision does not imply equal say. Instead, it demands that the deciders take these affected interests into account. We will come back to this in the following section. So, although possibly tempting at first glance, the AAI has been criticised from several angles: for being overly broad, and for being unhelpful for non-ideal theorising, and for assuming that being affected implies full enfranchisement.[107]

A second potentially more attractive way of answering the democratic boundary problem is by offering a higher bar for inclusion. The *coercion principle* requires that "the coercive exercise of political power be democratically justified to all those over whom it is exercised, that is, justification is owed to all those subject to state coercion."[108] Therefore, coercion is the condition that requires

[105] Bender, "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?," 3.
[106] Bauböck, *Democratic Inclusion: A Pluralist Theory of Citizenship*, 23–24.
[107] Bender, "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?"; Goodin, "Enfranchising All Affected Interests, and Its Alternatives."
[108] Arash Abizadeh, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders," *Political Theory* 36, no. 1 (February 1, 2008): 45, https://doi.org/10.1177/0090591707310090. I choose to call this view the *coercion principle* following the lead of Sarah Song. There are, of course, many versions of this principle and many names for it: the all-coerced view, the all-subjected view, the all subject to coercion view.

democratic inclusion. This account leads to a less radically expansive demos than the AAI. This is because those coerced are a smaller subset of those who are affected by some decision. This is at least partially because political decisions can usually only be carried out within the already determined territory of a state: "Governments can legitimately enforce laws only within a territorially limited jurisdiction and to some extent also over their citizens outside the territory."[109] Therefore, not everyone who is affected by some decision should have a say, but rather only those who will be subject to the coercive power of the state. People within the boundaries of the state for some period of time then are to be included in the demos of the state. This view supposedly excludes transients in the state, such as tourists, but explains why those in resident in the state for a significant period, such as temporary workers, ought to be enfranchised during their stay.[110] However, the coercion principle does still extend beyond the boundaries of the state. For instance, Arash Abizadeh's well-known argument on border controls holds that migrants and coerced by the power of the other states to exclude them and are thus owed political inclusion on grounds of legitimacy. Therefore, where the state's coercive powers extend beyond its borders, so should its demos. The coercion principle, therefore, avoids the constantly shifting and global demos of the AAI but does still offer a far more flexible account than currently accepted in practice. For instance, it still holds that political inclusion need not depend on a previous affiliation to the state; it accepts the unbundling of the demos and the citizenry.

Several critiques have been levelled against the coercion principle. For instance, Song notes that people are of course subject to differing levels of coercive power. For instance, a migrant at the border is subject to a different kind of coercion than someone who lives their entire lives subject to the total political system of governance. How this difference actually plays out in practice

Although these names often do capture small differences in the various accounts, I believe a broad approach is sufficient for our purposes here.

[109] Bauböck, *Democratic Inclusion: A Pluralist Theory of Citizenship*, 28.

[110] Bauböck, 31. I will come back to the question of whether refugees count as transients in chapter six.

remains to be seen. As Song notes "foreigners may be subject to much more coercion via US immigration law and border control than citizens of the US."[111] Therefore, if we agree with the starting point of the coercion principle – that in order for coercive power to be justified it must be democratically legitimated – then certain foreigners have as much of a claim to inclusion as citizens. We might still be able to critique the coercion principle from *within* democratic theory. For instance, Song argues that in order for democracies to flourish they require certain conditions that do not fit well with such a flexible, unbounded approach to the demos. First and foremost, she claims that democracies require stability in order to foster solidarity among participants and maintain political equality.[112] Of course, whether a democracy could survive something like the AAI or the coercion principle remains to be seen; no state has such liberal and flexible voting policies. However, in offering a more limited but still powerful response to the boundary problem, the coercion principle (or versions of it) has become adopted broadly in the literature. Because of its less radical but still expansive account of democratic inclusion, it is, to that extent, preferable to the AAI principle.

The above has not been a full account of every possible answer to the boundary problem. Nor have I attempted to cover all possible objections and replies. We should remember that the aim here is not to offer a final say on any of these accounts. Instead, the hope in the following chapters is to show that on almost all views, refugees have a strong claim to political inclusion. Therefore, the membership view is just one way among many that we might ground the refugee's claim to political status in each of the settings that we will discuss. The critiques of each view offered here are therefore to be borne in mind, but I do not take a stance on which of them I prefer in the chapters to come.

Who is entitled to citizenship?

[111] Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State," 52.
[112] Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State."

Citizenship in a state is usually acquired either through being born within a particular territory, *jus soli*, or through parental descent, *jus sanguinis*.[113] Therefore, most people are not entitled (or able) to choose their primary citizenship; it is simply given to them. However, when considering citizenship for refugees we need to discuss the conditions for gaining it where one has no previous relations. We have already noted that many political theorists accept the distinction between inclusion in the citizenry and inclusion in the demos. Therefore, the bar is typically set higher for inclusion in the citizenry than inclusion in the demos. As Alex Sager puts it:

> Citizenship goes beyond the granting of political rights because it signifies a long-term commitment to the community. This may justify more significant barriers to citizenship to ensure this commitment. For example, if we privilege how citizenship is connected to shared identity, then passing an exam testing knowledge of the official language(s), culture, and history may be a reasonable requirement.[114]

Accounts of who is entitled to citizenship where, then, often attempt to spell out this commitment to community and how it can be determined. The *stakeholder principle* developed by Rainer Bauböck holds that the previous two accounts of democratic inclusion wrongly assume that what is required is enfranchisement. Instead, he argues that the AAI merely shows that individuals need to have their interests considered and the coercion principle demands equality before the law. Whether or not an individual has a relevant *stake* in a community determines whether they should receive membership and therefore be enfranchised. As Bauböck puts it, "all whose individual autonomy and well-being depend on the collective self-government and flourishing of a polity have a claim

[113] For an in-depth discussion of *jus soli* and *jus sanguinis* see Shachar, *The Birthright Lottery: Citizenship and Global Inequality*, 111–34.
[114] Alex Sager, "Political Rights, Republican Freedom, and Temporary Workers," *Critical Review of International Social and Political Philosophy* 17, no. 2 (March 4, 2014): 192, https://doi.org/10.1080/13698230.2012.733586.

to citizenship in that polity."[115] There are therefore two ways to develop such a claim. The stakeholder principle applies to those who:

(a) depend on that community for long-term protection of their basic rights (dependency criterion) or

(b) are or have been subjected to that community's political authorities for a significant period over the course of their lives (biographical subjection criterion).[116]

Bauböck thus posits a much higher standard of inclusion than the AAI and coercion principles, tying enfranchisement explicitly to the extension of citizenship. Instead of merely being affected or coerced by the particular decisions of a state, the individual must have a relevant stake in the community. Bauböck develops this by arguing that the flourishing of the individual must be in some sense bound up with the flourishing of the community: in order to qualify as a member with a right to participate, one must have a long-term interest in the political community succeeding: "[c]itizens are stakeholders in a democratic political community insofar as their autonomy and well-being depend not only on being recognized as a membership in a particular polity, but also on that polity being governed democratically."[117] Therefore inclusion in the polity is inclusion in a set of "interlinked interests."[118]

This view has received a great amount of attention in recent years, but here I will outline a few powerful objections. First, some accuse the stakeholder view of conflating the two different standards of political inclusion: inclusion in the demos and inclusion in the citizenry. Bauböck explicitly denies that one can have a claim to vote without meeting this high standard. His position,

[115] Bauböck, *Democratic Inclusion: A Pluralist Theory of Citizenship*, 49.
[116] Rainer Bauböck, "The Rights and Duties of External Citizenship," *Citizenship Studies* 13, no. 5 (October 1, 2009): 479, https://doi.org/10.1080/13621020903174647.
[117] Bauböck, *Democratic Inclusion: A Pluralist Theory of Citizenship*, 41.
[118] Goodin, "Enfranchising All Affected Interests, and Its Alternatives," 49.

therefore, appears more conservative, at least on voting rights, than current practice. The stakeholder view cannot justify the "unbundling" of rights from citizenship as we see it in the real world.[119] Second, we might worry that the stakeholder view depends on some outdated notion of what it means to be a citizen. In his earlier work, Bauböck's conditions for gaining citizenship seem broadly instrumental; you gain a claim to enter the citizenry when you have been subjected to their power or when you rely on the state for the protection of your basic rights. Peter Spiro argues, however, that more recent attempts to defend the stakeholder view have depended on an antiquated notion of common destiny. Whether this is actually required to have a claim to citizenship seems unlikely and, again, represents stepping back from the more expansive regimes in modern liberal democracies. Spiro suggests, then, that we should instead attend to think with these new institutions.

We discussed an alternative though similar view on the right to naturalization in chapter two. Joseph Carens's well-known *social membership view* holds that individuals develop a claim to membership after some period of residence. That is, a claim to citizenship depends on some prior development of affiliation. Focusing on undocumented or 'irregular' migrants in the US, Carens argues that the state's right to exclude such individuals from membership erodes as social bonds in the state are developed. He writes:

> At some point a threshold is crossed, and they [long-term irregular migrants] acquire a moral claim to have their actual social membership legally recognized. They should acquire a legal right of permanent residence and all the rights that go with that, including eventual access to citizenship.[120]

[119] Bender, "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?," 4.
[120] Carens, *The Ethics of Immigration*, 150.

Carens claims that the intuition for his argument is strongest in the case of children.[121] When someone has spent their formative, childhood years in a country, their social world has been shaped by the state. They are therefore owed social recognition that allows them to regularise their status. Although similar to Bauböck's stakeholder view, the social membership view depends more on social inclusion than a future stake in the community's well-being; it depends on the individual's relationship with the state but in a different way. Critics of this approach have agreed broadly with its sentiment, but question Carens's focus on social ties. Kieran Oberman argues that the social membership view is both over- and under-inclusive.[122] That is, it fails to include cases of individuals that we think are owed citizenship whilst also including cases of individuals who do not appear to be owed citizenship. It is under-inclusive because most people would argue that individuals who do not develop social ties in the state are still owed citizenship, at least at some point. For instance, it seems that the state should also offer membership to individuals who cannot speak English or choose to stay in their home. Social ties, therefore, do not seem necessary to establish a claim to political membership. Likewise, there are cases where an individual *has* established social ties but does not seem entitled to citizenship. Oberman offers the example of an English tourist who visits Italy every summer, learning the language and befriending the locals. The social membership argument would entail that the tourist is owed citizenship but intuitively this does not seem to be the case. It is not obvious to me that Oberman's criticism here is particularly strong; is it really correct to say that the tourist develops ties of the kind that make someone a social member in the relevant? And unless the individual living in isolation is really living on an entirely self-sufficient life, then we might not think they count as lacking in all social ties either. What we might take from these examples is that there is something distinctively important about residency - that length of residence is a method of operationalising the social membership criterion. Once an individual has

[121] Joseph Carens, *The Right to Stay* (Boston, MA: Boston Review, 2010), 11.
[122] Oberman, "Immigration, Citizenship, and Consent: What Is Wrong with Permanent Alienage," 91–107.

lived within the political community of the state for a long period of time, they seem to be able to claim membership in that state. These views of grounding inclusion in the demos do lead to some broad consensus. That those who are resident in the state for a significant period of time have a claim to inclusion. Exactly why this is the case is perhaps still yet to be determined.[123]

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This chapter has outlined the dominant approaches to determining who is entitled to formal political inclusion where, focusing on enfranchisement and naturalization. First, I noted why the chapters to follow focus on political inclusion as opposed to other forms of protection. The novelty of the membership view is what it implies for ensuring political status elsewhere. Therefore, the view I developed in the first section of the thesis helps us to fill this important gap in the literature. Second, I outlined the existing views on political inclusion. I noted in the introduction to this chapter that this aim here is not to disprove any of these positions. Rather, each chapter that follows will aim to show that on, all the dominant account of political inclusion, refugees have a strong claim to political rights in various settings. However, I also posit that these accounts are somewhat secondary in the case of refugees. That is because, if we accept the membership view, we can show that refugees have a claim to membership elsewhere as a product of their refugeehood; the need for new political inclusion is built into our conception of refugeehood to begin with. The refugee's right to inclusion, then, is overdetermined and multiply justified. In what follows, I apply these existing frameworks to various settings and then see how the membership view complements and overrides them. In the end, I argue that refugees are

[123] In my paper on temporary refugee status, I argue that this is the orthodox view on refugee naturalization – that they *become* entitled to citizenship but only after some period of time in the state of asylum. We will discuss this in the following chapter; Rebecca Buxton, "Justice in Waiting: The Harms and Wrongs of Temporary Refugee Protection," *European Journal of Political Theory*, November 29, 2020, 1474885120973578, https://doi.org/10.1177/1474885120973578.

entitled to political inclusion far beyond current practice. The extension of voting and citizenship to refugees in various settings, then, is a necessary component of international legitimacy.

CHAPTER SIX

The State of Asylum

In December 2015, Justin Trudeau travelled to Toronto International Airport to meet what he called a plane full of "new Canadians."[1] This was the first Government-issued flight to arrive as part of Canada's commitment to resettle 25,000 Syrian refugees by February the following year. Trudeau greeted the "newcomers", a term often used for refugees in Canada, welcoming them to what he described as their new home. In a speech to immigration officials and staff waiting to process the refugees, he said: "This is a wonderful night, where we get to show not just a planeload of new Canadians what Canada is all about, we get to show the world how to open our hearts and welcome in people who are fleeing extraordinarily difficult situations." He continued, "They step off the plane as refugees, but they walk out of this terminal as permanent residents of Canada with social insurance numbers, with health cards, and with an opportunity to become *full Canadians."*

[1] Associated Press in Toronto, "Justin Trudeau Greets Syrian Refugees Arriving in Canada," *The Guardian*, 2015, https://www.theguardian.com/world/2015/dec/11/plane-carrying-syrian-refugees-arrives-toronto-canada. Emphasis mine.

While the extension of permanent residence in Canada was one of the most generous policies among Western states that year, Trudeau was importantly wrong about the official status of these refugees. Whilst the Syrians stepping off of this plane did receive the right to remain in Canada, they did not legally cease to be refugees. Instead, the dissolution of refugee status only occurs in exile when a refugee is fully naturalized in their new country. As the Geneva Convention notes in Article 1C. 3, refugee status ceases to apply when "[the refugee] has acquired a new nationality and enjoys the protection of the country of [their] new nationality."[2] These newcomers would only cease to be refugees once they had in fact achieved the status of *full Canadians*. Refugees arriving in Canada, including both those who are chosen for resettlement and spontaneous arrivals, do not receive immediate Canadian citizenship. Instead, like all non-citizen residents, they must live in Canada for at least three years before applying. This might seem like a small gap among the large and serious failures that we see every day in refugee protection. But if the membership view is convincing, then refugees require new membership elsewhere as soon as possible. The Syrians stepping off this plane in Canada should have been made full Canadians, *immediately*.

Canada is often held up as having one of the best records on refugee protection. In other states, refugees are not offered permanent residence for many years. Examples from across the Atlantic make clear the indefinite nature of refugee assistance.[3] In the same year as Trudeau's Canada welcomed its first plane full of newcomers, nearly one million people arrived on the beaches of Europe. Most were also fleeing war in Syria, which had become increasingly violent. Although escaping from the Middle East and North Africa to Europe by boat was far from new, the huge increase of deaths in the Mediterranean led to a discourse of 'crisis' in the European Union. Under increasing pressure, German Chancellor Angela Merkel offered sanctuary to these new arrivals,

[2] UN General Assembly, "Convention Relating to the Status of Refugees." 'Cessation' of refugee status can also occur if the refugee returns to their country of origin or the cause of her flight ceases to exist.
[3] The following passages are lifted and edited from an earlier publication on temporary refugee protection: Buxton, "Justice in Waiting: The Harms and Wrongs of Temporary Refugee Protection." *European Journal of Political Theory,* 2020

with Germany accepting almost a million refugees by the end of November 2015. However, soon after these refugees had been given temporary status, discussions began about how quickly they could be returned. In December 2017, the German interior ministers discussed a proposal concerning when Syrian refugees might be forcibly repatriated to areas considered "safe" by the Government.[4] They rejected the proposal and instead extended their memorandum on halting deportations to Syria for one year when they again considered the possibility of forced returns.[5] In 2019, German interior ministers again decided against conducting deportations, extending the policy for another year.[6] Many Syrians in Germany receive 'subsidiary protection' introduced by the EU Qualification Directive, as opposed to holding refugee status as defined under the 1951 Geneva Convention; this subsidiary protection is initially granted for only a year, at which time the holder must re-apply. After several cycles, Syrian refugees can eventually apply for permanent residence. A few years later, they may also be able to apply for citizenship. Until then, their temporary status is extended each time by one or two years – they must then wait with each application to see what decision is taken the next time around.

Protection for refugees has also become more precarious in the United Kingdom. In a 2016 speech, then Home Secretary Theresa May announced the introduction of "safe-return interviews". Previously, refugees had automatically qualified for indefinite leave to remain after holding formal status for five years. Under the new policy, the UK Home Office would consider whether it was safe for refugees to be repatriated after five years of formal protection. Announcing the policy, May said:

[4] Foreign Policy, "Germany Is Preparing to Send Refugees Back to Syria," *Foreign Policy*, December 6, 2017, https://foreignpolicy.com/2017/12/06/germany-is-preparing-to-send-refugees-back-to-syria/.
[5] Deutsche Welle, "Germany: No Syrian Deportations before the End of 2018," *Deutsche Welle*, December 12, 2017, https://www.dw.com/en/germany-no-syria-deportations-before-end-of-2018/a-41711485; Deutsche Welle, "Germany Mulls Sending Migrants Back to Syria.".
[6] InfoMigrants, "Germany Extends Ban on Deportations to Syria," *InfoMigrants*, December 6, 2019, https://www.infomigrants.net/en/post/21369/germany-extends-ban-on-deportations-to-syria.

> [W]hen a refugee's *temporary stay* of protection in the UK comes to an end, or if there is a clear improvement in the conditions of their own country, we will review their need for protection. If their reason for asylum no longer stands and it is now safe for them to return, we will seek to return them to their home country rather than offer settlement here in Britain. [7]

It is clear from all of these cases that refugees spend many years in limbo, waiting to receive some form of permanent status. This is a growing trend across European states who continue to treat refugees as transients and eventually deportable individuals. Some non-Western refugee-hosting countries adopt a different approach. For instance, Tanzania offered citizenship to over 160,000 refugees from Burundi in 2014.[8] Such a difference in treatment might be seen as another way in which Western states are failing in their duties to refugees and other refugee-hosting states. Temporary protection, then, is not a universal practice. But it is becoming more dominant across Europe and other liberal democratic countries.[9]

This chapter begins the concrete application of membership view to various spaces of exile. Here I argue that refugees are entitled to immediate citizenship after successful refugee status determination and that the most appropriate provider of citizenship is often the state of asylum. Given the shift towards temporary and precarious forms of protection, this may seem like a ridiculous proposal. However, it is the clear implication of my legitimacy-based view of asylum. Although I do not think the adoption of this approach is at all likely, it nevertheless shows even more starkly the injustices and failures of the current approach to refugee protection. If refugees,

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[7] The Independent, "Theresa May's Speech to the Conservative Party Conference – in Full," *The Independent*, October 6, 2015, https://www.independent.co.uk/news/uk/politics/theresa-may-s-speech-to-the-conservative-party-conference-in-full-a6681901.html;,

[8] UNHCR, "Tanzania Grants Citizenship to 162,000 Burundian Refugees in Historic Decision," 2014, https://www.unhcr.org/uk/news/latest/2014/10/5441246f6/tanzania-grants-citizenship-162000-burundian-refugees-historic-decision.html. This policy wasn't particularly successful as we will discuss later on. The number of refugees who have actually received the promised Tanzanian citizenship is very low.

[9] Other states such as Australia also have policies that do not allow refugees to access permanent status depending on the way that they enter the country. As noted in the introduction, if an individual seeks asylum in Australia after arriving by boat, they are barred from receiving permanent residency in the country.

as I argue, are owed formal political status in the state of asylum, then the current international protection regime is even further away from justice than we had previously imagined.

This chapter proceeds as follows. First, I sketch the history of refugee political inclusion in the state of asylum. This section shows, first, that refugee naturalization has always been (at best) piecemeal in nature. That is, refugees *are* sometimes offered citizenship, but this is usually for discrete, self-interested reasons. There has therefore never been a strong norm of naturalization for refugees. However, this section also shows that refugee naturalization is not so rare as it first appears. Instead, there are examples of mass naturalization being proposed as a durable solution to displacement, most notably by Fridtjof Nansen in his role as the High Commissioner for League of Nations. This section will also provide an overview of current practice, showing that there is wide variation in policy. Second, I outline what current normative approaches to political inclusion (outlined in the last chapter) can tell us about the rights of refugees in the state of asylum, considering the all-affected interests, coercion, social membership, and stakeholder approaches. Here I argue that, whilst each of these offer a strong account of why refugees should be enfranchised and naturalized, these arguments often cannot capture the particularities of refugeehood. Third, I consider the implications of the membership view, arguing that, for refugees to access new membership in their state of asylum, they require formal citizenship. Here I spell out why exactly formal inclusion is required in order for membership, developing on this argument from chapter four. I also consider how my view differs from David Owen's account of refugee naturalization. However, I also show here that my view does not imply that refugees can only be offered asylum in democratic states. Instead, refugees require political and social status in equal standing with other members within the particular political community, above some minimal threshold. The final section will consider some further implications of my approach, for instance, the possibility of citizenship being offered by a state other than the one in which the refugee is currently residing or by a supra-national institution such as the European Union. I argue that whilst

these are possibilities, there are good reasons why the state of asylum is often the most appropriate provider of membership. When this is not the case, other states have a collective duty to ensure that secure membership is offered elsewhere.

Refugees are not (and have never been) legally entitled to citizenship or enfranchisement in their state of asylum. Article 34 of the Geneva Convention asks that contracting states:

> As far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.[10]

This commitment does not formally require states to offer citizenship to refugees. Instead, that decision ultimately remains with the state in question. As Paul Weis puts it, the state of asylum "cannot be compelled to grant its nationality, even after a long waiting period, to a refugee settled in its territory since naturalisation confers on the naturalised citizen a series of privileges, including political rights."[11] Some states *have* implemented preferential naturalization policies for refugees, such as waiving or lowering the application fee. However, there remains no international harmonization of waiting times, fees, or citizenship tests, with some refugees, therefore, accessing citizenship long before others.[12] There are also no internationally recognised laws on refugee voting. Instead, as we saw in the previous chapter, general international instruments tie voting rights to formal status in a political community. States are therefore not required to give special preference to refugees. Scotland is the only country that extends the vote to refugees immediately after a successful refugee status determination.

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[10] UN General Assembly, "Convention Relating to the Status of Refugees." I will discuss the history of how this article came to be drafted later in this chapter.
[11] Weis, "The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis."
[12] Owen, "Refugees, EU Citizenship and the Common European Asylum System A Normative Dilemma for EU Integration." For information on different waiting times and policies see the GlobaCit database.

In spite of this lack of legal obligation, refugee naturalization has been a more common solution to displacement than is perhaps currently recognised. This section aims to trace the political inclusion of refugees, with a focus on citizenship.[13] Since there has never been a formal entitlement to citizenship, there is no central thread to be drawn among these cases. But it is worth showing that in many instances, naturalization *has* been pursued by particular governments at particular times.

The history of refugee political inclusion in the state of asylum

People have of course sought asylum since the beginnings of civilisation itself, and some of the earliest examples of refugee naturalization come from Greek city-states. The word asylum stems from the Greek word *asylia,* which is sometimes translated as *inviolability,* though it is more generally thought to refer to an individual receiving good favour and protection from the Gods.[14] The practice of asylum in Ancient Greece was a public act: an individual or group would arrive at the temple to seek sanctuary, usually carrying a wooden branch which they would lay inside.[15] Many forced migrants at the time were fleeing other city-states, either escaping war, civil unrest, punishment for crime, or an unruly master in the case of escaped slaves. There was huge variation in how city-states treated those seeking asylum: some like Sparta were known to be exclusionary, whereas Athens was supposedly the most hospitable. This feature of Athens is noted in Pericles' funeral oration as a good and virtuous quality of the city.[16] Whether individuals would receive protection often depended on what the refugees in question could bring to the city, for instance, whether they had any particular skills or were of military age. It also depended on whether the

[13] The focus on citizenship here is largely because there are very few cases of refugee enfranchisement until the late 20th century. I will outline some of these at the end of this section.
[14] Price, *Rethinking Asylum: History, Purpose, and Limits*; Benjamin Gray, "Citizenship as Barrier and Opportunity for Ancient Greek and Modern Refugees," *Humanities* 7, no. 3 (2018), https://doi.org/10.3390/h7030072. FitzGerald, *Refuge Beyond Reach,*
[15] Price, *Rethinking Asylum: History, Purpose, and Limits*, 26–27.
[16] Robert F. Gorman, "Citizenship, Obligation, and Exile in the Greek and Roman Experience," *Public Affairs Quarterly* 6, no. 1 (1992): 7. Thucydides, Pericles, and Fanis I. Kakridis. 1998. *Pericles' funeral oration: Thucydides' history of the Peloponnesian War, Book II, xxxv-xlvi.* [Athens]: The Hellenic Parliament.

forced migrants were friend or foe to the Athenians. The offering of asylum was a political act; Athens was highly unlikely to accept asylum applications from their political enemies, Spartans in particular. So, although they were famously generous, even Athens excluded some from receiving any protection whatsoever.

In most cases, exiles received the status of a *metic* (*tometoikoi)* a registered resident foreigner who was not considered a full citizen of the state. This was the same category as many other migrants living in the city.[17] In some cases, however, citizenship was extended to forced migrants depending on the particular individuals applying for support. For instance, Plataean exiles were naturalised as Athenians and therefore received all of the duties and privileges of full citizenship. The Plataeans, whose city was destroyed by Spartans and Thebans at the beginning of the Peloponnesian War, had long been allies to Athens.[18] They were likely mostly men of military age and were therefore viewed as useful to the Athenian state. This is one of many examples of refugee naturalization undertaken for broadly self-interested reasons. We will see many examples of this in the outline to come. States often select certain groups of refugees to receive the additional benefit of citizenship on the basis of either economic, social, or political gain. However, the extension of citizenship in this case did not aim to create full political cohesion. During their period in Athens, the Plataean's maintained a kind of government in exile – they held monthly meetings in the Athenian market and reaffirmed their own political identity.[19] So, while they were formally Athenians, they continued a form of external political affiliation. Nevertheless, this case shows that refugee naturalization was practised alongside some of the earliest examples of asylum. Although it was rare and political in nature, it was not and has never been an impossibility.

[17] Deborah Kamen, "Metics (Metoikoi)," in *Status in Classical Athens* (Princeton: Princeton University Press, 2013), 43–54, https://doi.org/10.2307/j.ctt2855c8.9. This is was a different status from temporary visitors to Athens.
[18] Gray, "Citizenship as Barrier and Opportunity for Ancient Greek and Modern Refugees," 13.
[19] Gray, 15.

One of the many reasons why refugee naturalization is historically rare is that it often involved lengthy political procedures. For instance, for much of the last thousand years, the only way to receive formal subject status in England was for a parliamentary decree to be passed. This usually involved intervention by the Monarch, as well as formal written applications to Parliament. Many migrants living in England during this period went through a process of *denization:* the legal pathway to granting a limited form of naturalization to aliens. According to The National Archive, denization "granted a foreign national almost equivalent status of native-born Britons and provided them the protection of the law."[20] Denizen status, then, reflected a form of residency status that allowed foreigners, including many refugees, to establish some kind of legal status.

An important shift in the practice of asylum occurred when the individual's right to flee her state was formally recognised by the *Peace of Westphalia* in 1648, a treaty that ended the Thirty Years' War and laid the foundations for modern international relations by establishing boundaries between states and affirming political sovereignty. This period likewise saw the cementing of the principle of *jus emigrandi:* "that individuals who face religious persecution had the right to leave their own state and seek sanctuary elsewhere."[21] In particular, this right of exit was viewed as related to religious persecution, reflecting contemporary refugee flows. Following this shift in the acceptance of the forcibly displaced, another early case of refugee naturalization was undertaken in England by Queen Anne through the *Foreign Protestants Naturalization Act 1708*. Following the expulsion of many Protestants across Europe including the Huguenots in the century before, The Palatines - another group of Protestant exiles from Germany - fled to England. After this mass exodus, there were around 15,000 Palatine Germans living outside of London, evoking both sympathy and disdain from the local population. At the time, any act of naturalization required an official decree from the Queen. And so, Queen Anne determined that all 15,000 of these refugees should become

[20] The National Archive, "Immigration and Immigrants," accessed January 29, 2021, https://www.nationalarchives.gov.uk/help-with-your-research/research-guides/immigration/.
[21] Orchard, *The Right to Flee*, 45.

British subjects. It is reported that "the naturalized had to take the oath of allegiance, and partake of the sacrament before witnesses, who signed a certificate to that effect."[22] Phil Orchard argues that this policy cannot merely be explained by the economic benefit to the English. Instead, a broader normative shift in attitudes towards the displaced during this period is at least part of the explanation.[23] This supposedly humanitarian extension of subjecthood was, though, was later undermined. After becoming British subjects, many of the Palatines were sent to the American Colonies having been promised financial support from the Crown for the first year of their resettlement. However, such support was not forthcoming, and many Palatine Germans were left destitute.[24]

So, refugee naturalization occurred throughout the distant past, although it almost always was done for specific reasons at particular moments in time. Another significant moment in the history of refugee naturalization occurred when Fridtjof Nansen was appointed as the League of Nations Commissioner for Refugees. Nansen was tasked with finding long-term solutions to the displacement of Russian refugees across the European continent, although he later assisted increasing numbers of displaced people. In general, Nansen took a radically different approach to displacement, fighting for refugees to receive citizenship status in their host state. One significant displacement event was the mass exodus created by the Greco-Turkish war (1919-1921) during the partitioning of the Ottoman Empire. Nansen helped to negotiate widespread naturalization policies for these refugees *in situ*, helping them to access permanent status. A similar solution was soon found for Armenian refugees who had been displaced by several massacres in the early 1920s. Nansen assisted many Armenians to secure citizenship, almost all of whom eventually acquired

[22] A. H. Carpenter, "Naturalization in England and the American Colonies," *The American Historical Review* 9, no. 2 (1904): 293, https://doi.org/10.2307/1833367.
[23] Orchard, *The Right to Flee*, 64–65.
[24] Carpenter, "Naturalization in England and the American Colonies."

Syrian or Lebanese nationality.[25] It was noted by Walter Adams in 1930 that these mass naturalization programmes were only possible because of the close national and ethnic ties between the refugees and their country of asylum such that, "their country of refuge was almost necessarily their country of final settlement."[26] This radical solution was also potentially more common as it was more widely accepted that, for these refugees, repatriation would never be a feasible durable solution.[27]

In spite of the fact that naturalization had only been pursued for some of the refugees in Nansen's mandate, he considered the extension of citizenship to refugees to be a potential durable solution for mass displacement throughout Europe. In the late 1920s, Nansen was tasked with undertaking a Commission into truly durable solutions for displaced people throughout the continent. During his time working with this Commission, Nansen proposed naturalization as a blanket solution to displacement and put this proposal to the League. A report from the middle of 1929 discussed the findings of this Commission, and the reaction of refugee-hosting states:

> The Commission therefore first examined the drastic and final solutions contemplated by the Assembly during its last session: the naturalisation of the refugees by the countries in which they are residing, their reinstatement in the nationality of their countries of origin and their return to these countries. From the written observations on this subject forwarded by a large number of Governments and from the discussion which took place at its first session, the Commission was, however, forced to recognise that none of these measures could at the moment lead to a complete solution of the refugee problem. *The mass naturalisation of the refugees by the countries in which they are residing gives rise to insuperable difficulties and the reinstatement of refugees in the nationality of their countries of*

[25] Walter Adams, "Extent and Nature of the World Refugee Problem," *The Annals of the American Academy of Political and Social Science* 203 (1939): 30.
[26] Adams, 28. Quoted in Orchard, *The Right to Flee.*
[27] Adams, "Extent and Nature of the World Refugee Problem," 34.

> *origin depends entirely on legislation in those countries.* It seems out of the question to try to force the refugees to return to their countries of origin.[28]

The report continues to consider when Nansen's Office for refugee protection might be entirely liquidated. Since this radical proposal, the question of mass naturalization for refugees was put to one side as it seemed evident from the findings of the Commission that states were not willing to adopt a blanket policy. Indeed, as we know, this discretionary approach to refugee naturalization was carried over to the Refugee Convention which was drafted several years later in 1950.

The conversations accompanying the drafting of Article 34 of the Geneva Convention, which encourages states to offer preferential naturalization policies for refugees, are useful for understanding the kinds of objections that were being raised by contracting states. For instance, the French delegate encouraged the group to adopt more liberal wording so that states might reduce the hurdles usually faced by those applying for citizenship. However, the UK representative was unhappy with this. As the Travaux Préparatoires detailing these conversations observes:

> [The UK representative] did not think, in fact, that his Government would be prepared to undertake either to reduce the period of length of residence expressly provided for by the law as a condition for naturalization, or to expedite the proceedings, a step which would entail giving priority to the applications of refugees over those of other foreigners. The procedure caused no undue delay. Moreover, the charges and costs of naturalization were so low in the UK that they could hardly be further reduced. [29]

[28] League of Nations, "League of Nations Report: Russian, Armenian, Assyro-Chaldean and Turkish Refugees. Report by the Representative of Venezuela." (Geneva, 0.223.1929, May 29, 1929), https://biblio-archive.unog.ch/Dateien/CouncilDocs/C-223-1929_EN.pdf. I have attempted for several years now to find the written observations from states on the question of mass naturalization, but it seems that the Commission had an independent office in Belgium, whose documents have since been lost. Emphasis mine.
[29] Weis, "The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis," 247.

Other representatives pointed out that some states did not already have such apparently liberal naturalization policies and that therefore the article was necessary to make it easier for refugees to access citizenship elsewhere. The French representative also clarified that the phrase 'to expedite proceedings' "did not apply to the duration of the period of residence, but only to the administrative formalities taking place between the submission of the application and the decision."[30] Therefore, it was never the drafters' intention that refugees have faster access to citizenship under Article 34. Instead, the intention was that refugees should be subject to less administrative bureaucracy that can reasonably be expected of voluntary migrants.

Despite the restrictive interpretation of this article in practice, we can still arguably view it as signalling something interesting about the nature of displacement. For instance, Schulz argues that Article 34 shows two things. First, it pushes back against the idea that refugees are simply in need of temporary shelter and will eventually return home.[31] Second, it also shows the importance of new citizenship for the cessation of refugee status.[32] As we saw when discussing the Canadian case, refugee status only formally ends when an individual either returns to their state of origin or acquires a new nationality in exile.[33]

Even after the signing of the Refugee Convention in 1951, there have been numerous instances of expedited refugee naturalization, again, usually taking a self-interested form. For instance, the United States had preferential naturalization and residency procedures for refugees arriving from Cuba during the Cold War. This was because, in taking in those fleeing communism, the United States was able to make a political statement by assisting and integrating these refugees.[34] Similarly,

[30] Weis, 247.
[31] Schmalz, *Refugees, Democracy and the Law Political Rights at the Margins of the State*, 94.
[32] Schmalz, 95.
[33] UN General Assembly, "Convention Relating to the Status of Refugees."
[34] Scanlan and Loescher, "U.S. Foreign Policy, 1959-1980: Impact on Refugee Flow from Cuba."

South Korea has preferential naturalization policies for North Korean defectors, allowing them to apply for citizenship only a year after their first arrival.[35]

As we saw in the examples given in the introduction of this chapter, refugees have to wait many years to access citizenship. This, to many, seems entirely reasonable. Such an approach maintains the state's assumed right to determine its own membership as a fundamental feature of self-determination. However, this tendency towards temporary protection is reflected in the attitude towards durable solutions for refugees and the kinds of remedies that are palatable to powerful states. That is, repatriation is now overwhelmingly the preferred durable solution for Western states, following the "decade of repatriation" in the 1990s.[36] This shift towards the presumption of return, then, might partially explain why mass naturalization for refugees is now so rare: the assumption that refugees are merely temporary guests in the state of asylum undermines any potential offering of permanent membership.

This section has not aimed to show that refugee naturalization is common. As should be obvious now, this radical policy is only pursued at particular times when the background conditions make it possible. However, the above also demonstrates that refugee naturalization is not a total impossibility. As the approach of Nansen demonstrates, there was a time when mass naturalization for refugees was considered (albeit fleetingly) as a serious solution to displacement. The fact that this was rejected by states gives us good reason to think it would be rejected again now, even more so with the shift towards a presumption of eventual return. But, at minimum, this historical exercise shows that I am not the first to propose naturalization for refugees in the state of asylum.

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[35] Andrei Lankov, "Bitter Taste of Paradise: North Korean Refugees in South Korea," *Journal of East Asian Studies* 6, no. 1 (2006): 105–37.

[36] Sadako Ogata, "Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, at the International Management Symposium, St. Gallen, Switzerland, 25 May 1992," UNHCR: The UN Refugee Agency, May 25, 1992, https://www.unhcr.org/uk/admin/hcspeeches/3ae68faec/statement-mrs-sadako-ogata-united-nations-high-commissioner-refugees-international.html.

The right to inclusion in the state of asylum

This section moves away from the historical picture set out above and instead discusses normative accounts of political inclusion, applying them to the question of refugees in the state of asylum. This section shows two things. First, there is a good case to be made, from various theoretical perspectives, for refugee enfranchisement. Second, current theories also show that refugees have a claim to naturalization, but only after a period of residency.

1. Voting

As mentioned earlier, there is no legal recognition of the refugee's right to vote in the state of asylum. Scotland is the only outlier, having introduced refugee enfranchisement in 2020.[37] This section aims to move away from contemporary practice and instead demonstrates that, on almost all current normative views of political inclusion, refugees should have a right to vote in the state of asylum. In doing so, I echo much of what Felix Bender has recently argued in applying the all-affected interests and the coercion principles to refugee voting.[38] Importantly, these arguments apply to liberal democracies in which the right to vote is already recognised. Later, when discussing the membership view, we will consider refugee inclusion in non-democratic states.

First, the all-affected interests principle (AAI). As the last chapter discussed, this view holds that all those affected by the outcome of some decision ought to have a say in it. It is therefore the broadest view of democratic inclusion in appealing only to the affect that some policy has on an individual. It seems obvious that refugees are affected by the decisions of their host state. From first arrival, a refugee's actions and options are determined by policies that are designed without consulting them. They are often told where they are going to live, how much assistance they will receive from the state, and to what kind of health care or legal assistance they are entitled. Such

[37] Scottish Government, "Right to Vote Extended," February 20, 2020, https://www.gov.scot/news/right-to-vote-extended/.
[38] Bender, "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?"

policies have been shown to impact, not only the lives of refugees in general, but also their mental and physical well-being.[39] If being "affected" simply means that one's life is shaped in some way, then refugees are very clearly affected by the state of asylum's policies – not only their policies in general but also the ones that are directed at the refugee population.

Perhaps, though, the AAI is too amorphous to be helpful in answering this specific question. That is, as we mentioned in the previous chapter, this principle does not take the existing boundaries of a political community as given. This can, of course, be fruitful in some cases. But it is perhaps unhelpful when asking about the inclusion of refugees in an already existing political unit. As Bender puts it, the AAI principle tells us little about "existing political units and refugees residing in them."[40] Moreover, on this view, there is nothing special about refugeehood. Instead, broader categories of migrant (actual and potential) are affected by the actions of the state as well. Again, this is not necessarily a problem for the view or an incorrect conclusion for us to draw. But as an account of inclusion in the demos, the AAI gives us little guidance on whether refugees have a stronger claim than others. Instead, according to the AAI, everyone within the state has a claim to democratic inclusion.

For these reasons, Bender defends a version of the coercion principle when considering the question of enfranchisement for refugees. As we know, this principle is more limited in scope than the AAI view. On Bender's specific conception of this approach, only those who are *subjected* to the political power of the state are entitled to enfranchisement. Subjection to rule means "being subject to the coercively backed collectively binding decisions in a political unit."[41] One is

[39] Charles Watters, "Emerging Paradigms in the Mental Health Care of Refugees," *Social Science & Medicine* 52, no. 11 (2001): 1709–18, https://doi.org/10.1016/S0277-9536(00)00284-7. Referenced in Bender, "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?"
[40] Bender, "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?," 3–4.
[41] Bender, 5.

subjected, then, when the system of governance that one lives under is coercively enforced. Some therefore define subjection as the coercively backed regulation of autonomy.[42] The benefit of this view is, first, that presumes the kind of politically bounded territory that we are presuming in this analysis – we are not attempting to question (at least here) whether the state should exist but rather whether a particular set of people have a claim to inclusion in a specific polity. Second, the coercion principle is not so amorphous as to render the question of refugee inclusion redundant. On the above AAI view, refugees had a claim to inclusion but only because almost everyone else had a claim to inclusion as well. The specific character of the refugee's predicament may be preserved when we use the coercion principle as our starting point.

In the same way in which refugees are clearly affected by policies internal to the state of asylum, they are also evidently subjected. Refugees are legally required to abide by the laws of the state of asylum, and these laws are backed up by coercive systems of governance: systems within which refugees receive no formal representation. However, the coercion principle often comes with an important caveat: that transients ought to be excluded from enfranchisement. For instance, visiting students or tourists need not be enfranchised because they will not be subject to the coercive laws of the state for a significant period of time. The question of whether refugees ought to be included in the state, then, depends on whether refugees count as transients. Bender argues that, despite the popular conception of refugees as merely temporary visitors, they in fact do not qualify as transients. This is because, rather than the refugee's stay being temporary, it is instead *indeterminate.*[43] When a refugee arrives, we have almost no way of telling how long she is likely to require protection. The visiting student or the tourist on the other hand have a limited period of time in

[42] David Owen, "Constituting the Polity, Constituting the Demos: On the Place of the All Affected Interests Principle in Democratic Theory and in Resolving the Democratic Boundary Problem," *Ethics and Global Politics* 5, no. 3 (2012): 129–52, https://doi.org/doi:10.3402/egp.v5i3.18617.; Marco Verschoor, "The Democratic Boundary Problem and Social Contract Theory," *European Journal of Political Theory* 17, no. 1 (2018): 3–22, https://doi.org/10.1177/1474885115572922.

[43] Ziegler also uses the ideal of indeterminacy to distinguish between refugees and other long-term migrants.

which they are subject to the laws of the state. The refugee's time in the state is not limited, it is simply unknown. In practice, refugees remain in their state of asylum for a long period of time, and few ever return.[44] Moreover, the coercion principle is importantly forward-looking as opposed to backward-looking. Unlike the social membership or stakeholder views of political inclusion, the coercion view asks whether an individual will be subject to coercion on an ongoing basis. Therefore, the coercion principle (which here explicitly focuses on subjection) holds that "a person should participate in the rule that subjects her."[45] In this sense, the refugee need not have established ties in the state of asylum in order to have a strong claim to inclusion. The indeterminate nature of the refugee's stay in the state of asylum does not affect her claim to political inclusion.

We might question again whether this view captures something special about the claims of refugees. That is, refugees are subject to laws in the state in the same way as other migrants. They are also not transients in the same way as other individuals who have received residency. For instance, EU citizens in the UK now have permanent leave to remain – which is the same status that is given to Geneva Convention refugees and, likewise, the state does not know really whether these individuals are likely to stay or to return home. Refugees are therefore relevantly similar to other migrants. Again, I do not think this is necessarily a problem for this view. But it is to say that on both of these accounts so far, refugees do not require political inclusion *qua* refugees. Instead, it is some feature of the refugee's experience in the state of asylum that grants her a claim to inclusion. Some, in fact, explicitly reject the idea that particular refugees might have a stronger claim to political inclusion. López-Guerra argues that "[t]he causes of immigration ... have nothing to do with the reasons for enfranchisement. Voting has the purpose of creating a government for

[44] Exact information on the number of returns per country is difficult to access. However, in 2018 UNHCR estimates that around 600,000 refugees returned to their country of origin out of over 25 million.
[45] Bender, "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?," 63.

the governed."[46] However, it might seem intuitive that those forced to leave the previous state have a stronger claim to inclusion in a new institution.

One recent discussion of the refugee's right to vote in the state of asylum *does* focus on the specific character of the refugee's predicament. The most comprehensive defence of refugee voting comes from Ruvi Ziegler's *Voting Rights for Refugees*. He makes two broad claims in this work. First, recognized Geneva Convention refugees (that is, persecuted refugees) are a special category of resident non-citizens. This is because, unlike other non-citizen residents, they are in need of what he calls 'full membership in a political community.'[47] Ziegler is, therefore, an advocate of the surrogate membership view that we encountered in chapter one and chapter three; he argues that Convention refugees have lost their membership in the state in virtue of having been persecuted. Second, it is therefore desirable that Convention refugees are treated by their countries of asylum "as if they were their nationals."[48] Ziegler claims that this can be achieved through the 'temporary disaggregation' of rights that are usually citizenship dependent - principally, by allowing refugees the right to vote in their host state. That is, even if the refugee's state of asylum usually restricts voting rights to their own citizens, they should treat refugees differently from other non-citizen residents in order to resolve their political predicament. He argues that it is normatively desirable to enfranchise (Convention) refugees in the state of asylum.[49]

As discussed in chapter three, I am not convinced of the special importance of persecution: persecution is only one possible cause of political membership loss among many. A few other things are worth noting. First, many refugees come from non-democratic countries. To that extent,

[46] Claudio López-Guerra, "Should Expatriates Vote?*," *Journal of Political Philosophy* 13, no. 2 (2005): 2438, https://doi.org/10.1111/j.1467-9760.2005.00221.x. This quote relates to a discussion of whether refugees have a claim to cote in their state of origin after having been displaced. We will focus on this in the following chapter, though I think López-Guerra would also make this claim in the case of the state of origin.
[47] Ziegler, *Voting Rights of Refugees*, 196.
[48] Ziegler, 9.
[49] Ziegler, 6.

they do not seem to have "lost" what Ziegler claims they now have an entitlement to. Refugees, I agree, lack membership in their communities. However, spelling this out solely in terms of voting complicates the picture; many did not hold the right to vote to begin with. We might worry, then, that there is an asymmetry in Ziegler's view. However, there is a more important issue of scope for Ziegler. Namely, if the predicament of refugeehood is that she has lost 'full political membership,' then remedying this concern requires that she be given full political membership. The right to vote is perhaps not enough to resolve the problem that Ziegler claims is central to our conception of refugeehood. It should be underlined here that the right to vote is important and does go some way to bringing refugees into the political community of their host state (both materially and symbolically). But it does not seem to be a solution to the problem to loss of political community altogether. Instead, in enfranchising refugees we are only partially resolving the 'political problem' of refugeehood that Ziegler outlines. Nevertheless, if we accept that refugees face the kind of political predicament that he argues for, then Ziegler gives us another reason to think that refugees have a strong claim to enfranchisement in the state of asylum.

The above section shows that there are many potential ways to ground a refugee's claim to enfranchisement in the state of asylum. Whichever approach we choose, there is a strong argument in favour of the refugee's right to vote in the liberal democratic state. As I have argued, though, many of these views fail to ground a refugee's claim to political inclusion in the fact of their refugeehood. Though potentially not a damning conclusion, we should consider whether the refugees require inclusion precisely because of their specific condition. We will come back to this after a discussion of citizenship.

2. Citizenship

As outlined in the last chapter, entitlement to citizenship is often separated from the question of voting rights. According to this paradigm, the right to vote requires a lower threshold for inclusion

than citizenship, which necessitates a more stable and ongoing commitment to the state in question. Such a distinction leaves open room for the assumption that states have a right to determine to whom it offers citizenship as a basic component of self-determination. For instance, Altman and Wellman defend "the moral right [of each legitimate state] to determine the criteria by which outsiders are permitted to enter their territory or become citizens."[50] However, most agree that states have a duty to naturalize long-term voluntary migrants once they have been admitted into their territory, at least after a significant period of time. Entry and membership are therefore importantly linked; migrants are often admitted on the basis that they are a "citizen in the making."[51]

Little has been said about refugees' potentially distinctive claim to naturalization, such that states have a duty to offer them citizenship over and above voluntary migrants. Although not commonly discussed in depth, most adopt what I call the orthodox view, arguing that refugees become entitled to membership only after a period of residence. This is best interpreted as a version of Carens's social membership view that we discussed in the last chapter, which holds that the state's right to exclude people from membership erodes as social bonds are developed.[52] Or, as Shachar puts it, "the longer they stay, the deeper the social connectedness, the stronger the claim for inclusion."[53] On this view, refugees are initially owed temporary protection in the state of asylum, but once they have remained in the state for a significant period they become entitled to membership.[54] Such an approach reflects a commonly held sentiment: that refugees can be placed in temporary forms of protection, but not for too long. Therefore, states do not need to avoid temporariness *per se* but rather *permanent temporariness.*

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[50] Andrew Altman and Christopher Heath Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2009), 187.
[51] David Miller, "Immigrants, Nations, and Citizenship," *Journal of Political Philosophy* 16, no. 4 (2008): 375.
[52] "Who Should Get in? The Ethics of Immigration Admissions," *Ethics & International Affairs* 17, no. 1 (2003): 95–110, http://dx.doi.org/10.1111/j.1747-7093.2003.tb00421.x.
[53] *The Birthright Lottery: Citizenship and Global Inequality*, 171.
[54] Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*; Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*..

We might simply think of the orthodox view as a kind of compromise between the rights of states to determine their membership policies and the claims of refugees to a secure form of protection. Gibney, for instance, argues that temporary refugee protection can be viewed as a compromise between control and humanitarianism.[55] Therefore, whilst we might hope that states would offer more stable protection to refugees, temporary measures allow states to expand their humanitarian efforts without giving up control over membership. It is not obvious that this compromise between the rights of states and the rights of refugees is immediately problematic. In fact, it might ultimately be what is required in situations where many people need access to protection as quickly as possible. Temporary protection is therefore assumed to be acceptable as long as refugees can eventually access permanent status. Carens explicitly accepts this. He writes: "When the Communist regimes in Eastern Europe collapsed and those states adopted democratic institutions, it would not have been unreasonable for all those who had fled over previous decades to return home because it was now safe to do so. As is the case with immigrants admitted on a temporary basis, refugees *become members over time*."[56]

On such a view, refugees become entitled to membership only when they have resided in the state for a prolonged period of residence. Again, there is nothing special about the refugee's case according to the social membership view. The social membership view, then, has a potentially difficult time accounting for refugees. Or rather, this theory accepts that, in terms of access to citizenship, refugees are in the same position as other migrants in the state.

[55] Matthew Gibney, "Between Control and Humanitarianism," *Georgetown Immigration Law Journal*, 2000.
[56] Carens, *The Ethics of Immigration*, 204–5. Interestingly, on the same page, Carens gives a very clear articulation of my overall argument. He says: "People have a right to membership in a society. If they cannot any longer be members of their country of origin, they must be given access to membership in some other state."

The stakeholder view reaches a similar conclusion on the refugee's claim to citizenship. As we saw in the last chapter, whether an individual is entitled to citizenship on this account depends on whether their future is bound up with the flourishing of the state. That is, someone has a stake in a polity when their individual autonomy and wellbeing is tied to the collective flourishing of that polity. In this sense, one has a stake in a particular place when their future depends on the state in some meaningful sense. As with the social membership view, it seems that the stakeholder view accepts that refugees will only develop a stake in a particular place after a significant period of time. That is, it only becomes evident that the refugee's future flourishing is bound up with their country of asylum when we know whether or not they are likely to remain permanently in the state. Stakeholder citizenship applies to "individuals who have a *permanent interest in membership and political participation.*"[57] When exactly a refugee develops this kind of permanent interest is presumably rather vague. As I have already discussed, states rarely know when and whether a refugee will eventually return to their state of origin. However, functionally, Bauböck's view reaches a similar conclusion to Carens: refugees can be asked to wait for citizenship while they establish a link with their state of asylum. Again, this view does not treat refugees as distinct from other kinds of migrant, at least at the level of principle. Refugees do not have a special claim to new membership and instead must wait to satisfy the normal conditions that we expect of non-citizen residents.

My argument here is not that these views are necessarily incorrect; the development of social ties might indeed entitle an individual to membership in her state of residence. Rather, I argue that the orthodox view is superseded by considerations of legitimacy in the case of refugees. I have argued elsewhere that refugees are entitled to permanent status in the state of asylum regardless of whether you accept the kind of membership view that I endorse here.[58] However, in this chapter, I aim to

[57] Rainer Bauböck, "Stakeholder Citizenship: An Idea Whose Time Has Come?" (Migration Policy Institute, 2008), 5, https://www.migrationpolicy.org/research/stakeholder-citizenship-idea-whose-time-has-come.
[58] Buxton, "Justice in Waiting: The Harms and Wrongs of Temporary Refugee Protection."

show that the membership view has very direct implications for the question of citizenship in the state of asylum. These are outlined in full in the following section.

The duty to naturalise refugees

So far, this chapter has outlined historical cases of refugee naturalization and offered several arguments for the political inclusion of refugees under current normative frameworks. This section considers the implications of the membership view, arguing that refugees are entitled to new citizenship and that this is best offered by their state of asylum.[59] However, I also argue here that such citizenship must meet the threshold requirements for membership. That is, citizenship should be offered to refugees in states with secure institutions and capacity, where refugees enjoy a kind of social and political standing necessary for their rights to be securely guaranteed. This importantly limits where exactly asylum can be offered to an individual for the function of legitimacy repair to be realised. We should remember here that asylum and entry are not identical; refugees may be able to receive emergency protection elsewhere. However, for the more substantive protection offered by asylum, certain conditions must be met.

As argued in earlier chapters, lacking membership is a central feature of refugeehood. Refugees are individuals who lack membership (as effective citizenship) in any political community and who can only be protected through recourse to the international order of states and the provision of membership elsewhere.[60] This is importantly a legitimacy repair view. Like David Owen's archetypal account, the membership view ties refugeehood to the legitimacy of the international system of states. Lacking membership is a problem for the legitimacy of the entire system of international states and, therefore, all states have collective a duty to resolve a lack of membership

[59] Rebecca Buxton, "The Duty to Naturalise Refugees," *Critical Review of International Social and Political Philosophy* 0, no. 0 (2021): 1–21, https://doi.org/10.1080/13698230.2021.1880198.
[60] In theory this definition is open to different interpretations of membership. That is, I outline a particular understanding of effective citizenship and others might take a more or less stringent approach. They could therefore plug in this conception of membership to this view.

where it arises. So, the question here then is *how* precisely the state of asylum should respond to the problem of lacking membership. The argument is quite simple. If legitimacy is disrupted when people lack membership, then new membership is precisely what is required. First, I will outline why citizenship is necessary for the extension of membership, expanding on my argument from chapter two. Second, I will consider how my view differs from David Owen regarding refugee naturalization. Third, I will consider some potential objections. Finally, I will set out alternatives that are open to my view but, I think, nonetheless the wrong path to take.

As I argued in chapter two, there are three requirements that must be satisfied in order for an individual to enjoy membership in a state. First, an individual must hold formal status (citizenship) in the political community in question. Second, the state has to have the capacity to uphold the basic rights of every individual that they are responsible for. This does not mean that all rights have to be satisfied and protected at all times, but a state that is unable to protect human rights on a stable and long-term basis cannot provide membership. Third, individuals within the state need to enjoy the political and social standing for these institutions to function as they ought to. As we saw in chapter two, people often live in states with these rights protecting institutions, but they fail to function because of the social or political position of the individual or group in question. This final requirement is a murky concept that makes membership difficult to determine. However, it seems clear that without this requirement we leave open precisely the space within which refugeehood often materialises; refugees can retain formal protections in their state in a thin sense, but in practice lack any kind of ongoing stable inclusion that allows this protection to function. These three steps for determining whether a state can provide membership show that the formal extension of citizenship is required. The provision of citizenship in the state of asylum helps to secure these final two conditions: that refugees enjoy protection in a state with rights-insuring institutions and that refugees enjoy a kind of social and political standing that allows these systems to function as they should. Citizenship broadens the refugee's formal ability to claim her rights

through particular institutions, and it functions as a way of demonstrating social and political standing.

On my account, formal citizenship is a necessary condition for membership. However, it is worth underlining why exactly citizenship is required. Formal inclusion leads to more substantive and secure protection, even for refugees with recognised Geneva Convention status. As Jon Seglow puts it:

> Once a citizen, however, a migrant is a *member in full standing* of a political community which has legally accepted him or her. To be sure, citizenship does not imply social acceptance. But a citizen nonetheless enjoys a security which residents lack. He or she has the full set of rights including, through the vote, the right to determine his or her new society's future, and also immunity from deportation.[61]

Once naturalized, refugees will have access to all of the same legal protections as citizens. There are several reasons to think that these rights are more secure when citizenship has been extended.

First, refugee citizens will no longer be subject to deportation.[62] An important part of the provision of citizenship is permanent residence without the state's ability to revoke one's status. Therefore, refugees will no longer have to worry about the consequences of political and legal contestation. We can see here again one of the potential problems with a proposal like Ziegler's which disaggregates voting rights from citizenship: that formal status of citizenship provides security for the operation of politics and, importantly, the safety to challenge power. This more substantive inclusion, therefore, goes some of the way to remove the structural vulnerability that refugees face.

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[61] Jonathan Seglow, "Arguments for Naturalisation," *Political Studies* 57, no. 4 (2009): 788, https://doi.org/10.1111/j.1467-9248.2008.00768.x. Emphasis mine.

[62] I use "refugee citizens" here, though I do not intend to single this out as a distinct form of status. Instead, refugees, once made citizens, would be citizens at the same standard as all others in the given political community.

As noted in chapter two, when individuals lack membership, their rights potentially fail to be upheld in the kind of modally robust way that is required. Legal and formal inclusion in the citizenry helps to undermine the vulnerability that stems from temporary status. This has consequences for the security of rights but also potentially immediate consequences for refugees' wellbeing. Unsurprisingly, being trapped in limbo for many years is highly detrimental to one's physical and mental health. One study of refugee populations in Australia found that those with insecure visa status were more likely to show "PTSD symptoms, depression symptoms, thoughts of being better off dead and suicidal intent."[63] This, on its own, seems a good enough reason to me to offer secure status without having to appeal to any loftier moral reasoning.

Second, when a refugee is made a citizen, any harms against her status *as* a citizen become a threat to the entire citizenry. That is, any threats of removal or denationalization then damage the entire institution of citizenship (and those included within it) as opposed to only those at the margins. In the current system, when refugees are threatened with illegitimate deportation and removal, we rely on those with formal status to come forward and protest. When refugees are made citizens (1) they should not be subject to removal to the same extent, and (2) their removal would threaten the status of everyone with citizenship as well. Thus, once refugees are citizens, the state cannot treat them differently from others without it posing a problem for the citizenry as a whole and potentially violating the conditions of equal treatment. This is often a powerful reason given against states being able to denationalise their own citizens; it undermines the security of citizenship for everyone.

Third, *even if* the substantive provision of rights does not change, the relationship between the state and the member is nonetheless different from the relationship between the state and the

[63] Angela Nickerson et al., "The Association between Visa Insecurity and Mental Health, Disability and Social Engagement in Refugees Living in Australia," *European Journal of Psychotraumatology* 10, no. 1 (December 31, 2019): 1688129, https://doi.org/10.1080/20008198.2019.1688129.

temporarily protected refugee. The provision of citizenship is, therefore, necessary for the refugee to enjoy the kind of social and political standing that is needed on my account. This is because formal membership is a prerequisite for substantive inclusion. One cannot be properly recognized as a member of a given state if they have not been recognised in this thin legalistic way. Citizenship does at least imply a degree of social acceptance which is lacking if the state makes it as difficult as possible for refugees to access formal status. This is because citizenship demands at least some form of public recognition – it allows the state to single out those who are included and those who are not. Whether we agree that the state should engage in such a practice is not what we are discussing here. Instead, the fact that citizenship demands formal recognition from power implies a level of status that is not held by the non-citizen outsider. As Seglow put it above, once a citizen, however, a migrant is a *member in full standing* of a political community which has legally accepted him or her.

It should be noted here that in chapter two, I argued that citizenship and membership are importantly different but interrelated; citizenship does not imply membership in the state. This is still true. Membership, on my view, is subject to a higher standard than mere formal acceptance. Someone is not a member just because she has formal citizenship. This is partially because one can have formal citizenship in states that lack any of the institutions to uphold and fulfil the protections of basic rights. Likewise, citizenship does not always imply social acceptance. However, when liberal democratic states are well-functioning, citizenship *does* entail membership. This is because most individuals in such states enjoy a level of social acceptance that allows them to claim their rights through legal institutions. That is, they are not immediately dismissed as claim-making agents because of racism, sexism, homophobia, or other kinds of prejudice. We can imagine examples where this would not be the case. For instance, we can imagine a case where a group of refugees were offered protection in a country in which there were deeply rooted xenophobic views about the refugee population in particular, such that these views impacted on

respect for those individuals' rights. Whilst these individuals would have citizenship in that state of asylum, they would not enjoy membership because the lack of social standing would have a direct impact on the provision and protection of their basic rights. A similar argument can be made specifically for LGBTQ refugees in non-liberal democratic states. Refugees fleeing homophobic or transphobic persecution of course cannot be offered a substantive form of asylum in states where this harm will continue. For instance, a refugee fleeing homophobic violence cannot successfully be offered asylum in, say, Uganda, which still adopts a death penalty for homosexuality. This perhaps seems obvious, but the membership view shows why this is the case – formal citizenship in a new country is not enough. A thicker form of acceptance is also required, and this impacts where a refugee can be offered asylum.

From the above, we can conclude that citizenship (at a minimum) is required in order for refugees to enjoy membership in the state of asylum. However, it also shows that citizenship needs to be offered in a state with rights protecting institutions and the possibility for social standing. Importantly, I should clarify that citizenship need not be offered in democracies in order for it to function on my legitimacy repair account. Instead, the standing required to ensure that citizenship functions as a guarantee of membership has a threshold requirement (based on liberal institutions and capacity). At a minimum, refugees must enjoy the standing for their rights to be recognised securely in practice. Otherwise, citizenship fails to provide membership. However, refugees must also enjoy standing that is on par with other citizens in the state. Therefore, in a liberal democratic state, refugees require citizenship on the same terms as others. They would be entitled to the full set of rights, including voting rights. However, in a non-democratic state, refugees could still enjoy the standing necessary to contest and claim their rights. A similar kind of point to this one has been put forward by Joseph Carens:

> A refugee who settles in a poor state will have fewer rights and opportunities than one who settles in a rich one, even if both are treated as full members of the society where they have settled…. Refugees are treated fairly (except by their country of origin) so long as they enjoy safety, protection of their basic human rights, and the same rights as other members of the society where they live.[64]

Therefore, the membership view does not imply blanket enfranchisement for refugees. Instead, it implies blanket relative political inclusion above a minimum standard. Refugees require citizenship on the same terms as other citizens. However, inequalities *between* states should only worry us if they undermine the state's rights-upholding credentials or capacity. Benign monarchies, for instance, which nevertheless uphold and protect the rights of members would be entirely open to my view. This does not mean that I am a relativist about the requirements of membership.[65] Instead, there are certain minimum conditions that need to be met in order for someone to enjoy the secure protection of their rights as a member. There is therefore a threshold above which all people must sit. This can occur with or without the state in question being democratic.

It is worth noting here the ways in which my view is different from David Owen's legitimacy view. As noted in chapter one, Owen does argue in favour of near-immediate citizenship for refugees who have been persecuted: *asylum* refugees, as he calls them.[66] We saw previously that persecution is not the only way in which membership can be lost and this discussion has important implications for Owen's distinction between different types of forced migrant. Owen argues that only asylum refugees require new immediate membership because they are the only refugees who have had

[64] Carens, *The Ethics of Immigration*, 204.
[65] I have in mind here Michael Walzer's relativistic understanding of societal good outlined in *Spheres of Justice,* in which justice is partially determined by the practises and beliefs of a particular community. For instance, he argues that the Indian caste system is potentially "good" or "just" as judged by internal standards. On a similar view, perhaps membership could be defined in a somewhat relational way. However, here I instead put forward a threshold view – for a legitimacy account, meeting a certain minimal standard of protection and security is required.
[66] In other places before offering a full account of legitimacy repair view, Owen makes this claim perhaps more strongly. He writes: "features of the refugee require that a route to national citizenship is available and suggest that an accelerated path to citizenship would be a reasonable option to adopt, even if the state's duty of care might be met in ways that do not require this." Owen, "Citizenship and the Marginalities of Migrants," 333–34.

their membership actively denied through suffering the special harm of persecution. Sanctuary refugees, however, only lack *effective membership* and therefore do not require immediate inclusion. However, as we saw in chapters one and three, from the position of the refugee, lacking effective membership is substantively the same as lacking any form of membership whatsoever. In both cases, the refugees are essentially *de facto* stateless, regardless of the way in which their predicament came about. Those who are forced to flee indiscriminate violence or environmental disaster can lack membership as well and therefore are entitled to citizenship on the same basis. Once the loss of membership is our central focus, as it is for us here, it is difficult to maintain the distinction between asylum and sanctuary. Therefore, on my account, both of these types of refugees are entitled to immediate citizenship. As I have already outlined in chapter four, my account accepts there will be some forced migrants who do not suffer the harm of membership loss. These would likely best be characterised as falling into Owen's 'refuge' category – those who are pushed across a border and yet still maintain a stable relationship with their state. The maintenance of a stable relationship with their state of origin is the important distinguishing feature here. If a forced migrant maintains the membership relation with her state, she is not entitled to new membership elsewhere. In such cases, the temporary protection of rights is sufficient until such a time that the refugee is able to safely return.

The above has therefore shown that the extension of citizenship is a minimum requirement of my membership view. Before turning to some potential alternatives that are open to my account, I will first discuss some potential objections to this view.

Objections and replies

David Miller, originally responding to those who defend the surrogate membership view (Price, Lister, Cherem, etc.), has considered the importance of political status for refugees. He writes that a proponent of this view must explain:

> [w]hy loss of political membership should be so important as compared to other harms that a person might suffer. Of course, in many cases, loss of political membership will bring with it vulnerability in other dimensions too - lack of access to food, education, health care, etc. But suppose for a moment that these can be provided in a secure zone outside of the state, would it matter so much that people were deprived of effective citizenship?[67]

It is true that many vital resources can be offered without membership. However, the importance of membership itself stems from the ability to turn the claim of the refugee from being vulnerable to being secured. To state this point more clearly, refugeehood, by its nature, forces refugees to depend on the goodwill of states. While we might be able to offer refugees important protections without membership, such protections would ultimately depend on the discretion of states who would be able to withhold or remove resources at their will. As Walzer puts it, those without membership "have no guaranteed place in the collectivity and are always liable to expulsion. Statelessness is a condition of infinite danger."[68] Arendt likewise argues that "the calamity of rightlessness is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion - formulas which are designed to solve problems within given communities - but that they no longer belong to any community whatsoever."[69] My claim then is that the robust protection of human rights simply *is* membership. So, in response to Miller's

[67] David Miller, "Our Responsibility to Refugees" (M. Hoesch and L. Laube (eds.), Proceedings of the 2018 ZiF Workshop "Studying Migration Policies at the Interface between Empirical Research and Normative Analysis", ULB Münster (miami.uni-muenster.de), 2018), 43, doi: 10.17879/95189441435.
[68] Walzer, *Spheres of Justice*, 31.
[69] Arendt, *The Origins of Totalitarianism*, 387.

objection, I can still claim that a lack of membership is a substantive wrong in itself, whether or not vital resources can theoretically be provided without offering membership. The harm of membership loss is precisely that an individual no longer has a community within which they can claim their basic rights. As Ayten Gündoğdu – following Arendt – puts it, rightlessness "captures the loss of organized political community where one's actions, opinions and speech are taken into account."[70] It is therefore not the formal or legal stripping of citizenship but the "fundamental condition denoting precarious legal, political and human standing."[71] As Arendt states, for the rightless, "the prolongation of their lives is due to charity and not to right."[72] Without membership, then, refugees remain in a position of ongoing structural vulnerability. Membership is central because it makes the goods that refugees require secure and guaranteed.

Someone defending Miller's position could respond that the refugee *is* offered some secure rights in their state of asylum. At the very minimum, the international norm of *non-refoulement* demands that states do not return refugees or asylum seekers to their state of origin when doing so would put them at risk. We could also raise the bar of basic rights that refugees receive, extending the right to work, the right to education, and the right to free health care, many of which they already enjoy in some liberal democratic states. If this is the case, and refugees can receive secure legal protection in this manner, why must we go one step further and guarantee membership in the form of citizenship? In this case, the strong legal protections guarantee that refugees can 'claim' their rights in a secure way. However, I believe that the membership view still demonstrates that we must go one step further. Whilst substantive legal protections for the rights of refugees would be an improvement on the current system of state discretion, rights are still their most secure when one is considered a member in equal standing with her co-members. So, if the legitimacy argument

[70] *Rightlessness in an Age of Rights* (Oxford: Oxford University Press, 2015), 95.
[71] Gündoğdu, 93.
[72] Arendt, *The Origins of Totalitarianism*, 387. I mentioned in chapter two that I don't accept all of the background conditions of Arendt's account. However, she remains useful as a demonstrative device for the kind of view that I'm putting forward.

demands that rights be claimable in a more substantive way, then membership is still a necessary outcome of this view. Indeed, the gap that we are remedying here is the lack of security that comes with the loss of formal status anywhere. We often think this more clearly in the case of statelessness: we accept that those without legal status anywhere require formal inclusion in the form of citizenship. David Miller, in fact, accepts as a basic starting principle that no individual should be stateless.[73] The case, I argue, is simply the same with *de facto* stateless refugees. So, whilst secure legal status gets us most of the way there, it does not quite meet the required standard of legitimacy.

Some other potential objections are worth considering briefly. First, one might worry that offering citizenship to refugees would undermine any remaining political relationship with their state of origin. Gibney argues that granting citizenship may convey to refugees that their relationship with their state of origin will never be (re)developed, thereby freeing refugee-generating states of their potential obligations.[74] However, it seems that we could simply make explicit the availability of an ongoing relationship with the state of origin, if, in fact, one exists. For instance, we might grant citizenship to forced migrants in a way that allows them to maintain their old (though perhaps currently defective) citizenship, underlining that if they ever wish to return, they are free to do so. For instance, many states waive the usual condition of renouncing citizenship when applying for new citizenship for refugees.[75] Dual nationality would be a simple and feasible way to allow the possibility of return to remain open. This does not, however, require that refugees return when it is eventually safe. The naturalisation of forced migrants should be considered permanent in the most absolute sense, whilst keeping open the possibility of truly voluntary repatriation. Moreover,

[73] David Miller, "Democracy, Exile, and Revocation," *Ethics & International Affairs* 30, no. 2 (2016): 269, https://doi.org/10.1017/S0892679416000137. He makes this point when replying to Patti Lenard's arguments about the revocation of citizenship.
[74] Matthew Gibney, "The Ethics of Refugees," *Philosophy Compass* 13, no. 10 (2018)..
[75] Owen, "Refugees, EU Citizenship and the Common European Asylum System A Normative Dilemma for EU Integration.".

even if one objects to dual nationality in other circumstances, it seems that the refugee has a particularly strong claim given her current lack of effective citizenship.

Second, we might wonder whether the duty to naturalise refugees only applies under conditions of fair refugee distribution. That is, given that many states are forced to take more than their 'fair share' of refugees, does the duty to naturalise refugees make permanent the potentially unfair distribution of refugees? I think this objection hits on something important. Namely, that we shouldn't necessarily think of the duty to naturalise refugees as a duty placed on individual states within which refugees are *currently* situated. The current distribution of refugee protection and assistance makes it extremely difficult for individuals to seek asylum in powerful states in the Global North. Therefore, most refugees are forced to seek protection in states surrounding their country of origin, leading to large numbers of displaced people in only a handful of states. For example, in Lebanon, refugees make up just over twenty per cent of the total population.[76] This is because individuals have fled from neighbouring Syria and other countries have failed to offer assistance in the form of resettlement elsewhere. To ask Lebanon to naturalize all refugees within their territory, then, would be extremely burdensome. It would raise genuine concerns about a radical change in the constitution of the demos and would likely create unrest among local populations. It would also solidify the unfair distribution of asylum as we currently see it – it would make permanent other state's failures to offer assistance. However, this individual state-level approach is not what the membership view demands. Instead, as we saw in chapter four, the duty to ensure membership for all is a *collective duty*. All states have duties of legitimacy based on their collective status in the regime of global governance. Therefore, such an approach would be broadly dependent on a just refugee distribution regime. We can say here then that states that have taken far fewer refugees than they should likely have an obligation to naturalize refugees within their

[76] UNHCR, "Lebanon: UNHCR Global Focus," 2021, https://reporting.unhcr.org/lebanon#:~:text=Lebanon%20remains%20the%20country%20hosting,Palestinian%20refugees%20under%20UNRWA's%20mandate.

territory as well as to accept and to naturalise those currently living elsewhere. States such as Lebanon would have an obligation to naturalize some of the refugees within its territory, though surely not all of them. At the very least, my argument shows that many states have more stringent duties towards refugees than we first presumed, even if the context is not such that those duties can be properly discharged in some cases.

As such, my view is also open to the possibility of citizenship being offered by a state other than the state of asylum. For instance, a refugee may seek asylum in Germany but receive citizenship from France. This would solve the basic problem of refugeehood: lacking membership anywhere. I am leaving aside the question of whether refugees should be able to choose where they receive membership, although we might think that this question is even more important for my account given that asylum is now a permanent commitment for both the refugee and the state. I believe that, as long as asylum is offered by a state that meets my requirements, the potential for citizenship to be offered by another state is possible. However, there are a few reasons why I think that the state of asylum is in fact the best option. First, in claiming asylum in a particular state, it may be the case that refugees perceive that state as being able to offer the kind of protection that membership required. This fiduciary relationship is important to the provision of membership, and so the fact that the refugee is choosing a particular state should hold some weight. Second, it may not be the case that full social inclusion is as feasible if a refugee has resided for a long-time in another state. For instance, if a refugee lodges her asylum claim in Germany and then is offered citizenship by France, she might have spent significant time integrating into German society, learning the language, the norms, and the dominant cultural practices. There might be reasons of feasibility and fairness then as to why this is not an appropriate option in some cases. However, if it is the case that membership *could* be provided in this way, then it is possible on my view.

Another potentially powerful objection against naturalizing refugees is the potential to make unjust forms of exclusion permanent. That is, offering citizenship to refugees may provide perverse incentives to persecutory governments. Exile often fundamentally reshapes the political community in question. Under persecuting regimes, this is often a purposeful move; they are attempting to redraw the boundaries around who counts as a member. Therefore, in offering refugees a new form of membership elsewhere, we may entrench this form of unjust treatment. This worry might be raised in the context of ethnic cleansing. By offering permanent protection elsewhere, such governments are potentially bolstered in their attempts to reshape the political community. Whether offering permanent status to refugees elsewhere would actually encourage states to persecute and expel their own citizens is not possible to say. What we can note here is that, although other states may have a collective duty to ensure that refugees have new membership, this does not mean that the state of origin has not committed an injustice in such a case. Indeed, as we will see in chapter seven, the state of origin may still have particular obligations towards ex-members that take on a reparative character. Our first concern here should be ensuring that refugees receive adequate and secure protection through the provision of new membership. Whether this actually provides perverse incentives would need to be shown in particular cases. Even if this were the case, most refugees would not fall into this category of concern. This worry, therefore, does not provide a general objection against naturalization for refugees.

Finally, the most powerful objection to the argument that states have a duty to naturalize refugees is what we might call the temporariness argument. The claim here is that refugees are often only in need of temporary protection. Factors in the state of origin could change such that refugees are safely able to be returned. Offering citizenship forces states to take in refugees who would otherwise only reside in their territory on a short-term basis. Along these lines, Miller argues that

new membership is not owed to refugees, even to those who have been persecuted.[77] Gibney likewise argues that it is difficult to explain why refugees *qua* refugees might be owed citizenship because of this potential need for temporary protection.[78] Ziegler also considers this question of temporariness, arguing that refugees only require protection for an indeterminate period.[79] Citizenship, then, appears to be a permanent solution to a temporary problem, and obliging states to extend membership to refugees may be asking them to do more than they would otherwise be required.

However, many refugees do not return. The UNCHR predicts that in 2018 around 600,000 refugees returned to their countries of origin. This is less than three per cent of the total population of displaced people that year.[80] Many refugees instead remain permanently in their state of asylum, often with precarious legal status. In spite of this, Western states continue their efforts to exclude refugees from permanent protection, instead favouring temporary visas and implementing new ways of encouraging repatriation. For instance, Germany favours subsidiary protection for almost all Syrian refugees, a status which initially afforded the holder fewer benefits (for instance, excluding them from family reunification) and no permanent form of relief.[81] This exclusionary turn leaves even those few refugees who have some official legal status in a potential position of precariousness with regard to a permanent solution. I am not convinced that we should deny all refugees the claim to new, permanent political community on the basis that some of them may eventually return to their original state. Indeed, allowing this temporariness to hold such weight might remind us of some of the worst features of contemporary responses to displacement. Such emphasis on eventual return helps to underpin the sense of deportability that characterizes the

[77] Miller, *Strangers in Our Midst: The Political Philosophy of Immigration*, 135–36.
[78] Gibney, "The Ethics of Refugees," 5.
[79] Ziegler, *Voting Rights of Refugees*, 205..
[80] UNHCR, "Global Trends: Forced Displacement in 2018," 2018, https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html.
[81] Foreign Policy, "Germany Is Preparing to Send Refugees Back to Syria."

lives of many refugees. We might believe, then, that temporariness itself amounts of a moral harm - it does not allow refugees to go on with their lives and plans or imagine a future for themselves.[82] Forcing refugees to remain in this state of temporary protection indefinitely does not offer a solution to their predicament. That is, if you think that my view amounts to over-inclusion, then over-inclusion might simply be a price worth paying. Moreover, on the membership view, any gap in membership generates concerns about legitimacy. States therefore cannot keep refugees in a position of lacking membership, in the hope that they will eventually leave, without violating the need of all for membership somewhere. What matters instead is simply whether a refugee enjoys membership in her state, not whether she could theoretically eventually revive her old membership.

Alternatives

There are several alternative solutions to the problem of lacking membership that are theoretically possible according to my view. This section aims to address these alternatives and consider why they may or may not be appropriate. Here I consider, first, local forms of inclusion and, second, supra-national citizenship.

1. Local citizenship

First, one might wonder whether more local forms of political inclusion are enough to resolve the problem of lacking membership. That is, could political inclusion be offered a different level, for instance through inclusion in local forms of governance. This kind of proposal would see refugees included in local elections (in states where this is practised), but without full national citizenship. We could imagine such a case, for example, in sanctuary cities in the United States which allow residents in the city to access services, despite lacking regular status. These cities often feature "don't ask, don't tell" policies surrounding visa status, as well as non-co-operation policies whereby

[82] Mollie Gerver, "Must Refugees Return?," *Critical Review of International Social and Political Philosophy*, 2019, https://doi.org/10.1080/13698230.2019.1573347; Buxton, "Justice in Waiting: The Harms and Wrongs of Temporary Refugee Protection."

local government officials refuse to co-operate with federal immigration services.[83] Such policies can lead refugees and irregular migrants to have a far more secure existence than they otherwise would, giving them access to healthcare and education in line with other city residents. However, I think this kind of inclusion does not go far enough for several reasons. First, without formal citizenship, refugees are still at threat of eventual deportation. Sanctuary city policies as those outlined above are not always sufficiently robust as to protect individuals from federal immigration forces. It also importantly only protects them within a particular boundary. So, while those within sanctuary cities can live their lives there, they lack freedom of movement that citizens enjoy. Second, refugees on this picture would also not be integrated into the full legal apparatus of citizenship – their fates would not be intertwined with other citizens. It is not clear whether access to basic services is sufficient to meet the standard of human rights protect, when such policies are potentially insufficiently robust. Third, while refugees enjoy a level of standing, they still lack the parity of inclusion that is needed in order for the extension of political inclusion to amount to membership. We will come back to the potential for devolved membership in the final chapter on the refugee camp.

2. Global citizenship

Second, and relatedly, it might be asked whether supra-national forms of citizenship could be available to the membership view. For example, refugees could be offered citizenship at the level of the European Union as opposed to individualized membership in any EU state. It is usually the case that EU citizen is derivative of citizenship in member states; if you hold citizenship in a member state then you automatically gain EU citizenship. Although a current system is not in place for this extension of status, it is possible to imagine the kinds of institutions that would be

[83] Patti Tamara Lenard, "The Ethics of Sanctuary Policies in Liberal Democratic States," in *The Political Philosophy of Refuge* (Cambridge: Cambridge University Press, 2019).

necessary. Refugees with EU citizenship might be given the right to live and work in any EU member state, the right to health care, and the right to move between countries as they please.

Interestingly, a similar policy was suggested before as a solution to statelessness. In the 1954 report, a special rapporteur on statelessness, Roberto Cordova, considered the possibility of offering refugees what he called *international nationality,* which was suggested by another commissioner. He writes:

> [T]he individual would be linked to the international community which, at this stage of the development of international relations, is represented by the United Nations. In order to grant to individuals, within the framework of national legislation, all the rights which the law entitles them to enjoy as nationals, they are not required to be part of any juridical person whatsoever. Similarly, in the case of international law one might think quite logically that it is not necessary for the same individual to be a national of a certain State in order to enjoy the same rights as those persons who belong, in virtue of the link of nationality, to that State.[84]

Therefore, the status of international nationality would confer on the stateless person a kind of global citizenship. However, Cordova notes several problems with this proposal which I think also apply to the contemporary EU citizenship case. First, he notes that the United Nations is not a super-state. It is not, in other words, meant to fulfil all the functions of a state at a higher level. Those who live within territories of actual states, therefore, "have not become the population and territory of the United Nations."[85] Whether or not this high level of status would therefore be available still depends on the discretion of sovereign states. Second, Cordova argues that the conferral of global citizenship – if successful – would place its holders in a privileged position compared to the rest of the world vis-à-vis political obligations. Since they would not be citizens

[84] Roberto Cordova, "Nationality Including Statelessness - Third Report on the Elimination or Reduction of Statelessness by Mr. Roberto Cordova, Special Rapporteur" (Extract from the Yearbook of the International Law Commission, 1954), 29, https://legal.un.org/ilc/documentation/spanish/a_cn4_81.pdf.
[85] Cordova, 29.

of any country, they would presumably lack the corresponding duties towards any particular political community. As such, that they would not have obligations to any state and would have unprecedented rights of free movement. Most importantly for our discussion, though, Cordova notes that even with global citizenship, stateless persons would still find themselves in "every country in an inferior situation as compared to nationals."[86] He rightly worries that any kind of supra-national status will nevertheless leave its holder in a lesser condition. In terms of my focus on membership, we could spell this out in the language of equal legal status and the language of standing. With a form of international nationality, the refugee would therefore still lack membership in any individual community. Since individual states are the principal guarantors of human rights, the status is best when it exists at that level of protection. On standing, it's not clear that UN or EU citizenship holds the kind of symbolic weight that it needs to in order for refugees and stateless persons to be respected as having some basic level of parity. Welcoming an individual into the state through citizenship is a symbolic act of social acceptance. An international body doing so may not hold the same power. That being said, I do believe it is possible to imagine a case like this on my view. If the institutions were ever such that a different kind of citizenship was possible and met all the conditions of membership, then this could be acceptable on grounds of legitimacy.

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This chapter has argued that refugees are entitled to citizenship in their state of asylum or an appropriate alternative state. That is, states have a collective duty to ensure that refugees are offered membership in a political institution that is willing and able to protect their basic rights. This is because, in order for membership to be provided, refugees require citizenship as a minimum

[86] Cordova, 29.

guarantee of political, legal, and social inclusion. This also demands that there are certain conditions on where this membership can be offered: for instance, states need to have a certain level of capacity and enjoy a minimum level of standing. In the final section, I pointed to two alternatives that are open to the membership view and, though I do not believe the current institutions are in place, it is possible to imagine that they might be in the future. For now, though, the state of asylum is often the most appropriate provider of membership.

As I have said in the introduction, I do not think the uptake of this conclusion is particularly likely. Though as we now know from our discussion of the history of refugee naturalization, the idea that refugees should receive citizenship *in situ* is not an entirely new proposal. Instead, even before Nansen's radical approach to durable solutions, states practised refugee naturalisation since nearly the first existing examples of asylum. I hope to have shown, then, that (though utopian) this view is perhaps not so revisionist as it first appears. Indeed, the idea that refugees have a claim to citizenship elsewhere is, on my view, still only a necessary first step. Having established this relationship with the state of asylum, the following chapter will turn to think about the implications for the refugee's relationship with her original state. That is, it asks whether other questions of membership persist even after the refugee has received formal status elsewhere.

CHAPTER SEVEN

The State of Origin

In the late summer of 1996, thousands of Bosnians queued up to vote in their national General Election. But instead of voting from their hometowns, many were taking part in this exercise of democracy from overseas, having been forcibly displaced by the recent Bosnian War. A year earlier, political leaders had negotiated and signed the Dayton Peace Agreement, also known as The General Framework Agreement for Peace in Bosnia and Herzegovina.[1] In an attempt to make good on the principles that were negotiated, those displaced across Europe were able to have a say in the future of their country.[2] In the Kirklareli refugee camp in Turkey, officials reported almost one hundred per cent voter registration among the displaced. An official election observer for the United Nations, Jeff Labovitz, stated at the time that he expected all of the refugees resident in the camp to vote in what he called "the most complex and biggest refugee election in history."[3]

[1] Europe - Miscellaneous, "Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovinia," November 21, 1995, https://www.refworld.org/docid/3de495c34.html.
[2] International Crisis Group (ICG), *Elections in Bosnia-Herzegovina: Introduction and Background*, 22 September 1996
[3] Associated Press, "Turkey/Bosnia: Refugees Vote in Turkey" (AP Archive, August 27, 1996).

In spite of the apparent success of this election in exile, there is still no standard international mechanism in place for enfranchising refugees. Instead, most refugees lack political representation anywhere in the world.

Questions concerning the state of origin have received far less attention in the political theory of refuge. This is presumably because of the reasonable assumption that the state of origin will not be able or willing to offer political inclusion. In the case of the persecuted refugee, this problem is even starker: she has been purposefully excluded from membership in her state and so asking the question of how she can engage politically is perhaps mistaken or problematic. Nevertheless, there are many normative questions concerning what claims the refugee can make on her state of origin after she has been displaced. For instance, does a refugee retain a right to vote in her previous state? Does she have a claim to return if she should ever wish to do so? Does her claim to vote depend on her eventual plan to repatriate? And importantly for us, how does our understanding of membership as effective citizenship have an impact on answers to these questions?

Most questions concerning the refugee's return to her state of origin happen under difficult circumstances. Often, repatriation is the preferred solution because other countries have failed to properly protect displaced populations. Return is still the favoured durable solution to displacement by many hosting states and UNHCR. Often this depends on outdated ethnic-national claims, undertheorized understandings of "home", and claims that refugees all really want to return.[4] Such claims are frequently used as an excuse for keeping refugees in precarious forms of temporary protection, as we saw in the last chapter. Of course, some refugees do want to return, though exactly how many is very difficult to determine. We can therefore establish a contrast

[4] Katy Long, "State, Nation, Citizen: Rethinking Repatriation" (Refugee Studies Centre Working Paper Series, No. 48, 2008), 20–22, https://www.rsc.ox.ac.uk/files/files-1/wp48-state-nation-citizen-2008.pdf. Liisa Malkki for instances discusses the presumption that refugees are necessary "out of place" and need to be reincorporated into the appropriate national order. Liisa H. Malkki, "Refugees and Exile: From 'Refugee Studies' to the National Order of Things," *Annual Review of Anthropology* 24 (1995): 495–523.

between the disingenuous reasons given by many countries to keep refugees in situations of precarity and how we might want to think about the political inclusion of those who sincerely wish to return. Under these circumstances, where refugees wish to re-integrate themselves into their country of origin, questions of membership again come to the foreground.

The last chapter considered the refugee's political claims in the state of asylum, arguing that they are entitled to citizenship in a new state. If this is taken up, then concerns about legitimacy are satisfied. That is, the refugee now has membership somewhere and, therefore, receiving states have fulfilled their collective obligation. However, there are questions of membership in the state of origin that still survive. The membership view simply claims that refugees are entitled to membership *somewhere*. However, in reality, people often rightly demand membership in a particular place. In the case of the refugee, the usual bond of membership has been broken. Though our concerns of legitimacy are satisfied – if the refugee has new citizenship in her state of asylum – there may be questions of justice that demand our attention as well. This chapter asks, then, what needs to be done to re-establish the bond between the displaced and their previous state? *How can membership be remade?* This re-establishment of membership will necessarily include some reparative element, particularly in cases where displacement occurred because of persecution. However, even in cases where the state has failed the individual through no fault of their own, the fiduciary and mutual relationship of membership still needs to be rebuilt.

This chapter, therefore, considers what political claims the refugee retains in her state of origin during displacement. I do this with two assumptions in mind. First, I assume that the individual in question wants to return. For our case, discussions of forced return become less salient as the refugee now already has the protective barrier of citizenship in a new state. Conditions of re-establishing membership in the state of origin, then, would only come about through the refugee's choosing. Second, I assume that refugees have a genuine claim to return if they wish to do so. I

am therefore putting aside the question of whether refugees always have a right to return to their state of origin and am instead asking the question of inclusion under these specific circumstances.

This chapter proceeds as follows. First, I outline the history and practice of external political representation and how it applies to refugees. Here I distinguish between individualized and group political inclusion, as well as between formal and informal political engagement. I also justify a narrowing of focus to specifically consider formal inclusion in national elections and referenda. Second, I outline the existing discussion of external voting in political theory, considering the expansive turn in normative approaches to enfranchisement. I outline why refugees might have a particularly strong claim to retain voting rights in exile. Third, I outline what the membership view implies for inclusion in the state of asylum, arguing that it can help us to rethink what is required in cases of refugee repatriation or return. I follow Katy Long and Megan Bradley, arguing that repatriation should be viewed as a political process rather than a physical one: refugees can regain membership in their state of origin without having to physically return.[5] The final section considers objections and replies, addressing worries about dual nationality and double voting.

Of course, much of what I will say here only applies to refugees who have fled states that hold elections. That is, democratic inclusion as a standard is unhelpful to refugees who have fled authoritarian regimes, as many of them do. I will say more about this at the end of the chapter. For now, we should note, first, that there are more ways than voting to signal the re-establishment of a political relationship. Second, states failing to meet these requirements may not be suitable for successful return. That is, they may not be able to guarantee the kind of membership with which we are concerned here.

[5] Long, *The Point of No Return*; Bradley, *Refugee Repatriation: Justice, Responsibility, and Redress*.

The development of external political representation

Engagement with politics across borders is an enduring feature of our social world; individuals and groups have always sought to change and shape political life across boundaries.[6] However, in the last half-century – with increased movement of people and capital across borders – transnational politics has become more obvious and better understood. Transnational politics, or political engagement across borders, was first conceptualised in the 1970s by realist scholars in international relations who were concerned with how states might use non-governmental bodies and supra-national institutions (such as the IMF or the World Bank) to do their bidding.[7] In the last thirty years, however, focus on transnational politics has moved beyond an analysis of states and instead focuses on a far broader set of agents. In particular, new discussions of transnational politics have become concerned with migrant political engagement and diasporic politics.[8] Migrants are often seen as the archetypal transnational political agent who represents a decoupling of residence with political engagement. Refugees, of course, are part of this growing transnational story. Many refugees are political agents in exile. Some, in fact, need to be outside the state in order to safely critique internal authoritarian regimes.[9]

Transnational politics comes in many forms. First, political engagement might be group-based or individualized. Group-based forms of political engagement involve migrants coming together to create political collectives, for instance through diasporic networks. For refugees, this can include forming governments-in-exile who seek to formally represent the displaced population. Examples

[6] Jönsson C. (2010) Capturing the Transnational: A Conceptual History. In: Jönsson C., Tallberg J. (eds) Transnational Actors in Global Governance. Palgrave Macmillan, London. https://doi.org/10.1057/9780230283220_2

[7] Robert Keohane and Helen Milner, *Internationalization and Domestic Politics.* (Cambridge: Cambridge University Press, 1996).

[8] Nina Glick Schiller, Linda Basch, and Cristina Szanton-Blanc, *Towards a Transnational Perspective on Migration: Race, Class, Ethnicity, and Nationalism Reconsidered* (New York: New York Academy of Sciences, 1992); Luis Eduardo Guarnizo, Alejandro Portes, and William Haller, "Assimilation and Transnationalism: Determinants of Transnational Political Action among Contemporary Migrants," *American Journal of Sociology* 108, no. 6 (2003): 1211–48.

[9] Alexander Betts and Will Jones, *Mobilizing the Diaspora: How Refugees Challenge Authoritarianism* (Cambridge: Cambridge University Press, 2016).

include the Central Tibetan Administration, The Palestinian Liberation Organisation, and the National Council of Resistance in Iran.[10] Individually, refugees and forced migrants can engage with political life without becoming part of a group – for instance through sending remittances home to their families or voting in national elections whilst overseas.[11] For the remainder of this chapter, I will be focusing on this individual political engagement. This is primarily because, although membership can and often does depend on group status, it is an individual condition. To guarantee membership for particular individuals we need to consider the minimum standards of membership outlined in chapter two. The ability to make claims on the state and have them securely upheld depends on the individual's position.[12]

A second distinction might be made between formal and informal political engagement: migrants and refugees can informally mobilise abroad to pressure countries of origin to change policies, but they can also be extended the right to formal inclusion. I am going to focus on formal political inclusion here for a few reasons. First, formal status is a necessary initial step in securing membership as effective citizenship. Second, as our focus in this second half of the thesis is on the political rights of refugees, this demands that we pay attention to certain institutional frameworks. Moreover, the theoretical approaches to democratic inclusion that we have been discussing so far – the all affected interests view (AAI), the coercion principle, and the social membership and stakeholder views – have more to say on whether refugees retain a right to formal political inclusion during exile. Our focus here, then, will be on the rights of refugees to vote whilst in exile and how this relates to their eventual return. This is where we will now turn our attention.

[10] Ashwini Vasanthakumar, "Exile Political Representation," *Journal of Political Philosophy* 24, no. 3 (2016): 279.
[11] Remittances aren't necessarily political. However, they do often have a serious political impact on the state of origin. For more on "political remittances" see: Cindy Horst, "The Transnational Political Engagements of Refugees: Remittance Sending Practices amongst Somalis in Norway," *Conflict, Security, and Development* 8 (2008); Irene Vélez-Torres and Jytte Agergaard, "Political Remittances, Connectivity, and the Trans-Local Politics of Place: An Alternative Approach to the Dominant Narratives on 'Displacement' in Colombia," *Geoforum* 53 (May 1, 2014): 116–25, https://doi.org/10.1016/j.geoforum.2014.03.001.
[12] Interestingly, the discussions in political theory on external voting often take on this individualized character. However, broader arguments in refugee studies often focus on the political integration of entire groups, mainly through the lens of a peace-building process.

External voting or out-of-country voting (OCV) is, quite simply, allowing citizens to vote while they are resident overseas. As we saw in chapter five, the legal right to vote is tied to citizenship status. Article 25 of the ICCPR states that:

> Every *citizen* shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.[13]

Residence in the state is not one of the distinctions mentioned in Article 2. States are thus not legally obliged – at least under the most straightforward interpretation of the ICCPR – to enfranchise citizens living abroad. Some jurisdictions have explicitly maintained that residency is a permissible distinction as long as it is reasonable and, therefore, citizens living abroad need not be enfranchised.[14] Importantly, no international legal document enshrines the right of non-resident citizens to vote. In other words, "no universally accepted legal principle holds that citizens residing outside of their home state have a right to participate in national political life."[15] There have been some recent political commitments to ensure migrants' voting rights from abroad. For instance, Objective 19 (G) of The Global Compact on Safe, Orderly, and Regular Migration calls for states to "enable political participation and engagement of migrants in their countries of origin, including

[13] UN General Assembly, "International Covenant on Civil and Political Rights."
[14] For a full discussion of the case law on expatriate voting, see Ruvi Ziegler, "Out of Country Voting: The Predicament of the Recognised Refugee," in *Exploring the Boundaries of Refugee Law* (Brill, 2015), 298–322.
[15] Jeremy Grace, "The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Instruments, Participatory Elections Project (PEP)" (IOM International Organization for Migration, 2003), 16.

in peace and reconciliation processes, in elections and political reforms, by establishing voting registries for citizens abroad, and by parliamentary representation."[16]

Despite this lack of legal clarity, many states *do* allow non-resident citizens to vote in elections. Indeed, in the last few decades, there has been a huge increase in legislation guaranteeing expatriates the right to vote abroad. The International Institute for Democracy and Electoral Assistance's (IDEA) "Voting from Abroad Database" lists 146 countries with legislation that allows their citizens to vote from overseas.[17] In spite of widespread uptake, there remains no standard practice for formal external political representation. For instance, different systems might involve establishing formal polling stations abroad or allowing expatriates to vote by mail and proxy. Likewise, OCV procedures can apply to citizens who are away for only a year (such as international students) or to individuals who live for their entire lives outside of the state. For instance, Austria, Belgium, Finland, France, Italy, Luxembourg, Portugal, and Spain sometimes enfranchise citizens who have spent their entire lives abroad.[18] Colombia guarantees external voting rights to all expatriates and has a member of the House of Representatives elected only by non-resident citizens.[19] In other states, only certain 'types' of citizen can vote from abroad, such as diplomats and those engaged in military service.[20] Jean-Michel Lafleur argues that states that adopted external voting mechanisms more recently tend to have an expansive approach, whereas states that adopted OCV mechanisms earlier take a more restrictive stance. Those with large overseas populations may also be less generous. Mexico, for instance, has relatively restrictive

[16] United Nations, "Global Compact on Safe, Orderly, and Regular Migration," December 2018, https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf.
[17] Armend Bekaj and Lina Antara et al., "Political Participation of Refugees: Bridging the Gaps" (International Institute for Democracy and Electoral Assistance, 2018), 73.
[18] More information for specific country policies can be found at the IDEA "Voting from Abroad Database", https://www.idea.int/data-tools/world-view/52 accessed on 8th April 2021
[19] Ministry of Foreign Affairs, Colombia, "Los Colombianos Residentes En El Exterior Ya Pueden Acercarse a La Embajada o Consulado Más Cercano y Realizar La Inscripción de La Cédula Para Participar En Las Elecciones de 2018," 2018, https://www.cancilleria.gov.co/newsroom/news/colombianos-residentes-exterior-ya-pueden-acercarse-embajada-o-consulado-cercano.
[20] Jean-Michel Lafleur, *Transnational Politics and the State: The External Voting Rights of Diasporas* (London: Routledge, 2012), 32.

OCV policies precisely because its diasporic population is so large, and this generates worries about overwhelming the in-state group.[21]

Still, around one-quarter of countries have no external voting mechanisms in place for non-resident citizens, leaving those abroad disenfranchised.[22] Whether states have an obligation of justice to extend or rescind non-resident voting rights will be discussed later on. For now, we should turn to the question of external voting and refugee populations.

External voting and forced displacement

For refugees, voting from abroad is often more complicated. Given that many refugees are often non-resident citizens, they retain at least some claim to vote while abroad.[23] There have been some attempts to draw out an explicit commitment from states to ensure access to minimal political engagement for the displaced. For instance, the first draft of the Global Compact on Refugees (March 2018) explicitly highlighted the importance of "facilitating the participation of refugees and returnees (notably women and youth) in relevant processes and decision-making, including peacebuilding activities" during the process of voluntary repatriation.[24] However, in the final version of the Compact (December 2018), this commitment had been removed.[25] The original

[21] Lafleur, 41. The historical relationship between the emigrant group and the Government may also be a key determining factor. For more on this, see: Michael Collyer, "A Geography of Extra-Territorial Citizenship: Explanations of External Voting," *Migration Studies* 2, no. 1 (March 1, 2014): 55–72, https://doi.org/10.1093/migration/mns008. Of course, Colombia having very generous external voting policies is perhaps a counter-example to this claim, as it likewise has a very large overseas population but nevertheless has adopted very liberal OCV policies.

[22] IDEA, "Institute for Democracy and Elactoral Assistance (IDEA) Voting from Abroad Database," April 2021, https://www.idea.int/data-tools/world-view/52.

[23] This of course only applies to refugees who have retained their citizenship – some may have gained new citizenship and voluntarily renounced their previous status. Some may have been subject to denationalization as well as forced displacement; Rohingya refugees for instance are often *de jure* stateless persons as well as refugees, having been stripped of or indefinitely denied formal inclusion. Indeed, in Hannah Arendt's famous discussion of refugees, legal statelessness and refugeehood go hand in hand as Jewish refugees fleeing Germany were also legally stripped of formal status. Voting rights to for such individuals may of course be just as morally important, but their legal status is at least contested in the case of lacking formal citizenship.

[24] United Nations, "The Global Compact on Refugees (Draft One)," March 2018, 17, https://www.unhcr.org/5aa2b3287.pdf.

[25] United Nations, "The Global Compact on Refugees," December 2018, https://www.unhcr.org/5c658aed4.

wording fell short of explicitly endorsing a right to vote for refugees, but it would nevertheless have signalled a recognition from states that the displaced are relevant political actors in the country of origin, particularly during periods of change.

Despite this lack of formal commitment, refugee voting has become more common in recent decades. As we saw in the introduction, one of the most successful refugee-inclusive elections took place in 1996, following the Dayton Peace Accord of Bosnia and Herzegovina. This pivotal election included those who had been displaced by conflict, who mostly voted from camps across Europe. Other refugee-inclusive elections have taken a different approach. For example, in some cases, refugees have been returned to their country of origin in time to take part in an important election or referendum. This approach was used in both Zimbabwe (then Rhodesia, 1980) and Cambodia's (1991) elections.[26] In both cases, UNHCR assisted the return of refugees before the pivotal election was due to take place locally. As Katy Long points out, such an approach is unlikely to ensure a durable solution for refugees; political engagement, though important, should not be the only standard for repatriation.[27] Our focus here is on refugees voting overseas, rather than on repatriation in order to take part in elections locally.[28] However, as we will see, out of country voting is still importantly linked to the question of eventual return.

In the last thirty years, refugee OCV has been implemented in many cases, including in Bosnia and Herzegovina (1996), Eritrea (2001), Afghanistan (2004), and Syria (2014). Refugees displaced from countries with liberal external voting policies are often also enfranchised along with other non-resident citizens. For instance, Colombian refugees often have full access to voting after displacement. Despite becoming more popular, UNHCR and IOM still lack a comprehensive

[26] Long, "Voting with Their Feet A Review of Refugee Participation and the Role of UNHCR in Country of Origin Elections and Other Political Processes," 11.
[27] Long, 11.
[28] I come back to the question of return in time for elections at the end of the chapter.

framework to encourage the formal political inclusion of refugees.[29] They therefore often remain the last group to be politically included, with some countries purposefully excluding those in exile and others unable to bear the logistical and financial costs.[30] Importantly, where refugees do not enjoy general external voting rights, OCV is often tied to peacebuilding processes in the country of origin: the (re)enfranchisement of those who have been exiled becomes an important symbolic and practical tool for rebuilding a legitimate political regime. Refugee-inclusive elections therefore often take place at pivotal moments for the country of origin. For example, the 2001 Eritrean referendum determined whether the country should gain independence from Ethiopia, following decades of conflict. In this and the Bosnian case, refugees were enfranchised at least in part because of the gravity of the political moment. I will come back to the symbolic importance of political inclusion later on because – as we know – it is important for the guarantee of membership as effective citizenship.

However, we should note the numerous practical problems with OCV that may bar refugees from proper inclusion in elections. First, because of the kinds of elections in which refugees are often included, their voting is often taken to signal an intention to return to the country post-reconstruction. As the country is going through a fundamental political change, it is thought that the refugee will be able to repatriate safely.[31] Indeed, some peace agreements have made this explicit. For instance, the Dayton Peace Accord confirmed that "the exercise of a refugee's right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina."[32] This presumption of return does two things. First, it may bar refugees from voting

[29] Both IOM and UNHCR have been responsible for over-seeing refugee voting mechanisms abroad, this with usually depending on camp management and the history of each organisation in the particular region.
[30] Jeff Fischer, "The Political Rights of Refugees and Displaced Persons: Enfranchisement and Participation" (In The International IDEA Handbook: Voting from Abroad IFE., 2007), 153.
[31] Other instances of fundamental political change have also brought about an expansion in the demos. For instance, in the first election in post-apartheid South Africa in 1994, the independent electoral commission opted for universal adult suffrage. These moments of political remaking, then, often have an expansive character even without factoring in displacement.
[32] Europe - Miscellaneous, "Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovinia," sec. IV.

if they do not wish to signal an intention to repatriate. Second, it presumes that, following an election, the country of origin will be safe for return. However, as Katy Long points out, these pivotal elections often do not lead to long-lasting change.[33] For example, the Eritrean referendum on independence, unfortunately, did not lead to a democratic state. As she puts it: "the referendum confirmed national self-determination: but it did not provoke meaningful democratic safeguarding of liberal, individual, human rights and freedoms."[34] One election is clearly not sufficient to ensure that a country will be safe for refugee return.

In a similar light, some autocratic regimes may use elections in an attempt to gain international legitimacy. For instance, the IDEA report on refugee political participation cites the Syrian 2014 elections as one such case.[35] In this instance, the autocratic leader Bashar al-Assad is thought to have used the enfranchisement of refugees as a way of garnering international credibility. Many countries, including most of the European Union member states, therefore did not allow Syrians abroad (including refugees and non-refugees) to vote in this election. The report argues that "the enfranchisement of refugees should not be taken as a compelling sign of democratization, but instead assessed cautiously and kept in context. In fact, in the aftermath of violence, an immediate introduction of universal suffrage in a highly polarized electorate can empower radical elites and extremist groups."[36]

There are also numerous obvious practical problems with refugee OCV. Refugees often flee their home state without documentation and therefore, ensuring their identity is difficult, particularly if the country of origin is concerned about widespread election fraud. This lack of documentation

[33] Moments of stark political change might, in fact, be a particular dangerous time to return. Similarly, willingness to return may be conditions of the outcome of the vote itself, not just the ability to participate.
[34] Long, "Voting with Their Feet A Review of Refugee Participation and the Role of UNHCR in Country of Origin Elections and Other Political Processes," 22.
[35] Armend Bekaj and Lina Antara et al., "Political Participation of Refugees: Bridging the Gaps," 77.
[36] Armend Bekaj and Lina Antara et al., 80.

often fuels worries that non-citizens are illegally voting in and therefore corrupting elections.[37] In order to combat these worries, international agencies such as UNHCR or IOM are often involved in overseeing the integrity of the vote. Still, in some cases, refugees are actively discouraged from voting or engaging in the political life of the country of origin. For instance, Tigranna Zakaryan notes that in the case of Congolese and South Sudanese refugees in Uganda, refugees were told not to engage in political activity due to worries about the replication of ethnic or tribal divisions in the host country. Therefore, despite Uganda's positive international reputation for refugee protection, "the space allowed for refugees and asylum seekers to participate in political decision-making on issues that affect them and to campaign for stability in their home countries using political platforms is heavily curtailed."[38]

Despite all of the above difficulties, there are some refugee OCV events that are thought to have been widely successful. For instance, IDEA names the 2004 Afghanistan election as a successful case of refugee enfranchisement. In this election, one in ten members of the electorate were refugees voting from abroad, and the organisation avoided concerns about election fraud and overwhelming cost. So, even in countries without strong external voting practices, refugees can often be successfully included.

Putting these practical concerns to one side, we will now turn to the question of whether refugees have a *right* to vote from abroad and, importantly, whether this needs to be coupled with an intention to return.

[37] Armend Bekaj and Lina Antara et al., 76. Of course, the lack of documentation might also be intentionally weaponized to generate worries about the inclusion of refugee populations.
[38] Tigranna Zakaryan, "Political Participation of Refugees: The Case of Congolese and South Sudanese Refugees in Uganda" (International IDEA, 2018), 7, https://www.idea.int/publications/catalogue/political-participation-refugees-bridging-gaps.

Political theory and expatriate voting

As we saw in chapters five and six, the moral entitlement to vote is often closely tied to residency in the state. The all-affected interests principle (AAI) and the coercion principle both claim that residents in the state should have a right to vote. For the AAI, all residents are affected by the decisions of the state in virtue simply of living in its jurisdiction. However, the reach of the AAI extends beyond the borders of the state to anyone who is affected by a decision. Non-residents would therefore have a claim to inclusion on the same grounds as residents. As Iris Marion Young simply puts it: "not only should all those affected be nominally included in decision-making, but they should be included on equal terms."[39] We should remember from chapter five that the AAI offered a potentially over-expansive view of who should be included in the electorate through its vague understanding of "affected interests." Again, though, my aim here is not to evaluate the merits of these various approaches, but instead to consider how they apply to the question of refugees in comparison with the membership view. For the coercion principle, residents have a strong claim to inclusion because governments can only legitimately enforce laws over a limited jurisdiction which includes (at least) the territory of the state. Again, subjection and coercion can extend beyond borders, as Abizadeh argues concerning migrants' subjection to border controls. However, in general, residence is even more important for the coercion principle than for the AAI because it determines a core group of individuals who ought to be included in the demos.

These views might be seen as part of an expansive turn in the literature on democratic inclusion. That is, political theorists have sought to justify how resident non-citizens, such as migrants and temporary workers, can become entitled to political inclusion. Most often, this extension of inclusion is based on residence which acts as a proxy for determining whether someone meets the relevant criteria for entering the demos or citizenry. In doing so, theorists are able to show why

[39] Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2002), 20.

long-term residents in the state are entitled to inclusion. One of the consequences of this focus on residency is how it impacts our thinking about non-residents, particularly *non-resident citizens* who retain formal status in the state but live elsewhere. Whether expatriates should be entitled to vote, then, is perhaps something of a puzzle for these new residency-based arguments. Indeed, as Rubio-Marín argues, the idea of external citizenship is a presumptive challenge to the paradigmatic territorially bounded nation-state: "external citizenship is about people who, in spite of having left the nation-state as a territorial space of coexistence, aim to continue enjoying and exercising their political membership status (in terms of identity, legal status, and entitlements) from within the territory of another national community."[40]

Each of these views implies a different conclusion on the question of expatriate voting. For the AAI and coercion principles, whether expatriates should be able to vote simply depends on whether they remain affected or subjected to the laws of the home state. Some, therefore, argue that non-residency can justify disenfranchising citizens living overseas, as they no long meet the relevant condition for inclusion. Perhaps most powerfully, López-Guerra argues that justice in fact *requires* that states exclude all non-residents, even those who retain formal citizenship. He proposes a total decoupling of citizenship rights from inclusion in the demos and, as such, "the demos of a democratic polity must exclude all individuals who are not subject to the laws."[41] Inclusion in the demos for López-Guerra should be entirely dependent on residence because subjection is the only relevant condition. However, it's not true that all those residing outside of the state are therefore necessarily not subject to its laws. For instance, Owen considers examples that directly impact expatriates – for instance, the Mexican referendum to which non-resident citizens are, by

[40] Ruth Rubio-Marín, "Transnational Politics and the Democratic Nation-State: Normative Challenges of Expatriate Voting and Nationality Retention of Emigrants Symposium: A Tribute to the Work of Kim Barry the Construction of Citizenship in an Emigration Context: Symposium," *New York University Law Review* 81 (2006): 120.
[41] López-Guerra, "Should Expatriates Vote?*," 225.

definition, subject.[42] Another obvious example of international subjection is found in the United States taxation system. Citizens of the United States are required to pay taxes at home no matter where in the world they live or how long they have spent abroad. Changes to the tax system in the US, then, quite evidently subject non-resident citizens. If this is the case, then justice does not demand the immediate disenfranchisement of non-resident citizens. Rather, it might demand determining the reach of subjection across borders.

A more nuanced position is put forward by Patti Lenard who implies that the importance of residency gives us a presumptive reason in favour of eventual disenfranchisement for expatriates. She argues that the assumption that non-resident citizens should *always* retain the right to vote, no matter their length of time abroad, is misguided and dependent on the idea that co-citizens "are bound by characteristics that do not erode over time."[43] In particular, she discusses citizens of Canada who live overseas and retain their voting entitlement, no matter how long they are abroad. If there is no ongoing relationship of subjection to laws or social membership, then the grounding for this appears to depend on some ethnic-nationalist conception of who "belongs" to a particular place. But this tendency to extend the vote to non-resident citizens without also offering it to long-term resident non-citizens is not defendable, in Lenard's view. Therefore, if we accept that residency grounds an eventual entitlement to vote, then non-residency can erode this entitlement. Lenard holds that we should "sever the right to vote from citizenship status and argue instead that residence in a territory, over time, serves as the basis for extending the right to vote in that territory."[44] Therefore, the eventual disenfranchisement of non-resident citizens may be required. A similar position is taken by Rubio-Marín who argues that whilst expatriates may have a claim to keep their citizenship indefinitely, they do not have an ongoing claim to inclusion in the demos.

[42] Owen, "Transnational Citizenship and the Democratic State: Modes of Membership and Voting Rights," 646. This example is also considered by López-Guerra but he claims that it does not constitute subjection.
[43] Patti Tamara Lenard, "Residence and the Right to Vote," *Journal of International Migration and Integration* 16, no. 1 (February 1, 2015): 122, https://doi.org/10.1007/s12134-014-0328-6.
[44] Lenard, 119.

As she puts it: "they [non-residents] are not directly and comprehensively affected by the decisions and policies that their participation would help to bring about even if they are likely to be affected by some of those decisions, such as those concerning remittances, nationality, and military service laws."[45] The fact that non-resident citizens aren't affected or subjected to the same extent as those living within the boundaries of the state might therefore justify excluding them. Nevertheless, Rubio-Marín maintains that non-residents have a right to retain their citizenship, no matter the period abroad, as it is often a source of non-instrumental value for them. As Owen notes, retaining citizenship can also have instrumental value, in terms of visiting family and the possibility of eventual return.[46] A more neutral position is adopted by Bauböck, who argues that individuals *can* be stakeholders in a given state without needing to be resident there. Therefore, an individual whose future well-being is intertwined with the future of the state can retain a right to vote during times of non-residence.[47]

There are often more practical objections to expatriate voting that may cause concern. Two are worth briefly considering here. First, some argue that because expatriates live abroad, they do not have to shoulder the consequences of a particular political decision. They therefore may be less careful or considered when voting for a particular candidate or outcome. Second, expatriates might also lack relevant knowledge of the situation in their previous state. Living abroad might therefore impact an individual's ability to determine the best course of policy. One thing that we should immediately note is that these concerns are not often raised when considering resident citizen's right to vote. That is, we do not question whether an individual within the state feels the impact

[45] Rubio-Marín, "Transnational Politics and the Democratic Nation-State: Normative Challenges of Expatriate Voting and Nationality Retention of Emigrants Symposium: A Tribute to the Work of Kim Barry the Construction of Citizenship in an Emigration Context: Symposium," 129.
[46] Owen, "Transnational Citizenship and the Democratic State: Modes of Membership and Voting Rights," 649.
[47] Rainer Bauböck, "Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting," *Fordham Law Review* 75, no. 5 (2007): 2422. Discussed in Owen, "Transnational Citizenship and the Democratic State: Modes of Membership and Voting Rights." Owen critiques both of these positions, arguing that they fail to focus on the central democratic question raised by expatriate voting. Namely, who gets to decide whether expatriates can vote on certain matters? He calls this the problem of the arbitrary demos.

of a political outcome or is in a well-informed position to vote. We could easily imagine cases in which this would be true; for instance, a citizen who lives out in the middle of the countryside is isolated and is therefore rarely impacted by changes in policy. He also potentially lacks information; he does not speak to his fellow citizens too much and rarely travels to the city. Presumably, we would not question such a citizen's entitlement to vote.[48] The extent to which non-residents necessarily determines these two worries is also up for question. For instance, a long-term expatriate may in fact know a great deal more than our countryside resident, for example, if she travels home once a month and attends local town meetings. Likewise, she may be affected *more* by a particular policy than our resident, particularly if new laws on tax status are brought in. The idea, then, that people should only be allowed to vote on matters that they are directly implicated in doesn't seem to be applied evenly across the board.

Perhaps obviously, the different positions on inclusion in the demos for resident non-citizens also have various implications for non-resident citizens. That is, depending on your commitments to how democratic and political inclusion should be determined, you will have a potentially pre-determined commitment to the question of expatriate voting. The question, though, is potentially somewhat different in the specific case of those forced to leave their homes.

Refugees and differentiated external voting rights

Approaches to a refugee's entitlement to vote in exile can be divided into two groups: those who view refugees as a special case, and those who treat refugees as the same as others outside of the state. In the latter vein, López-Guerra argues that refugees should be treated the same as other expatriates; namely, that they should be (as a matter of justice) excluded from the demos. He writes:

[48] Indeed, in the United States, rural votes often count more than voters in urban centres.

> The causes of immigration, deplorable as they may be, have nothing to do with the reasons for enfranchisement. Voting has the purpose of creating a government for the governed; the franchise cannot serve to compensate for economic or other kinds of injustice.[49]

On his view, including refugees in the demos would be mistaken because the only relevant criterion for inclusion is whether one is subject to the laws of the state. Since (on his account), no non-residents are subject to the laws of the state, refugees ought to be excluded as well. We have already rejected López-Guerra's argument that only residents are subjected to the laws of the state and, indeed, this is perhaps even more obvious in the case of refugees. We can imagine an example in which a country holds a vote on whether refugees should have the right to eventual return. Who would be subject to this new law banning repatriation? Of course, it would be the refugees living in exile. Citizens inside the state would not obviously be subject to such a law at all, as its application depends on being forcibly outside of the state to begin with. So, refugees can obviously be subject to the laws of a given state and sometimes even exclusively so. However, as with the case of expatriates generally, the fact that the state is not obliged as a matter of justice to exclude refugees does not mean they are obliged to include them.

López-Guerra appears to be an outlier in treating refugees as the same as all other expatriates. Rather than taking a neutral stance on the position of refugees, most argue that they are a special case. Specifically, most hold that those forced to leave their state have a special claim to expatriate voting, over and above the claims of voluntary migrants. Therefore, expatriate voting for refugees is in fact *required* as a matter of justice. For Gallagher and Schowengerdt:

[49] López-Guerra, "Should Expatriates Vote?*," 2438.

> Refugees have not in any way relinquished their citizenship by seeking asylum, but rather cannot avail themselves of the protection of their country of origin because current conditions therein pose a threat to either their lives or livelihood. As citizens, therefore, they have the right to participate in the electoral processes of their country.[50]

In a similar vein, Ruvi Ziegler argues that:

> Refugees have a strong normative claim to remain eligible voters and to have access to OCV procedures. It is a constitutive element of their status that recognised refugees have left their state of origin involuntarily and cannot or will not exercise their right to return and vote in person; hence, absent access to OCV, they are effectively disenfranchised."[51]

Again, along similar lines, Bauböck argues that because refugees have been forcibly displaced, they have a strong claim to inclusion in the demos from abroad. He writes:

> Forced migrants would have been citizens with voting rights had the state protected them from violence as it should. Restoring their citizenship rights is thus, first, a matter of rectificatory justice. Second, doing so does not merely satisfy individual claims but simultaneously restores the demographic continuity of the political community in terms of its membership, which had been distorted through the forced exile of some of its members.[52]

As the refugee was forced to flee her state, she has a special claim to vote whilst in exile, or so it is claimed. This seems to be based on two distinct concerns. First, the refugee has not consented to disenfranchisement. That is, because a forced migrant necessarily could not have agreed to lose

[50] Dennis Gallagher and Anna Schowengerdt, "Participation of Refugees in Post Conflict Elections," in *Postconflict Elections, Democratization, and International Assistance (Ed. K Kumar)* (London: Lynne Rienner, 1998), 199.
[51] Ziegler, "Out of Country Voting: The Predicament of the Recognised Refugee," 300.
[52] Bauböck, "Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting," 2436.

her vote, she is entitled to keep it. This idea relies on the view that voluntary migrants – in choosing to move – have consented to the terms of such movement, even if it includes potentially losing their right to vote. Of course, this does not obviously give refugees a claim to vote in perpetuity. Consider for example a refugee who has received citizenship in her state of asylum (as indeed they should be, following my argument in the previous chapter). And imagine that the situation in her state of origin then resolves itself after several years, and she has the opportunity to voluntarily return. However, she chooses not to and instead commits to spending the rest of her life in her new state. Although the original cause of her movement was forced, this no longer seems to impact whether she has a claim to vote in the same way. There appears to be at least some point when Lenard's concerns about residency kick in in the case of the refugee as well: if she lives for twenty years outside of her country of origin and has no intentions to go back, it is not clear that she should still receive the right to vote even if she did not originally consent to alienage. Second, the claim that refugees are special vis-à-vis expatriate voting also seems to be grounded in its reparative potential. Refugee movements, particularly in situations of mass displacement, fundamentally reshape the political community of the state. That is, in failing to politically incorporate those who have been forced to flee, the demos is altered and needs to be reconstituted. Inclusion in the form of voting could signal an intention on the part of the country of origin to maintain an ongoing relationship with the refugee and rebuild the demos as it previously was. Indeed, it could be a way of re-building such a relationship if it has been destroyed. This aspect of expatriate voting is central to the membership view's implications, to which I now turn.

Membership and the right to vote in exile

This section considers how the membership view shapes our thinking about refugee enfranchisement in the state of origin. Here I argue that refugee political inclusion is a necessary condition for successful return and the re-establishment of effective citizenship in the state of

origin. Therefore, accepting the membership view has consequences for how we think about voluntary repatriation. In particular, it gives us another reason to accept Katy Long and Megan Bradley's proposals that return is a political rather than a physical process. A reminder here that the holding of membership (as effective citizenship) depends on three conditions: holding formal citizenship, the institutions and capacity of the state, and the social and political standing of the individual. I argue that political inclusion through out of country voting is often required for securing the final condition, though it is not sufficient.

Before we begin to outline why political inclusion is necessary, I should clarify one potential concern. We might worry that the membership view has little to say about the state of origin, given that on my account this is precisely where the refugee has lost her membership. Perhaps, at first glance, one might argue that my account shows that the refugee does not have an entitlement to vote precisely because of this lack of membership. We should remember here the two different types of membership that I outlined in chapter two: membership as *affiliation* and membership and *effective citizenship*. I argue that the refugee has lost the latter form of membership and is, therefore, unable to stand in a stable relationship of rights guarantee with her state. However, I do not claim that the refugee has lost her affiliation with a particular state, which potentially entitles her to inclusion in the particular place. The main force of the membership view is not to offer an account of who is owed membership *where* but instead to show that membership *somewhere* is crucial for security and the guarantee of rights. This membership requirement is a basic condition of the legitimacy of the global system of territorially bounded states. However, we noted in chapter two that there may be particular reasons of justice why someone requires membership in a particular place: for instance, if they have lived there all their lives and it functions as a source of non-instrumental value for them. It could also serve instrumental value if one's family, friends, and work are located in a particular place. The force of the arguments concerning refugee voting outlined above come, in part, from the idea that she has a particular entitlement to inclusion in *her*

state, not just any state. We can therefore maintain that while refugees lack membership as effective citizenship, they can maintain this strong bond of affiliation. Indeed, as the above arguments demonstrated, she may maintain a title to inclusion in her state of origin more powerfully precisely because she was forced to leave. The question for us here then is this: if a refugee wishes to return to her country of origin, what conditions must be met for her membership to be secured? Voting, I argue, is one way in which the state of origin might begin to repair this severed relationship.

We might still wonder why the refugee has a claim to return to her state of origin, particularly given that the requirements of legitimacy are met if she has membership elsewhere. If a refugee has been offered citizenship in her state of asylum, why do we need to concern ourselves with claims to return? As a matter of legitimacy, the membership view only requires that a refugee enjoy membership *somewhere*. However, as mentioned in the introduction, there may be reasons of justice to ensure membership in a particular place. Likewise, as refugees often hold citizenship in their state of origin – unless they are formally denationalised – they formally retain a claim to return if they ever wish to do so.[53] As Mazen Masri argues, the refugee's legal right to return is not impacted by the acquisition of new citizenship.[54]

So, why is political inclusion a necessary condition for the re-establishment of membership? First, as discussed in chapter two, the extension of formal political status serves an important social function. As well as showing that an individual is legally entitled to make certain claims, it also affords them a level of political and social standing. This standing is necessary for them to be able to claim their rights effectively. Judith Shklar discussed this function of enfranchisement in *American Citizenship* when considering why the extension of the right to vote was so important to

[53] This right is codified in article 13 of the Universal Declaration on Human Rights and article 12(4) of the International Covenant on Civil and Political Rights.
[54] Mazen MASRI, "The Implications of the Acquisition of a New Nationality for the Right of Return of Palestinian Refugees," *Asian Journal of International Law* 5, no. 2 (2015): 356–86, https://doi.org/10.1017/S2044251314000241.

the politically excluded. She argued that the vote was not simply a way of having a say in a given state but also a way of signalling status.[55] I argued in the previous chapter that this function of citizenship is another reason to naturalise refugees in the state of asylum; it helps to make their status and rights more secure, and it also goes some of the way to ensuring that they have the social standing to claim these rights and entitlements securely. Here we can see the ways in which this symbolic function of political inclusion can apply to the state of origin as well, particularly under conditions of return.

In *Refugee Repatriation: Justice, Responsibility, and Redress,* Megan Bradley considers the minimum conditions for *just return*. She argues that "just return is best understood as the restoration (or creation) of a legitimate relationship of rights and duties between returnees and the state, such that returnees and their non-displaced co-nationals are rendered equal as citizens."[56] Importantly for her, "the goal of a just return process must be to put returnees back on equal footing with their non-displaced co-nationals by restoring or creating a new relationship of rights and duties between the state and its returning citizens."[57] Understanding return as a political and social process, as opposed to a physical one, is an important feature of Bradley's account. Under conditions of just return, refugees must be offered inclusion on the same terms as other citizens. This involves an important reparative element; in order for refugees to be fully included in the political community, there must be a process of redress for the harms that caused them to flee.

[55] Shklar is specifically discussing what enfranchisement symbolises in America, which she argues is particular because of the way in which disenfranchisement was used to keep certain groups from enjoying equality and dignity. Namely, Black Americans and women. However, these lessons of the importance of the vote can be pulled over the different contexts, particularly when denial of political inclusion in exile could point towards purposeful exclusion. Shklar, *American Citizenship: The Quest for Inclusion*.
[56] Bradley, *Refugee Repatriation: Justice, Responsibility, and Redress*, 45. There is of course an interesting question here as to whether refugees have duties to their states of origin during exile, particularly in cases where rights are not being guaranteed. Judith Shklar argues that suffering persecution destroys all previous bonds of loyalty.
[57] Bradley, 44.

The re-establishment of political equality is also central to Katy Long's account of return. For Long, repatriation is "return to citizenship and national belonging on both an individual and a collective level."[58] Importantly, Long underlines the need for political bonds rather than physical return; "repatriation must involve return not to a place, but to a political community."[59] Therefore, repatriation is about (re)building the political relationship of rights guarantee as opposed to the physical replacing of an individual into their state of origin.[60] For Long, greater flexibility is required around the concept of citizenship and political engagement. People can and often do enjoy the political protection of their state while abroad. This standard – which is widely available to citizens of states in the Global North – ought to be applied to refugees. In other words, "modern forms of citizenship can involve long-distance forms of political engagement and migration can be very much a component of contemporary understandings of functional citizenship."[61] An approach to political repatriation without physical return was taken in the early 2000s for refugees who had fled war in Liberia and Sierra Leone for Nigeria. When return was safe, refugees were offered the ability to stay in Nigeria on residency permits whilst being sent a passport by their state of origin, as a way of offering them new documentation. At the end of 2009, Sierra Leone had issued 5,600 passports to those wishing to re-establish their citizenship but wanting to remain abroad.[62]

The membership view complements this position. That is, membership in a state is a fundamentally political relationship as opposed to a physical one; it depends on the security and guarantee of rights. Therefore, it is consistent with my view that repatriation can occur without physical return. What is required as a matter of legitimacy is that all individuals enjoy membership

[58] Long, *The Point of No Return*, 1.
[59] Long, 2.
[60] Long also discusses cases of *emplacement,* the establishment of this relationship for refugees who have lived in exile for their entire lives. This process is more likely creating a new form of political affiliation, rather than recreating the old.
[61] Long, *The Point of No Return*, 204–5.
[62] Long, 206–7.

somewhere – if this can be re-established without physical repatriation, then there is no need for the refugee to return.

So, how can we ensure, then, that the relationship that Bradley and Long stipulate can be recreated? I want to suggest that voting is one important way in which this political relationship can be (at least partially) restored. That is, re-enfranchising refugee populations can signal that the state of origin recognises their citizenship and is attempting to make good on this political relationship. As Long puts it: "the extension of voting is seen as symbolic because it comes to represent a state formally recognising that refugees are part of the core political community. That is, the extension of voting reaffirms the right of the refugee to be considered a political citizen."[63] Moreover, it is not only symbolic but a necessary feature of the equality of citizens. Long continues:

> If refugees are to be engaged as equal citizens within a post-conflict country of origin, they need to participate not only in choosing the government, but also in government itself, contributing to the construction of a sustainable peace.[64]

In cases of state persecution, this re-establishment of voting could also include a reparative function. Offering refugees political inclusion in the state signals at least partial recognition of past wrongs.[65] In cases of non-state persecution, voting can signal recognition that the individual is a citizen of the community in question even if the individual is unable to live within the territory of that state at that time. Therefore, the extension of voting rights to refugees living in exile can help to fulfil the first and third conditions of membership as effective citizenship: it shows a

[63] Long, "Voting with Their Feet A Review of Refugee Participation and the Role of UNHCR in Country of Origin Elections and Other Political Processes," 19.
[64] Long, *The Point of No Return*, 42.
[65] This, perhaps obviously, would not be a sufficient form of reparation, but could be some part of the story. It would need to occur alongside other forms of reparation, for instance the reinstating of property.

commitment to the equal citizenship of refugees and can signal to the broader community that the refugee is entitled to the same level of political standing as those living inside the state.

Of course, expatriate voting for refugees is not sufficient to ensure that a membership relation has been re-established. Presuming this has been the mistake of linking voting to imminent return, such as in the case of Eritrea and Bosnia; voting is not enough to show that return will be successful. Instead, as the other conditions of the membership view stipulate, the state of origin also needs to have stable institutions to be able to guarantee the individual's security. However, what the membership view does reinforce is that political inclusion is a necessary part of the re-establishment of this relationship.

Before I turn to objections, we must consider the case of non-democratic states. That is, what if refugees are fleeing states in which elections are not held (as many of them do), or in which elections substantively mean very little. For instance, refugees fleeing North Korea are unlikely to be included in the political life of that country, as this is not even open to current residents. Importantly, other forms of political inclusion may be sufficient, as long as they bring non-residents up to a sufficient level of standing. In the last chapter, I mentioned that benign monarchies may be able to establish the kind of relationship that is necessary for membership as effective citizenship. There are various ways that such a country could signal its commitment to refugees in exile. For instance, they might have representatives in government working on behalf of refugees or allow refugees seats on committees that inform the government's approach to policy. Whether this is a legitimate or just form of governance in itself here is not our concern. All that we need to note is that, as long as refugees intending to return are allowed equal representation with other citizens, then the standing condition can go some way to being fulfilled.

Objections and replies

This section considers four key worries that may be levied against the argument in this chapter. First, one might ask why voting in *exile* is specifically important for the refugee's case. That is, as discussed earlier in the chapter, it is possible for refugees to be re-enfranchised upon their return to the state of origin. It's perhaps not obvious why voting from abroad is so important to my account. There are a few things to be said here. First, the idea that refugees could return home to vote is not closed off to my view, just as alternative forms of political inclusion are also possible. For instance, if a state were holding an election in several years' time, it would be possible for a refugee to return prior to this and be democratically included post-repatriation. Membership – as the effective guarantee of rights – therefore can be rebuilt in other ways. However, voting from abroad is still important for several reasons. We can imagine situations in which the refugee cannot return to her state because it is not safe but nevertheless wishes to remain politically included in her state of origin. Voting while abroad is therefore a way to ensure that the refugee can retain some kind of relationship with her previous state, even while it is not possible to voluntarily repatriate. Moreover, recognition of voting from abroad is better suited to the more fluid and non-territorially bounded forms of political life that we saw above. That is, given that we want membership to be able to be rebuilt from abroad, out of country voting is a straightforward way to begin this process.

Second, some might worry that it is overly costly to guarantee refugees citizenship in their state of asylum (as I argued in the previous chapter) and make political inclusion in the state of origin necessary as well. There are a few things to highlight here. First, political inclusion in elections is only a necessary condition on my account in cases where refugees wish to return and re-establish membership in their state of asylum. This is because it functions as a way to signal the re-building of a secure relationship between the individual and her state. In cases where refugees are happy to completely sever their relationship with their state of origin and never want to return, this standard

is not required. Nevertheless, unless the refugee in this case actually renounced their citizenship in their state of origin, they may still have some eventual claim to return, should they ever desire it. Moreover, some theoretical commitments still give rise to worries about dual nationality. For instance, communitarians often fear that dual nationality is a threat to democracy.[66] Insofar as communitarians are committed to an idea of loyalty to the community, some may worry that citizenship in two states can disrupt this important relationship. Moreover, given that dual nationals are often migrants, they potentially undermine the kind of homogeneity and cultural integration that is necessary for the development of the communitarian ideal. However, as Joachim Blatter points out, there are several reasons to be sceptical of this argument. First, we might question communitarians emphasis on loyalty to a specific community as being based on ethnic or cultural homogeneity. That is, it is not obvious that the empirical evidence supports the claim that dual nationals are less loyal to a particular country.[67] Second, we of course might simply reject the kinds of grounds upon which communitarians are concerned with membership. Importantly for our focus, the protection and security of rights is our main aim when considering citizenship for refugees. Given that many non-refugees enjoy dual nationality without question, that same flexible standard should be applied to refugees as well.

Third, and relatedly, some may worry that this proposal raises concerns of double voting. For instance, it may seem immediately unfair that a refugee should be allowed to vote in their state of asylum as a condition of their citizenship and in their state of origin as a way of re-establishing a relationship of eventual return. However, the apparent unfairness of multiple votes in different polities disappears once we consider that votes do not automatically improve one's life chances: that is, if I can vote in the UK and Italy, this is not obviously unfair as long as my claim to vote in each polity is strong. As Bauböck puts it, "votes are… not individual assets to improve one's life,

[66] Joachim Blatter, "Dual Citizenship and Theories of Democracy," *Citizenship Studies* 15, no. 6–7 (October 1, 2011): 779–82, https://doi.org/10.1080/13621025.2011.600090.
[67] Blatter, 781.

but opportunities to participate in electing a government whose decisions will affect the future of all its citizens."[68] Moreover, the problem of double voting is only an actual problem when individuals are represented twice in one system of governance, for instance in a federal union. Therefore, "federal democracies therefore generally prohibit horizontal multiple voting at the level of their constitutive units. This problem may eventually arise in the European Union, but it simply does not apply to multiple voting in fully independent states."'[69] There is of course an interesting empirical question to ask with regards to how many states one can have a genuine claim to vote in. In the case of the refugee, both of her claims to vote rest on her citizenship – she will (under ideal conditions) be a citizen in the state of asylum and a citizen in the state of asylum. Two hardly seems like so many claims as for us to void them in the case of the forcibly displaced, particularly given how many voluntary migrants enjoy double voting across the world.

A final worry might be raised about the financial cost of this proposal. As I am arguing that political inclusion is a necessary prerequisite for a refugee's successful return to effective citizenship, many countries hoping to re-integrate refugees would have to foot the bill for external elections. As I mentioned above in the case of states who don't hold elections, there may be other ways to signal the re-inclusion of refugees in the political community. For instance, through reparative processes, public statements, or other forms of group representation. Two things could be said here. First, there may be good reasons for the international community to assist states wishing to signal this kind of political commitment. For instance, if a state wishes to hold a refugee-inclusive election but lacks the ability to do so, then other states or international organisations may have an obligation to assist, particularly if refugees genuinely wish to return. This does often happen in refugee-inclusive elections, as those held in camps are usually arranged by UNHCR or IOM. Second, the lack of ability to hold elections abroad might signal a failure in capacity that could undermine the

[68] Bauböck, "Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting," 2428.
[69] Bauböck, 2427.

assurance of a successful return. A refugee being included in the political decision-making of the state is not sufficient to guarantee membership. My argument is simply that is one necessary step in the right direction.

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This chapter has sought to consider the refugee's membership with her state of origin. In particular, I have examined how external voting mechanisms may help to rebuild the relationship that has been lost between the individual and her state. I, therefore, focused on out of country voting and its relationship to a sustainable return. I argue that political inclusion is a necessary prerequisite for return to a political community. I also argue that the membership view reinforces the view that "repatriation" can occur without physical return. Instead, return is about re-establishing the political relationship between the refugee and her state. As we saw in this chapter, other normative views on political inclusion also seem to accept a refugee's special claim to vote in her country of origin. Therefore, despite much current practice, a refugee's claim to vote in her state of origin might be overdetermined: she might have a claim based on the standards of democratic theory but also on the standards required for the guarantee of membership. This focus on rebuilding previous memberships, then, gives us another reason to support refugee voting in exile.

CHAPTER EIGHT

Political Membership and The Refugee Camp

On September 11th, 2020, the Greek Island of Lesvos was the centre of a mass protest. Forced migrants who had been living in the Moria camp, some for several years, were calling for change. A fire had ripped through the camp three days earlier, leaving its 13,000 inhabitants without shelter. The camp residents had already been facing severe movement restrictions due to an outbreak of COVID-19. Several days before, 17 refugees had tested positive for the virus and strict quarantine rules had been enforced.[1]

After the fire, former residents of the camp were left to sleep on the street, with some living in graveyards. When asked by a news reporter what it felt like to sleep among the dead, a young woman replied: "I don't know what I'm feeling. I've lost my feeling here."[2] After three days with little official support, thousands of refugees gathered to protest how they had been treated, as well

[1] Benjamin Bathke, "Greece Reports at Least 17 Coronavirus Cases at Moria Migrant Camp," *InfoMigrants*, September 8, 2020, https://www.infomigrants.net/en/post/27109/greece-reports-at-least-17-coronavirus-cases-at-moria-migrant-camp.
[2] BBC News, "Moria Migrants and Greek Islanders Protests over New Camp," *BBC News*, September 11, 2020, https://www.bbc.co.uk/news/world-europe-54125761.

as to fight against the Government's policy of barring them from moving on to the Greek mainland until their asylum claim had been fully processed. One man interviewed by Al Jazeera commented, "I want to speak about the European Union, who abandoned us, who left us here like this." He said that the EU needed "to come and support us, to not leave us. We are like abandoned children. We have endured things we didn't know could happen."[3] The Greek Government initially blamed the camp residents for the fire, stating that they would only support unaccompanied children, and suggesting that other refugees would be locked up in closed facilities on the island.[4] A spokesperson for the Government said: "some [people] do not respect the country that is hosting them."

This was not the first time that protests had taken place in Moria and the surrounding area. Two years before the fire, the residents of the camp staged another large protest, calling for the right to work or migrate to the Greek mainland. Moria was hugely overcrowded, with new arrivals being kept in pens waiting to be registered. Some had been forced to sleep on the beaches that they had arrived on by boat for days at a time. Tensions had already been rising in the camp with clashes reported between residents and the local police. At that earlier protest in 2019, local law enforcement stopped the residents from moving further than a few hundred meters away from the boundaries of the camp. A woman was pictured surrounded by thousands of others. She held a sign above her that read "Moria is Hell."[5]

[3] Al Jazeera, "Thousands Protest after Greece's Moria Refugee Camp Burns Down," *Al Jazeera English*, September 11, 2020, https://www.aljazeera.com/news/2020/9/11/thousands-protest-after-greeces-moria-refugee-camp-burns-down.
[4] Ekathimerini, "Only Unaccompanied Children Will Leave Lesvos, Says Government Spokesman," *Ekathimerini*, September 10, 2020, https://www.ekathimerini.com/256792/article/ekathimerini/news/only-unaccompanied-children-will-leave-lesvos-says-govt-spokesman.
[5] Reuters Staff, "'Moria Is Hell': Asylum Seekers Protest Conditions at Greek Camp," *Reuters*, October 1, 2020, https://uk.reuters.com/article/uk-europe-migrants-greece-lesbos-protest/moria-is-hell-asylum-seekers-protest-conditions-at-greek-camp-idUKKBN1WG3WA.

The protest in September 2020 was more hopeful. Residents and reporters believed that, since Moria was almost entirely burnt down, the Greek Government might be more sympathetic to their demands. However, a few days later, those who had been forced to leave Moria were woken early in the morning to be told by police officers dressed in hazmat suits that they were being moved to a new camp, now known as Moria 2.0.[6] Speaking to reporters, as refugees were being rounded up into trucks, the Greek Minister for Citizenship Protection Michalis Chrysochoidis said: "today we are doing the obvious thing as a democratic and civilised society. Migrants are being moved from the streets to the new camp… from being abandoned to being cared for. *From no order to order.*"[7]

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The protest in Moria is just one among hundreds of examples of refugee protests and resistance taking place in camps across the world. Refugee camps are often painted as passive spaces where victims of disaster receive humanitarian assistance, but more often than not they are rich with political engagement; camp residents go on hunger strike, use their bodies as instruments of protest, elect officials and representatives, and negotiate with national governments.[8] Whilst political action in refugee camps has been of interest to refugee studies scholars for several years, it has not yet reached political theorists working on forced migration[9]. As mentioned in the introduction of the thesis, there has been something of a political agency turn in refugee studies in the last few decades: a turn which pushes back against the idea of the refugee as a passive

[6] Katy Fallon, "'Moria 2.0': Refugees Who Escaped Fire Now Living in 'worse' Conditions," *The Guardian*, October 7, 2020, https://www.theguardian.com/global-development/2020/oct/07/moria-20-refugees-who-escaped-fire-now-living-in-worse-conditions.
[7] Al Jazeera English, *Refugees in Greece Wary of Entering New Camp after Moria Fire*, accessed December 20, 2020, https://www.youtube.com/watch?v=vohgF9T0l-c.
[8] Katy Long discusses the case of Guatemalan refugees in Mexico who – in exile – organised to resist mass repatriation. They formed a political community in the form of the CCPP (Commission Permanente/Permanent Commission) and negotiated the terms of their return. Long, "State, Nation, Citizen: Rethinking Repatriation."
[9] An exception to this is the work of Serena Parekh whom I will discuss later in this chapter. Serena Parekh, "Beyond the Ethics of Admission: Stateless People, Refugee Camps and Moral Obligations," *Philosophy & Social Criticism* 40, no. 7 (August 28, 2013): 645–63, https://doi.org/10.1177/0191453713498254.

recipient of aid and instead centres her as a political agent in her own right. Political theorists have arguably been slow to respond to this shift and its consequences for our theorising. Indeed, theorists often do a poor job of considering the refugee camp more broadly. Many discussions depend on an outdated understanding of camps and the multiple ways in which they come about. There are many different 'types' of camp, and so any political theory concerning them needs to attend to these differences. As well as taking seriously the harms that refugee camps perpetuate, political theorists should also consider them as potential spaces of political life. It may be then that refugee camps arising from violence and displacement can nevertheless become "sites of innovation and reordering resulting in the creation of new types of legitimacy and authority."[10]

Refugee camps have been described as a "state within a state", opening up the possibility for them to offer membership or citizenship to camp residents.[11] This final chapter aims to take seriously the existence of politics in refugee camps, whilst recognising their place in the current structures of international power. That is, my aim here is to consider whether refugee camps might be able to fulfil the function of legitimacy repair through the provision of membership: in other words, I seek to answer whether can one be a 'member' of a refugee camp. This chapter pushes back against "methodological nationalism" that the thesis has perhaps relied upon so far; a presumption which "perpetuates the idea that people seek and fight for rights and self-determination solely in their national territory, seen as the natural context for achieving a full social personhood."[12] Indeed, as Patricia Owens points out, the three durable solutions for refugees – return, local integration, and

[10] Mark Duffield, *Global Governance and the New Wars* (London and New York: Zed Books, 2001), 6.
[11] Jaber Suleiman, "The Current Political, Organizational and Security Situation in the Palestinian Refugee Camps of Lebanon," *Journal of Palestine Studies* 29, no. 1 (n.d.): 66–80; Ralph Wilde, "Quis Custodiet Ipsos Custodes?: Why and How UNHCR Governance of 'Development' Refugee Camps Should Be Subject to International Human Rights Law," *Yale Human Rights and Development Law Journal* 1 (1998): 107–28; Adam Ramadan, "Destroying Nahr El-Bared: Sovereignty and Urbicide in the Space of Exception," *Political Geography* 28 (2009): 153–63.
[12] Ruba Salih, "From Bare Lives to Political Agents: Palestinian Refugees as Avant Garde," *Refugee Survey Quarterly* 32, no. 2 (2013): 66. For more on methodological nationalism, see Alex Sager, "Methodological Nationalism, Migration and Political Theory," *Political Studies* 64, no. 1 (October 28, 2014): 42–59, https://doi.org/10.1111/1467-9248.12167; Peggy Levitt and Nina Glick Schiller, "Conceptualizing Simultaneity: A Transnational Social Field Perspective on Society," *The International Migration Review* 38, no. 3 (2004): 1002–39.

resettlement – all "affirm the classical trinity of nation/state/territory with its ideas of citizenship and rights."[13] In the context of thinking about refugees, this might be even more problematic as "the state is neither the only, nor always the primary, community of belonging of influence and importance in global politics, nor of the politics of rights or migration."[14] We, therefore, need to critically examine potential solutions to displacement beyond the state but also to ask whether these would really be, in substance, any different from the structures that already exist. The central question here then is: *can the camp ever replicate the fiduciary and mutual relationship that ought to exist between the state and its members?*

Importantly, I will not only be asking whether refugees are entitled to political rights in the camp – that much seems obvious. Refugees are both affected, coerced, and subjected to the regulations in the camp and clearly have an ongoing stake in how it is run. Whether refugees should be democratically involved in the camp is therefore arguably clear, although I will outline specifically why this is clearly the case later on. However, we might worry that offering refugees the right to vote in how the camp is run constitutes a lower standard of political inclusion than is necessary, particularly if the ultimate decisions remain in the hands of international agencies or the state of asylum. Refugees require greater powers than merely deciding how humanitarian aid should be dispersed within the camp. Instead, what I want to consider is whether the refugee camp can ever function as a provider of membership as effective citizenship.

This chapter argues that camps, as they are currently structured, cannot be providers of membership. This is because if camps could provide such membership, they *become* something else. Any camps that can offer membership, then, will look far more like what we would recognise as

[13] Patricia Owens, "Reclaiming 'Bare Life'?: Against Agamben on Refugees," *International Relations* 23, no. 4 (2009): 571. This trinity was first conceptualised by Arendt in *The Origins of Totalitarianism.*
[14] Natasha Saunders, "Beyond Asylum Claims: Refugee Protest, Responsibility, and Article 28 of the Universal Declaration of Human Rights," *The International Journal of Human Rights* 22, no. 7 (August 9, 2018): 5, https://doi.org/10.1080/13642987.2018.1485654.

city-states than the dominant cultural image of the refugee camp: they would-be providers of human rights, possibly run by refugees themselves, and recognised as independent political units by international actors. Contemporary refugee camps, such as those currently run by UNHCR and IOM, cannot offer membership to refugees because of the way in which power is ultimately structured between the camp and the host state. The current structural relationship between camps and state of asylum means that camps do not have membership conferring authority – they cannot provide the kind of security required as they are not in a position of power to do so. Instead, for camps to become providers of membership would require a radical shift in the way in which encampment is currently practised. This would involve turning camps into a kind of city-state: a political organisation with resources, authority, and independence.

Although this city-state approach is at least in theory open to the membership view, I want to offer a strong word of caution against institutionalising this kind of protection. From the perspective of legitimacy, creating new polities for refugees might allow for membership to be guaranteed. However, there are several unlikely conditions that must be met in order for this to be the case: refugee city-states would need resources, international recognition, and authority. Given that refugee camps, as they are currently practised, seem destined to bar refugees from engagement in political affairs, this seems unlikely. Moreover, as I will argue, the creation of these refugee city-states will likely lead to institutionalised exclusion and the rejection of the duties of powerful states more broadly. Therefore, although from the perspective of legitimacy this is possible, there are reasons of justice to avoid such an institutional shift. Seeing refugee camps as a space of institutional and political experimentation, then, is ill-advised.

The chapter will proceed as follows. First, I will consider what we mean by 'refugee camp.' Here I will show that much philosophical work on camps relies on the dominant cultural understandings, rather than how camps function in practice. Second, I will outline the more recent

literature on politics and political activity in refugee camps. Here I will again consider the distinction between membership *as belonging* and membership *as effective citizenship*, arguing that refugee camps can clearly function as spaces of political belonging and activity, but the question remains as to whether they can offer a more substantive form of membership. Third, I will consider the question of voting in refugee camps, arguing that whilst refugee camps should be democratically run by refugees, this is not enough to satisfy the need for membership. Fourth, I will consider what kind of camp could in theory satisfy this condition, arguing that membership-providers must have a kind of jurisdiction, be recognised as distinct political units, and have the means to provide residents with the secure and ongoing protection of their human rights. Therefore, if camps *could* provide this kind of membership, they are no longer camps: in process of providing membership, they become a kind of city-state. Here I outline a potential camp that could meet such a condition, the Pikpa camp in Lesvos, Greece. The final section of this chapter confronts Nick Van Hear and Robin Cohen's recent proposal for *Refugia,* a "utopian" solution to mass displacement. Here I argue against institutionalising camps as membership-providing bodies. Instead, I argue that there are reasons of justice to instead offer refugee integration into our usual membership institution: the territorialized nation-state.

Defining the camp

It is difficult to say whether it's possible to even talk about a 'refugee camp' as a single definable entity. Camps come in many different shapes, sizes, and types. As Kirsten McConnachie puts it, "some are the size of cities, while others are more like towns. Some are fenced and guarded, while others allow free movement. Some have existed for generations, while others are newly created."[15] To use the term 'refugee camp' to cover both a Palestinian camp such as *Bourj el-Barajneh* located in the southern suburbs of Beirut, and *Kutupalong* refugee camp, a UNHCR-led camp in rural Bangladesh which houses Rohingya refugees, and perhaps even the informal refugee settlements

[15] Kirsten McConnachie, "Camps of Containment: A Genealogy of the Refugee Camp," *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 7, no. 3 (2016): 397.

in Calais, might just be overly ambitious. What is it, exactly, that leads us to think that these three camps can all be defined and analysed in similar ways? Several theorists have attempted to give an overriding theoretical conception of the refugee camp. I begin here with a brief historicization of the camp as a feature of political life, and then turn to how theorists have attempted to define it.

The term 'camp' was first used to refer to the Ancient Roman *Campus Martuis,* with the word literally meaning "level ground."[16] This "camp" was a space for athletic practise, military drills, and accommodation during sudden floods of the Tiber river.[17] The more general term can refer to many different spaces, but its primary use was to refer to a set of people grouped into a specific locality. As such, "the camp space isolates detainees, processes refugees, harbours pilgrims, welcomes tourists, inspires activists, and conceals hedonists."[18] Camps in general, then, mark out a specific group of people located together in a particular geographic space.

The history of the camp as a space of containment and isolation is thought to have begun during the French Revolutionary Wars, when prisoner-of-war camps became more prominent.[19] By the end of the Napoleonic Wars (c. 1815), there were nine prisoner-of-war camps in Britain.[20] Internment camps, which aim to group together and imprison specific populations, were developed later on, with the first examples appearing in the late 19th-century. In 1895, the commander of the Spanish garrison in Cuba wrote a letter to his Government about plans to "reconcentrate" resistant locals into camps.[21] In the years that followed, thousands of Cubans were removed from their homes and forced to live in informal buildings described as "old shacks,

[16] Charlie Hailey, *Camps: A Guide to 21st-Century Space* (Cambridge, MA: MIT Press, 2009), 3.
[17] Peter Grbac, "Civitas, Polis, and Urbs: Reimagining the Refugee Camp as the City" (Refugee Studies Centre Working Paper Series, No. 96, 2013), 6.
[18] Hailey, *Camps: A Guide to 21st-Century Space*, 2.
[19] McConnachie, "Camps of Containment: A Genealogy of the Refugee Camp."
[20] McConnachie, 400.
[21] Anne Applebaum, "A History of Horror," New York Review of Books, October 18, 2001, 3, https://www.nybooks.com/articles/2001/10/18/a-history-of-horror/?pagination=false.

abandoned houses, [and] impoverished shelters."[22] These camps of containment were then adopted as a mechanism by other colonial powers and were used to concentrate specific civilian populations into small localised areas, for instance by the British during the Anglo-Boer War.[23] The largest system of forced-labour camps was perhaps that established under the Soviet Union's Stalinist regime: the *gulag*. These camps were used as a tool of political suppression, to capture supposed political dissidents to the Soviet project. Around 18 million people sent to the gulag between 1918 and the post-Stalin era. This continued a system used by the Russian Tsar which exiled prisoners and forced them to work in confined areas. The gulag was therefore supposedly used to 're-educate' political dissenters through work. This notion of "concentrating" a specific population into areas was also used to persecute and destroy "undesirable" populations in the early 20th-century, most notably the Jews living under Nazi rule during The Holocaust.

Camps as a response to refugee flows followed this development of containing civilian and dissenting populations. The historical roots of contemporary refugee camps can therefore be found at the beginning of World War II when "Displaced Persons" camps were used to assist forced migrants fleeing Germany and the Soviet Union. Since then, camps have been used to assist populations fleeing harm, as well as to prevent them from moving on. Encampment became the "*de facto* durable solution" for displaced people, with Bauman calling the last one hundred years "the century of camps."[24] As McConnachie notes, "in that time, the creation and management of refugee camps has become a humanitarian industry, involving hundreds of international organizations in food, shelter, sanitation, education, health, and other forms of assistance."[25] Camps, therefore, shifted from being spaces of explicit dominance, punishment, and persecution,

[22] Applebaum, 1.
[23] Shula Marks, "The Concentration Camps of the Anglo-Boer War: A Social History," *Journal of Southern African Studies* 41, no. 5 (September 3, 2015): 1133–36, https://doi.org/10.1080/03057070.2015.1073065.
[24] Zygmunt Bauman, "The Century of Camps," in *The Bauman Reader, Ed. Peter Beilharz* (Oxford: Blackwell Publishing, 2000), 266–81.
[25] McConnachie, "Camps of Containment: A Genealogy of the Refugee Camp," 405.

to being spaces in which emergency assistance can be offered in a supposedly managed and rapid way. Such a practise allowed states and international agencies to manage, count, and assist their refugee populations. However, it also allowed states to contain refugee flows, preventing forced migrants from working, integrating with local populations, or moving on to claim asylum elsewhere.[26]

This precedent has somewhat shifted in recent years due to action from UNHCR (in response to pressure from international organisations and refugees themselves) who now advocate for refugees to be guaranteed freedom of movement. They aim to "avoid the establishment of refugee camps" whenever possible.[27] Today, around 2.6 million refugees live in camps.[28] Cox's Bazar in Bangladesh is currently the largest refugee camp in the world, housing over 725,000 Rohingya Muslims displaced by persecution in Myanmar. The refugee camp which dominates popular discourse, Za'atari in Jordon, houses around 77,000 refugees who are entirely from Syria.

The above outlines the development of refugee camps and their historical predecessors, but perhaps misses some conceptual features of the camp that we would want to capture in our discussion. McConnachie argues that there are several approaches to defining the refugee camp. First, we could rely on specific descriptors of the camp, like the fact that it is spatially bounded and temporary. Of course, such an account would then include camps that we might want to exclude from our analysis of refugee camps in particular, for instance, Scout camps or protest camps.[29] Moreover, not all camps are spatially bounded in the same way. In some cases, it is difficult to tell where camps begin and end. For instance, some camps have become more like suburbs, enclaves, or ghettos of large cities. The temporary aspect of refugee camps might also be

[26] There are also different cultural understandings of camps. In the Middle East, a camp also refers to a *Bedouin* settlement or any type of tented settlement in the desert, which are common among the nomadic population.
[27] UNHCR, "Alternatives to Camps" (UNCHR, 2014), https://www.unhcr.org/5422b8f09.html.
[28] UNHCR, "Refugee Camps," 2020, https://www.unrefugees.org/refugee-facts/camps/.
[29] McConnachie, "Camps of Containment: A Genealogy of the Refugee Camp," 370.

questionable. Many camps, whilst originally intended to be temporary, have nevertheless morphed into more permanent structures. The oldest refugee camps have now been standing for around seventy years and the average length of time that a refugee lives in a camp is twelve years.[30] Temporariness, then, might not be the correct formulation. Still, the camp seems conditional in some sense in that it depends on a certain political reality. When a durable solution is found for the camp inhabitants, either through return, local integration, or resettlement, the camp need no longer exist and will be disassembled. This first very broad approach to thinking through camps then is perhaps unhelpful for capturing the specificities of the refugee camp.

A second way of defining camps is found through considering their specific 'logic of power.'[31] Georgio Agamben typifies this approach when he writes:

> Instead of deducing the definition of the camp from the events that took place there, we will instead ask: What is a camp, what is its political-juridical structure, that such events could have taken place there? This will lead to us regard the camp, not as a historical fact and an anomaly belonging to the past but in some way as the hidden matrix or nomos of the political space in which we are still living.[32]

Many have followed Agamben in thinking about the camp as a particular space of sovereign power – as a space of both exception and violence.[33] As Agamben remains the dominant voice on the camp, it's worth spending some time understanding and responding to him. Agamben's analysis of the camp builds on several strands of political thought. First, he draws on a distinction

[30] McClelland, "How to Build," quoted in Kelly Oliver, "Abolish Refugee Detention: Rethinking International Law and Carceral Humanitarianism," in *Refugees Now: Rethinking Borders, Hospitality, and Citizenship, Edited by K. Oliver, L. M. Madura, and S. Ahmed* (New York: Rowman & Littlefield, 2019), 118.
[31] McConnachie, "Camps of Containment: A Genealogy of the Refugee Camp."
[32] Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 166. Quoted in Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (Berkeley, California: University of California Press, 2012), 151.
[33] Agamben, *Homo Sacer: Sovereign Power and Bare Life.*

developed by Aristotle between *zōē*, biological existence that we share with animals, and *bios*, our socially situated and political selves. Second (and relatedly), Agamben draws on and develops Foucault's *biopolitics*. That is, he accepts that the central function of the state in modernity is to attend to the body of the citizen rather than the political self. Foucault famously traced the shift in state practice towards attending to the body and coins the term *biopower:* a technology of power that "distribut[es] the living in the domain of value and utility."[34] For Foucault, then, biopower functions through "dividing people into those who must live and those who must die."[35]

For Foucault, the shift towards biopolitics and biopolitical power is separable from sovereign power, whereas Agamben offers an apparent corrective to Foucault's theory: he explicitly ties state sovereignty to the biopolitical nature of the modern state. This brings us to our third important conceptual strand whereby Agamben draws on Schmitt's specific understanding of sovereignty, not as the Weberian idea of monopoly on the use of legitimate violence, but rather as the ability to decide the exception.[36] As Owens puts it, "only the 'sovereign' can decide when the law can be suspended because the sovereign is already the lawgiver, deciding the space in which the rule of law has validity."[37] Therefore, drawing on the notion of biopower, Agamben argues that sovereign power enables the state to determine who is exempt from political life and therefore constitutes what he calls "bare life" or mere biological existence. He writes: "placing biological life at the centre of its calculations, the modern State […] does nothing other than bring to light the secret tie uniting power and bare life."[38]

For Agamben, the camp is the exemplary space of exception within which the individual can be subject to violence without legal ramification. As Richard Ek puts it, "the camp that reveals itself

[34] Michel Foucault, *The History of Sexuality, Volume I* (New York: Random House, 1990), 144.
[35] Achille Mbembe, "Necropolitics," *Public Culture* 15, no. 1 (2003): 16–17.
[36] Carl Schmitt, *Political Theology* (Chicago: Chicago University Press (2010), 1985).
[37] Owens, "Reclaiming 'Bare Life'?: Against Agamben on Refugees," 571.
[38] Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 6.

as the form of organization of naked life that the sovereign chooses; a pure and absolute biopolitical space and the hidden paradigm of the political space of modernity."[39] The camp, therefore, reduces its residents to "bare life" or mere biological existence. This makes the camp inhabitants an exemplary figure of Agamben's concept of *homo sacer:* an individual who can be killed but not scarificed, and therefore is stripped of all political and social qualities. Such an individual can be killed with impunity by the state, without the proper kind of recognition normally afforded to human death. Agamben writes that "insofar as [the camp's] inhabitants were stripped of every political status and wholly reduced to bare life, the camp was […] the most absolute biopolitical space ever to have been realized, in which power confronts nothing but pure life, without any mediation."[40] The residents are "humans as animals in nature without political freedom."[41] His argument, importantly, is not that the encamped are some radical exception to the norm, but rather that they are exemplary of this new form of biopolitical sovereign power. They are "the symbolic representation of social and political reality."[42]Agamben himself writes:

> It [the birth of the camp] is produced at the point at which the political system of the modern nation-state, which was founded on the functional nexus between a determinate localization (land) and a determinate order (the State) and mediated by automatic rules for the inscription of life (birth or the nation), enters into a lasting crisis, and the State decides to assume directly the care of the nation's biological life as one of its proper tasks…the camp is the new, hidden regulator of the inscription of life in the order…[and] is the fourth, inseparable element that has now added itself – and so broken – the old trinity composed of the state, the nation (birth), and land.[43]

[39] Richard Ek, "Giorgio Agamben and The Spatialities of the Camp: An Introduction," *Swedish Society for Anthropology and Geography*, 2006, 368.
[40] Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 171.
[41] Owens, "Reclaiming 'Bare Life'?: Against Agamben on Refugees," 568.
[42] Owens, 567.
[43] Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 175–76.

Of course, this kind of separation is only accepted by the remaining population because of the kinds of people who are placed in this exceptional, violent condition. As Didier Fassin puts it, "a situation that should be considered intolerable is in fact tolerated because the public order is threatened by immigrants, enemies, communists, gypsies, Jews, and collaborators."[44]

There have been many responses to Agamben's conceptualisation of the refugee camp. First, Agamben is consistently critiqued for failing to take into account many different types of 'camp' and drawing a direct line between concentration camps of the Second World War and contemporary refugee camps. Levy argues that Agamben "orientalizes the refugee… and overly dramatizes the camp and, by doing so, is of little use to understanding the variety of camps present."[45] Since we want to be attentive to these different particularities of the camp, Agamben's totalising account does not appear to be very flexible here. Second, it is perhaps unsurprising that recent scholarship has pushed back against the understanding of the camp as consisting of merely "bare life." Owens for instance argues against centring Agamben in our theorising about the refugee camp, instead claiming that it is Arendt's notion of politics, speech, and space that helps us to think through how politics can *emerge* in the camp. Owens uses the example of refugee's political resistance to show how camp residents can create political space, focusing in particular on the protest of lip sewing. Many have likewise pushed back against Agamben for failing to leave open the possibility of political life within the camp. For instance, Adam Ramadan argues that approaches like Agamben's "risk losing sight of the complex sovereignties of the refugee camps, and the possibility of agency of the part of refugees themselves."[46] Likewise, Andreas Kaylvas argues that Agamben "can no longer localise the contingency of political and social struggles…

[44] Didier Fassin, "Compassion and Repression: The Moral Economy of Immigration Policies in France," *Cultural Anthropology* 20, no. 3 (2005): 378–79.
[45] Carl Levy, "Refugees, Europe, Camps/State of Exception: 'Into The Zone', the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-Seekers (Theories and Practice)," *Refugee Survey Quarterly* 29, no. 1 (January 1, 2010): 100, https://doi.org/10.1093/rsq/hdq013.
[46] Adam Ramadan, "Spatialising the Refugee Camp," *Transactions of the Institute of British Geographers* 38, no. 1 (2013): 68.

His approach assumes an almost totalistic, agentless history, and though it is concerned with politics and its eclipse, it is itself quite unpolitical."[47] It seems then that, in offering a totalising account of sovereignty, Agamben's view gives us no way out. In this way, Agamben's approach "does not provide a satisfactory analytical tool neither to grasp the complexity of social relations within the camp, and between the camp and the city, nor to appreciate the strategies and tactics that those inhabiting such spaces adopt in their everyday lives to claim rights and membership."[48] Theorists are therefore now attempting to move away from the conceptualisation of refugees as "sediments of other people's actions", and towards a recognition of their place in political life, even within the camp itself.[49] A similar approach has been taken recently by Serena Parekh who argues that refugee camps necessarily rid their inhabitants of certain important human qualities. Following Arendt and Agamben, Parekh argues that speech and action are made impossible in the refugee camp because camp residents suffer from a kind of ontological deprivation; they are socially and politically excluded from the rest of the world. She writes that the camp produced "a reduction to the merely human or bare life, a separation from the common realm of humanity and abandonment, and the diminishment of agency or ability to act in the Arendtian sense."[50] Of course, accepting this demands that we buy into an Arendtian account of the centrality and specificities of human action. But also, like Agamben's view, it closes the question of whether camps *could* ever be potential spaces of human action and what those camps would have to look like.

Therefore, adopting Agamben's definition of the camp would be difficult to square with our purpose here. It essentially already gives us an answer to the question of whether camps can offer

[47] Andreas Kalyvas, "'The Sovereign Weaver. Beyond the Camp,'" in *Politics, Metaphysics, and Death: Essays on Georgio Agamben's Homo Sacer (Ed. Norris. A)* (Durham, NC: Duke University Press, 2005), 39.
[48] Nando Sigona, "Campzenship: Reimagining the Camp as a Social and Political Space," *Citizenship Studies* 19, no. 1 (January 2, 2015): 1, https://doi.org/10.1080/13621025.2014.937643.
[49] Zygmunt Bauman, "In the Lowly Nowherevilles of Liquid Modernity: Comments on and around Agier," *Ethnography* 3, no. 3 (2002): 343.
[50] Parekh, "Beyond the Ethics of Admission: Stateless People, Refugee Camps and Moral Obligations," 646.

a space for political membership. According to his account, camps are spaces of extreme sovereign power where refugees are reduced to nothing beyond mere biological existence. The political (at least in any optimistic sense) is not possible here. So, although Agamben's view gives us a more conceptual way to think through the camp beyond its spatially bounded and temporary nature, it is nevertheless not appropriate for our uses here.

We could rely on a third, more *functional* approach to defining the refugee camp. As McConnachie puts it "refugee camps exist to contain forced migrants until such time as they can return home, or an alternative durable solution is possible."[51] She argues that any definition of camp must include this function of containment. For host countries, "camps are a means to contain a refugee 'problem' and to ensure that international actors take some responsibility for refugees' support, while for international agencies camps offer an administratively efficient model of service delivery."[52] This reflects Bauman's observation that "the powers ruling over the land around the camp do whatever they can to prevent the inmates from leaking out and spilling over the adjacent territory. The outside of the camp is, essentially, off-limits for the camp's insiders."[53] Given this focus on containment, McConachie's proposed definition is as follows:

> A site that is spatially bounded (i.e., it is an identifiable site); temporally limited (i.e., it exists pending an end to conflict or an alternative durable solution); is biopolitical (i.e., is designed and administered for a category of population rather than for individuals); and segregates residents from a surrounding population by formal or informal restrictions.[54]

This functional approach is not as dependent on particular theoretical commitments as Agamben's and therefore survives a great deal of criticism to which he is vulnerable. Whilst this function of

[51] McConnachie, "Camps of Containment: A Genealogy of the Refugee Camp," 398.
[52] McConnachie, *Governing Refugees*, 1.
[53] Bauman, "In the Lowly Nowherevilles of Liquid Modernity: Comments on and around Agier," 345.
[54] McConnachie, "Camps of Containment: A Genealogy of the Refugee Camp," 398.

containment is central to the refugee camp, many camps also function as way of providing assistance. To ignore this fact is perhaps to jettison the dominant explicit motive for refugee camps: to provide quick assistance from disaster. As Parekh puts it "many refugees are extremely grateful to make it to a refugee camp, which at least affords them safety from danger in their home country."[55] Therefore, although containment is a function of the camp, it is not obviously the only function. Moreover, this approach also potentially excludes some camps that we may want to consider in our theorising. For instance, camps that have been established by refugees themselves, or refugee settlements that do not have the same restrictions on freedom of movement. If containment is an essential feature of the camp, we lose the ability to consider these boundary cases.

The above shows that many attempts to define the camp obscure the potentially political nature of the camp itself. In order to avoid making such a presumption about camps from the outset, this chapter will take a more neutral stance on what counts as a camp.[56] I, therefore, follow Peter Grbac in defining a refugee camp "as a temporary settlement for those individuals forced to leave their country."[57] We will come back to these other approaches to defining camps later on when considering whether the providers of membership that I outline here can actually be properly conceived of as camps. At the end of the chapter, I will discuss whether these potentially membership providing camps are actually camps at all or whether, in providing membership, they *become* something else.

Politics in the refugee camp

[55] Serena Parekh, *No Refuge* (Oxford: Oxford University Press, 2020), 108.
[56] I accept that there's essentially no such thing as a neutral definition of a refugee camp. But it is worth adopting a definition that at least leaves open some theoretical space for us to consider.
[57] Grbac, "Civitas, Polis, and Urbs: Reimagining the Refugee Camp as the City," 6.

Before moving onto the discussion of membership, it will be fruitful to consider political life in the camp more generally. This background gives us all the more reason to push back against the idea of the camp as a space of 'bare life.' Despite the dominant cultural image of the refugee camp as a space for the passive recipient of aid, the last decade of research has clearly demonstrated that camps are spaces of substantive political engagement. Although Michael Agier's conception of the refugee camp describes it as politically and socially divided from the rest of society, he nevertheless admits that the camp is full of political relationships: "to act and speak out in their places of exile means for the refugee rejection the principle of their vulnerability as justifying their treatment as nameless pure victims. From this is born the only revolt that is logically possible, one embodying a politics of resistant life."[58] The following section outlines recent work on politics in refugee camps, before asking whether any such examples could confer membership on its residents. I will focus here on three political features of refugee camps: belonging and identity, protests, and elections.

1. Belonging and identity

Refugee camps can often become spaces of affiliation and identity. This again pushes against Agamben's view of the camp as a space of "bare life" where politics becomes impossible. Instead, particularly in prolonged situations of encampment, new forms of affiliation and political identity can develop. Refugee camps can be spaces of social and political stagnation, but they can also provide new opportunities for different forms of belonging to emerge. The camp can therefore be conceived as a space "where sociality is (re-)created, social hierarchies are produced and politics continues to have significance—indeed it may intensify."[59] For instance, in Palestinian refugee camps in Lebanon, nationalistic Palestinian identities can be recreated and entrenched through

[58] Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government*, 155.
[59] Simon Turner, "What Is a Refugee Camp? Explorations of the Limits and Effects of the Camp," *Journal of Refugee Studies* 29, no. 9 (2015): 143.

particular narratives.[60] Likewise, Malkki's work on refugee camps in Tanzania, in *Purity in Exile,* draws out the example of particular myths being created in the camp. These myths or *mythico-histories* reinforce and reshape patterns of national belonging. The camp, therefore, becomes a space for indigenous origin stories to be told and recreated.[61]

To consider how the camp can shape and form of political identity, Nando Sigona proposes the concept of *campzenship* to "capture the specific and situated relationship of its inhabitants with the camp and the ways the camp shapes the relationship of its inhabitants with the state and their capacity and modes of being political."[62] This notion of campzenship is therefore not meant to describe a particular political or legal status, but rather a mode of political affiliation that occurs in the camp. Of course, as I have already noted, it should be no surprise that political connections persist and develop in the camp: our surprise at this possibility is merely a hangover of viewing refugees as passive subjects. Indeed, as the following two sections show, more explicit forms of politics beyond affiliation happen in camps on a regular basis.

2. Protests and strikes

We saw in the introduction to this chapter the ways in which refugees protest their containment and poor treatment. In Moria, refugees protested for several years and had multiple difficulties with local law enforcement. This practice is, of course, not specific to Moria but is instead a feature of many refugee camps and asylum centres all across the world. I briefly mentioned Owens's account of refugee lip-sewing, the first reported case of which occurred in 2002 by 62 detained

[60] Kathleen Fincham, "Learning the Nation in Exile: Constructing Youth Identities, Belonging and 'Citizenship' in Palestinian Refugee Camps in South Lebanon," *Comparative Education* 48, no. 1 (February 1, 2012): 119–33, https://doi.org/10.1080/03050068.2011.637767.
[61] Liisa Malkki, *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania* (Chicago: Chicago University Press, 1995).
[62] Sigona, "Campzenship: Reimagining the Camp as a Social and Political Space."

asylum seeker in Woomera, a detention camp in Australia.[63] More recently, a group of Iranian refugees also protested the demolition of the Calais camp by sewing their lips together. They held signs that read: "Where is your democracy, where is our freedom?" and "Representatives of the United Nations and human rights, come and bear witness – we are humans."[64] These practices of using the body as a medium for protest have become prevalent in refugee camps and radical political protest more generally.[65] Such forms of dissent have been called *corporeal protest*, or "the use of the body to make a political statement."[66] In the case of lip-sewing in particular, speechlessness itself becomes part of the act of resistance.[67]

Less extreme forms of protest are also common in camps. For example, Agier discusses the use of boycotts in Dadaab refugee camp in Kenya in 2001. In this case, residents refused to co-operate in a camp-wide census which was being used to carry out non-voluntary repatriations. Likewise, a UNHCR report on Za'atari camp in Jordan noted that there had been 327 "contentious events" between 2013 and 2014, including "protests, sit-ins, demonstrations, roadblocks, and stone-throwing incidents."[68] Of course, such protests often face many barriers because they are contained within the camp. Without the ability to be seen by outsiders and citizens of the state, refugees in camps potentially lack the ability for their political message to be shared. This kind of geographically infused political exclusion has itself been overcome by many refugee protest groups. For instance, the *Refugee Protest Camp* in Vienna in 2012 fought against the living conditions in the largest asylum reception centre in Austria. Refugee protesters purposefully located themselves in

[63] Nithya Rajan, "What Do Refugees Want? Reading Refugee Lip-Sewing Protests through a Critical Lens," *International Feminist Journal of Politics* 21, no. 4 (August 8, 2019): 528, https://doi.org/10.1080/14616742.2019.1638811; Owens, "Reclaiming 'Bare Life'?: Against Agamben on Refugees."
[64] Rajan, "What Do Refugees Want? Reading Refugee Lip-Sewing Protests through a Critical Lens," 532.
[65] Banu Bargu, "Theorizing Self-Destructive Violence," *International Journal of Middle East Studies* 45, no. 4 (2013): 804, https://doi.org/10.1017/S0020743813000950; Rajan, "What Do Refugees Want? Reading Refugee Lip-Sewing Protests through a Critical Lens."
[66] Rajan, "What Do Refugees Want? Reading Refugee Lip-Sewing Protests through a Critical Lens," 528.
[67] Rajan, 534.
[68] Clarke, "When Do the Dispossessed Protest? Informal Leadership and Mobilization in Syrian Refugee Camps," 618.

a central park in Vienna in order to make themselves as visible as possible. By moving from a space of exclusion to the centre of the city, the protest movement "generated different modes of resistance, forms of mobilization and collective action."[69] Other protests have focused specifically on the provision of aid within the camp. For instance, Nell Gabium considers resistance efforts by Palestinians living in a camp in Northern Syria, who fought against a shift from humanitarian to development assistance. They saw this change as potentially undermining their eventual claim to return.[70] From the above it should be obvious then, that refugees engage in protest in as many various ways as non-refugees. Indeed, their containment and the nature of their predicament may in fact lead to other forms of protest, for instance through the use of the body and through the use of particular forms of space.

3. Elections

As we already know, refugees are excluded from formal political inclusion in almost every sphere of their lives. This includes life in the camp, where there is no standard practice for enfranchising refugees. However, in recent years, sporadic camp elections have become more popular, particularly in long-term refugee camps and settlements. In 2013, Dadaab camp in Kenya engaged in one of the largest refugee elections in history with over 400,000 residents voting in elections with over 1000 potential candidates for various positions in the camp, including camp leaders, section leaders, and block leaders. This election was spearheaded by Kenya's Department for Refugee Affairs (DRA) who saw engagement from refugees as necessary for improving trust. Patrick Musando, head of the DRA in Dadaab said, "for us to be able to access the refugee communities and resolve their problems, it's very important that we have the leadership structured in a legitimate manner." He continued, "we expect these leaders to assist us in delivering

[69] Ilker Ataç, "'Refugee Protest Camp Vienna': Making Citizens through Locations of the Protest Movement," *Citizenship Studies* 20, no. 5 (2016): 629, https://doi.org/10.1080/13621025.2016.1182676. Social media may also play a role in pushing refugee's political activities beyond the boundaries of their camps.
[70] Nell Gamium, "When 'Humanitarianism' Becomes 'Development': The Politics of International Aid in Syria's Palestinian Refugee Camps," *American Anthropologist* 114, no. 1 (2012): 95–107.

humanitarian assistance, maintaining security, and generally implementing the rule of law."[71] Commenting on the camp election, UNHCR noted that "empowering those living in the world's largest refugee site to manage their own affairs to the greatest extent possible is crucial for the dignity of the community and for ensuring smooth service delivery. The elected leaders will be involved in decision making on community issues while facilitating and supporting the work of humanitarian agencies operating in Dadaab. Their work is completely voluntary, and they are not paid a salary."[72]

We might legitimately worry that these refugee elections fall far short of reaching any reasonable standard of democratic inclusion. In such cases, refugees are elected to represent their community to a higher body that is still responsible for overall decision making. Refugee officials, then, are not given the power to make political decisions within the camp. Their role is simply to advise and support humanitarian agencies. This becomes clear in several cases where refugee leaders have been ousted by humanitarian agencies for not complying. For instance, in the Tobanda refugee camp in Sierra Leone, the refugee 'chairman' elected by residents was thought by humanitarian agencies to threaten the stability of the camp. The administration therefore deposed him, and he was replaced with an 'acting chairman' who seemed "sufficiently collaborative to assist them in the function of control."[73]

Of course, having some elections is preferable to refugees having no formal representation in the camp whatsoever. These elections are likewise important for ensuring that refugees have a sense of their opinions being taken seriously. The leader of the Popular Front for the Liberation of Palestine (PFLP) in Lebanon, Marwan Abdel Al, equally favoured camp elections: "I live in a

[71] UNHCR, "Enthusiastic Turnout for Elections at World's Largest Refugee Site," August 28, 2013, https://www.unhcr.org/uk/news/latest/2013/8/521de8729/enthusiastic-turnout-elections-worlds-largest-refugee-site.html.
[72] UNHCR. 2013
[73] Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government*, 157.

refugee camp, I know how important it is for people in the camps to have an elected leadership. First and foremost, to have popular committees which are elected, not only representing the factions."[74] Therefore, but representative elections can also be better at achieving a kind of cohesive camp structure as opposed to particular factional groups representing their interests in other ways.

In the following section, I will offer a normative argument for enfranchisement in the refugee camp from two of the dominant perspectives that we've discussed in each preceding chapter so far: the all-affected interests principle and the coercion principle. Both of these principles, I argue, can ground a right to vote in the refugee camp. However, I will also argue that this is not enough to provide membership in the camp, instead to attend to that question, we need to consider the relationship between the camp and the larger political institutions in which they are situated.

The right to vote in the refugee camp

The all-affected interests principle (AAI) is the broadest account of enfranchisement that we have considered so far. It holds quite simply that "everyone who is affected by the decisions of a government should have the right to participate in that government."[75] Therefore, in order to determine who ought to have a vote in a particular polity, we need simply to figure out who is affected by its decisions. The relevant question for us here seems to be, *is the camp a system of government?* That is, is the camp the relevant system within which encamped refugees need to be included, or is it the state in which the camp is situated?

The notion of humanitarian government, which has often been discussed in relation to refugee camps, has a specific history in its use in refugee studies. It relates most precisely to Fassin's view

[74] Dag Tuastad, "'State of Exception' or 'State in Exile'? The Fallacy of Appropriating Agamben on Palestinian Refugee Camps," *Third World Quarterly* 38, no. 9 (September 2, 2017): 2159–70, https://doi.org/10.1080/01436597.2016.1256765.
[75] Dahl, *After the Revolution?: Authority in a Good Society*, 64.

concerning a particular way of government over 'precarious lives', such as "the lives of the unemployed and the asylum seekers, … of sick immigrants and people with Aids, … of disaster victims and victims of conflict."[76] This is not an account of what government is per se but an illustration of a kind of government; one that attends to the bodies and caring for a population rather than speech and action.

So, what is the concept of *government* more generally and does the refugee camp qualify? Elizabeth Anderson argues that government is often thought of as synonymous with the state, which is viewed as the only available public sphere.[77] However, government as a structure of rule exists in many other areas of life both inside and outside the state. She argues that "government exists wherever some have the authority to issue orders to others, backed by sanctions, in one or more domains of life."[78] In doing so, Anderson argues for the concept of *private government:* a form of control that can exist outside of the usual public sphere of the state. Weber likewise considers government a form of "compulsory organisation" which controls the individual's life in some meaningful and systematic way.[79] Importantly, private government is government that "has arbitrary, unaccountable power over those it governs."[80] As such, in cases of private government, the governing body is free to determine rules with discretion.

There's an obvious sense in which many camps involve a system of private government. That is, refugees' lives in camps are often controlled and shaped almost entirely determined by humanitarian organisations such as UNHCR or IOM, and the state within which the camp is based. The idea that camps act as a kind of replacement for the state is not new. Fassin, for instance, argues that refugee camps and shelters can function to maintain protection and order,

[76] Fassin, *Humanitarian Reason: A Moral History of the Present*, 4.
[77] Elizabeth Anderson, *Private Government* (Princeton: Princeton University Press, 2017), 41.
[78] Anderson, 41.
[79] Max Weber, *Economy and Society* (Berkeley, California: University of California Press, 1968), 51.
[80] Anderson, *Private Government*, 41.

usually afforded by the state.[81] Likewise, Jeff Crisp and Amy Slaughter argue that, in cases of protracted encampment, UNHCR itself becomes a "surrogate state." They write that UNHCR is often perceived as being "complete with its own territory (refugee camps), citizens (refugees), public services (education, health care, water, sanitation, etc.) and even ideology (community participation, gender equality). Not surprisingly in these circumstances, the notion of state responsibility was weakened further, while UNHCR assumed (and was perceived to assume) an increasingly important and even preeminent role."[82] Given that refugee camps almost always lack any form of democratic representation, we can also, I think, fairly state that the form of government prevalent in camps is dictatorship. In the context of refugee camps, as well as other forms of private government, "the dictator is appointed by an oligarchy. In other cases, the dictator is self-appointed."[83] In a typical refugee camp, then, the structure is almost entirely top-down. As Harrell-Bond and Voutira describe it:

> Starting from the top down, a refugee camp is administered by officials. assigned by the host government whose power is enforced by the presence of armed police or paramilitary personnel… The management and distribution of material assistance is carried out by international non-governmental (NGO) humanitarian agencies… On the receiving end are the refugees.[84]

We will come back to a discussion of the distinction between the host state and the camp later when thinking through the question of membership specifically. For now, we need only note that camps can be thought of as governments in the relevant sense. Decisions are often made about

[81] Fassin, *Humanitarian Reason: A Moral History of the Present*, 269.
[82] Jeff Crisp and Amy Slaughter, "A Surrogate State? The Role of UNHCR in Protracted Refugee Situations" (UNHCR, New Issues in Refugee Research, 2009), https://www.unhcr.org/uk/research/working/4981cb432/surrogate-state-role-unhcr-protracted-refugee-situations-amy-slaughter.html.
[83] Anderson, *Private Government*, 38.
[84] Voutira Eftihia and Barbara Harrell-Bond, "In Search of the Locus of Trust: The Social World of the Refugee Camp," in *(Mis)Trusting Refugee, Daniel and Knudsen (Eds)* (Berkeley, California: University of California Press, 1995), 210. Quoted in McConnachie, *Governing Refugees*, 11.

the lives of residents in a serious and impactful way. Therefore, given that the camp can be understood as a form of government, and refugees are affected by the decisions of that government, they should be enfranchised in those decisions according to the AAI principle. Interestingly, the use of this principle would also mean that non-residents of the camp, such as those living in the local community, would have a say in how the camp should be run. This is not necessarily a problem for this view, but it does again attest to the idea that the AAI principle is often more inclusive and expansive than other approaches. If we want a principle that picks out refugees as the specific subjects of enfranchisement in the camp, then we need to look elsewhere.

Refugees in the camp also have a strong claim to enfranchisement under the coercion principle. This view holds that a person should be democratically included if they are subjected to coercion by a particular system of government. Again, we need to question whether the word *state* here is a necessary feature of this view, or rather whether the subjection need only be under an institution that is "state-like." Importantly, the core of the coercion view – and therefore the relevant consideration for determining whether the camp is an appropriate system for it to be applied – is the existence of sanctions that back up coercive power. Therefore, we need to ask: are refugees coerced and obliged to follow a particular set of rules within the camp? There are some clear ways in which refugees do face subjection in the camp, particularly from the perspective of restrictions on movement. Refugees are normally unable to move in and out of the camp at their will. When they are allowed to leave, they often need permission from camp authorities. Moreover, refugee camps often mirror the typical punishment structures of a state. For instance, many large camps such as Za'atari in Jordan have their own police stations; refugees and aid workers have to report to these stations when asking to enter or leave the camp for any period of time, or for asking to engage in certain activities. By 2014, there were over 90 "community police officers" trained to

work in Za'atari and Azraq, another refugee camp to the south of Za'atari.[85] If individuals do not follow the rules set by the humanitarian organisation, they are punished. Sometimes this involves being moved to another camp or being placed under house arrest. There is a question again here of precisely *whose* rules refugees are being subjected to. In the case of Za'atari, the camp is technically run by the Syrian Refugee Affairs Directorate (SRAD) which is an agency of the Jordanian Government. But the camp is entirely run by UNHCR. The Jordanian Government has a memorandum of understanding with UNHCR which defers authority to the international agency. The camp is therefore essentially led by a dual authority or a "double chain of administration."[86] However, in most cases the state is largely absent from the everyday experience of governance in the camp: "The state plays an essential role in defining the conditions and circumstances of encampment at a political level but on a daily basis is largely invisible, even irrelevant, to the refugee population."[87]

If we accept that refugees are subjected to the rules of the camp under this structure, rules that are established and enforced by UNHCR, then refugees ought to have a say in how those rules are determined. Refugees are therefore subjects in the camp in some meaningful sense; their lives are not only affected by the regulations of the camp, but they are coerced and obliged to follow established rules on a long-term basis. As such, Agier notes that refugees are "victims twice over: of the war and forced displacement that led them there; and then of their political powerlessness in the face of the power of humanitarian organisations over their lives."[88] In the case of camps like Za'atari where the system is dual authority, the all-subjected view also again justifies inclusion in the state of asylum. If refugees within the camp are subject to the coercion of the host state, then

[85] Jessica Watkins, "Policing and Protection for Syrian Refugees in Jordan," Carnegie Endowment for International Peace, October 16, 2018, https://carnegieendowment.org/sada/77511.
[86] Elizabeth Colson, "Displacement," in *Nugent and J. Vincent (Eds) A Companion to the Anthropology of Politics* (Blackwell Publishing, 2004), 108.
[87] McConnachie, *Governing Refugees*, 11. This isn't the case in Za'atari where the SRAD is involved in the governance of the camp, particularly who has permission to enter and exit.
[88] Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government*, 157.

they have a legitimate claim to enfranchisement in that system as well. Again, then, the relationship between the host state and the camp blurs the relevant institution within which refugees have a claim to the vote.[89]

So, according to the AAI view and the coercion principle, refugees have a strong claim to enfranchisement in the refugee camp. This, as we have seen, depends upon the various ways in which camps adopt 'state-like' function and therefore become systems of government and subjection in their own right. However, as we've also noted, this story is complicated by the relationship between the camp and the host state. Whether a camp is essentially still under the authority of the state of asylum, then, can give refugees a claim to inclusion beyond the camp alone.

Can the refugee camp be a provider of membership?

So far, we have discussed the existence of politics in refugee camps. I have also given an argument in favour of enfranchising refugees from the all-affected interests and coercion principles. However, it should be obvious by now that the mere existence of political action or voting systems in refugee camps is not sufficient to prove that camps can be genuine providers of membership. Likewise, I have raised concerns about the *kind* of democratic inclusion that is offered in refugee camps: residents are sometimes included in decisions about the everyday running of the camp, but almost never in discussions about the nature and construction of the polity itself. The future of the camp is never in the hands of refugees themselves. So, let us finally turn to this more difficult standard: what would it take for a camp to be a provider of membership?

[89] There are some examples of refugees creating rules in the camp for themselves. For instance, in Karen refugee camps on the Thai Burma border, committees of elders determined a system of rules that are applied throughout the camps. McConnachie, *Governing Refugees*, 11.

We should remind ourselves, for the final time, what is meant by membership. Membership, on my view, can also be described as *effective citizenship*. It is not the same as formal citizenship but is rather a thicker notion dependent on the capacity of the state, as well as social and political status. However, as we saw in chapters six and seven, membership does depend on formal status as well. You cannot be a member if you are formally excluded. Therefore, when one is a member in the fullest sense, one is guaranteed stable and ongoing protection of their human rights because one stands in a certain relationship to the provider of such rights. Whether the refugee camp can be a provider of membership, then, depends on the relationship between the refugee and the institution of the camp. However, here the picture is complicated: whether the camp can be a genuine provider of membership also depends on the relationship between the camp and the host state.

There are several obvious conditions that need to be met in order for membership to be effectively conferred in the context of the camp. First, camps must be generally human rights abiding: a basic condition of membership is that members are able to claim rights as a matter of standing. If the camp itself is in violation of rights as a matter of course, then membership in the camp is impossible. Many argue that the very existence of refugee camps is a violation of human rights, in particular the right to freedom of movement. Several articles of the Geneva Convention on the status of refugees are relevant here. First, Article 16 affords refugees equal treatment in their country of asylum at the same standard or better than other resident aliens. Second, Articles 7 and 22 enshrine the refugee's right to education and work respectively. Finally, and most importantly, Article 26 requires that refugees enjoy freedom of movement in their state of asylum. They, therefore, hold "the right to choose their place of residence and move freely within [the state's] territory."[90] With this made clear, then, it might seem evident that the existence of any camp whatsoever is already in contention with the rights of the refugee. If refugee camps are founded

[90] UN General Assembly, "Convention Relating to the Status of Refugees."

on the notion of containment, as argued by McConnachie, then refugee camps are always a violation of rights.[91] If the very structure of the camp is a violation of human rights, it is difficult to see how rights-guaranteeing membership could be offered by that same structure.

One might immediately reply that citizens in modern states also face a kind of containment. Given the structure of the international state system, citizens within the state system do not enjoy the ability to move wherever they like. If containment is an issue in the camp, why is it not an issue more generally? Without taking a stance on whether there is a more basic right to freedom of movement across borders, I think we can note a few things about the difference in containment here. Centrally, while citizens within states do face a form of containment, they nevertheless have access to an adequate range of options within their state. Therefore, although they cannot freely move beyond the borders, they nevertheless have a chance at a minimally decent human life. Part of what is frustrating about containment in the camp is the corresponding lack of resources, life chances, and autonomy. Refugees in camps are kept in spaces where they do not have access to an adequate range of options. Therefore, containment in the camp is more obviously a violation of human rights than containment in the state. Second, citizens do have the right to exit their state at any time, even if this does not correspond with a right to enter any other state they wish. This may not amount to much, but we do generally criticise states that never allow their citizens to leave, for instance, in the case of North Korea. So, while states might contain their citizens to some degree, they are not comparable to the kind of containment found in refugee camps.

However, there may be some camps that do not violate human rights in their structure. For instance, more recently, UNHCR policy has pursued the establishment of 'refugee settlements': an approach that seeks to integrate refugee communities into the host state, creating a synergy

[91] McConnachie, "Camps of Containment: A Genealogy of the Refugee Camp."

between emergency humanitarian aid and local development assistance. UNHCR calls this an 'integrated approach to refugee management' which it has specifically been pursuing in the Ugandan and Kenyan contexts. Under such schemes "refugees enjoy essentially the same rights and access to jobs and services as locals."[92] Refugees, therefore, have the right to work, enjoy freedom of movement, own property and can access local services. Refugees "essentially enjoy the same rights and services as Ugandans: *the one difference is that they cannot acquire Ugandan citizenship.*" Such experiments in "refugee management" then potentially avoid the containment-based human rights problem outlined above. That is, if refugees enjoy the same rights to move as those in the local community, then the camp is not (as a structure) violating their rights. This potentially opens up the possibility of camps being providers of membership. This is likewise the case in refugee settlements in Kenya. UNHCR states that the aim in the Kalobeyei Settlement is to "re-orient the refugee assistance program to contribute to [the] improvement of the socio-economic conditions of the refugees and host communities… and support the refugees to achieve durable solutions."[93] This approach reflects UNHCR's renewed commitment to refugee self-reliance: the idea that refugees should be helped achieve autonomy from humanitarian aid and live an independent life in the host community.[94]

There are a few problems that we should consider here. First, according to many definitions of refugee camps outlined above, these refugee settlements would not be included. McConachie's understanding of the camp as fundamentally premised on containment would preclude us from considering these settlements as genuine camps. On my view of camps as spaces within which refugees receive or create assistance from disaster, however, this possibility is open. It is worth

[92] Iffat Idris, "Integrated Approaches to Refugee Management in Uganda" (K4D Report, January 24, 2020), https://assets.publishing.service.gov.uk/media/5e3c4d2740f0b6090defbc53/716_Integrated_Approaches_to_Refugee_Management_in_Uganda.pdf.
[93] UNHCR, "Kalobeyei Settlement," UNHCR: The UN Refugee Agency, 2020, https://www.unhcr.org/ke/kalobeyei-settlement.
[94] Claudena Skran and Evan Easton-Calabria, "Old Concepts Making New History: Refugee Self-Reliance, Livelihoods and the 'Refugee Entrepreneur," *Journal of Refugee Studies* 33, no. 1 (2020): 1–21, https://doi.org/10.1093/jrs/fez061.

noting, though, that in requiring an open or physically porous refugee camp, we exclude almost all camps as they are contemporarily practised. If membership provision requires camps to be open, then most camps as we know them cannot be membership providers. Second, this free movement problem opens up an interesting issue about the relationship between the refugee and the community at large. As we mentioned in the section above on enfranchising refugees, the relationship between the camp and the host state is complicated. Many camps like Za'atari are under the dual authority of the state and international agencies. In cases of settlements in countries like Uganda and Kenya, this parity with the local community may cause more conceptual challenges. Once refugees are essentially being treated as part of the local community then the relevant institution in which they are entitled to membership is no longer the camp structure but the state. This is because refugees, in being free to leave the camp and enjoy the rights of other citizens, become subject to the conditions that we discussed in chapter six on the state of asylum. The relevant structures of inclusion, in such cases, appear to shift outwards.

Perhaps, though, we can still think of the camp as being a kind of membership-provider in such cases. In this way, camps might provide a kind of background guarantee of membership in the context of free movement. An analogy might be the way in which states in the European Union provide a kind of background stability for citizens as they live and work elsewhere. Such citizens do not require membership elsewhere when working abroad because their membership at home provides an ongoing stability and standing. If the non-container camp can play a similar function, then perhaps the camp can still be the relevant provider of membership.

Importantly for the provision of membership, though, refugees need to have *standing* in the camp. This means that their entitlement to assistance cannot be discretionary or precarious. Instead, it needs to stem from a kind of status within the polity itself. As Fassin argues, camps are the archetypal system of humanitarian government: a mode of governance that attends to the person's

bodily needs before their political status. The camp, then, seems poorly situated to provide any kind of standing; it is premised on the provision of aid rather than the provision of standing. The growing trend towards voting in refugee camps is perhaps a step in this more standing-based direction. Although in chapter six I argued that voting was not necessary for membership, because membership could be guaranteed in other ways, it does demonstrate a kind of commitment to standing. Refugees, though, would need to be democratically included in such a way that does not merely assist humanitarian agencies. Instead, they need to have a say in the structure of the camp itself. In the following section, I want to tentatively outline a camp that might meet this standing condition.

The Polis of Pikpa

On the morning of September 10th, 2020, only a few hours after the fire had destroyed much of the Moria camp, the women of Pikpa began to cook. They prepared a huge variety of dishes, carrying them down to the centre of the island where many refugees were stranded, sleeping on the roads. These women were refugees themselves, from Eritrea, Syria, and Afghanistan. They put together bags for the stranded Moria residents, filled with soap, clothes, and more food. They then walked back to their camp and began to prepare more food. Only a few miles up the road from Moria, described as a form of "hell" by one refugee-protestor, sat Pikpa. A camp built on the principles of solidarity, dignity, and respect. The small island of Lesvos provides us with two polar opposite potentialities for the refugee camp: hell on the one hand, and hope on the other.

Pikpa camp has become well-known among humanitarian agencies and human rights bodies for providing vulnerable refugees with assistance and dignity. Pikpa was a small settlement with just over one hundred residents. It described itself as "a community-based space, built on the principles of solidarity, empowerment and active participation."[95] In particular, it aimed to assist vulnerable

[95] Lesvos Solidarity, "About Pikpa Camp," 2020, https://www.lesvossolidarity.org/en/what-we-do/pikpa-camp.

refugees such as unaccompanied children or those living with a disability or mental illness. In Pikpa, refugee residents were allowed to leave the camp whenever they wish without checks and could travel around the island in the same way as Greek citizens. The camp looked more like a small village or a holiday retreat than what we would standardly imagine as a refugee camp.[96] The collection of small wooden and brick houses looked onto a set of shared gardens, a playground, and a community centre. Furniture and electrical appliances were provided to camp residents, as well as medical care, mental health support, legal support, transportation, food, clothes, and much more. Over 30,000 refugees passed through Pikpa since it was established in 2012, having started on an abandoned piece of land that was once a children's summer camp. Originally, Pikpa provided assistance to refugees on their way to the Greek mainland. However, following the new policy of barring refugees from continuing on until their asylum claim has been fully completed, refugees instead became longer-term residents in the camp. The co-founder of Pikpa camp, Efi Latsoudi said:

> When we started Pikpa, we wanted to send the message that refugees can live in dignified conditions and that our community can support them. We wanted to show that you do not need to violate people's rights in order to protect the host society. We have proved this point, in many ways.[97]

The camp, therefore, shaped itself as an alternative to the standard model of the refugee camp. Refugees were not viewed as mere recipients of aid; they were instead viewed as having a kind of standing. Such a model not only allows refugees to maintain some autonomy over their lives, but

[96] It's perhaps questionable whether there is a standard collective imagination of the refugee camp. For instance, many refugee camps do have shopping centres, restaurants, children's centres. This fact may actually cut against what many people think when asked to describe refugee camps. The key difference in the case of Pikpa is that these are provided in the context of free movement and autonomy as opposed to enclosure.
[97] Efi Latsoudi, "Do Not Close Pikpa down, Replicate It," Al Jazeera, October 13, 2020, https://www.aljazeera.com/opinions/2020/10/13/do-not-close-pikpa-down-replicate-it.

also offers them the potential to redevelop the kind of secure membership that has been denied to them. Kader Hussein, a resident from Afghanistan commented that:

> I lived in Moria for six months before I came to Pikpa, and the situation we had there made me disappointed with life. Since I came here, Pikpa has provided many opportunities like education, health care, food boxes and a kindergarten, pharmacy and a psychologist for me and my family. I became optimistic about life again. Pikpa is the only place in Greece that a refugee can feel comfortable and hopeful for the future. [98]

Pikpa also held weekly meetings with all camp residents to discuss problems, make suggestions, and govern the camp together. This affirms its status as a quasi-democratic organisation. Because of this, the camp refused to accept donations from the Greek government or any financial institution that stipulate certain conditions. According to a Pikpa team member, Pedraam Khorasani:

> The reason Pikpa has survived as long as it has, and what makes it a project worth pursuing, is because it has autonomy. And that autonomy makes it more than just a place of shelter. It has become symbolic of a better way of doing things.[99]

As such, "dignified, community-run shelters like Pikpa are bright beacons of hope in what has otherwise been a tremendously dark experience for refugees on the island of Lesvos."[100] In acting as a legal and political representative of residents in Pikpa, the camp authorities became a rights-claiming body for the individuals within the camp. With proper individualised legal assistance, Pikpa helps refugees to feel that their rights are secure.

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[98] Latsoudi.
[99] Tom Anderson, "The Grassroots Refugee Camp That Shows Europe 'a Better Way of Doing Things,'" The Canary, October 24, 2019, https://www.thecanary.co/feature/2019/05/24/the-grassroots-refugee-camp-that-shows-europe-a-better-way-of-doing-things/.
[100] Latsoudi, "Do Not Close Pikpa down, Replicate It."

I want to suggest that Pikpa had the potential to be a membership-providing camp. However, because of this, I argue, it ceases to be a camp as we would usually recognise it. There have been numerous scholarly interventions that attempt to reframe the refugee camp as a city. This is largely due to the development of cultural, economic, and social life within many refugee camps.[101] The main roads in camps are often teeming with life, shops, community centres, restaurants and other things that you would typically find in an urban centre. However, rather than simply thinking of camps as being city-like in cultural terms, the question here is whether they are the kinds of political institutions that can guarantee membership. In becoming a potential provider of membership, places like Pikpa instead become more like a *polis* or a city-state.

The word *polis* is often simply translated from ancient Greek as *city*. Indeed, as the word is used in the first translations of Homer it means simply a physical place, mostly referring to Troy.[102] After Homer, however, the idea of the polis became much more expansive and instead referred to a particular place. The polis, as a term for a particular kind of political community, is therefore not merely a random collection of individuals or a physical place. For a place to be a *polis* as opposed to a mere city, it will be particular kinds of political community. Pikpa had the beginnings of a political institution that was able to protect and uphold the rights of refugees. Being grounded in principles of dignity and solidarity means that, unlike other camp structures that we have encountered so far, the refugees enjoyed a certain amount of social and political status. Though Pikpa could not provide citizenship to refugees, they did enjoy at least the sense of security and protection that is often lacking from camps. Pikpa also had a far more secure set of institutions for assisting and protecting refugees' rights than Moria. It offered individualized legal assistance to help refugees claim their rights securely from the Greek Government. The autonomy of the

[101] Grbac, "Civitas, Polis, and Urbs: Reimagining the Refugee Camp as the City."
[102] J. V. Luce, "The 'Polis' in Homer and Hesiod," *Proceedings of the Royal Irish Academy. Section C: Archaeology, Celtic Studies, History, Linguistics, Literature* 78 (1978): 1–15.

camp provided some level of protection from the world outside. Refugees were treated with dignity and respect, were taken seriously as agents with rights and desires, and were therefore afforded at least a minimal level of standing. According to the three conditions – citizenship, capacity, and standing – Pikpa perhaps comes close to satisfying membership outside the state. On my broad view of camps as simply spaces where refugees are assisted in times of emergency, Pikpa does remain a kind of camp. However, it changes from merely providing assistance to redeveloping the relationship between the individual and some institution that is able to offer them security. In doing so, the camp becomes a kind of political institution in its own right, one that could have potentially sat alongside the state as the core supplier of membership throughout the world.

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On the 30th of October 2020, The Pikpa camp was evacuated by the Greek Government.[103] Having been given only 24 hours' notice, the 74 residents in the camp were awoken by police officers in riot gear and escorted onto buses. These buses then took them to Moria 2.0, the new camp on the other side of the island. The Lesvos Solidarity Network which supported Pikpa remains active and continues to help the vulnerable refugees in their new camp. However, the potential structure of dignity and inclusion that had been created for and by refugees since 2012, was undone by the Greek Government. Here, then, we need to come back to the relationship between the camp and the state, for it is this relationship that ultimately undermines the ability of the camp, or any other internal alternative structure, to be a genuine provider of membership.

[103] InfoMigrants, "Police Clear Pikpa Camp on Lesbos," *InfoMigrants*, October 30, 2020, https://www.infomigrants.net/en/post/28238/police-clear-pikpa-camp-on-lesbos.

The Pikpa case demonstrates that whilst dignity and inclusion can be created within a refugee camp of a particular kind, the security and stability of rights are never entirely guaranteed. The camp as a structure exists at the discretion of the host state and, at any time, that structure can be removed. When the camp remains under the jurisdiction of the host state, it is not able to provide membership in the necessary way, the standing on which refugees need to be able to claim their rights is undermined by the ability of the government to strip that standing away. The autonomy of Pikpa then, though important to the refugees and residents of the camp, was ultimately empty. It depended on the discretion and charity of the Greek Government, which came to an end when the new Moria camp was created.

Of course, despite this, it is perhaps possible to imagine how Pikpa could have succeeded. If the camp had had sufficient autonomy and independence, it may have been able to resist the pressure of the Greek Government. That is, we could offer camps like Pikpa the chance to become actual polities in a more institutional sense, rather than simply imitating these structures. Such an alternative model for refugee protection has recently been put forward in Nick Van Hear and Robin Cohen's *Refugia,* which aims to provide a utopian solution to mass displacement. Refugia is a genuinely radical proposal, made in response to the failure of the three durable solutions: resettlement, local integration, and return. Instead of relying on previously existing frameworks, Van Hear and Cohen argue that we should build new structures of power that can sit alongside the existing nation-state system, perhaps like Pikpa. They write:

> Refugia is not a state, nor a conventional international organization, but combines elements of both. Refugia is not based in a single territory, rather it comprises hundreds of sites or locales, strung out along a networked archipelago. (These sites can be camps, agricultural settlements, safe zones, hostels, or neighbourhoods – wherever displacees have congregated or been gathered.) Refugia is governed highly democratically. If you have been displaced, you can sign up. You can join freely and leave freely.

> Through digital means, Refugians will participate in democratic elections and referenda. They will draw up demands, run campaigns, and advance legal claims. Refugians will have the capacity to press for improvements to their lives and gain access to resources they require.[104]

Refugia could be conceptualized as a way to create membership guaranteeing polities from refugee camps and many other spaces. On this model, then, Pikpa would become part of an autonomous transnational archipelago led by refugees themselves. There have already been many critiques of this proposal. What I want to underline here is that, although this kind of approach is potentially open to the membership view, I nevertheless think it ought to be avoided. First, it is not clear whether Refugia is a state with boundaries and jurisdiction. Van Hear and Cohen argue that it adopts a deterritorialized model, rather than depending on a specific locale. However, this territorial boundary, as we can see from the Pikpa case, can often be incredibly important for the protection of refugee's and the alternative lives that they build. Experimentation with new ways of organising the political world is perhaps ill-advised in the case of those who need protection the most. Likewise, on the kind of Refugian model, it is not clear what the relationship would be between the camp and the state it is situated in. Again, this is clearly a necessary relationship to get right. As Bauböck asserts when discussing claims to enfranchisement, we "cannot make sense of claims to inclusion in the city of Florence, the region of Tuscany or the European Union without describing first the different nature of these polities and their relations with the Italian state."[105] In a similar way, we also cannot make sense of these kinds of alternatives without understanding how they could be undermined by current structures of power. Instead, the problem faced by refugees attempting to create new lives for themselves is precisely that they remain dominated by an old system. Discussing the case of Guatemalan refugees who negotiated with their home Government, Long notes that "the problem faced by many refugee communities, then, is not one of developing

[104] Robin Cohen and Nick Van Hear, *Refugia: Radical Solutions to Mass Displacement* (London: Routledge, 2019), 4.
[105] Bauböck, *Democratic Inclusion: A Pluralist Theory of Citizenship*, 51.

their own system of representation, but of being recognized as legitimate representatives by an international community interested in effecting a solution." Without recognition by power, Refugia would be subject to the same treatment as Pikpa. Others have simply suggested creating refugee nations. Most famously, in 2015 the millionaire Jason Buzi proposed buying land to house the world's refugees.[106] Again, there are reasons of justice to avoid this. First and foremost, such an approach cements the view that refugees should remain excluded from the existing structures of power. Rather than being re-integrated into the system of existing states, this approach proposes placing them elsewhere. This allows powerful states to shirk their duties to refugees and create new forms of exclusion. Again, there are good reasons to avoid playing with the world and using refugees as the subjects of our experimentation. Instead, what they require is secure protection in already established systems of power, even if we object to how those systems are organised.

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This chapter has aimed to consider whether refugee camps can ever provide membership to refugees. I have argued that, although camps are clearly spaces of intense political life, they nevertheless cannot guarantee security for the displaced in the way that is required. Instead, in order to turn camps into the kinds of spaces that could guarantee such membership, we have to begin radically experimenting with them, such that they cease to be camps altogether. This experimentation, as I suggested in the final section, is ill-advised. We should caution against creating new states for refugees, particularly one's based on camps or detention centres. Such institutionalization simply cements their exclusion from a system that has already expelled them. In my view, then, there are reasons of justice to avoid such an approach, even if they are possible for legitimacy views of refugeehood.

[106] The Washington Post, "A Silicon Valey Mogul Wants to Solve the Global Refugee Crisis by Making a New Country," *The Washington Post*, 2015, https://www.washingtonpost.com/news/worldviews/wp/2015/07/23/a-silicon-valley-mogul-wants-to-solve-the-global-refugee-crisis-by-creating-a-new-country/.

This chapter, therefore, perhaps, turns us back to the methodological nationalism that we sought to avoid. In seeking to consider whether camps could ever offer membership in a substantive sense, I was attempting to bring to the fore alternative ways to arrange our political world. My approach is somewhat sceptical here. Although it is true that we must take seriously political life outside of its usual boundaries, we must also make sure to understand the continuing centrality of the state. Though pessimistic, this chapter suggests that the camp cannot develop the kind of relationship between the individual and the political community that is required as a matter of legitimacy. In my concluding remarks, I will now turn to the question of membership outside the state and a possible way forward.

CONCLUSIONS

Membership Beyond the State

This thesis has sought to understand the refugee's predicament as a political one. That is, refugees are those who lack membership in any state and are therefore do not have their rights securely guaranteed. The first section of the thesis aimed to build a new normative account of refugeehood centred on membership. In the second section, I proposed resolving this predicament by re-absorbing refugees into the territorially bounded state system through existing forms of political inclusion. I have argued that refugees are entitled to citizenship in their state of asylum and to political inclusion in the process of voluntary return. I have also argued, in the most recent chapter, that my account of membership gives us another reason to reject the acceptability of the refugee camp as a long-term protection solution.

I noted in the introduction that some might find this an overly conservative argument. In many ways, this thesis could be read as reifying the state as the central political institution of our time. For those who reject the state as an unjust or illegitimate political arrangement, it may be that my argument simply patches over cracks of a fundamentally flawed way of living. By reabsorbing

refugees into this system, we maintain and stabilise it. In offering citizenship to refugees, we recreate and give strength to the state, with all its faults. My proposal, for some, is a cure drawn from the poison.

In these concluding remarks, I want to briefly consider other potentially more radical solutions to the refugee's predicament and spell out why I am pessimistic about them. I would like to underline here that what I have argued in this thesis does not guarantee a just refugee protection regime. Far from it. Instead, new membership for refugees is a necessary, minimal condition for the legitimacy of the international order of states; if we accept that all individuals require membership as effective citizenship somewhere, then formal inclusion in the state is the very lowest standard that is required.

Another way to ensure membership for all is to change the way in which membership is secured to begin with. That is, instead of viewing refugees as an inevitable consequence of political life, we should attempt to redraw how rights and entitlements are guaranteed. Phil Cole pointed us in this direction earlier on, arguing that framing the refugee question as a kind of problem to be solved is the wrong way to think about the central normative questions at hand.[1] Taking precisely this route, some have argued for a decoupling of human rights from membership in the state. Those who follow Arendt's account of the right to have rights often call for supra-national forms of rights insurance that do not depend on unstable inclusion in particular political bodies. Seyla Benhabib, for instance, argues for a form of *cosmopolitan federalism* that would adopt porous borders and universalised rights for all. Individuals under this framework would have access to rights protection wherever they are, and forms of belonging would no longer have power over their lives. Instead, democratic elections would determine the particular direction of a political community but could

[1] Cole, "Framing the Refugee."

not undermine who is entitled to basic human rights and security. This is just one example of the ways in which human rights could be guaranteed without accepting the already existing boundaries of the state. Others simply argue for the abolition of states on the basis that they are unable to protect universally recognised human rights.[2] International Relations theorist, Alexander Wendt, argues that the world will move through several stages of development before inevitably establishing a global state.[3] Friedrich Engels famously predicted that the state would one day "wither away" and make space for governance without the coercive enforcement of the law.[4] Advocates of postnationalism believe that we are now seeing this decoupling of rights protection and nationality. Yasemin Soysal, for instance, outlines the ways in which migrants *are* receiving rights protections despite lacking formal citizenship. In this way, the rights that used to be guaranteed by citizenship are becoming 'unbundled' from its legal status. If we are already walking this road to something else, why have I not argued for a different way of imagining the world?

There are a few reasons why I have not chosen this path. First, I do not believe we are *en route* to a future without the state. Many of the theorists believe that the dominant way of organising politics for the last hundred years – the territorially bounded nation-state – is on the way out.[5] The power of the state, some contend, is dwindling and soon will be overtaken by cosmopolitan and transnational forms of political life. This argument was, of course, more prominent around a decade ago, before the recent surge in nationalism that we have seen spread across much of the world. Wendy Brown believes that our most recent renewed throwing up of boundaries is the final

[2] For example, see Luis Cabrera, *Political Theory of Global Justice A Cosmopolitan Case for the World State,* (Routledge, 2004).
[3] Alexander Wendt, "Why a World State Is Inevitable," *European Journal of International Relations* 9, no. 4 (2003): 491–542, https://doi.org/10.1177/135406610394001.
[4] Chapter 2, Part 3 of *Anti-Dühring* (1878)
[5] For example see Ohmae, Kenichi (1995), *The End of the Nation State: The Rise of Regional Economics,* Harper Collins. Soysal, *Limits of Citizenship*; Wendy Brown, *Walled States, Waning Sovereignty* (Princeton: Princeton University Press, 2017).

cries of the state in its dying days.[6] Even this latest surge of border controls, then, is taken as evidence for their eventual destruction.

I am not convinced by arguments concerning the death of the state. In the last ten years, it has come to dominate the political world more and more. The state is still the only institution that can legitimately engage in a number of practices. In his 2013 lecture on *A Genealogy of The State,* Quentin Skinner notes:

> States print money… they continue to impose taxes, to enforce contracts, to engage in wars (a lot of wars), to imprison and otherwise penalise errant citizens, they legislate with an unparalleled degree of complexity. What other institution in the world except states does any of those things legally? None. So, what is all this stuff about the death of the state. It's pure inattentiveness. Where are these people living?![7]

The fact that the state is still the only political institution able to legally fulfil almost all of the core political functions gives us a reason to believe that it is as strong as it ever was. There are a few other perhaps more principled reasons why I do not argue for a re-ordering of the world. First, as I outlined in my methodology, this thesis is a work of practise-dependent theory. Therefore, it aims to take the state as the central institution of the world and asks what it would take to make *this world* legitimate. Part of my reason for adopting this approach stems from the scepticism that I have outlined above. But it also developed from a second worry. Refugees and stateless people are some of the most vulnerable on the planet. This does not mean that they are helpless or needy. As we have seen throughout the thesis, refugees are as politically engaged and self-sufficient as any other political agent. The deprivation for refugees lies in their lack of recognition by power. It is

[6] Brown, *Walled States, Waning Sovereignty.*
[7] Skinner, "Genealogy of the State."

not obvious to me that these are the individuals to experiment with while re-arranging the political order. In doing so, we take those who need the protection of the state the most and deny it to them, instead offering alternatives that many of us would not adopt for ourselves. If we are going to re-make the world, it seems wrong to ask those who do not have so much to lose to take the first step. The state, then, is an even more incredibly important institution for those who are excluded from its protection. This thesis, therefore, is not an endorsement of the state, but an attempt to take its power and persistence seriously. I accept that some might find this conservative. Some might also find it radical. In arguing in favour of citizenship for refugees as a minimum condition of legitimacy, the argument that I have presented steps well beyond current practice in international refugee protection.

So, what is to be done? It is obvious that we live in an unjust world. Most obvious perhaps to anyone who is attentive to the exclusion of refugees, and indeed to refugees themselves. Given that we are seeing a retraction in asylum protection rather than an expansion, it is hugely unlikely that anyone with political power will adopt any part of what I have said. Still, understanding the core of refugeehood as lacking membership in the state remains important. It is important for understanding the illegitimacy and injustice of current refugee protection. It is important for understanding how our world is organised and where people might fall through the cracks. It is also important for beginning to think through new ways of living, even if I am sceptical that these new worlds are on the way. In the end, thinking through the predicament of refugees may point us in a new and better direction. My point here is perhaps a basic one. That, as long as states remain the ultimate sources of authority in our political life, inclusion by power is better than exclusion from it.

Bibliography

Abizadeh, Arash. "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders." *Political Theory* 36, no. 1 (February 1, 2008): 37–65. https://doi.org/10.1177/0090591707310090.

Adams, Walter. "Extent and Nature of the World Refugee Problem." *The Annals of the American Academy of Political and Social Science* 203 (1939): 26–36.

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press, 1998.

Agier, Michael. *Managing the Undesirables: Refugee Camps and Humanitarian Government*. Cambridge: Polity Press, 2011.

Al Jazeera. "Thousands Protest after Greece's Moria Refugee Camp Burns Down." *Al Jazeera English*, September 11, 2020. https://www.aljazeera.com/news/2020/9/11/thousands-protest-after-greeces-moria-refugee-camp-burns-down.

Al Jazeera English. *Refugees in Greece Wary of Entering New Camp after Moria Fire*. Accessed December 20, 2020. https://www.youtube.com/watch?v=vohgF9T0l-c.

Altman, Andrew, and Christopher Heath Wellman. *A Liberal Theory of International Justice*. Oxford: Oxford University Press, 2009.

Amnesty International. "'It's Better to Die from One Bullet than Being Slowly Killed Every Day' – Refugees Forsaken on Nauru." Amnesty International, August 4, 2016. https://www.amnesty.org/en/latest/news/2016/08/australia-cruel-fate-of-refugees-forsaken-on-nauru/.

———. "Nauru Overview." Amnesty International, 2021. https://www.amnesty.org/en/countries/asia-and-the-pacific/nauru/.

Anderson, Elizabeth. *Private Government*. Princeton: Princeton University Press, 2017.

Anderson, Tom. "The Grassroots Refugee Camp That Shows Europe 'a Better Way of Doing Things.'" The Canary, October 24, 2019. https://www.thecanary.co/feature/2019/05/24/the-grassroots-refugee-camp-that-shows-europe-a-better-way-of-doing-things/.

Andrijasevic, Rutvica, and Bridget Anderson. "Conflicts of Mobility: Migration, Labour and Political Subjectivities." *Subjectivity* 29 (2009): 363–66.

Applebaum, Anne. "A History of Horror." New York Review of Books, October 18, 2001. https://www.nybooks.com/articles/2001/10/18/a-history-of-horror/?pagination=false.

Arendt, Hannah. *The Human Condition: A Study on the Central Dilemma's Facing Modern Man*. New York: Doubleday Anchor Book, 1959.

———. *The Origins of Totalitarianism*. London: Penguin Random House, 1951.

Armend Bekaj and Lina Antara, Contributors: Tarig Adan, Jean-Thomas Arrighi de Casanova, Zeina, El-Helou, Ezra Mannix, Mukondeleli Mpeiwa, Caleb Otieno Opon, and Nora Jasmin Ragab, Shoaib Sharifi and Tigranna Zakaryan. "Political Participation of Refugees: Bridging the Gaps." International Institute for Democracy and Electoral Assistance, 2018.

Associated Press. "Turkey/Bosnia: Refugees Vote in Turkey." AP Archive, August 27, 1996.

Associated Press in Toronto. "Justin Trudeau Greets Syrian Refugees Arriving in Canada." *The Guardian*, 2015. https://www.theguardian.com/world/2015/dec/11/plane-carrying-syrian-refugees-arrives-toronto-canada.

Asylum in Europe Database. "Differential Treatment of Specific Nationalities in the Procedure." Accessed April 14, 2020. https://www.asylumineurope.org/reports/country/germany/asylum-procedure/treatment-specific-nationalities.

Ataç, Ilker. "'Refugee Protest Camp Vienna': Making Citizens through Locations of the Protest Movement." *Citizenship Studies* 20, no. 5 (2016): 629–46. https://doi.org/10.1080/13621025.2016.1182676.

Balibar, Etienne. "(De)Constructing the Human as Human Institution: A Reflection on the Coherence of Hannah Arendt's Practical Philosophy." *Social Research* 74, no. 3 (2007): 727–38.

Bargu, Banu. "Theorizing Self-Destructive Violence." *International Journal of Middle East Studies* 45, no. 4 (2013): 804–6. https://doi.org/10.1017/S0020743813000950.

Bathke, Benjamin. "Greece Reports at Least 17 Coronavirus Cases at Moria Migrant Camp." *InfoMigrants*, September 8, 2020. https://www.infomigrants.net/en/post/27109/greece-reports-at-least-17-coronavirus-cases-at-moria-migrant-camp.

Bauböck, Rainer. *Democratic Inclusion: A Pluralist Theory of Citizenship*. Manchester: Manchester University Press, 2018.

———. *Immigration and the Boundaries of Citizenship*. Monographs in Ethnic Relations, 1991.

———. "Morphing the Demos into the Right Shape. Normative Principles for Enfranchising Resident Aliens and Expatriate Citizens." *Democratization* 22, no. 5 (July 29, 2015): 820–39. https://doi.org/10.1080/13510347.2014.988146.

———. "Political Membership and Democratic Boundaries." In *The Oxford Handbook of Citizenship, (Eds. Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink)*, 358–83. Oxford: Oxford University Press, 2017.

———. "Stakeholder Citizenship: An Idea Whose Time Has Come?" Migration Policy Institute, 2008. https://www.migrationpolicy.org/research/stakeholder-citizenship-idea-whose-time-has-come.

———. "Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting." *Fordham Law Review* 75, no. 5 (2007): 2393–2447.

———. "The Rights and Duties of External Citizenship." *Citizenship Studies* 13, no. 5 (October 1, 2009): 475–99. https://doi.org/10.1080/13621020903174647.

Bauman, Zygmunt. "In the Lowly Nowherevilles of Liquid Modernity: Comments on and around Agier." *Ethnography* 3, no. 3 (2002): 343–49.

———. "The Century of Camps." In *The Bauman Reader, Ed. Peter Beilharz*, 266–81. Oxford: Blackwell Publishing, 2000.

BBC News. "Moria Migrants and Greek Islanders Protests over New Camp." *BBC News*, September 11, 2020. https://www.bbc.co.uk/news/world-europe-54125761.

Beitz, Charles. *The Idea of Human Rights*. Oxford: Oxford University Press, 2009. https://doi.org/10.1111/phc3.12521.

Bender, Felix. "Enfranchising the Disenfranchised: Should Refugees Receive Political Rights in Liberal Democracies?" *Citizenship Studies*, September 20, 2020, 1–16. https://doi.org/10.1080/13621025.2020.1825625.

Benhabib, Seyla. *The Rights of Others*. Cambridge: Cambridge University Press, 2004.

Betts, Alexander. *Survival Migration: Failed Governance and the Crisis of Displacement*. Ithica, New York: Cornell University Press, 2013.

Betts, Alexander, and Paul Collier. *Refuge: Transforming and Broken Refugee System*. London: Penguin Books, 2017.

Betts, Alexander, and Will Jones. *Mobilizing the Diaspora: How Refugees Challenge Authoritarianism*. Cambridge: Cambridge University Press, 2016.

Blank, Yashai. "Spheres of Citizenship." *Theoretical Inquiries in Law* 9 (2007): 411.

Blatter, Joachim. "Dual Citizenship and Theories of Democracy." *Citizenship Studies* 15, no. 6–7 (October 1, 2011): 769–98. https://doi.org/10.1080/13621025.2011.600090.

Bosniak, Linda. *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton: Princeton University Press, 2006.

Bradley, Megan. *Refugee Repatriation: Justice, Responsibility, and Redress*. Cambridge: Cambridge University Press, 2013.

Brown, Wendy. *Walled States, Waning Sovereignty*. Princeton: Princeton University Press, 2017.

Brubaker, Rogers. *Citizenship and Nationhood in France and Germany*. Cambridge, MA: Harvard University Press, 1992.

Buxton, Rebecca. "Justice in Waiting: The Harms and Wrongs of Temporary Refugee Protection." *European Journal of Political Theory*, November 29, 2020, 1474885120973578. https://doi.org/10.1177/1474885120973578.

———. "Reparative Justice for Climate Refugees." *Philosophy* 94, no. 2 (2019): 193–219. https://doi.org/10.1017/S0031819119000019.

———. "The Duty to Naturalise Refugees." *Critical Review of International Social and Political Philosophy* 0, no. 0 (2021): 1–21. https://doi.org/10.1080/13698230.2021.1880198.

Cantor, David. "Defining Refugees: Persecution, Surrogacy and the Human Rights Paradigm." In *Chapter 14, B. Burson and D.J. Cantor (Eds.), Human Rights and the Refugee Definition: Comparative Legal Practice and Theory*. Brill, 2016.

Carens, Joseph. "Migration and Morality: A Liberal Egalitarian Perspective." In *Brian Barry & Robert E. Goodin (Eds.), Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, 25–47. University of Pennsylvania Press, 1992.

———. "Realistic and Idealistic Approaches to the Ethics of Migration." *International Migration Review* 30, no. 1 (1996): 156–70.

———. *The Ethics of Immigration*. Oxford: Oxford University Press, 2013.

———. *The Right to Stay*. Boston, MA: Boston Review, 2010.

———. "Who Should Get in? The Ethics of Immigration Admissions." *Ethics & International Affairs* 17, no. 1 (2003): 95–110. http://dx.doi.org/10.1111/j.1747-7093.2003.tb00421.x.

Carpenter, A. H. "Naturalization in England and the American Colonies." *The American Historical Review* 9, no. 2 (1904): 288–303. https://doi.org/10.2307/1833367.

Cartegena Declaration. "Regional Refugee Instruments & Related, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama," November 22, 1984. https://www.refworld.org/docid/3ae6b36ec.html.

Cherem, Max. "Refugee Rights: Against Expanding the Definition of a 'Refugee' and Unilateral Protection Elsewhere." *Journal of Political Philosophy* 24, no. 2 (2016): 183–205.

Christenson, Ronald. "The Political Theory of Persecution: Augustine and Hobbes Midwest." *Midwest Journal of Political Science* 12, no. 3 (1968): 419–38.

Clarke, Killian. "When Do the Dispossessed Protest? Informal Leadership and Mobilization in Syrian Refugee Camps." *Perspectives on Politics* 16, no. 1 (2018): 617–33.

Cohen, Jean. "Changing Paradigms of Citizenship and the Exclusivity of the Demos." *International Sociology* 14, no. 3 (1999): 245–68.

Cohen, Robin, and Nick Van Hear. *Refugia: Radical Solutions to Mass Displacement*. London: Routledge, 2019.

Cole, Phil. "Framing the Refugee," November 2016. https://www.e-ir.info/2016/11/25/framing-the-refugee/.

Coles, G. J. L. "Approaching the Refugee Problem Today." In *Gil Loescher and Laila Monahan (Eds), Refugees and International Relations*. Oxford: Oxford University Press, 1989.

Collyer, Michael. "A Geography of Extra-Territorial Citizenship: Explanations of External Voting." *Migration Studies* 2, no. 1 (March 1, 2014): 55–72. https://doi.org/10.1093/migration/mns008.

Colson, Elizabeth. "Displacement." In *Nugent and J. Vincent (Eds) A Companion to the Anthropology of Politics*, 107–20. Blackwell Publishing, 2004.

Cooke, Maeve. "Beyond Dignity and Difference Revisiting the Politics of Recognition." *European Journal of Political Theory* 8, no. 1 (2009): 76–95.

Cordova, Roberto. "Nationality Including Statelessness - Third Report on the Elimination or Reduction of Statelessness by Mr. Roberto Cordova, Special Rapporteur." Extract from the Yearbook of the International Law Commission, 1954. https://legal.un.org/ilc/documentation/spanish/a_cn4_81.pdf.

Crisp, Jeff, and Amy Slaughter. "A Surrogate State? The Role of UNHCR in Protracted Refugee Situations." UNHCR, New Issues in Refugee Research, 2009. https://www.unhcr.org/uk/research/working/4981cb432/surrogate-state-role-unhcr-protracted-refugee-situations-amy-slaughter.html.

Dahl, Robert. *After the Revolution?: Authority in a Good Society*. Yale University Press, 1991.

DeShalit, Anver. *Cities and Immigration: Political and Moral Dilemmas in the New Era of Migration*. Oxford: Oxford University Press, 2018.

Deutsche Welle. "Germany Mulls Sending Migrants Back to Syria." *Deutsche Welle*, November 16, 2018. https://www.dw.com/en/germany-mulls-sending-migrants-back-to-syria/a-46336147.

———. "Germany: No Syrian Deportations before the End of 2018." *Deutsche Welle*, December 12, 2017. https://www.dw.com/en/germany-no-syria-deportations-before-end-of-2018/a-41711485.

———. "Kenya to Close 2 Refugee Camps next Year." *Deutsche Welle*, April 29, 2021. https://www.dw.com/en/kenya-to-close-2-refugee-camps-next-year.

Dowdall, Alex. "The Greatest Parliament of Men": Refugees' Petitions to the League of Nations, 1919-1938." Presented at the Refugee Studies Centre Conference: Democratizing Displacement, New College, Oxford, March 18, 2019.

Du Bois, W.E.B. "On Being Ashamed of Oneself: An Essay on Race Pride." *Crisis* 40, no. 9 (1933): 199–200.

———. *The Souls of Black Folk, 1903*. Boston, MA: Bedord Books, 1997.

Duffield, Mark. *Global Governance and the New Wars*. London and New York: Zed Books, 2001.

Dummett, Michael. *On Immigration and Refugees*. London: Routledge, 2001.

Eftihia, Voutira, and Barbara Harrell-Bond. "In Search of the Locus of Trust: The Social World of the Refugee Camp." In *(Mis)Trusting Refugee, Daniel and Knudsen (Eds)*. Berkeley, California: University of California Press, 1995.

Ek, Richard. "Giorgio Agamben and The Spatialities of the Camp: An Introduction." *Swedish Society for Anthropology and Geography*, 2006, 363–86.

Ekathimerini. "Only Unaccompanied Children Will Leave Lesvos, Says Government Spokesman." *Ekathimerini*, September 10, 2020. https://www.ekathimerini.com/256792/article/ekathimerini/news/only-unaccompanied-children-will-leave-lesvos-says-govt-spokesman.

Etymology Dictionary. "Member." Accessed March 25, 2021. https://www.etymonline.com/word/member.

Etzioni, Amitai. *The Spirit of the Community: Rights, Responsibilities, and the Communitarian Agenda*. New York: Crown Publishing, 1993.

Europe - Miscellaneous. "Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovinia," November 21, 1995. https://www.refworld.org/docid/3de495c34.html.

European Union. "COUNCIL DIRECTIVE 2004/83/EC." Official Journal of the European Union, April 29, 2004.

Executive Committee of the High Commissioner's Programme. "Reinforcing a Community Development Approach. EC/51/SC/CRP.6.," February 15, 2001.

Executive Order 13769. "Protecting the Nation From Foreign Terrorist Entry Into the United States." Federal Register, January 27, 2017. https://www.federalregister.gov/documents/2017/02/01/2017-02281/protecting-the-nation-from-foreign-terrorist-entry-into-the-united-states.

Fallon, Katy. "'Moria 2.0': Refugees Who Escaped Fire Now Living in 'worse' Conditions." *The Guardian*, October 7, 2020. https://www.theguardian.com/global-development/2020/oct/07/moria-20-refugees-who-escaped-fire-now-living-in-worse-conditions.

Fanon, Franz. *The Wretched of the Earth, 1961*. London: Penguin Books, 2001.

Fassin, Didier. "Compassion and Repression: The Moral Economy of Immigration Policies in France." *Cultural Anthropology* 20, no. 3 (2005): 362–87.

———. *Humanitarian Reason: A Moral History of the Present*. Berkeley, California: University of California Press, 2012.

Feinberg, Joel. "The Nature and Value of Rights." *The Journal of Value Inquiry* 4 (1970): 243–60.

Fincham, Kathleen. "Learning the Nation in Exile: Constructing Youth Identities, Belonging and 'Citizenship' in Palestinian Refugee Camps in South Lebanon." *Comparative Education* 48, no. 1 (February 1, 2012): 119–33. https://doi.org/10.1080/03050068.2011.637767.

Fine, Sarah. "Refugees and the Limits of Political Philosophy." *Ethics & Global Politics* 13, no. 1 (January 1, 2020): 6–20. https://doi.org/10.1080/16544951.2020.1735017.

Fischer, Jeff. "The Political Rights of Refugees and Displaced Persons: Enfranchisement and Participation." In The International IDEA Handbook: Voting from Abroad IFE., 2007.

FitzGerald, David Scott. *Refuge Beyond Reach*. Oxford: Oxford University Press, 2019.

Foreign Policy. "Germany Is Preparing to Send Refugees Back to Syria." *Foreign Policy*, December 6, 2017. https://foreignpolicy.com/2017/12/06/germany-is-preparing-to-send-refugees-back-to-syria/.

Forsythe, David. "UNHCR's Mandate: The Politics of Being Non-Political." New Issues in Refugee Research: Working Paper, 2001. https://www.unhcr.org/3ae6a0d08.pdf.

Foucault, Michel. *The History of Sexuality, Volume I*. New York: Random House, 1990.

Fraser, Nancy. "Rethinking Recognition." *New Left Review* 3 (2000).

Gallagher, Dennis, and Anna Schowengerdt. "Participation of Refugees in Post Conflict Elections." In *Postconflict Elections, Democratization, and International Assistance (Ed. K Kumar)*. London: Lynne Rienner, 1998.

Gamium, Nell. "When 'Humanitarianism' Becomes 'Development': The Politics of International Aid in Syria's Palestinian Refugee Camps." *American Anthropologist* 114, no. 1 (2012): 95–107.

Gerver, Mollie. "Must Refugees Return?" *Critical Review of International Social and Political Philosophy*, 2019. https://doi.org/10.1080/13698230.2019.1573347.

———. *The Ethics and Practice of Refugee Repatriation*. Edinburgh: Edinburgh University Press, 2018.

Gibney, Matthew. "Between Control and Humanitarianism." *Georgetown Immigration Law Journal*, 2000.

———. "Refugees and Justice Between States." *European Journal of Political Theory* 14, no. 4 (2015): 448–63.

———. *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. Cambridge: Cambridge University Press, 2004.

———. "The Ethics of Refugees." *Philosophy Compass* 13, no. 10 (2018).

Glick Schiller, Nina, Linda Basch, and Cristina Szanton-Blanc. *Towards a Transnational Perspective on Migration: Race, Class, Ethnicity, and Nationalism Reconsidered*. New York: New York Academy of Sciences, 1992.

Goodin, Robert. "Enfranchising All Affected Interests, and Its Alternatives." *Philosophy & Public Affairs* 35, no. 1 (2007): 40–68. https://doi.org/10.1111/j.1088-4963.2007.00098.x.

Gorman, Robert F. "Citizenship, Obligation, and Exile in the Greek and Roman Experience." *Public Affairs Quarterly* 6, no. 1 (1992): 5–22.

Grace, Jeremy. "The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Instruments, Participatory Elections Project (PEP)." IOM International Organization for Migration, 2003.

Grahl-Madsen, Atle. "The Status of Refugees in International Law, Vol. I, 1966, UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees." Geneva, January 1992.

Gray, Benjamin. "Citizenship as Barrier and Opportunity for Ancient Greek and Modern Refugees." *Humanities* 7, no. 3 (2018). https://doi.org/10.3390/h7030072.

Grbac, Peter. "Civitas, Polis, and Urbs: Reimagining the Refugee Camp as the City." Refugee Studies Centre Working Paper Series, No. 96, 2013.

Grierson, Jamie, and Peter Walker. "UN Official Raises Concerns over UK Offshore Asylum Plan." *The Guardian*. March 18, 2021. https://www.theguardian.com/uk-news/2021/mar/18/gibraltar-isle-of-man-rule-out-housing-asylum-seekers-uk.

Guarnizo, Luis Eduardo, Alejandro Portes, and William Haller. "Assimilation and Transnationalism: Determinants of Transnational Political Action among Contemporary Migrants." *American Journal of Sociology* 108, no. 6 (2003): 1211–48.

Gündoğdu, Ayten. *Rightlessness in an Age of Rights*. Oxford: Oxford University Press, 2015.

Haddad, Emma. *The Refugee in International Society: Between Sovereigns*. Cambridge: Cambridge University Press, 2008.

Hailey, Charlie. *Camps: A Guide to 21st-Century Space*. Cambridge, MA: MIT Press, 2009.

Hansen, Randall. "The Poverty of Postnationalism." *Theory and Society* 38, no. 1 (2009): 1–24.

Haslanger, Sally. "Gender and Race: (What) Are They? (What) Do We Want Them to Be?" *Nous* 34, no. 1 (2000): 31–55.

Hathaway, James. *The Law of Refugee Status*. Toronto: Butterworths, 1991.

Hathaway, James, and Michelle Foster. *The Law of Refugee Status (Second Edition)*. Cambridge: Cambridge University Press, 2014.

Hegel, Georg Wilhelm Friedrich. *The Phenomenology of Spirit, 1807*. Oxford: Oxford University Press, 1979.

Heidegger, Martin. *Being and Time*. Harper Collins 2018, 1927.

Held, David. "Cosmopolitanism: Ideals and Realities." In *The Changing Contours of Political Community (Ed. Barry Holden)*, 17–31. Global Democracy: Ket Debates. London: Routledge, 2000.

Hobbes, Thomas. *Leviathan, 1651*. Cambridge: Cambridge University Press, 1991.

Honneth, Axel. *The Struggle for Recognition: The Moral Grammar of Social Conflicts*. Cambridge: Polity Press, 1995.

Honohan, Iseult. "Liberal and Republican Conceptions of Citizenship." In *The Oxford Handbook of Citizenship, (Eds. Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink)*, 83–106. Oxford: Oxford University Press, 2017.

Horst, Cindy. "The Transnational Political Engagements of Refugees: Remittance Sending Practices amongst Somalis in Norway." *Conflict, Security, and Development* 8 (2008).

Human Rights Watch. "Turkey Forcibly Returning Syrians to Danger," July 19, 2019. https://www.hrw.org/news/2019/07/26/turkey-forcibly-returning-syrians-danger.

IDEA. "Institute for Democracy and Elactoral Assistance (IDEA) Voting from Abroad Database," April 2021. https://www.idea.int/data-tools/world-view/52.

Idris, Iffat. "Integrated Approaches to Refugee Management in Uganda." K4D Report, January 24, 2020. https://assets.publishing.service.gov.uk/media/5e3c4d2740f0b6090defbc53/716_Integrated_Approaches_to_Refugee_Management_in_Uganda.pdf.

InfoMigrants. "Germany Extends Ban on Deportations to Syria." *InfoMigrants*, December 6, 2019. https://www.infomigrants.net/en/post/21369/germany-extends-ban-on-deportations-to-syria.

———. "Police Clear Pikpa Camp on Lesbos." *InfoMigrants*, October 30, 2020. https://www.infomigrants.net/en/post/28238/police-clear-pikpa-camp-on-lesbos.

IOM. "Missing Migrants Project," 2021. https://missingmigrants.iom.int/.

Iser, Mattias. "Recognition." The Stanford Encyclopedia of Philosophy, 2019. https://plato.stanford.edu/archives/sum2019/entries/recognition/>.

Isin, Engin. *Citizens without Frontiers*. New York: Bloomsbury, 2012.

James, Aaron. "Constructing Justice for Existing Practice: Rawls and the Status Quo." *Philosophy & Public Affairs* 33, no. 3 (2005): 281–316.

Jones, Rhonda, and Charles McKinney. "Jim Crowed – Emancipation Betrayed: African Americans Confront the Veil (Eds. Alton Hornsby Jr)." In *A Companion to African American History*, 271–82. Oxford: Blackwell Publising, 2005.

Joppke, Christain. "Transformation of Citizenship: Status, Rights, Identity." *Citizenship Studies* 11, no. 1 (2007): 37–48.

Kalmo, Hent, and Quentin Skinner. *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*. Cambridge University Press, 2011.

Kalyvas, Andreas. ""The Sovereign Weaver. Beyond the Camp."' In *Politics, Metaphysics, and Death: Essays on Georgio Agamben's Homo Sacer (Ed. Norris. A)*. Durham, NC: Duke University Press, 2005.

Kamen, Deborah. "Metics (Metoikoi)." In *Status in Classical Athens*, 43–54. Princeton: Princeton University Press, 2013. https://doi.org/10.2307/j.ctt2855c8.9.

Kenez, Levent. "Turkey Accepts New Financing Agreement with the EU on Condition of Keeping Refugees in Its Territory." *Nordic Monitor*, May 4, 2021. https://nordicmonitor.com/2021/05/turkey-accepts-a-new-financing-agreement-with-the-eu-on-the-condition-of-keeping-refugees/.

Keohane, Robert, and Helen Milner. *Internationalization and Domestic Politics*. Cambridge: Cambridge University Press, 1996.

Khan, Sarilee, and Edward Alessi. "Coming Out Under the Gun: Exploring the Psychological Dimensions of Seeking Refugee Status for LGBT Claimants in Canada." *Journal of Refugee Studies* 31, no. 1 (2018): 22–41.

Kibreab, Gaim. "Citizenship Rights and Repatriation of Refugees." *International Migration Review* 37, no. 1 (2006): 24–73.

Kingston, Lindsey. *Fully Human*. Oxford: Oxford University Press, 2019.

Kukathas, Chandran. "Are Refugees Special?" In *Migration and Political Theory: The Ethics of Movement and Membership (Eds. Sarah Fine and Lea Ypi)*, 249–68. Oxford: Oxford University Press, 2016.

Kuosmanen, Jaakko. "What's So Special About Persecution?" *Ethical Theory and Moral Practice* 17, no. 1 (2014): 129–40.

Kymlicka, Will. "Immigration, Citizenship, Multiculturalism: Exploring the Links." *The Political Quarterly* 74, no. 1 (2003): 195–208.

Lafleur, Jean-Michel. *Transnational Politics and the State: The External Voting Rights of Diasporas*. London: Routledge, 2012.

Lankov, Andrei. "Bitter Taste of Paradise: North Korean Refugees in South Korea." *Journal of East Asian Studies* 6, no. 1 (2006): 105–37.

Laski, Harold. *Authority in the Modern State*, 1919.

Latsoudi, Efi. "Do Not Close Pikpa down, Replicate It." Al Jazeera, October 13, 2020. https://www.aljazeera.com/opinions/2020/10/13/do-not-close-pikpa-down-replicate-it.

League of Nations. "League of Nations Report: Russian, Armenian, Assyro-Chaldean and Turkish Refugees. Report by the Representative of Venezuela." Geneva, 0.223.1929, May 29, 1929. https://biblio-archive.unog.ch/Dateien/CouncilDocs/C-223-1929_EN.pdf.

Lenard, Patti Tamara. "Residence and the Right to Vote." *Journal of International Migration and Integration* 16, no. 1 (February 1, 2015): 119–32. https://doi.org/10.1007/s12134-014-0328-6.

———. "The Ethics of Sanctuary Policies in Liberal Democratic States." In *The Political Philosophy of Refuge*. Cambridge: Cambridge University Press, 2019.

Lesvos Solidarity. "About Pikpa Camp," 2020. https://www.lesvossolidarity.org/en/what-we-do/pikpa-camp.

Levitt, Peggy, and Nina Glick Schiller. "Conceptualizing Simultaneity: A Transnational Social Field Perspective on Society." *The International Migration Review* 38, no. 3 (2004): 1002–39.

Levy, Carl. "Refugees, Europe, Camps/State of Exception: 'Into The Zone', the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-Seekers (Theories and Practice)." *Refugee Survey Quarterly* 29, no. 1 (January 1, 2010): 92–119. https://doi.org/10.1093/rsq/hdq013.

Lewicki, Aleksandra. "'The Dead Are Coming': Acts of Citizenship at Europe's Borders." *Citizenship Studies* 21, no. 3 (2017): 275–90.

Leydet, Dominique. "Citizenship." Stanford Encyclopedia of Philosophy, 2017. https://plato.stanford.edu/archives/fall2017/entries/citizenship.

Library of Congress. "Refugee Law and Policy: Australia," 2020. https://www.loc.gov/law/help/refugee-law/australia.php.

List, Christopher, and Laura Valentini. "The Methodology of Political Theory." In *The Oxford Handbook of Philosophical Methodology Edited by Herman Cappelen, Tamar Szabó Gendler, and John Hawthorne*. Oxford: Oxford University Press, 2016.

Lister, Matthew. "The Place of Persecution and Non-State Action in Refugee Protection." In *The Ethics and Politics of Immigration: Core Issues and Emerging Trends (Ed. Alex Sager)*. Lanham, Maryland: Rowman & Littlefield, 2016.

———. "Who Are Refugees?" *Law and Philosophy* 32 (2013): 645–71.

Lister, Michael, and Emily Pia. *Citizenship in Contemporary Europe*. Edinburgh University Press, 2008.

Locke, John. *A Letter Concerning Toleration*. London: Routledge (1992), 1689.

Loescher, Gil. "UNHCR's Origins and Early History: Agency, Influence, and Power in Global Refugee Policy." *Refuge* 33, no. 1 (2017): 77–87.

Long, Katy. "State, Nation, Citizen: Rethinking Repatriation." Refugee Studies Centre Working Paper Series, No. 48, 2008. https://www.rsc.ox.ac.uk/files/files-1/wp48-state-nation-citizen-2008.pdf.

———. *The Point of No Return*. Oxford: Oxford University Press, 2013.

———. "Voting with Their Feet A Review of Refugee Participation and the Role of UNHCR in Country of Origin Elections and Other Political Processes." UNHCR Development and Evaluation, 2001.

López-Guerra, Claudio. "Should Expatriates Vote?*." *Journal of Political Philosophy* 13, no. 2 (2005): 216–34. https://doi.org/10.1111/j.1467-9760.2005.00221.x.

Luce, J. V. "The 'Polis' in Homer and Hesiod." *Proceedings of the Royal Irish Academy. Section C: Archaeology, Celtic Studies, History, Linguistics, Literature* 78 (1978): 1–15.

Malkki, Liisa. *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania*. Chicago: Chicago University Press, 1995.

Malkki, Liisa H. "Refugees and Exile: From 'Refugee Studies' to the National Order of Things." *Annual Review of Anthropology* 24 (1995): 495–523.

Manne, Kate. *Down Girl*. London: Penguin Books, 2018.

Marion Young, Iris. *Inclusion and Democracy*. Oxford: Oxford University Press, 2002.

Marks, Shula. "The Concentration Camps of the Anglo-Boer War: A Social History." *Journal of Southern African Studies* 41, no. 5 (September 3, 2015): 1133–36. https://doi.org/10.1080/03057070.2015.1073065.

Marshall, Thomas. *Citizenship and Social Class and Other Essays*. Cambridge: Cambridge University Press, 1950.

Marx, Karl. "On the Jewish Question," Deutsch-Französische Jahrbücher 1844. https://www.marxists.org/archive/marx/works/1844/jewish-question/.

MASRI, Mazen. "The Implications of the Acquisition of a New Nationality for the Right of Return of Palestinian Refugees." *Asian Journal of International Law* 5, no. 2 (2015): 356–86. https://doi.org/10.1017/S2044251314000241.

Mayblin, Lucy. *Asylum after Empire*. London: Rowman and Littlefield International, 2018.

Mbembe, Achille. "Necropolitics." *Public Culture* 15, no. 1 (2003): 11–40.

McAdam, Jane. "Rethinking the Origins of 'Persecution' in Refugee Law." *International Journal of Refugee Law* 25, no. 4 (2014): 667–92.

McConnachie, Kirsten. "Camps of Containment: A Genealogy of the Refugee Camp." *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 7, no. 3 (2016): 397–412.

———. *Governing Refugees*. London: Routledge, 2014.

Michelman, Frank. "Parsing 'A Right to Have Rights.'" *Constellations: An International Journal of Critical and Democratic Theory* 3, no. 2 (1996): 200–208.

Midgley, Mary. *Utopias, Dolphins, and Computers: Problems of Philosophical Plumbing*. London: Routledge, 1996.

Miller, David. "Democracy, Exile, and Revocation." *Ethics & International Affairs* 30, no. 2 (2016): 265–70. https://doi.org/10.1017/S0892679416000137.

———. "Immigrants, Nations, and Citizenship." *Journal of Political Philosophy* 16, no. 4 (2008): 371–90.

———. "Is There a Human Right to Democracy?" *CSSJ Working Papers Series, SJ032*, 2015.

———. *National Responsibility and Global Justice*. Oxford: Oxford University Press, 2007.

———. "Our Responsibility to Refugees." M. Hoesch and L. Laube (eds.), Proceedings of the 2018 ZiF Workshop "Studying Migration Policies at the Interface between Empirical Research and Normative Analysis", ULB Münster (miami.uni-muenster.de), 2018. doi: 10.17879/95189441435.

———. *Strangers in Our Midst: The Political Philosophy of Immigration*. Cambridge, MA: Harvard University Press, 2016.

Ministry of Foreign Affairs, Colombia. "Los Colombianos Residentes En El Exterior Ya Pueden Acercarse a La Embajada o Consulado Más Cercano y Realizar La Inscripción de La Cédula Para Participar En Las Elecciones de 2018," 2018. https://www.cancilleria.gov.co/newsroom/news/colombianos-residentes-exterior-ya-pueden-acercarse-embajada-o-consulado-cercano.

Monsutti, Alessandro. "Mobility as a Political Act." *Ethnic and Racial Studies* 41, no. 3 (2017): 448–55.

MSF. "Carnage in the Mediterranean Is the Direct Result of European State Policies," November 13, 2020. https://www.msf.org/eu-policies-blame-refugee-shipwrecks-central-mediterranean.

Nickerson, Angela, Yulisha Byrow, Meaghan O'Donnell, Vicki Mau, Tadgh McMahon, Rosanna Pajak, Susan Li, et al. "The Association between Visa Insecurity and Mental Health, Disability and Social Engagement in Refugees Living in Australia." *European Journal of Psychotraumatology* 10, no. 1 (December 31, 2019): 1688129. https://doi.org/10.1080/20008198.2019.1688129.

Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.

Nyers, Peter, and Kim Rygiel. *Citizenship, Migrant Activism and the Politics of the Movement*. London: Routledge, 2012.

Oberman, Kieran. "Immigration, Citizenship, and Consent: What Is Wrong with Permanent Alienage." *Journal of Political Philosophy* 25, no. 1 (2017).

———. "Reality for Realists: Why Economic Migrants Should Not Just 'Go Home and Wait for Assistance'." *European Political Science*, 2018, 649–66. https://doi.org/10.1057/s41304-016-0095-2.

Ogata, Sadako. "Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, at the International Management Symposium, St. Gallen, Switzerland, 25 May 1992." UNHCR: The UN Refugee Agency, May 25, 1992. https://www.unhcr.org/uk/admin/hcspeeches/3ae68faec/statement-mrs-sadako-ogata-united-nations-high-commissioner-refugees-international.html.

Oliver, Kelly. "Abolish Refugee Detention: Rethinking International Law and Carceral Humanitarianism." In *Refugees Now: Rethinking Borders, Hospitality, and Citizenship, Edited by K. Oliver, L. M. Madura, and S. Ahmed*, 117–36. New York: Rowman & Littlefield, 2019.

Orchard, Phil. *The Right to Flee*. Cambridge: Cambridge University Press, 2014.

Organization of African Unity. "Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ('OAU Convention') 1001 U.N.T.S. 45." OAU, September 10, 1969. https://www.refworld.org/docid/3ae6b36018.html.

Oudejans, Nanda. "The Right to Have Rights as The Right to Asylum." *Netherlands Journal of Legal Philosophy* 43, no. 1 (2014): 7–26.

Owen, David. "Citizenship and the Marginalities of Migrants." *Critical Review of International Social and Political Philosophy* 16, no. 3 (2013): 326–43.

———. "Constituting the Polity, Constituting the Demos: On the Place of the All Affected Interests Principle in Democratic Theory and in Resolving the Democratic Boundary Problem." *Ethics and Global Politics* 5, no. 3 (2012): 129–52. https://doi.org/doi:10.3402/egp.v5i3.18617.

———. "Differentiating Refugees: Asylum, Sanctuary and Refuge." In *The Political Philosophy of Refuge Eds. David Miller & Christine Straehle*, 19–38. Cambridge: Cambridge University Press, 2019.

———. "In Loco Civitatis." In *Migration in Political Theory: The Ethics of Movement and Membership Eds. Sarah Fine & Lea Ypi*, 269–91. Oxford: Oxford University Press, 2016.

———. "Refugees, EU Citizenship and the Common European Asylum System A Normative Dilemma for EU Integration." *Ethical Theory and Moral Practice* 22 (2019): 347–69. https://doi.org/10.1007/s10677-019-09973-x.

———. "Transnational Citizenship and the Democratic State: Modes of Membership and Voting Rights." *Critical Review of International Social and Political Philosophy* 14, no. 5 (December 1, 2011): 641–63. https://doi.org/10.1080/13698230.2011.617123.

———. *What Do We Owe to Refugees?* Cambridge: Polity, 2020.

Owens, Patricia. "Reclaiming 'Bare Life'?: Against Agamben on Refugees." *International Relations* 23, no. 4 (2009): 567–82.

Parekh, Serena. "Beyond the Ethics of Admission: Stateless People, Refugee Camps and Moral Obligations." *Philosophy & Social Criticism* 40, no. 7 (August 28, 2013): 645–63. https://doi.org/10.1177/0191453713498254.

———. *No Refuge*. Oxford: Oxford University Press, 2020.

Pedroza, Luicy. *Citizenship Beyond Nationality*. University of Pennsylvania Press, 2019.

Prearo, Massimo. "The Moral Politics of LGBTI Asylum: How the State Deals with the SOGI Framework." *Journal of Refugee Studies*, no. feaa047 (July 21, 2020). https://doi.org/10.1093/jrs/feaa047.

Price, Matthew. *Rethinking Asylum: History, Purpose, and Limits*. Cambridge: Cambridge University Press, 2009.

Pro Asyl. "Escape Again: Afghan Refugees Deported from Germany Are Forced to Flee a Second Time." Pro Asyl, February 19, 2018. https://www.proasyl.de/en/news/escape-again-afghan-refugees-deported-from-germany-are-forced-to-flee-a-second-time/.

Pupavak, Vanessa. "Refugees in the 'Sick Role': Stereotyping Refugees and Eroding Refugee Rights." United Nations High Commission for Refugees (UNHCR), 2006. https://www.refworld.org/docid/4ff159d32.html [accessed 17 July 2020].

Rajan, Nithya. "What Do Refugees Want? Reading Refugee Lip-Sewing Protests through a Critical Lens." *International Feminist Journal of Politics* 21, no. 4 (August 8, 2019): 527–43. https://doi.org/10.1080/14616742.2019.1638811.

Ramadan, Adam. "Destroying Nahr El-Bared: Sovereignty and Urbicide in the Space of Exception." *Political Geography* 28 (2009): 153–63.

———. "Spatialising the Refugee Camp." *Transactions of the Institute of British Geographers* 38, no. 1 (2013): 65–77.

Rawls, John. *A Theory of Justice*. Cambridge, MA: Harvard University Press, 1971.

———. *Law of Peoples*. Cambridge, MA: Harvard University Press, 1999.

Reuters Staff. "'Moria Is Hell': Asylum Seekers Protest Conditions at Greek Camp." *Reuters*, October 1, 2020. https://uk.reuters.com/article/uk-europe-migrants-greece-lesbos-protest/moria-is-hell-asylum-seekers-protest-conditions-at-greek-camp-idUKKBN1WG3WA.

Ricoeur, Peter. *The Course of Recognition*. Cambridge, MA: Harvard University Press, 2005.

Rikhof, Joseph, and Ashley Geerts. "Protected Groups in Refugee Law and International Law." *Laws* 8, no. 4 (2019).

Rubio-Marín, Ruth. "Transnational Politics and the Democratic Nation-State: Normative Challenges of Expatriate Voting and Nationality Retention of Emigrants Symposium: A Tribute to the Work of Kim Barry the Construction of Citizenship in an Emigration Context: Symposium." *New York University Law Review* 81 (2006).

Sager, Alex. "Methodological Nationalism, Migration and Political Theory." *Political Studies* 64, no. 1 (October 28, 2014): 42–59. https://doi.org/10.1111/1467-9248.12167.

———. "Political Rights, Republican Freedom, and Temporary Workers." *Critical Review of International Social and Political Philosophy* 17, no. 2 (March 4, 2014): 189–211. https://doi.org/10.1080/13698230.2012.733586.

Salih, Ruba. "From Bare Lives to Political Agents: Palestinian Refugees as Avant Garde." *Refugee Survey Quarterly* 32, no. 2 (2013): 66–91.

Sandel, Michael. *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press, 1998.

Sangiovanni, Andrea. "Justice and the Priority of Politics to Morality." *Journal of Political Philosophy* 16, no. 2 (2008): 137–64. https://doi.org/10.1111/j.1467-9760.2007.00291.x.

Saunders, Natasha. "Beyond Asylum Claims: Refugee Protest, Responsibility, and Article 28 of the Universal Declaration of Human Rights." *The International Journal of Human Rights* 22, no. 7 (August 9, 2018): 847–68. https://doi.org/10.1080/13642987.2018.1485654.

Scanlan, John, and Gil Loescher. "U.S. Foreign Policy, 1959-1980: Impact on Refugee Flow from Cuba." *The Annals of the American Academy of Political and Social Science* 467 The Global Refugee Problem: US and World Response (1983): 116–37.

Schmalz, Dana. *Refugees, Democracy and the Law Political Rights at the Margins of the State*. London: Routledge, 2020.

Schmitt, Carl. *Political Theology*. Chicago: Chicago University Press (2010), 1985.

Scottish Government. "Right to Vote Extended," February 20, 2020. https://www.gov.scot/news/right-to-vote-extended/.

Seglow, Jonathan. "Arguments for Naturalisation." *Political Studies* 57, no. 4 (2009): 788–804. https://doi.org/10.1111/j.1467-9248.2008.00768.x.

Shachar, Ayelet. *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge, MA: Harvard University Press, 2009.

Shacknove, Andrew. "Who Is a Refugee?" *Ethics* 95, no. 2 (1985): 274–84.

Shapiro, Ian. *Democratic Justice*. New Haven: Yale University Press, 1999.

Sharma, Aradhana, and Akhil Gupta. *The Anthropology of the State*. Blackwell Readers in Anthropology. Blackwell Publishing, 2006.

Sharp, Daniel. "Immigration and State System Legitimacy." *Critical Review of International Social and Political Philosophy*, December 8, 2020, 1–11. https://doi.org/10.1080/13698230.2020.1860416.

Shklar, Judith. *American Citizenship: The Quest for Inclusion*. University of Utah: The Tanner Lectures on Human Values, 1989.

Shklar, Judith N. "Putting Cruelty First." *Daedalus* 111, no. 3 (1982): 17–27.

Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy: 40th Anniversary Edition*. Princeton: Princeton University Press, 2020.

Sigona, Nando. "Campzenship: Reimagining the Camp as a Social and Political Space." *Citizenship Studies* 19, no. 1 (January 2, 2015): 1–15. https://doi.org/10.1080/13621025.2014.937643.

Singer, Peter. "Famine, Affluence, and Morality." *Philosophy and Public Affairs* 1, no. 3 (1972): 229–43.

Skinner, Quentin. "Genealogy of the State." Northwestern University, 2013.

Skran, Claudena, and Evan Easton-Calabria. "Old Concepts Making New History: Refugee Self-Reliance, Livelihoods and the 'Refugee Entrepreneur." *Journal of Refugee Studies* 33, no. 1 (2020): 1–21. https://doi.org/10.1093/jrs/fez061.

Somers, Margaret. *Genealogies of Citizenship: Markets, Statelessness, and The Right to Have Rights*. Cambridge: Cambridge University Press, 2008.

Song, Sarah. *Immigration and Democracy*. Oxford: Oxford University Press, 2019.

———. "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State." *International Theory* 4, no. 1 (2012): 39–68. https://doi.org/10.1017/S1752971911000248.

Souter, James, and Joshua Hobbs. "Asylum, Affinity, and Cosmopolitan Solidarity with Refugees." *Journal of Social Philosophy* 51, no. 4 (2020): 543–63.

Soysal, Yasemin. *Limits of Citizenship*. Chicago: Chicago University Press, 1994.

Spiro, Peter. "Stakeholder Theory Won't Save Citizenship." In *Democratic Inclusion: A Pluralist Theory of Citizenship*. Manchester: Manchester University Press, 2018.

Suleiman, Jaber. "The Current Political, Organizational and Security Situation in the Palestinian Refugee Camps of Lebanon." *Journal of Palestine Studies* 29, no. 1 (n.d.): 66–80.

Tasioulas, John. "Human Rights, Legitimacy, and International Law." *The American Journal of Jurisprudence* 58, no. 1 (June 1, 2013): 1–25. https://doi.org/10.1093/ajj/aut001.

Taylor, Charles. "The Politics of Recognition." In *Multiculturalism: Examining the Politics of Recognition (Ed. Amy Gutmann)*, 25–73. Princeton: Princeton University Press, 1994.

The Independent. "Theresa May's Speech to the Conservative Party Conference – in Full." *The Independent*, October 6, 2015. https://www.independent.co.uk/news/uk/politics/theresa-may-s-speech-to-the-conservative-party-conference-in-full-a6681901.html;

The National Archive. "Immigration and Immigrants." Accessed January 29, 2021. https://www.nationalarchives.gov.uk/help-with-your-research/research-guides/immigration/.

The Washington Post. "A Silicon Valey Mogul Wants to Solve the Global Refugee Crisis by Making a New Country." *The Washington Post*, 2015. https://www.washingtonpost.com/news/worldviews/wp/2015/07/23/a-silicon-valley-mogul-wants-to-solve-the-global-refugee-crisis-by-creating-a-new-country/.

Tuastad, Dag. "'State of Exception' or 'State in Exile'? The Fallacy of Appropriating Agamben on Palestinian Refugee Camps." *Third World Quarterly* 38, no. 9 (September 2, 2017): 2159–70. https://doi.org/10.1080/01436597.2016.1256765.

Turner, Simon. "What Is a Refugee Camp? Explorations of the Limits and Effects of the Camp." *Journal of Refugee Studies* 29, no. 9 (2015).

UN General Assembly. "Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal," December 11, 1946. https://www.refworld.org/docid/3b00f1ee0.html [accessed 18 August 2020].

———. "Convention Relating to the Status of Refugees." United Nations, July 28, 1951. https://www.refworld.org/docid/3be01b964.html.

———. "International Covenant on Civil and Political Rights." United Nations, Treaty Series, vol. 999, p. 171, December 16, 1966. https://www.refworld.org/docid/3ae6b3aa0.html [accessed 10 January 2021.

UNHCR. "Alternatives to Camps." UNCHR, 2014. https://www.unhcr.org/5422b8f09.html.

———. "Enthusiastic Turnout for Elections at World's Largest Refugee Site," August 28, 2013. https://www.unhcr.org/uk/news/latest/2013/8/521de8729/enthusiastic-turnout-elections-worlds-largest-refugee-site.html.

———. "Global Trends: Forced Displacement in 2018," 2018. https://www.unhcr.org/uk/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html.

———. "Kalobeyei Settlement." UNHCR: The UN Refugee Agency, 2020. https://www.unhcr.org/ke/kalobeyei-settlement.

———. "Lebanon: UNHCR Global Focus," 2021. https://reporting.unhcr.org/lebanon#:~:text=Lebanon%20remains%20the%20country%20hosting,Palestinian%20refugees%20under%20UNRWA's%20mandate.

———. "Refugee Camps," 2020. https://www.unrefugees.org/refugee-facts/camps/.

———. "Tanzania Grants Citizenship to 162,000 Burundian Refugees in Historic Decision," 2014. https://www.unhcr.org/uk/news/latest/2014/10/5441246f6/tanzania-grants-citizenship-162000-burundian-refugees-historic-decision.html.

———. "The Lost Children of Côte d'Ivoire." The UN Refugee Agency, 2021. https://www.unhcr.org/ibelong/the-lost-children-of-cote-divoire/.

United Nations. "Global Compact on Safe, Orderly, and Regular Migration," December 2018. https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf.

———. "Rome Statute of the International Criminal Court, 17 July 1998, in Force on 1 July 2002, United Nations, Treaty Series, Vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, Http://Treaties.Un.Org.," 1998.

———. "Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428 (V) of 14," 1950.

———. "The Global Compact on Refugees," December 2018. https://www.unhcr.org/5c658aed4.

———. "The Global Compact on Refugees (Draft One)," March 2018. https://www.unhcr.org/5aa2b3287.pdf.

———. "The Principle of Non-Refoulement under International Human Rights Law." (UN OHCHR), 2018. https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf.

———. "Universal Declaration of Human Rights," 1948. https://www.un.org/en/universal-declaration-human-rights/.

Valentini, Laura. "Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism." *Journal of Political Philosophy* 19, no. 4 (2010): 399–418. https://doi.org/10.1111/j.1467-9760.2010.00373.x.

Vasanthakumar, Ashwini. "Exile Political Representation." *Journal of Political Philosophy* 24, no. 3 (2016): 277–96.

Vélez-Torres, Irene, and Jytte Agergaard. "Political Remittances, Connectivity, and the Trans-Local Politics of Place: An Alternative Approach to the Dominant Narratives on 'Displacement' in Colombia." *Geoforum* 53 (May 1, 2014): 116–25. https://doi.org/10.1016/j.geoforum.2014.03.001.

Verschoor, Marco. "The Democratic Boundary Problem and Social Contract Theory." *European Journal of Political Theory* 17, no. 1 (2018): 3–22. https://doi.org/10.1177/1474885115572922.

Waldron, Jeremy. "Participation: The Right of Rights." *Proceedings of the Aristotelian Society* 98 (1998): 307–37.

Walzer, Michael. *Spheres of Justice*. New York: Basic Books, 1983.

———. "The Moral Standing of States: A Response to Four Critics." *Philosophy & Public Affairs* 9, no. 3 (1980): 209–29.

Watkins, Jessica. "Policing and Protection for Syrian Refugees in Jordan." Carnegie Endowment for International Peace, October 16, 2018. https://carnegieendowment.org/sada/77511.

Watters, Charles. "Emerging Paradigms in the Mental Health Care of Refugees." *Social Science & Medicine* 52, no. 11 (2001): 1709–18. https://doi.org/10.1016/S0277-9536(00)00284-7.

Weber, Leanne, and Sharon Pickering. *Globalization and Borders*. Basingstoke: Palgrave Macmillan, 2011.

Weber, Max. *Economy and Society*. Berkeley, California: University of California Press, 1968.

Weis, Paul. "The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis." UNHCR, 1990. https://www.refworld.org/docid/53e1dd114.html.

Wellman, Christopher Heath. "Immigration." Stanford Encyclopeadia of Philosophy, 2019. https://plato.stanford.edu/entries/immigration/.

Wendt, Alexander. "Why a World State Is Inevitable." *European Journal of International Relations* 9, no. 4 (2003): 491–542. https://doi.org/10.1177/135406610394001.

Wilde, Ralph. "Quis Custodiet Ipsos Custodes?: Why and How UNHCR Governance of 'Development' Refugee Camps Should Be Subject to International Human Rights Law." *Yale Human Rights and Development Law Journal* 1 (1998): 107–28.

Wolff, Johnathan. "Method in Philosophy and Public Policy: Applied Philosophy versus Engaged Philosophy." In *The Routledge Handbook of Ethics and Public Policy Ed Annabelle Lever and Andrei Poama*. London: Routledge, 2018.

Yong, Caleb. "Justifying Resistance to Immigration Law: The Case of Mere Noncompliance." *Canadian Journal of Law and Jurisprudence* 32, no. 2 (2018): 459–81.

Young, Iris Marion. *Justice and the Politics of Difference*. Princeton and Oxford: Princeton University Press, 1990.

Zakaryan, Tigranna. "Political Participation of Refugees: The Case of Congolese and South Sudanese Refugees in Uganda." International IDEA, 2018. https://www.idea.int/publications/catalogue/political-participation- refugees-bridging-gaps.

Ziegler, Ruvi. "Out of Country Voting: The Predicament of the Recognised Refugee." In *Exploring the Boundaries of Refugee Law*, 298–322. Brill, 2015.

———. *Voting Rights of Refugees*. Cambridge: Cambridge University Press, 2017.

Zolberg, Anthony. "Refugee Warriors: A Problem of Our Time." In *Escape from Violence (Eds. Aristide Zolberg, Astri Suhrke and Sergio Aguayo)*. Oxford: Oxford University Press, 1989.