What’s So Special about Forced Migration
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I.

Forced migration is a major interest of study, public policy and civic activism and in the centre of some political and scholarly disputes. Often the question of definition is brought up in these debates; people ask: ‘what is forced migration?’ or ‘who is a forced migrant’? The vagueness of the term stems from the fact that it is not a well defines and accepted legal category like refugees. The use of the term forced migration attempt to broaden the legal protection, international assistance, and moral consideration that refugee receive today. It meant to capture a wider group of immigrants who flee their homes because of dreadful or misfortunate events that go beyond of the reasons for granting refugees with the protection they have today under international law. But the effort to introduce a more inclusive category encounters many hurdles; some of them conceptual and related to the question of how to define it.

In this paper I examine this question from a normative perspective, tying the background circumstances of migratory movements to the obligation states have to those who were forced to leave their homes. Adding the prefix ‘forced’ to movement between locations aims at distinguishing it from other cases of migration. David Turton suggests that the reason for separating forced migrants from the wider category of migrants is that “forced migrants make a special claim on our concern… They require us to ask what our responsibilities are to the stranger in distress, the stranger amongst us, on our doorstep”. Following Turton, I argue that forced migration is a normative category and retrace its distinctiveness to the moral duty states have towards such immigrants. The definition of the term is inseparable from its moral account.

This paper has few goals. First, it will provide a conceptual and normative framework for forced migration. This will be an inclusive framework that can accommodate different positions on the nature and extent of the duties states have toward forced migrants. Leaving the framework relatively open aims at explaining how the normative account of forced migration can be, potentially, related to broader moral positions. This will be the paper’s second goal. Third, I will explore what contribution a new conception of freedom – ‘freedom-as-independence’,
recently introduced by Christian List and Laura Valentini – has for the issue of forced migration. Parts II and III of the paper are dedicated to the first two goals. In part II, through a series of distinctions, I explain who should be considered a forced migrant and how it is inherently contacted to the state’s duty to admit her. In part III I move to explore three different ways to understand how states incur the duty to admit forced migrants. Parts IV and V will focus on the third goal – introducing the conception of ‘freedom-as-independence’ to the analysis of forced migration. Part IV is a brief description of this conception of freedom and in part V I explore its implications in the context of forced migration.

II.

I start by explaining how to conceive forced migration, especially as a concept for normative inquiry. As in many other cases, defining a category is done best by distinguishing it from other categories. I will define the category of migrants I am focusing on through a couple of core distinctions. I will first elaborate on the distinction between voluntary and forced movement. Next I will shortly discuss the distinction between those who relocate (migrants) and the ones who live under similar circumstances but will stay put (non-migrants). This sounds a redundant distinction for a discussion on migration, but as it will become clear soon, it is a crucial one for the normative analysis of forced migration. My discussion will be limited to crossing-borders movement; this is the essence of the third distinction. I explain and justify it as I distinguish between internal and international migration.

Voluntary – involuntary

It is common to understand the category of forced migration by contrasting it with voluntary migration. First let me just clarify that ‘forced’ should be taken here as involuntary. In normative political philosophy to say that an agent is forced to do something is to suggest that there is someone who makes her perform this action. An agent A is forced to do X, as far as there is an agent (or agents) B that coerces her to do X. Coercion can come in many forms and we do not have to envisage a one-to-one direct coercive relation to claim that one is forced to perform an action.\(^4\) However, I do not want to exclude from this discussion displacement due to natural disasters such as earthquakes and tsunamis, which are difficult to square into the coercion framework.\(^5\)


\(^5\) It could be said that by omission there are human agency involved in such displacement. We might think that the state ought to prevent the uprooting of citizens due to natural disasters by investing in protective measures. This is
It will be ill-advised to think on voluntary and forced movement as a stark dichotomy. As many researchers on migration suggest, there are elements of voluntariness and involuntariness in any migratory movement. Nonetheless, this distinction encloses an important insight for the normative account. It suggests that we should respond differently to each; namely, that we owe something to those we take to be forced migrants that we do not owe to other migrants. Something in the involuntariness of the decision gives rise to some duties towards these migrants. This is why I claim that more than a research-lead category, forced migration is a normative category which involves a moral judgment. It indicates that there might be duties towards those who cannot stay where they live without suffering from significance limitation on their life prospects and manage to move away in order to escape this unfavourable circumstances.

The assessment of the movement as forced should not be based on the subjective level of involuntariness of the decision to leave. Saying that one is forced to leave considering the situation where she resides is to claim that the freedom she can enjoy there is compromised in such a way that a reasonable judgment of her state of affairs could not be to expect her to stay. But that is not all. Invoking the title ‘forced migrant’ suggests that we owe some special response to the individuals who move under such circumstances. It is a judgment regarding the freedom of individuals to stay where they live without suffering from significant deprivation and the moral obligations of others to secure this possibility. So in order to determine who is a forced migrant we need to establish what kinds of deprivation give rise to duties in others, who are the duties bearers and what they owe to people on the move.

The options an agent cannot have in conjunction with staying where she is should be important ones. Not having the access to trivial options in your place of residence will be limitation of your freedom in a way that cannot make others owe you something. I will present these important options in terms of rights and opportunities. There is an agreement among many thinkers on the importance of some set of rights, for example basic human rights which set a

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minimal threshold of decent human living. The deprivation of basic human rights has the power to invoke duties in other agents towards those who suffer from it. There is less agreement regarding other sets of rights and opportunities; not on their power to create duties in others and not on the identity of the potential duty bearers. Fleeing in order to save your life will be a case that will be hard to deny as forced movement one. A person is not expected to risk his own life by staying where he may find his demise. The right to life is as basic as basic rights get. It does not matter if the person is trying to get away from a deadly civil war or ethnic persecution as in Northern Iraq or Syria nowadays, or if he escapes a devastating natural disaster like typhoon Haiyan that displaced millions of people in the Philippines. The basic rights in these cases ought to be secured and their deprivation gives rise to duties in others.

Being a forced migrant is determined according to the level of deprivation of rights and opportunities in the place of residence. Therefore it is not a strict dichotomy, rather a scalar property; one can be more or less forced to leave with respect to the level of rights and opportunities she can enjoy where she lives. But it is not a simple continuum. Not every sort of deprivation can invoke a duty in others, and more particularly, as we will soon see, duties of other states towards non-members. People will have different judgments regarding what is the level of deprivation from which we should regard the movement as forced. This will depend on their moral assumptions and commitments and what level of rights and opportunities they command us to secure to all human beings. According to one theory, states will have duties to secure basic human rights of non-citizens living in other states. Other moral stances will subscribe a duty to secure a more extensive set of rights and opportunities, which may include egalitarian considerations. The content and extent of the morally relevant set of rights and opportunities does not matter to my analysis, because I focus on the structure of the duty towards forced migrants. People could fill it in according to their moral commitments. The point I make here is that we cannot understand forced migration only based on the involuntariness of the movement, but through the relation between the deprivation individuals experience where they reside and the duties of others to secure the relevant set of rights and opportunities.

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7 We can think of something similar to Henry Shue’s security and subsistence rights (Henry Shue, Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy (Princeton; Guildford: Princeton University Press, 1980) Ch. 1). These rights can be said to correspond with fundamental interest and the basic goods persons “need [in order] to live a minimally decent life according to a broad range of conceptions of human flourishing. [Such fundamental] interests include physical integrity, adequate food, drink, clothing, shelter, health care, and education, a safe environment, and basic political liberties. This understanding of [fundamental] interests is consistent with human rights discourses, which contend that [such] interests are so fundamental that every person has a right to their protection.” (Shelley Wilcox, “Immigrant Admissions and Global Relations of Harm,” Journal of Social Philosophy, 38 (2007), p. 279).
So to recap, a forced migrant will be a person that relocates under the pressure of depriving circumstances that others have a duty to address. A migrant (which is not forced) is a person that we do not have this special commitment in relation to his movement.

**Migrants – non-migrants**

Another important distinction is between immigrants and non-immigrants – those who will not move facing the same rights and opportunities deficit. The persons who will not or cannot choose mobility in response to the depriving circumstances are also subjects of moral concern. In principle, both the ones who stayed and the ones who left should receive assistance in regaining the rights and opportunities they lost, assuming that other agents owe them that. Many times immobility is a sign for even greater vulnerability. The dire situation of an asylum-seeker who fled a conflict zone might be better than the situation of those suffering from the perils where the violence continues to rage on. If we need to target our efforts, then there is a reason to put more weight on the plight of those in immediate danger. The distinctiveness of the duties towards forced migrants should be tied to the fact that they are on the move. The specification of duties should address individuals *qua* forced migrants; that is individuals who relocate in order to secure important rights and opportunities.

**Internal- international**

The last distinction brings us to the distinction between internal and international (or crossing-border) migration. Within the territory of a given country there are not many restrictions on the free movement between one place to the other, or at least we think that there should not be such limitations. There are specific places individuals are prohibited from relocating into; typically due to property rights of other people. But in general there are enough relocation options to say that one is not constrained from moving within the country’s boundaries. This manifestation of the idea of freedom of movement is true for any person who wishes to relocate, regardless if we take the movement to be forced or voluntary. There is no real dispute over the freedom of

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8 Though it is not always the case. Sometimes individuals with more resources and networks can deal better with external deleterious interference.

9 There are other reasons, such as safety (a deserted old mine), security (a secret military base) or environmental reasons (a natural reserve). In general they will restrict the relocation into small number of specific locations. Occasionally authorities will be justified in restricting the movement of the population because of disasters and risk to public health or security (though this prerogative should not be permitted too easily as it is often can be abused). It is part of the routine use of state coercive power to constrain specific individuals’ freedom of movement as part of its duty to maintain the public order (stop criminals, issue restrain order, etc.). These are not cases that we take as undermining the general right of free movement within a state.
movement within a country.\footnote{This is not true for all places. In China, for instance, the national registration system (Hukou) places restrictions on its citizens’ internal freedom of movement.} Freedom of movement across borders, however, is a different story. Border restrictions and international immigration is a burning political issue as well as the focus of interest of many discussions in normative political philosophy. The international conventional norms, as well as international laws, provide states with the discretion over their borders; to decide how much and who to admit.\footnote{I will not defend this presumption here. For positions that argue for the states principled right to exclude outsiders, see: Michael Walzer, \textit{Spheres of Justice: A Defence of Pluralism and Equality} (New York: Basic Books, Inc., 1983), chap. 2; David Miller, “Immigration: The Case for Limits,” in \textit{Contemporary Debates in Applied Ethics}, ed. by Andrew I. Cohen and Christopher Heath Wellman (Malden, MA, USA; Oxford, UK; Carlton, Victoria, Australia: Blackwell Publishing Ltd, 2005), pp. 193–206; David Miller, \textit{National Responsibility and Global Justice}, Critical review of international social and political … (Oxford, UK; New York, US: Oxford University Press, 2007), chap. 8; David Miller, “Border Regimes and Human Rights,” \textit{The Law & Ethics of Human Rights, 7} (2013), pp. 1–23; Christopher Heath Wellman, “Immigration and Freedom of Association,” \textit{Ethics}, 119 (2008), 109–41; Ryan Pevnick, \textit{Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty} (Cambridge: Cambridge University Press, 2011); Michael Blake, “Immigration, Jurisdiction, and Exclusion,” \textit{Philosophy & Public Affairs}, 41 (2013), 103–30.} Under regular circumstances this conventional view provides states with the right to exclude outsiders.

I presume this conventional view on states right to exclude outsiders in this paper.\footnote{Missing reference} If states would not have this discretion over their borders there will be nothing ‘special’ about admitting forced migrants. All those who attempt to cross the border into the territories of another state should not be stopped. This does not mean that states’ border policies are not subject for scrutiny and free from moral considerations. A duty to admit forced migrants is exactly such moral imperative state should adhere to with regard to their border control. I also side with a normative framework that considers the state to be the duty bearers for its members’ rights and opportunities. The extent of these duties will differ according to the theory one’s hold, but generally the state has a duty to secure and provide some level of rights and opportunities. This does not mean that there are no moral duties across borders; obligation towards persons who are not members of one’s state. I assume that there are duties to secure and provide some level of rights and opportunities to all persons, but these should be carried out by each state political institutions. My framework is neutral with regards to the extent of the duties and the difference between the domestic and the global sphere. One theory can subscribe only minimal set of rights and opportunities within the state and another will only be satisfied with full equality. Also, according to one theory the domestic duties of the state can be extensive but fairly minimal across borders. Whether the duties to individuals in other states are extensive or minimal, they come into play only when a state is unable or unwilling to fulfil its role as the guardian and provider of the set of relevant rights and opportunities.
In the context of forced migration, the state where the displacement is taken place is the first that should address the matter. If the state is unable to carry its duties then it will probably ask for assistance from the international community. Other states should provide assistance so the state, where displacement is taken place, could overcome the rights and opportunities deficit of its members. The extent of foreign aid depends on the set of rights and opportunities that other states are obligated to sustain to all persons worldwide according to the moral view one subscribes to. Cases in which the state is unwilling to secure the rights and opportunities of its members are more complicated, because they require direct involvement of the international community that will face the resistance of the local administration. The stakes of involvement are higher and place second-order considerations on what other states ought to do regarding the deprivation of individuals living under this regime.

Many of the internal movement due to deprivation of rights and opportunities do not require special consideration that justifies the distinct category of forced migration. The state is obliged to address their rights and opportunities deficit as it ought to address other members that suffer from similar deprivation. The location within the state of the deprived individuals should not matter for the duties the state has towards them. The same goes for international assistance. If, based on the moral framework one works with, the deficit calls for assistance, then other states should provide their resources to assist the state to address the plight of its members. This is true for cases of mobility as well as to cases of immobility as we already saw. Assuming that there is a duty to secure persons with the minimal goods required for their survival, both those who suffer from famine where they live and those who struggle to survive after they flee a flood should receive the support they desperately need. The aid should come from their government, and when it cannot provide it on its own – with the help of other states.

To conclude, forced migration is when irregular circumstances of deprivation occur. This is what makes their movement distinct from non-forced or voluntary migration. This deficit of rights and opportunities is one that other states have duties to secure and the local administration is unable or unwilling to address. In this situation states have a duty to aid the deprived persons. This duty is not limited to those who will move in order to secure their rights and opportunities; it is what states owe to all affected individuals irrespectively of their location. This is why I take only crossing-border movement under such circumstances to be the defining feature of forced migration. This group of migrants raise a more specific claim against other states; they want to be let in. In the next section I explore the nature of this claim and states’ duty to admit forced migrants.
III.

The place where the call for special moral consideration takes place is at the state border with the claim that forced migrant should be treated differently from voluntary migrants. This sort of claim assumes that under regular circumstances of immigration, i.e. voluntary migration, states have high level of discretion to decide who will be admitted. However, the deprivation in the background of forced migrants’ movement challenges the liberty states can take in declining the request for admission. The classical case of forced migration is the case of refugees. Since it is not disputable that refugees have a strong claim for admission, I take it as a springboard for examining what makes the case of forced migration such that deserve special consideration.

The use of the term ‘forced migration’ calls for broadening the scope of the protection given to refugees under international law to other cases of migration. Two main features make refugees claim for admission. The special claim for admission is based on a duty states have towards the refugee and the inability to discharge it in her country of origin. The only way to discharge the duty is to admit the refugee into another state. In this section I explore three explanations for the state duty to admit forced migrants: a way to discharge a positive duty, a negative duty not to put a person in a situation of unacceptable deprivation, and the lack of adequate justification for coercive border restrictions.

Based on the UN 1951 convention relating the status of refugees it could be said that the primary duties of states are not to return (non-refoulment) persons to where they will face the danger that was the reason for their flight and to grant them asylum. According to the convention, states

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13 I am writing high level of discretion and not total discretion, because there are applicants that should be admitted even if they do not suffer from any deficit of rights and opportunities in their country of origin. I mainly have in mind here cases of family reunion. There are strong reasons why states’ border regulation should not exclude such application for admission (Joseph H. Carens, “Who Should Get in? The Ethics of Immigration Admissions,” Ethics & International Affairs, 17 (2003), pp. 96–8; Miller, “Immigration: The Case for Limits”, fn. 2).

14 This is widely accepted in political philosophy that refugees should be let in other things considered (Walzer, pp. 48–51; David Miller, Borders and Human Rights, “Borders and Human Rights” Workshop (Tel Aviv, 2011), IV, 1–24; Miller, “Border Regimes and Human Rights”; p. 10; Joseph H. Carens, The Ethics of Migration, 2013, p. 194; Teresa A. Sullivan, “Immigration and the Ethics of Choice,” The International migration review, 30 (1996), p. 99. It is also a follows from the fact that 145 states are registered parties to the 1951 UN convention relating the status of refugees (https://treaties.un.org/Pages/ViewDetailsII.aspx?src=UNTSONLINE&mtdsg_no=V~2&chapter=5&Temp =mtdsg2&lang=en#Participants).


16 There is potentially a forth explanation as well – causal connection. It said that if an agent, or a state in this case, is causally involved in bringing about harm, it incurs the duty to amend it. So, if a state is involved in creating the forced migration scenario it ought to admit them (for examples of this claim with regards to refugees, see: Walzer; Carens, The Ethics of Migration, p. 195; in the wider context of immigration, see: Wilcox. I think that the causal connection to the deprivation give good reasons why specific states have more duties than others towards specific groups of forced migrants, but still the rights and opportunities deficit is what give rise to the moral duty to admit them. So for me the involvement of the state in creating the circumstances of forced migration is more relevant for how to distribute the associate burdens of admitting and resettling.
owe that to people who suffer from a very specific form of right violation – persecution – and to
the extent that it is directed at them because of their race, nationality, political opinion or
membership in a particular social group.\textsuperscript{17} For many writers the duty to provide asylum for
refugees derives from humanitarian duties that we have towards any human being.\textsuperscript{18}

Introducing the term forced migrants instead of refugees aims at broadening the scope of
these duties towards persons who immigrates due to forcing factors other than persecution.
Those who support this broadening trend usually consider the deficit of minimal basic human
rights as the relevant deprivation that can invoke the same duties that are owed today to
refugees. The causes of the deprivation are not relevant, just the dire necessity of these
immigrants that forces them to relocate. They can move because of violent conflict, natural
disasters or extreme poverty.\textsuperscript{19} One writer even calls it survival migration.\textsuperscript{20} According to the
general framework I develop here, the deprivation of migrants needs to be below the set of
rights and opportunities that states have duty to secure to non-citizens who live in other states.
This is the first condition. The second condition is that it is not possible to discharge this duty in
the immigrants’ country of origin. No matter what one thinks the extent of moral duties towards
non-citizens are, the structure of the moral duty is similar: when a person suffers from a
deprivation of rights and opportunities that he or she cannot achieve in the country of residence,
and other states have a duty to restore his or her rights and opportunities deficit, and they cannot
do it in his or her country of residence, then this states have a duty to accept him or her in.
Admission is a way to discharge the duty states have towards those they cannot be assisted \textit{in situ}.

I want to suggest a second explanation to why and how states come to incur the duty to
admit forced migrants. Under this alternative interpretation the duty to admit forced migrants
derives from what we ought not to do to those who move across borders due to of morally
significant rights and opportunities deficit. It is more about what we should not do to them and
not so much about what we should do for them. States should not use coercive force to prevent
forced migrants from entering their territories or to expel them back to the country where they
cannot secure the relevant set of rights and opportunities.\textsuperscript{21} It is possible to ground this view on
something like a negative duty not to be complicit in deprivation that states have a duty alleviate
in the first place. If an individual suffers from a deficit of rights and opportunities that according

\textsuperscript{17} Article United Nations High Commissioner for Refugees (UNHCR), “Convention Relating to the Status of
Refugees” (Geneva: UNHCR, 1951), Article 1.A.
\textsuperscript{18} Lister; Matthew J. Gibney; Miller, “Immigration: The Case for Limits”; Walzer, chap. 2; Andrew E Shacknove,
\textsuperscript{19} Shacknove, p. 278.
\textsuperscript{20} Betts.
\textsuperscript{21} This is how I understand Michael Walzer’s position in \textit{Spheres of Justice} (Walzer, pp. 50–1).
to the moral position you hold states should restore, then states should also not act in a way that puts her in a position of suffering from this deprivation. Sending back the forced migrant to where she will face such deprivation again is acting in such a way, and as long as it is not too costly, states should avoid it. That means that states are under a duty to accept forced migrants that arrive to their borders (or find them a durable solution in a third country).

I want to add a third alternative, which I find as the most appealing one, to the explanation of states’ duties towards forced migrants. The duty to provide asylum can derive from the justification of a world-system of territorial states and its failure in securing the adequate level of rights and opportunities to individuals within their state of origin. There is a world order that is imposed on all individuals where states’ role is to guarantee a set of right and opportunities for its members. When a state fails, then individuals have a claim against other states as agents that support and sustain this international order. Specifically, those who move across borders trying to secure the adequate level of rights and opportunities challenge the justification of border restrictions. States’ right to exclude outsiders is at least partly justified on the grounds that individuals can enjoy the set of rights and opportunities they entitled to where they reside. When individuals have this set secured, other states do not owe them any special treatment and can use their discretion to decide who will be let in (or left out). However, when the case is of forced migrants, who are deprived from this adequate set of rights and opportunities in their country of residence, it is more difficult to reject their claim for admission.

This understanding of states duty to admit forced migrants is about the legitimate use of coercive power of the state towards outsiders, which make it a duty of justice. Here as earlier, I assume that under regular circumstances states have a privileged position in deciding on their borders policies; they have discretionary power to decide how much and who will be let into their territories and become part of their society. However, if the only solution for the deprivation of the adequate level of rights and opportunities is moving into another state territory, then the existing reasons that justify state discretion over its borders do not hold anymore. The use of coercive means to exclude forced migrants cannot be justified and therefore border restrictions are illegitimate use of state power in these cases.

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22 When it is too costly is a good question that the main writers on duties towards refugees remain vague. Joseph Carens in criticizing them on this equivocalness suggests that the answer for the question ‘when is it too much?’ is simply: ‘almost never!’.

23 Carens, *The Ethics of Migration*, p. 196; Katrina M. Wyman, “Are We Morally Obligated to Assist Climate Change Migrants?,” *The Law & Ethics of Human Rights*, 7 (2013), pp. 205–6 (the paper focuses on climate migration, but this is given as a general reason why states ought to accept refugees).
The first view presented saw admission as a way to fulfil what we already owe to forced migrants. The second view took admission as a derivative of a negative duty not to act in a way that put forced migrants in deprived circumstances. Under this third view, admission must be granted to forced migrants because the justification of border restrictions cannot be applied to their case. This first explanation of the duty to admit forced migrants is different from the second and third explanations in two important ways. First, negative duties and duties of justice, which tie the agency of an actor to the moral wrong, are more stringent than duties to assist individuals in similar situations without this binding link. So the second and third explanations can establish a stronger case for admission. Second, the third and second explanations also link the duty bearer, the state in this case, to the forced migrants to which it owes admission. The state deals with specific individuals that want to get into its territory. It is under a duty not to send back the ones that actually apply for admission or it cannot justify their exclusion by coercive border regulations. With the first explanation, the duty bearers were all states and in order to decide which states ought to admit them there is a need of additional set of reasons.24 Seeing admission as derivative of the negative duty not to expel or reject forced migrants, or as the lack of justification to use coercive force to exclude them, means that the state where the forced migrants make their claim incurs this duty.

The advantage of this explanation is that it is clearer who bears the duty and responsibility to provide asylum. The problem is that the contingent reasons that will bring individual to ask admission in one state and not the other are likely to create unfair distribution of burdens. Today most of the world’s refugees populate poor countries that have less capacity to deal with their resettlement.25 This is because refugees who flee from conflict and persecution many times ask seek refuge and request asylum in the nearest countries. In addition, many of the wealthy democratic states try to prevent and deter asylum seekers from reaching their borders so they will not have to consider their application.26 This practice goes against the duty I suggested here, and therefore there is a reason to believe that if states would uphold their duty, more forced migrants will apply for admission in wealthy democratic states. Even so, it is still more likely that the dispersion of forced migrants in the future will follow to the current trend, because the cost of traveling long distances and the urgent nature of movement dictates relocation to nearby

24 For example capacity, proximity, cultural, historical or political ties.
countries. So, also under the second and third explanations there is a need for a supplementary set of principles to address burden-sharing among receiving states.

In the last sections I explained the category of forced migration and how states can incur the duty to admit them. The analysis is open to different interpretation, based on one’s moral position regarding states’ duties toward non-citizens as well as for the way this duty originates. My own inclination is towards the third explanation that derives the duty to admit from the lack of justification to exclude forced migrants. The readers may find other explanations more compelling. At this point I move to discuss the conception of ‘freedom-as-independence’ and its implication to the analysis of forced migration.

IV.

In his famous lecture from 1958, Isaiah Berlin distinguished between two traditions of political thought that allure to different conceptions of freedom: negative freedom and positive freedom. Later on another concept was added to these two – republican freedom. The new conception have shifted the debate and replaced the positive conception of freedom as the main contender to negative freedom. Since republican freedom is regarded as part of the ‘negative freedom’ camp, the debate is sometimes also described as the divide between the liberal conception of freedom and the republican conception of freedom. They both also have a more descriptive title: freedom as non-interference and freedom as non-domination, respectively. Recently, Christian List and Laura Valentini suggested a conception of freedom that is positioned somewhere in between the liberal and the republican conception; they title it ‘freedom-as-independence’ (FaI). The new conception embraces a core element of the republican freedom while rejecting a second aspect. FaI emphasises the robustness of freedom that is lacking in the liberal account and rejects the moralized understanding of freedom that comes with the republican view. In this way List and Valentini think they can overcome the shortcoming of liberal freedom and avoid the pitfalls of its opposition – republican freedom.


It is best to start with explaining what the new conception of freedom adds to liberal freedom. According to liberal freedom an agent is free as long as he is not subject to external constraints to perform an action. This conception of freedom emphasises the availability of options and non-interference with the agent’s choices.\textsuperscript{31} The problem with this understanding of freedom is its wholesale reliance on the actual available options and constraints on agent’s actions. According to the definition of liberal freedom that List and Valentini provide “[a]n agent is free to do X if and only if, in the actual world, there are no constraints on his (or her) doing X”.\textsuperscript{32} From this follows that an agent is free even if he is not free to do X in nearby possible worlds. The concern with this implication was famously demonstrated through the example of the slave and the benevolent master. In this example a slave enjoys freedom merely because his master does not use his power to restrict his action. However, in any given point the master might change his mind and prevent the slave from following his own preferences. The freedom of the slave depends entirely on the good will of his master. Without any protection from his master’s potential change of heart, it seems strange to talk on the slave as free, though based on the liberal freedom conception no one interferes with the slave’s actions in the actual world.\textsuperscript{33}

What the slave’s freedom is lacking is robustness; some sort of assurance that he can act according to his choosing without interference. Freedom can be already undermined by the possibility of constraints. This is why List and Valentini suggest that non-interference with the agent course of action should be extended also to nearby possible worlds.\textsuperscript{34} This robustness aspect is one of the main contributions of the republican conception of freedom; the assurance that you are not dominated by another agent, that you are not subject to their arbitrary will.\textsuperscript{35} However, FaI also differs significantly from republican freedom. It has a lot to do with the idea of ‘arbitrary will’ and the moralized account of constraints it entails. For republican freedom, the morally justified limitations on individuals’ actions do not render them unfree. Only the arbitrary obstructions – freedom-restricting actions that cannot be justified – which are constraints that make an agent unfree. This view leads to outcomes that conflict with many of our considerate judgment in many cases. The marked example is that the freedom of a convicted felon that gets a justified jail sentence is not compromised by him being imprisoned.\textsuperscript{36}


\textsuperscript{32} List and Valentini, p. 10.


\textsuperscript{34} List and Valentini, p. 11; Pettit, \textit{Republicanism}, p. 25.


\textsuperscript{36} List and Valentini, p. 23.
Against the republican moralized account of restrictions, List and Valentini claim that “we can meaningfully talk about third-party-imposed constraints. But whereas the republican would want us to say that such constraints are not freedom-restricting, it seems more natural to conclude that they are, while acknowledging that they are not morally problematic… [we should not] mistake justified restrictions of freedom for no such restrictions”.\(^{37}\) The reservation from the moralized view coupled with the robustness aspect shape the definition of FaI: “An agent is free to do X if and only if, robustly, there are no constraints on his (or her) doing X.”\(^{38}\)

V.

We can now go back to forced migration and examine the contribution of freedom-as-independence (FaI) to the discussion. FaI emphasises the robustness of the freedoms an agent ought to enjoy in order to be genuinely free. In addition, not all limitations on the agent’s freedoms are unjustified. It is also important to keep in mind that not every deprivation of freedom will be significant enough to invoke moral duties in others. In the case of forced migrants, it would be the deprivation of rights and opportunities that correspond with duties of other states. The main duty in the context of forced migration is to provide asylum; making sure that deprived individuals that reach states’ borders will find safe haven where their rights and opportunities will be secured. FaI tells us that we need to look beyond the actual set of rights and opportunities individuals obtain; we need to consider how well they are secured, to evaluate their robustness.

There are cases when persons have an adequate set of rights and opportunities, but they cannot secure them. By adequate I mean that they do not suffer from deprivation of rights and opportunities that give rise to duties of other states. Their situation is precarious without reasonable safeguards against removal of important rights or opportunities from the adequate set they at present can enjoy. They are vulnerable to the sort of deprivation that is a cause for moral concern of other states. It could be said that the moral duties of others to prevent this possible rights and opportunities deficit include addressing persons’ vulnerability. It means that states should act or establish institutions to deal with the risks of possible deprivation.

FaI is suited for explaining the duties of states towards forced migrants and it also widens the scope of who would be considered a forced migrant. It invites a more inclusive reading of the duty to admit forced migrants. Not only those who suffer from actual deprivation of rights and opportunities are the subjects of this duty, also those vulnerable to this deprivation have a

\(^{37}\) List and Valentini, p. 34.
\(^{38}\) List and Valentini, p. 35.
strong claim for admission. The benchmark for being a forced migrant — having a special claim for admission — is the absence of stable circumstances in the country of origin that can secure the relevant set of rights and opportunities. I assume that the group of persons that are vulnerable to significant rights and opportunities deficit is larger than the ones that actually suffer from it. I take it to be a reasonable assumption to make. Therefore applying the FaI conception to forced migration is most likely to make this category bigger in numbers.

FaI broadens the scope of who are forced migrants, but not by adding elements that are foreign to the way we should understand this category. On the contrary, it captures important characteristic of it. The essential part of the duty towards forced migrants is non-refoulement — not to return an individual to the place where he will suffer from a rights and opportunities deficit that the state have a duty to secure for him under this circumstances. The state, where forced migrant apply for admission, ought to provide asylum and prevent expected deprivation in his country of origin. ‘Expected’ will be the key word here. In many cases, the future of those who were denied admission (or were forcefully returned) is not certain in their country of origin. A forced migrant might find a reasonably good life if she returns; she could have the adequate set of rights and opportunities that should be her lot. But the precarious circumstances at her country of origin, that defined her as forced migrant in the first place, means that returning put her at risk. By not admitting her, the state fails to address her vulnerability in the right way; it does not act to secure the rights and opportunities as its duty instructs. It may be impossible to know what will happen with each individual upon returning, but it is possible to estimate the risk they will face. With FaI the principle of non-refoulement requires states not to put forced migrants in such risk.

Considering the risk for rights and opportunities and not only their actual deprivation is not something unheard-of in the context of forced migration. It is actually part of the definition and status determination of refugees. One of the core elements in the definition of refugees according to the UN 1951 convention relating the status of refugees is the inability to receive the protection of their country because of “persecution or well-founded fear of prosecution”. 39 ‘Fear’ could be understood as the subjective perspective of the individual regarding the harms he might suffer from. With refugees, as defined in the 1951 convention, it is the fear of prosecution due to one of the protected grounds – race, religion, nationality, membership particular social group, or

political opinion. But ‘well-founded’ suggests some objective assessment of the risks one faces and her or his attitudes towards it. In part, this is what a refugee status determination process needs to verify. The use of ‘fear of’ is confusing here and it is better to talk of ‘risk of’ when we try to account for the element of robustness FaI introduces to the understanding of forced migration. I claim that forced migration is a normative category, and therefore which risks count is also a subject for a normative decision. It cannot be based on the subjective perspective of the immigrants alone. It is a about the type and level of risks that states have a duty to secure for forced migrants. Under what level of robustness to freedom they ought to admit immigrants from vulnerable locations.

Not any tiny risk for the relevant set of rights and opportunities will be a cause for protection of other states (or the states of origin to this matter). The risk has to be significant and directed to the set of rights and opportunities that grounds the duty to admit forced migrants. It will not be easy to construct a conceptual threshold that marks the level of such risk. It will be even more difficult to think of translating it into immigration policy. Nonetheless, states and the UN agency responsible for refugees (UNHCR) are dealing with such challenges for many years now with refugees’ status determination. There are many things to improve in that front for sure. Already today this individual-based in-depth process is slow and costly. Extending states’ duties to admit forced migrants as understood here will increase the scope of who are the potential subjects for such evaluation process and will make it even more challenging. This will require a different and more efficient way to determine the status of forced migrants. Efficiency will probably be here on the expense of accuracy. I think that this is not a small challenge, but not an impasse that render the entire project futile.

40 In practice today the UNHCR addresses the plight of a wider category of forced migrants and in determining refugee’s status accepts additional consideration to these listed protected grounds. For example, those fleeing from a violent conflict zone will be regarded as refugees. Also sometimes defectors that were forcefully recruited grant refugee status when they will face severe punishment if they will be returned to their country of origin. 


43 Matthew J. Gibney, pp. 214–5.

44 One path to explore is whether to grant admission on a group-based protection (if you are coming from a persecuted group, or with my definition of forced migration – from a location susceptible to rights and opportunities deprivation) instead of individuals determination process.
VI.

I provided in this paper an analytical account of forced migration from a normative perspective. It is a broad and open analysis that can accommodate different interpretations regarding the origin and nature of states duty to admit forced migrants as well as which migrants will be in this group. I showed that forced migrants should receive special consideration, namely their request for admission should not be turned down. I sense that in the discourse on forced migrants and more so with refugees, there is an undercurrent presumption that this group of migrants present a special case which cross-cut different moral positions. No matter what one’s moral position is regarding the obligation towards non-citizens, the dire plight of the refugee must be answered with hospitality. States ought to provide asylum as some kind of a ‘duty beyond their duties’. My analysis strongly suggests otherwise – I claim that we understand who are forced migrants based on the states’ existing duties towards the deprivation of rights and opportunities of non-citizens. The moral position on this matter will determine to whom states owe admission due to their deprived circumstances. It interlinks the definition and the duty towards forced migrants as an integral element in broader moral framework of duties across borders.

As such, it shifts the locus of forced migration from the periphery to the centre of migration ethics debates. The special obligation to this class of migrants will not matter much for the proponents of ‘open borders’ – those who think that states have no principled right to exclude others and support free movement across borders. For them, the urgency of the movement of forced migrants can only establish some priority in admission in extreme cases when state are allowed to limit incoming flux of immigrants because of genuine threats to the local security, public order or the endurance of essential political institutions. However, for many writers on migration states ought to accept more immigrants because of the better life chances such relocation (usually from poor to rich developed countries) promises. The duties towards poor persons in other countries (usually poor and developing) can be discharged through letting them in. This kind of position on immigration sounds similar to my account of forced migration. If according to the moral position one holds the state is obligated to secure the sets of rights and opportunities individuals in other states are lacking, then when they apply for admission they should be considered as forced migrants. That is, if the relevant rights and opportunities deficit cannot be bridged in their state of origin.

My account of forced migration emphasises something that is lacking or not clear enough in the abovementioned position, which claims that wealthy states can discharge their duties towards

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the poor (or those deprived of the morally significant set of rights and opportunities) through accepting more immigrants. This claim provides states with discretion over how to fulfil their duties towards the deprived persons. They can either contribute to the recovery of the circumstances where the deprived reside (typically, transfer money) or accept them into their relatively more affluent society. Recently this position was given the title ‘the choice view’ by Kieran Oberman, who criticizes it by claiming that states should not have such licence in their decision. States first and foremost obligation is to address the issue ‘on the ground’ so to speak. Persons have the ‘right to stay’; a right not to be forced to emigrate. In order to respect this right, states ought to fulfil their duties in such a way that the deprived individuals will not have to relocate to overcome their circumstances.\(^{46}\) I will not dwell on Oberman’s argument, as I want to emphasise the other end of states’ lack of discretion how to discharge their duties. In cases of forced migrants states cannot deny entrance on the grounds that it chooses to discharge its duty by supporting financially the place these immigrants came from. By definition, it is impossible or too costly to secure the rights and opportunities of forced migrants in their country of origin.

States cannot justify declining the request of forced migrants in their efforts to secure the rights and opportunities where they are lacking. States have a duty to restore such rights and opportunities deficit anyhow; these are their background moral duties that establish the duty to accept immigrants from such depriving circumstances. But until the circumstances have not changed, they cannot renounce their duty to admit forced migrants. This is clearer with the second and third explanation for how states incur the duty to accept forced migrants I gave in part III. The negative duty not to put persons in depriving circumstances which states have a duty to secure, or the lack of justification to use coercive force to exclude force migrants do not dissolve because states are investing efforts and resources in amending the background circumstances of these immigrants. These two explanations also show that the state has this duty towards the specific individual who tries to enter its territories.\(^{47}\) It is not a general duty to the poor wherever they are in the world. So unlike the arguments in immigration ethics that allow states to choose how to fulfil their duties to deprived individuals, I argue that in cases I describe as forced migration they do not have such free choice. They have moral duty to admit the forced migrants who apply for admission and cannot deny entrance because they are fulfilling their obligation towards other individuals.

The upshot of this conclusion can lead to heavy burdens on some states if many forced migrants will try to enter their territories. A state can argue that they are doing over and above


\(^{47}\) For a similar position, see: Carens, The Ethics of Migration, pp. 202–3.
their ability to aid others or unfairly much more than other states who share similar duties. This brings us back to the issue of burden-sharing mentioned earlier. This aspect of states’ duties towards forced migration is beyond the scope of this paper. A full normative account of the issue should include an account of how states should distribute the associated burdens of hosting and resettling forced migrants among themselves. As part of this complementary discussion it is also important to investigate what states are obliged to do under circumstances of partial compliance of other states; when some states do their fair share but other states refuse or fail to do so, who should pick up the slack.48 I hope that the analysis provided here can assist in these and others investigations that will better our understanding of the moral duties states have towards forced migrants.

— London, 2014