



KIERAN OBERMAN 

## ENOUGH SPURIOUS DISTINCTIONS: REFUGEES ARE JUST PEOPLE IN NEED OF REFUGE

(Accepted 9 September 2024)

### I. INTRODUCTION

What makes refugees different to non-refugee migrants? A plausible answer is that refugees need refuge. Within their home state, they fall below some threshold. To fulfil their basic human needs, they must migrate elsewhere. Non-refugee migrants might be badly off in relative terms, but they don't fall below this threshold. It is because refugees need refuge that they have a claim to refuge. States are obligated to admit them at least when they can do so without severe cost. Call this the "Needs Account" of refugeehood. The Needs Account combines a needs-based definition of a refugee with a needs-based argument for refugee protection. Refugees are people in need of refuge, and, for this reason, they have a claim to refuge.

While the Needs Account is intuitive, it is also controversial. Part of the controversy is its departure from international law. The United Nations Convention Relating to the Status of Refugees defines a refugee as someone who is outside their country of nationality and cannot gain protection from it, nor return to it, because of a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".<sup>1</sup> This is a much narrower definition. Out of all the reasons why someone might need refuge, the Convention selects just one, fear of persecution, as the basis for refugeehood, and, even then, insists that people must be persecuted for the particular reasons listed. Anyone who needs refuge for any other reason is not a refugee.

<sup>1</sup> United Nations General Assembly, *Convention Relating to the Status of Refugees* (1951), Article 1A (2).

Within public debate, politicians and the media use the Convention definition to help justify exclusion. Asylum applicants who do not fit the definition are branded “bogus” and “fraudulent”. Since they are not Convention-definition refugees, they are assumed to have no moral claim to refuge. They can be excluded without shame.

Even refugee organisations have, on occasion, sought to reinforce the distinction between Convention-definition refugees and other people in need. Adrian Edwards, of the United Nations High Commissioner for Refugees (UNHCR), argues that only Convention-definition refugees “need sanctuary elsewhere”. Migrants, by contrast, “choose to move”. They face no “impediment to return”.<sup>2</sup>

Scholars studying the ethics of refugee policy have tended to be more careful. They realise that many migrants who do not fit the Convention definition do not choose to move but are forced. Still, there is a reluctance to endorse the Needs Account. While the account, or something close to it, was once proposed by Andrew E. Shacknove, it has since been widely criticised. Scholars have claimed there is some further factor, beyond need, essential to the definition of a refugee and the argument for refugee protection. Suggested factors include the impossibility of assistance in situ and the need to legitimise the state system. As we shall see, even Shacknove includes other factors alongside need.

This article defends an unadulterated needs account. Refugees are just people in need of refuge. It is because they are in need that they have a claim to refuge. When politicians and the media brand asylum applicants “bogus” and “fraudulent” for failing to fit the narrow Convention definition of a refugee, they draw a morally spurious distinction between Convention-definition refugees and other people in need of refuge. Someone can fall outside the Convention definition and yet have an equally strong claim to refuge. Scholars who oppose the Needs Account do not all support the Convention definition, but they too draw questionable distinctions. They offer various reasons why the term “refugee” should be reserved for only a subset of those in need of refuge. As we shall see, none of these reasons prove persuasive.

---

<sup>2</sup> Adrian Edwards, “UNHCR Viewpoint: ‘Refugee’ or ‘Migrant’—Which is Right?”. <https://www.unhcr.org/ph/10990-10990.html> (accessed: April 27 2023).

## II. METHODOLOGY

The argument for the Needs Account starts with a point of methodology. Despite all the debate over the refugee definition, there is surprisingly little reflection on the criterion for choosing among definitions. Let me present the criterion I follow.

The first point to clarify is that we are, at least initially, pursuing a non-legal definition. The term “refugee” has a life outside law. Politicians, the media and activists use the term in debates over policy. While their use of the term generally tracks the Convention definition, it does not always (see the discussion of “war refugees” below), nor need it. We could refer to some people as “refugees” in public debate even if they are not refugees in law. The law has no monopoly over our language.

That said, the law is enormously consequential. This article thus also seeks to inform debate over the best refugee definition for international law. Given that the Convention definition is so narrow, there is a case for redrafting the Convention. Some worry that, in the current climate, redrafting would prove counterproductive. States would take the opportunity to weaken their obligations.<sup>3</sup> If this is true, it is not the right time to redraft the Convention. But this does not mean that law could not be improved, nor that there will never be an opportunity for change in the future.

We are then selecting a definition for political life and, potentially, the law. What is the relevant criterion for selection? Let us distinguish two questions:

1. The Definition Question: Who is a refugee?
2. The Normative Question: Who has a claim to refuge?

These questions are generally conflated, with scholars giving the same answer to both. But the questions are logically distinct. One could, if one chose, define one group of people as refugees while believing some broader group have a claim to refuge. One reason why one might do this is out of respect for linguistic convention. Many people use the term “refugee” in line with the Refugee Convention. One might feel that any definition which radically departs from the Convention is too violent a break with current use.

---

<sup>3</sup> Luara Ferracioli, ‘The Appeal and Danger of a New Refugee Convention’, *Social Theory and Practice* 40 (2014), 123–144.

One might still believe that a broader group have a claim to refuge. One would just be insisting that this broader group pursue their claims using a different label.

Distinguishing these two questions is helpful as it allows us to see that the Definition Question is less important than the literature implies. What really matters is the Normative Question. It matters that we correctly identify people who have a claim to refuge. It matters less what we call them. If words did not have power, we could perhaps put the Definition Question entirely aside.

Unfortunately, or otherwise, words do have power. Because they have power, I follow other scholars in pursuing a single answer to both questions. Consider again linguistic convention. It is more complex than one might think. Yes, people identify “refugee” with particular groups (such as those identified by the Convention), but the term has another association as well. People use “refugee” to demarcate those with a claim to refuge. This is evident from the public debate. The danger of using the term narrowly, to mean only some of those who have a claim to refuge, is that others may struggle to gain recognition for their claims. The general principle should be this: in choosing a refugee definition we want to ensure that no one’s claim to refuge is denied for some non-normative reason. No one should be refused refuge simply because of how we have historically chosen to use a particular word.

My approach then is to answer the Definition Question (who is a refugee?) by way of the Normative Question (who has a claim to refuge?). This is not because I think that the essence of what it means to be a refugee is to have a claim to refuge. My approach, rather, is pragmatic: we should define “refugee” in whatever terms best advances our relevant moral goals including, most centrally, the goal of helping people who have a claim to refuge find refuge. If our definition of the word “refugee” were to obstruct such this goal, we should probably change our definition.<sup>4</sup> Adopting this pragmatic approach, we do not seek the “essence” of the refugee concept, if there is such a thing, but rather a definition that helps us achieve our relevant moral goals.<sup>5</sup> People associate the term “refugee” with

<sup>4</sup> “Probably” because there could be other relevant goals that might, on occasion, take priority.

<sup>5</sup> My approach follows along the lines of the “ameliorative projects” proposed by Sally Haslanger and Jennifer Saul, ‘Philosophical Analysis and Social Kinds’, *Proceedings of the Aristotelian Society, Supplementary Volumes* 80 (2006), 89–143.

having a claim to refuge. As long as they continue to do so, we should define “refugee” according to our judgement of who has a claim.

### III. THE NEEDS ACCOUNT

Let me now present the Needs Account more formally. The Needs Account has two components:

The Needs Argument: A person’s need of refuge, in itself, grounds a claim to refuge.

The Needs Definition: Refugees are people in need of refuge.

Critical to both is the word “refuge”. “Refuge” here means a place, outside someone’s original location, where their basic needs will be protected against undue threats. “Basic needs” include needs for freedom, security, and subsistence.<sup>6</sup> These needs represent the minimum requirements for a decent life. Someone in need of refuge thus has a kind of meta need. They need a place where their other needs can be fulfilled.

An “undue threat” is a threat that lacks a liability justification: the person suffering it has not acted in such a way that would justify the level of harm involved. Most people who flee their homes for want of freedom, security or subsistence are fleeing undue threats. They are innocent victims. Some people, however, flee harms to which they are liable: criminals escaping just punishment, for instance. In defining “refuge” in terms of protection from “undue threats” we distinguish between these two groups. Such a definition aligns with ordinary use. A criminal escaping just punishment would ordinarily be described as “evading justice”, rather than being “in need of refuge”.<sup>7</sup>

Does someone being “in need of refuge” signify the impossibility of assisting them in situ (their locality)? No. Someone could need refuge even if assistance in situ is possible. What matters is whether assistance is actually provided. When assistance in situ is possible but not provided, a refugee remains in need of refuge. Their need is a conditional need, much like a poor person’s “need for money” or an

---

<sup>6</sup> This list is from Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton, NJ: Princeton University Press, 1996).

<sup>7</sup> This is not to say that criminals can never be refugees. If a criminal flees punishment that is unjust, because, say, it is disproportionate, they are fleeing undue harm: a level of harm to which they are not liable. Someone who is sentenced to death for pickpocketing is a refugee on the Needs Definition.

LA resident's "need for a car": needs that people have absent something else (free resources, public transport). But that makes their need no less urgent. I return to the question of assistance in situ below.

What if a person is sent to a third country instead of the country they are seeking to enter? Various states, such as Australia and the UK, have sought, so-called, "third country solutions". Can a third country satisfy a need for refuge? Everything depends on what conditions are like in the third country. If someone's needs for freedom, security, and subsistence are protected, they enjoy refuge, even if they do not live where they wish. If, however, these needs go unprotected, the person remains in need of refuge. Importantly, "refuge" is non-comparative. A third country can be a better place to live than a refugee's country of origin without meeting the necessary threshold.

Now, admittedly, there will be hard cases. There is no sharp line between basic needs and non-basic needs. In this respect, the Needs Definition is much like the Convention definition. Any adherent to the Convention definition will have trouble determining precisely when someone suffers persecution as opposed to some lesser injustice. Indeed, it seems likely that this problem of hard cases will arise on any plausible definition. A full theory of refugeehood would provide further guidance for settling hard cases, but given that the existence of hard cases is not something that distinguishes the Needs Definition from its rivals, I set the issue aside.

Having defined "refuge" and "need of refuge", let's turn to "claim to refuge". To say that someone has a claim to refuge means that their interest in refuge must be appropriately weighed. It does not mean that refuge must always be granted. There may be circumstances in which a receiving state may permissibly exclude people with a claim to refuge to protect its citizens or third parties. A claim is something that goes into our moral calculations. It does not necessarily determine the result. To stress this point, I use the term "claim" in place of stronger terms like "right" or "entitlement".

The Needs Argument holds that a need for refuge provides sufficient grounds for a claim for refuge. Depending on the case, there might be further grounds. In cases in which receiving states themselves created the need for refuge, by starting wars, causing climate

change and so forth, moral responsibility would seem to provide such further grounds.<sup>8</sup> The Needs Account does not deny that further grounds exist. All that it holds is that no further grounds are necessary. Even absent further grounds, those in need of refuge have a claim to refuge. Need alone suffices.

To grasp the force of the Needs Account, it is helpful to compare it to the Refugee Convention definition. On the Needs Account, Convention-definition refugees are refugees. Anyone fleeing persecution is clearly in need of refuge. Yet, as we have seen, there are more people, besides Convention-definition refugees, in need of refuge. There are people fleeing war, gang violence, natural disasters, climate change and poverty.<sup>9</sup> Some of these people will be in even greater need of refuge than some Convention-definition refugees. After all, a Convention-definition refugee can have a “well-founded fear of persecution” without persecution being a certainty, and some forms of persecution, such as ‘mere’ imprisonment, are not among the worst forms of harm. The Convention arbitrarily selects a subset of those in need of refuge. The Needs Account corrects this arbitrariness by expanding the refugee definition to cover everyone in need of refuge. It does not discriminate between people based on the source of that need.

Now, the Needs Account does have the effect of significantly increasing the number of refugees. The inclusion of people in poverty is particularly consequential. In a world in which hundreds of millions of people live in extreme poverty, there are hundreds of millions of refugees. Compare this to the current estimate of Convention-definition refugees: 27 million.<sup>10</sup> This comparison invites the first objection against the Needs Account: the claim that there is not capacity to accommodate everyone in need of refuge. Even if the largest and richest receiving states were to dedicate themselves to the task, they could not admit everyone. So not everyone in need of refuge can be a refugee.

This objection fails for two reasons. First, to say that someone has a claim to refuge does not mean that the best way to address their

---

<sup>8</sup> See James Souter, *Asylum as Reparation: Refuge and Responsibility for the Harms of Displacement* (Cham: Palgrave Macmillan, 2022).

<sup>9</sup> There are also people in need of refuge who cannot flee because they are stuck in place. I return to this below.

<sup>10</sup> UNHCR, “Figures at a Glance”. <https://www.unhcr.org/uk/figures-at-a-glance.html> (accessed: March 3 2023).

needs is to grant them refuge. It might be better to assist them in situ (more on this below). Second, recall the point made above: a claim to refuge is not an absolute right to refuge. When many people have claims and only some claims can be fulfilled, selections must be made. In the case of refugees, the right way to select will generally be according to need. Those with the greatest needs, or those whose needs can best be addressed, should be selected ahead of other refugees.<sup>11</sup> So, expanding our definition does not involve committing ourselves to the impossible task of providing accommodation beyond capacity but only to the achievable task of ensuring that everyone's claims are fairly weighed.

Consider the analogous case of healthcare. In healthcare too, resources are limited. Demand outstrips supply. Given this, we accept some form of selection, and we tend to think of need as the relevant criterion. What we don't do is attempt to dodge the need for selection by arbitrarily defining those with a claim to treatment. We do not say, for instance, that the source of someone's medical condition is crucial: that someone who has been assaulted, say, has a claim to treatment, while stroke or cancer patients do not. In healthcare, any such attempt to address the problem of limited capacity with arbitrary definitions would be readily rejected. We should be no more amenable to it when it comes to refugees.

Below, I consider stronger objections to the Needs Account, but first, let us consider one last issue: migration. According to the Convention definition, a refugee must be "outside the country of his nationality". There is something in this stipulation that chimes with linguistic intuitions. We think of refugees as migrants. Perhaps, refugees do not need to be outside their country, as the Convention stipulates, but the idea of a sedentary refugee – someone who has never migrated, not even within their country – seems strange.

Should we then make migration a condition for refugeehood? This would not require us to reject the Needs Definition. We could simply amend it by defining refugees as *migrants* in need of refuge. I

---

<sup>11</sup> What it means to select on need turns out to be surprisingly complex. I address this issue in Kieran Oberman, 'Refugee Discrimination: The Good, the Bad, and the Pragmatic', *Journal of Applied Philosophy* 37 (2020), 695–712.



can see how this amendment would narrow the gap between the Needs Definition and common use. Still, I oppose it.<sup>12</sup> It is natural that people associate refugeehood with migration since people who need refuge typically seek it, but not everyone migrates. Some are prevented by a lack of resources, government restrictions, or war. People in need of refuge have a claim to refuge even if they are trapped at home. Indeed, some of the people who are trapped have the strongest claim of all. The fact that they can't escape speaks to their vulnerability. In such cases, the need for refuge still grounds a claim to refuge. A claim for refuge can be more than a demand for admission. It can also be a demand for the resources and conditions necessary to migrate: a bus ticket, perhaps, a visa, or a ceasefire. If we are to follow the practice of defining everyone with a claim to refuge as a refugee, then we must extend the term to cover these people who need refuge but are unable to migrate.

#### IV. SOCIAL BONDS AND HOPELESS CASES

In the rest of the article, I defend the Needs Account against its rivals. The first rival I consider may seem surprising. Andrew Shacknove is famous for offering a needs-based definition. He defines refugees as people “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”.<sup>13</sup> At first glance, his account seems to match the Needs Account. However, Shacknove departs from the Needs Account in both his argument for his definition and the definition itself.

Shacknove's argument for his definition begins, not with needs, but rather with the idea of a social bond between state and citizens. Ordinarily, Shacknove argues, the two exist in a harmony characterised by “trust, loyalty, protection and assistance”.<sup>14</sup> In the case of refugees, however, this harmony is disrupted. The state's failure to

---

<sup>12</sup> Here I follow Andrew E. Shacknove, ‘Who Is a Refugee?’, *Ethics* 95 (1985), 274–284 at pp. 282–283. See also, Eilidh Beaton, ‘Against the Alienage Condition for Refugeehood’, *Law and Philosophy* 39 (2020), 147–176.

<sup>13</sup> Shacknove, ‘Who Is a Refugee?’, p. 284.

<sup>14</sup> *Ibid.*, p. 278

fulfil its citizens' needs breaks the "normal bond between the citizen and the state".<sup>15</sup>

Shacknove considers the objection that states might be unable to fulfil their citizens' needs for reasons outside their control. His response is empirical. Drawing on the work of Amartya Sen and others, he argues that "'natural disasters' are frequently complicated by human action", famines typically "result from neglect or malice of the local regime" and "[t]hreats to vital subsistence are subject to the same logic". When citizens are in need, their government is typically to blame.<sup>16</sup>

The Social Bonds Argument differs from the Needs Argument in what it takes to be the fundamental concern underlying a refugee's claim to refuge. On the Needs Argument, need is fundamental. A refugee has a claim to refuge because they need refuge. On the Social Bonds Argument, social bonds are fundamental. A refugee has a claim to refuge because their needs signal the severance of social bonds.

The effect Shacknove's argument has upon his definition is unclear since a key word in that definition, "fails", is open to two interpretations. "Fails" could mean that the government, as a matter of fact, does not protect basic needs (call this "merely fails") or it could mean that the government is culpable for the lack of protection (call this "culpably fails"). On the merely-fails interpretation, anyone with unmet needs can claim refugeehood. On the culpably-fails interpretation, only those whose government is culpable for their unmet needs can do so.

Shacknove's Social Bonds Argument, and his reply to the above objection, suggest the culpably-fails interpretation. But whichever interpretation we choose, we should reject the Social Bonds Argument. If we adopt the merely-fails interpretation, then the Social Bonds Argument is a distraction. To see that it is a distraction, imagine a hypothetical case in which someone lives in an area of the world that has no state. (To imagine this, think back to a time, before the modern era, when only parts of the world were ruled by states). The person lives in peace until some threat forces her to seek refuge within a state. Is this person a refugee? She has not severed

---

<sup>15</sup> *Ibid.*, p. 282.

<sup>16</sup> *Ibid.*, pp. 279–280.

bonds with her state. She never had a state to bond with in the first place. Still, she seems to have an equally strong claim to refuge as anyone in equal need. This indicates that refugeehood is the real concern.<sup>17</sup> Social bonds are irrelevant.<sup>18</sup>

If we adopt the culpably-fails interpretation, the Social Bonds Argument is not merely a distraction. It is harmful. For interpreted this way, Shacknove's definition would deny refugeehood to anyone needing refuge for reasons outside her government's control. This would not be a problem if it was always the case that, whenever citizens are in need, their government is to blame, but that's not so. To give one striking counterexample: it is not Ukraine's fault that millions of its citizens have fled. It is Russia's. Yet the Ukrainians who have fled have a claim to refuge.

The Ukrainian example brings out, in a different way, how poorly the idea of social bonds captures what we care about when it comes to refugees. For it seems odd to say that the social bond between Ukrainian citizens and their government was severed by the Russian invasion. Arguably, the bond was never stronger. We can reach the conclusion that the bond was severed only if we stipulate that by "severing" we mean only that the government cannot protect its citizens' needs. That such a stipulation is required is good evidence that it is need, and not social bonds, that is really at issue.

Let us put the Social Bonds argument aside and turn to a different aspect of Shacknove's definition. The definition departs from the Needs Definition in including the condition that a refugee must be "so situated that international assistance is possible". Call this the Reachability Condition. The Reachability Condition holds that only people within reach of international assistance can be refugees. Unreachable people are not refugees. But why not?

Shacknove's own motivation seems to be a desire to avoid the numbers objection discussed above, but, as we have seen, that is not a powerful objection. There is a better argument, however: avoiding waste. If someone cannot be assisted, there is no point wasting resources on trying to assist them.

---

<sup>17</sup> The example is unrealistic to the extent that, in our current world, people are tied to states, but the example is nevertheless helpful in that it reveals that it is not this feature of our current world that is morally salient in grounding refugee claims. Even if people were not tied to states, they could make equally strong claims to refuge.

<sup>18</sup> See, relatedly, Christopher D Boom, 'Beyond Persecution: A Moral Defence of Expanding Refugee Status', *International Journal of Refugee Law* 30 (2018), 512–531 at pp. 526–527.

Yet, it would be a mistake to make reachability a condition of refugeehood. The condition would allow states to deny people refugee status by determining them to be unreachable. But in fact, it is not easy to discern who is reachable and who is not. People who currently appear unreachable might be reachable were states to dedicate greater time, money, or political capital to their cause. The danger of wasting resources on hopeless cases is real, but there is also the contrary danger of failing people who could be reached. It seems relevant here that while states rarely, if ever, spend too much on refugee assistance, they regularly spend too little. In refusing to insert a reachability condition, we help guard against the greater danger. Of course, at some point, a judgement on who can actually be assisted (and at what cost) must be made. But it seems better not to build such judgements into the very definition of a “refugee”.

It is worth noting that the Convention definition itself has no reachability condition. One can easily miss this fact since someone must be outside their country of nationality to be a Convention-definition refugee. But that one is outside one’s country does not mean that one is within reach of assistance.<sup>19</sup> Consider the situation of German Jewish refugees who fled to France in the 1930s only for France to be occupied by Germany soon after. These refugees would have been refugees under the Convention but were not in reach of assistance.<sup>20</sup> The Convention adopts the stance that whether one is a refugee and whether one can be assisted are two separate questions. On this point, the Convention gets it right.

#### V. THE IMPOSSIBILITY OF ASSISTANCE IN SITU

Let us turn to another account, one that ties refugeehood to the impossibility of providing someone with assistance other than refuge. An account of this kind is offered by Eilidh Beaton, Max Cherem, Matthew Lister, David Miller, and Kirsty Walker.<sup>21</sup> The basic thought is that while many people are in need, not all require

<sup>19</sup> Compare Matthew Lister, ‘Who are Refugees?’, *Law and Philosophy* 32 (2013), 645–671 at p. 664.

<sup>20</sup> “Would have” since the Convention was only adopted in 1951.

<sup>21</sup> Eilidh Beaton, ‘Replacing the Persecution Condition for Refugeehood’, *Archiv für Rechts und Sozialphilosophie* 106 (2020), 4–18, Max Cherem, ‘Refugee Rights: Against Expanding the Definition of a “Refugee” and Unilateral Protection Elsewhere’, *Journal of Political Philosophy* 24 (2016), 183–205, David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016), Lister, ‘Who are Refugees?’, Kirsten Walker, ‘Defending the 1951 Convention Definition of Refugee’, *Georgetown Immigration Law Review* 17 (2002), 583–610

refuge. Many could be assisted in situ with development aid or some other form of assistance. The term “refugee” should be reserved for people who must be offered refuge elsewhere if their needs are to be addressed. Call this the “Impossibility Account”.

The Impossibility Account has the merit of referring to a morally important distinction. When receiving states can assist people in situ, it is often better that they do so. Arguably, people have a right to stay in their home country, a right that imposes a duty on others to enable them to fulfil their needs there.<sup>22</sup> Capacity for refuge, moreover, may be limited. When it is limited, it should be reserved for people who have no other remedy. There is then reason to distinguish people who could be assisted in situ from people who must be awarded refuge. One way to mark that distinction is to call the latter “refugees”.

The Impossibility Account should nevertheless be rejected. Before explaining why, first note that the account comes in two versions. The less ambitious version, proposed by Beaton and Miller, makes the impossibility of alternative assistance the definition of a refugee. Beaton defines refugees as people who “require the distinctive remedy of refuge”; Miller as “people whose human rights cannot be protected except by moving across a border”.<sup>23</sup> The more ambitious version, proposed by Cherem, Lister and Walker, employs the idea of the impossibility of assistance in situ to defend the Convention definition. The argument goes as follows. Since persecuted people are typically persecuted by powerful groups, such as governments, the only way foreign states can protect them in situ is through armed intervention. Armed intervention can be disastrous. In the case of other threats, such as poverty and natural disasters, armed intervention is unnecessary. Development aid and other non-violent means can be used instead. So persecuted people are the only people in need who cannot be assisted in situ.<sup>24</sup>

What both versions of the account share is the conviction that we should define “refugee” based on the impossibility of assistance in situ. As I shall show, both versions fail since that conviction is

<sup>22</sup> I make this argument in Kieran Oberman, ‘Immigration, Global Poverty and the Right to Stay’, *Political Studies* 59 (2011), 253–268.

<sup>23</sup> Beaton, ‘Replacing the Persecution Condition for Refugeehood’, p. 18, Miller, *Strangers in Our Midst*, p. 18.

<sup>24</sup> Walker, ‘Defending the 1951 Convention Definition of Refugee’, pp. 599–600, Cherem, ‘Refugee Rights’, pp. 190–191, Lister, ‘Who are Refugees?’, pp. 659–664.

wrong. The more ambitious version fails more spectacularly because it would fail even if the conviction were true.

To see this, note that there are, in fact, two relevant distinctions. There is the distinction between who is and who is not suffering persecution, and there is the distinction between who could and could not be assisted in situ. Lister, Cherem and Walker claim that the first distinction reliably tracks the latter. It does not. There are people suffering persecution who could be assisted in situ and people who are not suffering persecution who cannot be assisted unless granted refuge. Let us take each point in turn.

Cherem, Lister and Walker are correct that armed intervention can prove disastrous. But it is not always so. Possible examples of successful intervention include Indian intervention in Bangladesh (1971), Vietnamese intervention in Cambodia (1978) and Tanzanian intervention in Uganda (1978). These interventions seem to have been both proportionate and effective in saving lives. They also led to the return of millions of refugees.<sup>25</sup> Alongside examples of successful interventions, there are probably many more cases in which intervention could have been successful but, for want of political will, was never tried.<sup>26</sup>

Even when armed intervention would prove disastrous, there are other ways to protect persecuted people in situ. States can and do exert diplomatic pressure, impose sanctions, and appeal to international tribunals. There are also cases in which refugee-receiving states are themselves partially responsible for the persecution in question. In such cases, the receiving states might be able to protect people simply by changing their own policies. During the Cold War, for instance, thousands of refugees fled to the United States from Central America and elsewhere, fleeing regimes supported by the United States. Arguably, many could have stayed home had the United States cut support for their persecutors or made that support conditional on reform.

This is not to deny that in the case of some persecuted people, there is no alternative to refuge. But this brings us to the second point. There are people in need of refuge for reasons other than persecution who cannot be assisted in situ. Consider war refugees.

<sup>25</sup> For an examination of these cases see Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2002).

<sup>26</sup> Rwanda is an oft-cited example; *ibid.*, pp. 224–225

While, in common usage, we describe people fleeing war as “refugees”, not all fall under the Convention definition. Many are not fleeing persecution, but crossfire. Clearly, it is not always possible for receiving states to assist war refugees in situ. In some cases, it is easier to protect people from persecution than from war.

Next, consider poverty. Cherem, Lister and Walker assume that poverty can be solved through development aid, but the evidence on aid effectiveness is mixed. Aid sceptics point to the billions already spent without clear signs of success.<sup>27</sup> Even aid enthusiasts will admit that there are some countries with such repressive and dysfunctional governments that aid will do little good. If persecution cannot be easily ended in states like North Korea or Eritrea, nor can poverty.

At times, those defending the Impossibility Account seem aware that some non-persecuted people cannot be assisted in situ. Their fallback is to grant the possibility that some may require temporary protection while denying that they need refugee status.<sup>28</sup> The assumption seems to be that only persecution is a persistent phenomenon. But this assumption too is false. Persecution is not always persistent. Berlin Walls do sometimes fall. Nor are other threats necessarily temporary. Poverty is particularly hard to eradicate. Even when aid is effective, it can take decades to work. In the meantime, people suffer and die for want of resources.

Enough of the more ambitious version. Let us turn to the less ambitious version. Recall that the less ambitious version makes the impossibility of alternative assistance the definition of a refugee. It does not seek to defend the Convention definition. It thus survives the above objections. Nevertheless, it too should be rejected. A refugee is someone in need of refuge. It does not matter if they *could be* assisted in situ.

Recall, the Normative Question: “who has a claim to refuge?” Someone has a claim to refuge if they need refuge. Suppose someone could be assisted in situ. Do they need refuge? Well, it depends. If assistance is provided, they will not. But what if assistance is not provided? Then nothing changes. They remain in need of refuge. The mere possibility of alternative assistance is irrelevant. This

---

<sup>27</sup> William Easterly, *The White Man's Burden: Why the West's Efforts to Aid The Rest Have Done So Much Ill and So Little Good* (New York: Penguin Press, 2006), Dambisa Moyo, *Dead Aid: Why Aid is Not Working and How There is a Better Way for Africa* (New York: Farrar, Straus and Giroux, 2009).

<sup>28</sup> Lister, ‘Who are Refugees?’, pp. 668–669, Cherem, ‘Refugee Rights’, pp. 190–191.

is a central problem for all versions of the Impossibility Account, the less ambitious as well as the more ambitious versions. Someone does not lose their claim to refuge merely because they *could be* assisted in situ.<sup>29</sup>

Consider, again, the analogy with healthcare. Patients who go to hospital can be divided in two: those who could be treated at home and those who could not. A healthcare system may have good reason to draw this distinction. Imagine, for instance, hospital capacity is limited. Without room for everyone, hospitals resort to triage, selecting patients on need. If the healthcare system were reorientated towards greater homecare, the pressure on hospitals could be relieved. Those who could be treated at home would be treated at home. Everyone else could then be admitted. But now imagine that while such a reorientation would be ideal, nothing is done. Patients who could be treated at home remain in need of treatment. In this case, the distinction between those who could be treated at home and those who cannot be is irrelevant when determining hospital admissions. Hospitals should continue to select patients on need. They should not send patients home to await treatment that will never come. A hospital admittance policy premised on a fiction of home treatment is misguided. A refugee policy premised on the fiction of assistance in situ is the same.

What do the proponents of the Impossibility Account say about these people who could be assisted in situ but will not be? Surprisingly, Cherem, Lister and Walker say nothing on the topic. They get as far as identifying the possibility of assistance in situ and stop there, as if we can assume that the possibility of assistance in situ will necessarily transform into actual assistance. In his book, *Strangers in Our Midst*, Miller appears to make precisely this mistake, confusing possibility with actuality. Having claimed, in Chapter Five, that poor economic migrants are not refugees since (according to Miller) they could be assisted in situ,<sup>30</sup> he opens Chapter Six proclaiming to have already shown that “economic migrants cannot claim admission as a matter of justice”.<sup>31</sup> But, not so. Poor economic migrants would only lose their claim to admission if they were actually assisted in situ. The mere possibility of assistance is irrelevant.

<sup>29</sup> For similar criticism see Boom, ‘Beyond Persecution’, p. 522.

<sup>30</sup> Miller, *Strangers in Our Midst*, p. 80.

<sup>31</sup> *Ibid.*, p. 95.



After I raised this possibility/actuality objection in previous work,<sup>32</sup> Miller and Beaton offered responses. Miller's response is to double down. For him, the "distinction between those who could be helped in situ and those who could not remains crucial".<sup>33</sup> The former are not refugees and can be legitimately deported. Miller's argument seems to rest on an empirical hypothesis: those who could be assisted in situ are in less need than those who could not be. The former, he reasons, have "at least a chance that they will be treated at home, sooner or later".<sup>34</sup> Moreover, economic migrants (whom Miller continues to equate with people who could be assisted in situ) cannot be amongst the worst off since, Miller argues, they pay smuggler fees to migrate.<sup>35</sup>

Now as a universal claim, Miller's empirical hypothesis is false. It is not true that everyone who could be assisted in situ is in less need than everyone who could not be. One counterexample is the millions suffering easily treatable, life-threatening diseases. These people are in the severest need. Many could be assisted were receiving states to provide the necessary resources. The mere 'chance to be treated at home, sooner or later' is worthless to those who are not. Even if there were a general correlation between the ability to be assisted in situ and level of need this would not be a reason to accept the Impossibility Account over the Needs Account. The Needs Account already prioritises those most in need. If someone is in less need because they are likely to be assisted in situ, because they already have resources, or any other reason, they will be deprioritised on the Needs Account. There is no reason to consider the hypothetical of whether they *could be* assisted in situ.

Beaton's response is more measured. She grants that the possibility of assistance in situ is irrelevant when it comes to the Normative Question but insists on its centrality to the Definition Question. In her view, everyone in need of refuge has a claim to refuge whether they could be assisted in situ or not, but only those who could not be assisted in situ warrant the label "refugees". Her reasoning is that the distinction between who could and could not be

---

<sup>32</sup> Kieran Oberman, 'Reality for Realists: Why Economic Migrants Should Not Just 'Go Home and Wait for Assistance'', *European Political Science* 17 (2018), 658–661.

<sup>33</sup> David Miller, 'A Response to Song, Stilz and Oberman', *European Political Science* (2017) at p. 666.

<sup>34</sup> *Ibid.*, p. 665.

<sup>35</sup> *Ibid.*

assisted in situ is important to policy. States should be applying this distinction when deciding whether to either offer refuge or send aid. Since the distinction is important, Beaton reasons, we should use the label “refugee” to mark it.<sup>36</sup>

I agree with Beaton that the distinction between who could and could not be assisted in situ is important. Where I disagree is with the idea of using the label “refugee” to mark it. As I noted above, the word “refugee” is commonly associated with having a claim to refuge. If we refuse to describe people who could be assisted in situ but aren’t as “refugees”, we risk casting doubt on their claims. This danger is especially acute since, as we have seen, it is all too easy to confuse the situation of people who could be assisted in situ with that of people who are. What I have referred to as the “fiction of assistance in situ” is an enticing fiction, especially to the governments and citizens of receiving states. If one pretends that the possibility of assistance magically translates into actual assistance, one can continue to exclude vulnerable people without shame.

It is worth noting that, for all their differences, this is something the Convention definition and the Needs Definition share: neither makes a distinction between those who could be assisted in situ and those who could not. According to the Convention, anyone who is outside her country, and fears persecution for the reasons listed, is a refugee. It does not matter whether there is some other way she could be protected. Suppose that a persecuted person flees State A for State B. State B is a powerful ally of State A and could pressure State A to end its persecution if it so wished but does nothing. According to the Convention, the persecuted person is a refugee. According to Beaton and Miller, she is not. The fact that Beaton and Miller would remove refugee status from people who currently enjoy it lends added reason to reject their definitions.

Let me summarise this section by restating what is at issue. The Impossibility Account holds that refugees are people whose needs could be assisted in situ. The problem with the account is that some people who *could be* assisted in situ will not be and these people seem to have a claim to refuge. There are two possible responses proponents of the Impossibility Account can give: (1) maintain that the identified group have no claim to refuge (Miller) or (2) concede that

---

<sup>36</sup> Beaton, ‘Replacing the Persecution Condition for Refugeehood’, pp. 17–18.

they do have claim but insist that they are not refugees (Beaton). (1) is implausible. Anyone who *could be* assisted in situ but will not be has an equal claim to refuge as anyone who could not be assisted in situ, assuming both are in equal need. (2) is more plausible but should still be rejected. Given that “refugee” is commonly thought to denote those with a claim to refuge, using it to refer only to a subset of people with a claim to refuge risks undermining the claims of the rest. The people who could be assisted in situ but will not be will be doubly disadvantaged: they will be denied both assistance in situ and the status of being a refugee, a status they could use to seek assistance elsewhere.

## VI. LEGITIMACY

The final account I wish to address, the “Legitimacy Account”, has recently gained popularity. The account, as proposed by Gillian Brock, Joseph Carens and David Owen, offers an argument for refugee protection that, on its face, seems different to the Needs Account.<sup>37</sup> That argument begins with a simple fact: the world is governed by a state system. Since we are all subject to that system, we are entitled to ask what function it serves. The answer, according to the Legitimacy Account, is that it is there to fulfil our needs. Each state is assigned responsibility for the people within its jurisdiction. When everything goes well, that state fulfils those people’s needs. But the practice of assigning people to states “clearly does not work well for refugees”.<sup>38</sup> Their state is unable or unwilling to fulfil their needs. This throws the legitimacy of the entire state system into question and, with it, the legitimacy of the individual states. Under the current state system, states are assumed to possess certain rights, like the right to control migration. With the state systems’ legitimacy in question, states stand to lose those rights.<sup>39</sup> The solution is a

---

<sup>37</sup> Gillian Brock, *Justice for People on the Move* (Cambridge: Cambridge University Press, 2020), Joseph H. Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), p. 196, David Owen, *What Do We Owe to Refugees?* (Cambridge: Polity, 2020). These three authors offer closely related accounts focussing on refugees. Chris Bertram offers a different kind of legitimacy account focussing on migration in general in *Do States Have the Right to Exclude Immigrants?* (Cambridge: Polity, 2018). For reasons of space, I leave Bertram’s account aside.

<sup>38</sup> Carens, *The Ethics of Immigration*, p. 196.

<sup>39</sup> Brock, *Justice for People on the Move*, pp. 39–40, Owen, *What Do We Owe to Refugees?*, pp. 178–179.

“legitimacy repair mechanism” in the form of the international refugee regime.<sup>40</sup> Its task is to ensure that anyone whose needs are not fulfilled by their own state has a substitute state to which to turn. Secondary duty bearers stand in for primary duty bearers. No one falls through the cracks.

The Legitimacy Account involves a different kind of argument for refugee protection, but does it support a distinct definition of a “refugee”? As it happens, Owen offers a distinct definition, one that falls somewhere between the Needs Definition and the Convention. He defines refugees as people “for whom the international community must stand in loco civitatis, that is, as a substitute for their own state”.<sup>41</sup> People living in a state that “is incapable of securing basic rights [...] in the face of, say, famine or environment degradation and calls for international assistance” would not be refugees, even though they would “fit the basic needs account’s criteria for granting refugeehood”. Why so? Because for Owen, the state would be “acting effectively” by calling for assistance.<sup>42</sup> No other state need act as a substitute because the state would be doing its duty.

But what about cases in which a state calls for assistance but never receives the assistance it requires? Oddly, Owen does not consider this possibility. The question poses a dilemma for Owen. Either people living there are refugees, in which case the distinction between Owen’s definition and the Needs Definition collapses, or Owen must join the Impossibility Account in arguing that anyone who *could be* assisted in situ is not a refugee, in which case Owen’s definition fails for the reasons already discussed.

Owen is wrong, then, to think that the Legitimacy Account yields a distinct definition. Indeed, on the most natural reading, the Legitimacy Account yields the Needs Definition. If the function of the state system is to fulfil people’s needs and its legitimacy is threatened by failures to perform this function, then presumably states should provide refuge for all those who need it. In this respect, it is tempting to regard the Legitimacy Account as a companion to the Needs Account. Both accounts reach the same conclusion via different routes. Joseph Carens, indeed, proposes both accounts in

---

<sup>40</sup> Owen, *What Do We Owe to Refugees?*, p. 88.

<sup>41</sup> *Ibid.*, p. 37.

<sup>42</sup> *Ibid.*, pp. 92–93.

his case for refugee protection.<sup>43</sup> In this context, criticising the Legitimacy Account might seem akin to attacking an ally.

Nevertheless, I think it is worth subjecting the Legitimacy Account to critical attention. One reason to do so is that such attention has so far been lacking. The debate has largely been between the other accounts. The Legitimacy Account has been proposed, but never fully critiqued.<sup>44</sup> The other reason is that the argument it offers is false. False arguments are a distraction. The fact that the Legitimacy Account could be a companion to the Needs Argument, in supporting the Needs Definition, is then no reason to withhold fire.

To see what is wrong with the Legitimacy Account, let us first acknowledge what appears to be its main attraction. The Legitimacy Account seems to provide an argument for refugee protection that goes beyond humanitarianism. The Needs Account rests on the moral intuition that all people in need are owed assistance. Clearly, in a world in which refugees are badly treated, not everyone shares this intuition. Many are, what we might call, “moral isolationists”. They deny that states have anything except, perhaps, the weakest of duties towards foreigners, and they demand that states be free to pursue the interests of their own citizens. Against calls for refugee protection, they will respond, “What have their needs got to do with us?”

The Legitimacy Account seems to offer an answer to this question. It holds that each state’s legitimacy depends on the legitimacy of the state system. When the needs of some go unfulfilled, the legitimacy of the state system is called into question. States cannot then ignore the needs of foreigners without undermining their own legitimacy.<sup>45</sup> The fact that the Legitimacy Account can offer this response seems like a major advantage.

In fact, however, there is no reason why the Legitimacy Account should prove convincing to anyone who is not already convinced by the Needs Account. To see this, recall the pivotal claim underlying the Legitimacy Account: the function of the state system is to ad-

---

<sup>43</sup> Carens, *The Ethics of Immigration*, pp. 195–196.

<sup>44</sup> Although, for some probing questions, see Daniel Sharp, ‘Immigration and State System Legitimacy’, *Critical Review of International Social and Political Philosophy* (forthcoming), 1–11.

<sup>45</sup> That the Legitimacy Account is intended as a response to moral isolationists is clear in Brock, *Justice for People on the Move*, pp. 34–35.

dress people's needs. Why should a moral isolationist accept this claim? It seems more likely that a moral isolationist will regard the function of the state system as allowing individual states to pursue the interests of their citizens without interference. As long as states refrain from interference, they remain legitimate, irrespective of how foreigners fare.

We have then two possible functions of the international system:

- (1) To fulfil people's needs.
- (2) To allow individual states to pursue the interests of their citizens without interference.

What reason can a proponent of the Legitimacy Account offer for believing that the function is (1) rather than (2)? The answer is none beyond the intuition that people in need are owed assistance. But if this is what is doing the work, then there is no real difference between the Legitimacy Account and the Needs Account. All the Legitimacy Account does is express the same intuition in different words.

Now, proponents of the Legitimacy Account may push back by reminding us that their argument starts with the fact that everyone in the world is subject to a state system. This fact grounds the claim that the state system must be justified to its losers. The function of the state system cannot be merely to allow each state to pursue the interests of its own citizens. For in merely performing that function, the state system does nothing to justify itself to its losers. Only a state system that seeks to fulfil everyone's needs can do that.

I think the best way to understand this response is as an argument from moral responsibility. States cannot claim that abuses that occur in foreign states have nothing to do with them. Rather states are morally responsible for the abuses that occur in foreign states since states, together, impose the state system upon everyone.

One can imagine a world in which such an argument has force. Imagine, a world in which two states, States A and B, cover part of the world and the rest is left stateless. At first, everything goes well. States A and B fulfil the needs of their citizens. The people living in the stateless area fulfil their needs themselves. But then States A and B decide that the stateless area must have its own state. They create State C which promptly starts persecuting its citizens. A refugee

crisis ensues. In such a world, States A and B have forced everyone to live under a state system and this has been disastrous for people in State C. To this extent, States A and B are morally responsible for creating refugees. For this reason, they are obligated to protect them.

In the real world, there might be circumstances where some similar argument could be made. Some states, for instance, have aided the creation of other states which have gone on to persecute their citizens. Perhaps this generates a special duty to provide refuge. Such an argument is effectively an extension of moral responsibility arguments from more direct harms (war, climate change and so forth). As I noted above, I accept that, in some cases, moral responsibility might represent an additional ground for refugee claims. But the Legitimacy Account wants to provide a general argument for why *all* states are obligated to protect *all* refugees. Arguments about moral responsibility for particular cases cannot do this. States which simply operate within the state system do not thereby become morally responsible for every abuse. Suriname is not morally responsible for Uzbek refugees just because Suriname is a member of the state system. Suriname has not forced anyone in Uzbekistan to live under a state, nor caused anyone in Uzbekistan to become a refugee. While it is true that Suriname participates in the state system, mere participation is not sufficient for moral responsibility. Transit workers participate in a city's transit system, but not every transit worker is morally responsible for every crash.

If moral responsibility cannot do the work, we return to our previous conclusion. The Legitimacy Account offers no distinct argument to the Needs Account. Both must be grounded on the same intuition. All this talk of the "legitimacy of the state system" and "legitimacy repair mechanisms" is just the same old humanitarianism dressed up in new clothing.

Now, even if the Legitimacy Account is grounded on the same intuition underlying the Needs Account, someone might still argue that the Legitimacy Account adds something. The Legitimacy Account does not merely claim that, when states fail to offer refuge, they fail to fulfil their duties (as the Needs Account does). It makes the further claim that such failure undermines the legitimacy of the state system. That further claim might be thought worth making.

I agree that this further claim would be worth making were it true. But it is not. To see that it is not, consider a question we have so far avoided: what does it mean to say that the state system is legitimate or illegitimate? Indeed, what does “legitimacy” even mean?

Sometimes people use “legitimacy” merely to express their approval or disapproval of a particular agent. Someone might say that a non-corrupt government is more legitimate than a corrupt government, for instance, to mean only that the first is better than the second. I find such use unhelpful. If we simply mean “good” or “better”, we should stick to those more everyday terms.

A more meaningful use of “legitimacy” is to signal the possession of certain rights. A legitimate agent has certain rights that an illegitimate agent lacks. A legitimate state, for instance, might have the right to enforce the law (in the sense that it violates no duty in enforcing the law) and a right to be obeyed (in the sense that others have a duty to obey it).

Beyond this second use of “legitimacy”, there is a third even narrower use. The term can refer to the normative power to place others under a duty merely by one’s say-so.<sup>46</sup> To see the difference between the second and third meanings, consider the example of an impromptu rescue. Following a road accident, bystanders rush to rescue survivors. To act effectively, the bystanders need to coordinate and, seeing this, one bystander, Cristina, starts shouting orders. If no one else can better perform the role, Cristina has “legitimacy” in the second sense. She has the right to shout orders. People should obey her. But she lacks legitimacy in the third sense. She cannot place people under a duty merely by her say-so. People are only under a duty to obey her to better realise their duty to rescue survivors. Beyond that task, their allegiance ends. Compare this to an example of a subject who freely takes an oath to do anything her sovereign commands. In such a case, the sovereign seems to have the normative power to place the subject under a duty merely by her say-so.

---

<sup>46</sup> This third sense of legitimacy can be found in Thomas Hobbes, *Leviathan*, ed. JCA Gaskin (Oxford: Oxford University Press, 1996), Chapter 25, p169. In contemporary debate, it is referred to as a “content independent” account. See George Klosko, ‘Are Political Obligations Content Independent?’, *Political Theory* 39 (2011), 498–523.



Now, consider again the claim that the legitimacy of the state system depends on fulfilling people's needs. If we understand "legitimacy" here in the first sense of merely expressing approval, there is nothing wrong with the claim. It is good if people's needs are fulfilled. But, as noted, this use of the term is too shallow to be helpful.

The claim that the legitimacy of the state system depends on the fulfilment of people's needs is more meaningful on the second use of "legitimacy". It would then mean that individual states, and the state system, have certain rights only if people's needs are fulfilled. The relevant rights, when it comes to states, would be those they are assumed to possess under international norms, such as the right to control migration. The relevant right, when it comes to the state system, would presumably be the right to exist. If the state system has a right to exist, then people should not replace it with some other system like global anarchy or a world state. If it has no right to exist, replacement is permissible.

Proponents of the Legitimacy Account seem to have the second use of "legitimacy" in mind when they claim that state system legitimacy depends on the fulfilment of people's needs.<sup>47</sup> But if we understand "legitimacy" in this second sense, the claim is false. The relevant rights referred to are not gained or lost depending on the fulfilment of people's needs but on a comparison with the alternatives. The rights of individual states could prove critical to protecting people from serious threats. The right to control migration, for instance, might protect public health during an epidemic or security during war. When this is so, states can retain these rights even if they fail to fulfil their duties towards refugees. The same is true of the state system's right to exist. The state system might, as now, fail to fulfil the needs of hundreds of millions of people. Yet still, if the alternatives (global anarchy, a world state) would be even worse, no one should seek to replace it.

Someone might respond that while needs fulfilment is not necessary for legitimacy, it is sufficient. But, in fact, this too is false. Even in a world in which states did succeed in fulfilling everyone's needs,

---

<sup>47</sup> I interpret them thus since they (1) refer to the possibility of states losing rights for lack of state system legitimacy and (2) do not claim that legitimate states have the power to place people under duties merely by their say-so (the third use of "legitimacy"). Still, I am not entirely clear which conception of legitimacy they hold since they say surprisingly little on that subject. This is why I canvass various possibilities.

we might still have reason to deny them the rights they are currently assumed to possess. For again, everything depends on the alternative. If what we care about—justice, freedom and so on—would be better advanced by denying states these rights, we should deny them. Likewise, with the state system’s right to exist. Even in a world in which everyone’s needs are fulfilled, the state system should be disbanded if some other system would prove superior. States and the state system do not acquire rights as prizes for good behaviour. Rather states and the state system only have rights when some good comes of it.

The fulfilment of needs is thus neither necessary nor sufficient for state system legitimacy, assuming the second use of “legitimacy”. What about the third use of the term (the normative power to place people under duties merely by one’s say-so)? Since the state system itself does not issue commands, it’s best to consider this third use by considering the normative powers of individual states. Do states gain or lose the normative power to place people under duties merely by their say-so depending on whether the state system fulfils people’s needs?

No. If we owe states any duties of obedience, it is most likely because such obedience furthers the fulfilment of some more fundamental duty. Just as the bystanders, in the impromptu rescue case, should obey Cristina to save lives, so there may be circumstances in which we should obey the state to realise some similarly valuable end. On such occasions, the state possesses a certain kind of legitimacy, but it is not the legitimacy of this third kind.

It is not clear what conditions a state would have to fulfil to enjoy this third kind of legitimacy. What is clear is that the mere fulfilment of people’s needs is insufficient. Perhaps, a state might acquire this third kind of legitimacy were people to promise to obey its commands. Promising is the kind of act that could generate such a normative power. The mere fulfilment of someone’s needs is not. If some stranger fulfils my needs by, say, paying my rent, I may have reason to recompense them in some way, but they do not thereby acquire the normative power to place me under a duty merely by their say-so.

In sum, the Legitimacy Account has nothing to offer us over the Needs Account. It does not support a distinct definition of refugees.

Nor does it provide a new argument for the Needs Definition capable of winning fresh converts. While the Legitimacy Account introduces new terminology, the underlying motivation remains the same. The Legitimacy Account would add something to the Needs Account were it true that the state system loses legitimacy when it fails to fulfil people's needs, but, as we have seen, this is not necessarily true either.

## VII. CONCLUSION

This article has defended the Needs Account of refugeehood. Refugees are people in need of refuge, and, for this reason, they have a claim to refuge. The article has shown that other accounts fail. Refugees need not have severed bonds with their state (contra Shacknove). Nor need it be impossible to assist them in situ (contra the Impossibility Account). Nor does the demand for their protection rest on the need to legitimise the state system (contra the Legitimacy Account). These accounts follow the Refugee Convention in drawing spurious distinctions among people in need of refuge.

At the start of this article, we decided to answer the Definition Question (who is a refugee?) by way of the Normative Question (who has a claim to refuge?). Since this decision was crucial to our defence of the Needs Account, let's return to it here. Recall, the decision is guided by the pragmatic approach: we seek to define "refugee" in whatever terms best advances our relevant moral goals including the goal of helping people who have a claim to refuge find refuge. Defining a refugee based on who has a claim to refuge helps us pursue our relevant moral goals for an empirically contingent reason. People associate the word "refugee" with having a claim to refuge. Given this association, we can better protect people who have a claim to refuge by calling them "refugees". If we do not call them "refugees", there is the danger their claims will be dismissed. By defining everyone in need of refuge as "refugees", we underscore the validity of their claims.

Since the argument for the Needs Definition is empirically contingent, it is open to empirical contestation. Someone could agree with our pragmatic approach to defining "refugee", and with the claim that everyone with a need for refuge has a claim to refuge, and still disagree with the Needs Definition. They would be arguing, in

effect, that we can better advance our morally relevant goals by refusing to define everyone with a claim to refuge as a refugee. We have considered arguments for this view above and found them unpersuasive. But I do not want to entirely reject the possibility of some further argument that could yet prove convincing. Raising this possibility helps highlight the deeper commitment of this article. That deeper commitment is to the idea that what ultimately matters is that people in need of refuge find refuge. Our search for a refugee definition is subordinate to that goal. If any refugee definition, including the Needs Definition, were shown to hinder us in pursuing that goal, we should readily abandon it. We should never allow definitions to come between those in need of refuge and the refuge they need.

#### ACKNOWLEDGEMENTS

I presented this article in Stockholm, Warwick, Oxford, and Stepantsminda, Georgia. I'm grateful for the feedback I received. I'm also grateful for excellent written comments from Victor Tadros and Christina Easton, and for helpful discussions with, among others, Jonathan Parry, Daniel Sharp, Massimo Renzo and Bradley Hillier-Smith. I owe special thanks to Helen Frowe, Joe Bowen and an anonymous reviewer.

#### OPEN ACCESS

This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

ENOUGH SPURIOUS DISTINCTIONS...

*London School of Economics and Political Science (LSE), London, UK*  
*E-mail: k.oberman@lse.ac.uk*

**Publisher's Note** Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.