

*Selecting Refugees**David Miller*¹**I Introduction**

In this chapter I examine the criteria that it is legitimate for liberal states to use when selecting refugees for admission. My aim is not to provide detailed policy guidance. Refugee policy, like immigration policy generally, is a complex matter, and states have evolved different selection practices to suit their particular circumstances and the demands for admission that they face. Nevertheless, we can readily agree that some selection criteria are inadmissible – selection on grounds of race, for example. In particular, I want to explore whether in setting their policies, states have simply to respond to the weight of the moral claim that each refugee can make to be admitted, or whether they also have some scope to shape these policies to reflect the preferences and interests of their own citizens. In relation to the former, what gives one refugee a stronger claim than another to be granted admission, on either a temporary or a permanent basis? In relation to the latter, how far, if at all, is it permissible for states to allow considerations of national culture, economic advantage, social cohesion and so forth to influence their refugee selection policies?

Some readers may find the very idea of refugee *selection* disturbing. Don't all refugees have a *right* to be admitted, under the long-established principle of *non-refoulement*, which prohibits their return to the place that has made them into refugees – or indeed any place where they face persecution, or some other unavoidable threat to their human rights?²

¹ Earlier versions of this chapter were presented to the workshop on Feasibility and Immigration, Australian National University, 23–24 April 2018, the conference on Refugees and Minority Rights, University of Tromsø, 14–15 June 2018, and the conference on Refugees, Borders and Membership, University of Malmo, 24–26 October 2018. I thank the participants in all three events for their penetrating comments and criticisms, and also Patti Lenard, Serena Parekh and Christine Strachle for their advice and suggestions.

² I will not say anything more here about how 'refugee' should be defined, a question discussed at length in the Introduction. The arguments I make in the chapter should apply regardless of whether

So why the talk of selection, which implies that some will be turned away? But here I believe a small dose of realism is unavoidable. We might imagine a first-best world in which all states treated their citizens with respect, and made a good-enough job of protecting their human rights. In that world, plainly, there might still be a need for immigration policy, but there would be no refugees. We could also imagine a second-best world containing a few rogue states that produced refugees, though in small enough numbers that no state would be burdened by admitting everyone who applied to it in search of asylum. But we are living in a third-best world where the number of people with valid claims to refugee status is so high that states can justifiably set limits to the numbers they will accept, preferably under a burden-sharing scheme that divides their collective responsibility to aid refugees fairly between them.³ Indeed the key document establishing a right to claim asylum under international law – the 1951 Geneva Convention – also recognizes the problem that admitting such a right may pose when it acknowledges that ‘the grant of asylum may place unduly heavy burdens on certain countries’ and that a solution must involve international cooperation.⁴ The UNHCR was established in part as an instrument for managing refugee flows in such a way that no country would have to bear such burdens single-handed. In other words, while the right to asylum was recognized by the international community acting through the UN in the post-war period, it was also acknowledged that the

a wider or a narrower definition is preferred. My own position is set out in D. Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016), ch. 5.

³ For discussion of such schemes, and the criteria that might be used to determine what each state’s refugee quota should be, see P. Schuck, ‘Refugee Burden-Sharing: A Modest Proposal’, *Yale Journal of International Law*, 22 (1997), 243–97; J. C. Hathaway and R. A. Neve, ‘Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection’, *Harvard Human Rights Journal*, 10 (1997), 115–211; A. Hans and A. Suhrke, ‘Responsibility Sharing’, in J. Hathaway (ed.), *Reconceiving International Refugee Law* (The Hague: Martinus Nijhoff, 1997), pp. 83–109; A. Suhrke, ‘Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action’, *Journal of Refugee Studies*, 11 (1998), 396–415; T. Kritzman-Amir, ‘Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law’, *Brooklyn Journal of International Law*, 34 (2009), 355–93. I do not mean to underestimate the practical difficulty in getting states to sign up to such schemes, given that they will have their own internal estimates of the real costs of admitting and integrating refugees, which may not correspond to the economic burden calculated on the basis of objective criteria such as population size or per capita GDP – for example, they may claim that it is particularly costly for them to have to admit refugees from certain ethnic groups. I believe, nonetheless, that there is an obligation both to help establish and to join them.

⁴ UNHCR, *Convention and Protocol Relating to the Status of Refugees* (Geneva: UNHCR, 1996), p. 15.

exercise of that right would in practice require countries to cooperate in responding to large-scale refugee crises.⁵

Once we accept that states are justified in establishing limits to the number of refugees they will admit in any given time period, we cannot avoid confronting the selection issue. States may also have a responsibility to tackle the refugee problem at the source, helping to move the third-best world toward second-best and ultimately first-best configurations, but meanwhile they need to have ethically justified policies for deciding which refugees should be given priority for admission within those limits. What principles should guide them here? We can approach this question from the side of the refugee, asking what factors might contribute to the strength of his claim to be admitted to a particular state. But we can also approach it from the side of the receiving state, noticing that the costs and benefits of admitting different refugees may vary considerably: some will contribute a lot and need little support from the state, whereas for others the opposite may be true. But is it acceptable for a state to take these costs and benefits into account when it decides on its admission policy? In the case of refugees, unlike other immigrants, some may think it impermissible. I examine the refugee's perspective first before turning to the receiving state's perspective.

To get our question into proper focus, it is important to distinguish analytically between two categories of refugees. The first covers those who are admitted on a short-term basis in the expectation that they will be able to repatriate to their home countries after a few months or years, when the crisis that has turned them into refugees has passed. These will typically be people escaping from collapsed states or civil wars who cannot for the time being be protected in their homelands. I shall describe refugees in this category as candidates for *sanctuary*. The second covers those who are applying to remain in the receiving state on a long-term basis, because they have no realistic prospect of returning home safely. This might be because they are certain to face persecution on grounds of race or religion if they attempt to do so, or because the place they might otherwise return to has been so transformed meanwhile that they could no longer make a life there. Typically, refugees in this second category will already have spent

⁵ In this chapter, I am going to set aside the large policy question of how states should best respond to such crises – how far they should respond by admitting refugees, or on the other hand by providing funding for purpose-built refugee camps or investing in enterprise zones where refugees can find employment in third countries. For discussion of these alternatives to admission, see especially A. Betts and P. Collier, *Refuge: Transforming a Broken Refugee System* (London: Allen Lane, 2017). I assume simply that admitting *some* refugees to liberal democracies must be part of the solution.

some years in countries of first asylum, eking out a living in refugee camps, cities or rural settlements. I shall describe refugees in this category as candidates for *resettlement*.

As indicated, the distinction between sanctuary and resettlement is an analytical one. In any concrete case, it may be difficult to know whether a refugee who seeks admission should be treated as claiming sanctuary or as claiming resettlement, because it is hard to tell in advance whether the situation she is fleeing can be resolved quickly enough to allow return within the time limit for which sanctuary is granted. We must also recognize that there is a length of time, difficult to specify precisely, beyond which a claim for sanctuary will turn into a claim for permanent resettlement, because the refugee has put down sufficiently deep roots in the receiving society that it would breach his human rights to require him to return to his society of origin. Here I am endorsing what is sometimes called the ‘social membership’ argument, which holds that once a person has lived in a society for a number of years, forming social ties and contributing productively through working, paying taxes and so forth, that person has a right to become a permanent resident and in due course a citizen.⁶ This is regardless of the terms on which he or she entered the society initially. But although for these reasons the distinction between sanctuary and resettlement may be blurred in practice, it will turn out to be important when we begin to evaluate selection criteria. I will argue that some factors that may properly be taken into account when judging claims for resettlement may not be used when only sanctuary is being sought. It is also a distinction that is drawn in practice by many states, when they offer some asylum-seekers temporary residence visas that expire after three or more years unless renewed, and others permanent residency.⁷ So although it may prove difficult to devise a policy that exactly captures the morally

⁶ For the fullest defence of this argument, see J. Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013), ch. 8. See also R. Baubock, *Transnational Citizenship: Membership and Rights in International Migration* (Aldershot: Edward Elgar, 1994), ch. 6; R. Rubio-Marin, *Immigration as a Democratic Challenge: Citizenship and Inclusion in Germany and the United States* (Cambridge: Cambridge University Press, 2000), chs. 2 and 5; A. Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, MA: Harvard University Press, 2009), ch. 6; and my own defence in Miller, *Strangers in Our Midst*, ch. 7. For the influence of this principle in US law, see H. Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (New York: Oxford University Press, 2006), ch. 4. For a critique, see K. Oberman, ‘Immigration, Citizenship, and Consent: What Is Wrong with Permanent Alienage?’, *Journal of Political Philosophy*, 25 (2017), 91–107.

⁷ This is common practice within the EU, for example, and also applies in Australia and New Zealand. In the United States, refugees become eligible to apply for permanent residency after one year. For a fuller discussion (and defence) of such practice, see Chapter 11 in this volume.

relevant distinction between refugees whose vulnerability is a short-term condition that will end with the cessation of conflict or a change of regime in their home country, and those for whom it is likely to last indefinitely unless they are given the chance to make a life in a new place, we need to use that distinction in a discussion of selection criteria, as will shortly become apparent.

2 Selection by Lottery?

Let's begin with the simple case in which a state is receiving more asylum applications than it is willing to accept, whether these are being lodged by refugees arriving at its borders, or through embassies or from camps in third countries. Once it has been determined that the applicants do indeed qualify as refugees, a selection needs to be made. One possibility would be to select via a lottery. This might seem to have certain advantages. A lottery is strategy-proof, in the sense that no one can gain an advantage by misrepresenting their situation. It also rules out partiality, say on the grounds of race or gender, on the part of the selectors. The lottery gives each refugee an equal chance of being chosen.⁸ There are precedents for using lotteries to select immigrants. The best-known example is the US green card lottery, which each year awards immigration visas to 50,000 applicants out of a pool of nearly 10 million. Canada gives 10,000 family reunification places by lot to people wishing to bring in parents or grandparents. These programmes have their supporters, but they are also fiercely attacked by critics who object to someone's life-chances being determined in such a direct way by the luck of the draw. It's also relevant that these lottery mechanisms make up only a small part of the overall immigration regimes of the countries in question, allowing defenders of the green card lottery, for example, to argue that it serves to offset the bias of the system as a whole in favour of the highly qualified.⁹

⁸ For a defence of lotteries that emphasizes their imperviousness to strategic behaviour on the part of the prospective beneficiaries, see J. Elster, 'Taming Chance: Randomisation in Individual and Social Decisions', *Tanner Lectures on Human Values*, 9 (1988), 107–79. Elster does, however, also provide a plausible explanation of our reluctance to allow important decisions to be decided by a random procedure such as a lottery.

⁹ As one put it: 'This is the only instance where an average Joe, housewife or a mechanic, just an ordinary person – not a PhD holder, not a Harvard professor, not an engineer – could apply. And that continues to be the beauty of it. ... Nowhere else are you going to find ordinary people, from different parts of the world, feeding the American melting pot and enriching the lives of Americans in the way this program does.' Available at www.theguardian.com/us-news/2017/may/02/green-cardlottery-us-immigration-trump-agenda.

It would be hard, however, to defend selection by lot in the case of refugees. A lottery system might be defensible when it is handing out golden tickets to a few, which seems to be the way the US green card lottery is usually regarded, but not when what is at stake is offering protection to people whose human rights are under threat. The lottery necessarily discards a great deal of information relevant to assessing a refugee's claim for admission, so unless reliable information is impossible to come by, not merely difficult to obtain, it's unacceptable as a selection mechanism. Even though by definition a refugee is someone whose human rights are under threat, the immediacy and severity of the threat will differ markedly from one person to another. The principle behind it – that each claimant should have an equal chance of success – should be set aside once we recognize that refugees are not all alike, and some will have stronger claims on our protection than others.¹⁰

3 Vulnerability as Grounds for Admission

So what are the factors that should determine the strength of a refugee's claim? Given that the source of the claim is the threat that the refugee faces to her human rights, it seems obvious that her degree of vulnerability must be the main factor. What we need to ask is whether it is the *only* one. Moreover, what 'vulnerability' means is less than clear-cut.¹¹ What makes one refugee more vulnerable than another? There appear to be two dimensions to this judgement: one is *urgency* – how *immediate* is the threat to the refugee's human rights if she remains where she is – and the other is *depth* – how serious is the harm she will suffer if not given

¹⁰ John Broome has defended the use of lotteries in some cases where claims are unequal in strength on the grounds that this is what fairness requires: everyone should have some chance of getting the good that is being allocated. However, he concedes that this looks most plausible when the differences of strength are not too great. See J. Broome, 'Fairness', *Proceedings of the Aristotelian Society*, 91 (1990–91), 87–101. It may also be relevant here that the case for a lottery looks strongest when the allocation takes the form of a single unrepeated event; whereas in the case of refugees, those who are not selected in any one time period may have the chance to reapply at some later time, and this reinforces the case for selection on grounds of relative vulnerability, as I suggest below.

¹¹ For the purpose of this chapter, 'vulnerability' is to be understood as the threat to the refugee's human rights imposed by her own state or by other third parties. In a different sense, a refugee might be described as vulnerable to the decision of the state that is now considering her for asylum, since her life prospects in general will depend on whether or not her application is granted (for this wider conception of vulnerability, see R. Goodin, *Protecting the Vulnerable* [Chicago, IL: Chicago University Press, 1985], ch. 5). Vulnerability in this second sense does not in itself constitute grounds for admission, but it does impose a special duty of care on the state that is assessing her application. For a fuller discussion of this point, see Miller, *Strangers in our Midst*, pp. 83–85.

protection. Combining these dimensions gives a criterion that seems compelling: if there are refugees who are in imminent danger of losing their lives, or being tortured, for instance, then they should be given top priority for admission.

But now we must look at some complicating factors that qualify the judgement that refugees should be selected only on grounds of relative vulnerability. One is that while vulnerability may be the main criterion to be used when refugees are being considered for sanctuary, it is less obvious that it can do all of the work when selecting refugees for resettlement. In many cases resettlement will be offered to those who have already moved across an international border and are now living in a third country – perhaps in a city, perhaps in a purpose-built refugee camp. Although their human rights are not fully secure, they are not directly vulnerable to the severe threats in their country of origin that have turned them into refugees.¹² So if a person's vulnerability is measured by the immediacy and depth of the threat to their human rights, it may be very difficult to discriminate on such a basis between refugees in that category. If a selection for purposes of resettlement is going to be made, therefore, it seems that it has to be on grounds other than relative vulnerability – for example, how likely it is that the refugee will be able to repatriate safely in the near future or, alternatively, integrate successfully in the country that has so far provided her with asylum.

A second issue is about the source of vulnerability. What should we say about refugees who have special needs – special medical needs, for example – when these needs are not connected to the persecution that has turned them into refugees? Do they have stronger claims because they are more vulnerable overall, even though part of that vulnerability is due to

¹² It is difficult for those not directly involved in working with refugees to form an unbiased judgement about conditions of life for those who have crossed a border and settled in the global South, whether in a camp or elsewhere. The picture seems to vary considerably from one country to the next. Because those who are contained in camps are often prohibited from finding work outside, staying for more than a short period is likely to be a miserable experience. On the other hand, there are forms of local settlement, such as those sponsored by the Ugandan government, that give refugees more autonomy. For analysis, see Betts and Collier, *Refugee*, chs. 5 and 6; O. Bakewell, 'Encampment and Self-Settlement', in E. Fiddian-Qasmiyeh et al., *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford: Oxford University Press, 2014), pp. 127–38. The bleakest description of the condition of refugees in Kenya and Uganda, written from a confessedly partisan perspective, is G. Verdirame and B. Harrell-Bond, *Rights in Exile: Janus-Faced Humanitarianism* (New York: Berghahn Books, 2005). For a helpful synthesis, see S. Parekh, *Refugees and the Ethics of Forced Displacement* (New York: Routledge, 2017), ch. 1. For purposes of this chapter, I assume only that there are a substantial number of refugees who qualify for resettlement on the grounds that they have no decent future in the places they are currently settled, but whose basic human rights are not immediately at risk.

factors other than persecution? The UNHCR, in listing its grounds for resettlement, offers as one criterion a person's having severe medical needs that cannot be treated in the country of asylum; however, it also gives special weight to the claims of those who have been victims of violence or torture, suggesting that needs that arise directly from persecution may be treated differently from others.¹³ So the underlying question here is whether we see the international refugee system as something established as a specific response to human rights threats posed by rogue or collapsing states, or whether we see it more broadly as discharging one part of a wider global responsibility to meet all human needs.¹⁴ If we think that refugees make special claims of us by virtue of being refugees, then we are taking the former view, and this means that our obligations toward them *as* refugees are limited to counteracting the human rights threats they face, by providing refuge in one form or another. That means discounting medical or other needs that have arisen for independent reasons as grounds for selection. Of course there is no ban on doing more for the refugees who are accepted for admission, but this should not be a factor that affects the selection process itself.

This question about different possible ways of measuring vulnerability is also connected to a third issue, namely, whether besides considering vulnerability itself, we should also look at how far granting admission is likely to improve a person's situation. Obviously, removing someone directly from a danger zone is always going to improve their life chances very markedly. But if the question is where they are going to be offered sanctuary or resettlement – in one particular Western state – then how they are likely to fare in different places seems relevant at first sight. Someone who is illiterate, or who has very few work-related skills, may find it difficult to find proper employment if they are granted residence in a developed society. They may still be better off materially than they would be living in a refugee camp, but perhaps not much better off. Whereas someone who has professional skills is likely to find that their life chances improve very substantially, especially if they are offered the opportunity to resettle permanently.

There are parallels here to the debate in medical ethics over whether, with limited resources, we must always give priority to the patients who are currently worst off or whether we should also consider how effectively

¹³ See UNHCR, *UNHCR Resettlement Handbook* (Geneva: UNHCR, 2011), ch. 6.

¹⁴ The contrast between these two perspectives is further developed in the Introduction to this volume and in Chapter 1.

different patients can be treated. This might mean practising a form of triage whereby we prioritise those whose condition can be significantly improved, regardless of how ill they were initially. Presented with that dilemma, most people opt for an intermediate position which takes account of both how badly off patients are to start with and how far their condition can be improved with the resources available.¹⁵ In more abstract terms, the question is whether when considering how to respond to people in need, we should take account only of the relative depth of their initial need, or also of how far that need can be relieved given our capacity to respond. You do not have to be a strict consequentialist to think that the second factor should play some role in our practical reasoning. But does the same form of reasoning also apply in the refugee case?

It does, but only with an important qualification. The refugee's claim for sanctuary or resettlement is based on the threat to her human rights. So all that should count is the extent to which her human rights situation can be improved by being admitted. Increasing opportunities over and above that basic standard – opportunities for higher education or a professional career, for example – should not. Suppose we consider two stylised characters – one, a person who is illiterate and the other, a trained medic – and ask who has the stronger claim to be resettled. We know that the medic will do far better than the person who is illiterate overall if resettlement is granted. The worry here is that if we select in favour of the medic for that reason, we are resolving a human rights dilemma on grounds that have nothing essentially to do with human rights. It may seem unfair that the medic should be advantaged *in this context* by allowing the fact that we can do much more to advance her higher interests to determine the outcome. In other words, while it might be relevant that one person's *human rights* situation can be improved more than another's by granting them admission, it is not relevant that one person's *overall* situation can be improved more than another's if the expected human rights improvement is similar in both cases.

Once again, the underlying issue here is whether when developing criteria for use in refugee selection, we should ask how much we can help each refugee overall, or how much we can help each refugee overcome the specific human rights deficits that have made her into a refugee. As we saw, the same question arises in relation to the problem of medical needs that

¹⁵ For relevant evidence, see J. Hurley et al., 'Nonmarket Resource Allocation and the Public's Interpretation of Need: An Empirical Investigation in the Context of Health Care', *Social Choice and Welfare*, 49 (2017), 117–43.

have arisen independently of refugeehood. If Aziz has developed cataracts for genetic reasons, but is now housed in a refugee camp where specialist treatment is unavailable, should that count in favour of resettling him in Canada? (Assume that human rights are not immediately at stake: Aziz's sight is deteriorating, but only slowly.) From a general humanitarian perspective we may be inclined to say Yes, but if we are thinking strictly about Aziz's claims *as a refugee*, then we should consider only factors that are relevant to his status *as a refugee*, which disqualifies the cataracts.

So long as we are looking at the selection issue entirely from the refugee's perspective, therefore, severe vulnerability to human rights abuses, where it can be established, remains the paramount consideration. But there may be factors other than vulnerability that can help to bolster an admission claim. One such factor is family reunification, meaning here bringing back together immediate family members, that is, spouses and/or dependent children. This counts as a legitimate reason for a state to grant preference in immigration policy generally, and it also adds weight to a refugee's claim, since involuntary separation from one's family members by reason of state action breaches the human right to family life.¹⁶ In this case the breach has presumably been caused by the actions that have turned one or both parties into refugees.¹⁷ So the grant of sanctuary or resettlement can be seen as providing a remedy for a rights violation over and above the violations that have made the person into a refugee in the first place.

In the case of family reunification, what gives the refugee an additional claim against a particular state is simply the ongoing presence within that state of a relevant family member. But there are also cases in which the existence of a prior relationship between the refugee and the state itself adds weight to his claim. I have referred elsewhere to people in this position as 'particularity claimants'.¹⁸ A case in point is where the receiving state has helped to create the conditions that have turned the person into a refugee – say, through an armed intervention that goes wrong and leads to

¹⁶ For a fuller analysis and defence of family unification as grounds for admission, see M. Lister, 'The Rights of Families and Children at the Border', in E. Brake and L. Ferguson (eds.), *Philosophical Foundations of Children's and Family Law* (Oxford: Oxford University Press, 2018), pp. 153–70.

¹⁷ What if one party has moved *voluntarily* to the receiving state, perhaps in anticipation that this would help strengthen the claim of her refugee partner or child? Well, first, clearly the family cannot be reunited in the state from which the refugee has fled, so long as the threat to his human rights persists there. But, second, what of the case where the refugee is seeking resettlement from a camp or some other place in a third country? Could it be argued that the family can be reunited if the voluntary migrant also moves to that third country? But this might involve, for example, swapping a secure life in Germany for an insecure life in Lebanon.

¹⁸ Miller, *Strangers in Our Midst*, pp. 113–16; D. Miller, 'Justice in Immigration', *European Journal of Political Theory*, 14 (2015), 401–3.

social breakdown.¹⁹ Here the refugee has a reparative claim at least for sanctuary and in most instances for resettlement if the breakdown persists. Similar considerations apply when a person has been forced to seek refuge as a result of having previously helped the state to which he is now claiming admission – say, as an interpreter or translator for an occupying force. I don't suggest that particularity claims of either kind should outweigh extreme vulnerability – where someone is in imminent danger of being killed or tortured if she is not granted sanctuary, that should be the decisive factor in prioritising her admission. But in third-country resettlement cases, these other factors should count. Recall that we are envisaging a situation in which states have each agreed to admit a certain refugee quota, and the issue is which refugees in particular are going to be offered sanctuary or resettlement. States, I believe, are obliged to take account of the effects of their own past actions when making these decisions.

4 The Receiving State's Perspective

Up to this point I have been examining the selection issue from the refugee's side, asking what factors might strengthen or weaken her claim to be admitted. But we also need to examine the issue from the perspective of the receiving state, where a different set of factors may seem relevant. Some refugees are likely to be costlier than others to receive and integrate, and equally some can be expected to create greater benefits than others as they contribute productively or culturally to the society they have joined. When a refugee quota is established, either unilaterally or through an agreement made between states, an estimate will have been made of the overall cost–benefit effect of taking in a certain number of refugees. Nevertheless, the state and its citizens still have a clear interest in selecting those refugees from whom they expect to derive the greatest benefit at least cost, using whatever metric of benefit and cost citizens deem to be relevant. Fulfilling the fair refugee quota is an obligation, but as with obligations generally, it is permissible to try to discharge it in the least burdensome way. The question is, are these considerations of cost and benefit legitimate grounds on which states can choose which refugees to admit?

They are not legitimate when refugees are being admitted, for either sanctuary or resettlement, as a result of an immediate threat to their human rights – in other words, they are moving directly from the state

¹⁹ See the more extensive discussion in J. Souter, 'Towards a Theory of Asylum as Reparation for Past Injustice', *Political Studies*, 62 (2014), 326–42.

where their rights are under threat to a Western state. In these circumstances, the only selection criteria that can justifiably be used are those already discussed – the refugee's degree of vulnerability, together with special factors that already link her to the receiving state. Now when refugees are admitted in these circumstances, they are likely to be legally entitled to more than basic rights protection. Returning to the case of Aziz, for example, it may well be that if he is chosen, he will qualify to have his cataracts removed. So, accepting him will impose higher than average costs on the medical system. But it would be wrong to discriminate against him on that basis. When considering his claim, I argued that it was not strengthened by having greater needs when these needs had nothing inherently to do with his condition as a refugee. But nor I think should he be penalised at the point of selection because our medical system operates in such a way that he will in fact receive the same attention as a citizen would. In principle, it would be legitimate to limit the benefits available to those offered only sanctuary, even though it would certainly also be mean-spirited. Their claim is to have their human rights adequately protected, not to enjoy all of the benefits that a state provides for its own citizens. Since that is all we are morally obliged to offer, it would be wrong to disfavour Aziz at the point of selection on the grounds that in practice we will provide him with more, at some cost. In sanctuary cases, then, selection should be special-needs blind.

The position looks rather different, however, in resettlement cases where the human rights of the person being granted that status are not under immediate threat. For here what is being offered goes considerably beyond the protection of basic rights. The refugee is being given the opportunity to join the implicit social contract that the arrangements of a liberal democracy embody. He will in due course have access to the full set of social and political rights that other citizens possess. It therefore seems reasonable to ask, as with immigrants generally, whether he is likely to be a net contributor to the scheme or a net liability. This will depend on factors such as the talents and skills he already has or will be able to acquire, and conversely on the demands he can be expected to make on the welfare state. Assume that the state is discharging its international obligations by taking in N refugees, its quota under a fair distribution of responsibility. If it is going to offer permanent settlement to some $n < N$ of these, why shouldn't it be allowed to select the n by considering the net contribution they are likely to make, while choosing the remaining $N - n$ on grounds of immediately vulnerability?²⁰

²⁰ As one illustration of this approach in practice, consider Robert Vineberg's proposal that in the case of Government-Assisted Refugees in Canada, there should be a 50–50 split between those who are

The problem with this proposal comes into view, however, when we think about the distribution of refugees between states. For what is being proposed is in effect that state *S* should be allowed to cherry-pick the *n* resettlement candidates whose human rights are not immediately at risk. If a burden-sharing scheme for refugees is going to be fair, quotas must be set on the basis that the overall profile of the refugees going to each state will be approximately the same – the numbers will vary according to the capacities of the receiving state, but the make-up of the group will be similar. So, if a state begins to cherry-pick on cost–benefit grounds, it is imposing an unfair burden on other states, who will have to take in a disproportionate number of more costly refugees – those who are low skilled or who have special needs, for example. If, in response, other states also begin to cherry-pick, then what happens will depend on the preferences of the favoured refugees who can expect to receive multiple offers – with no guarantee that the outcome will preserve fairness between countries.

Note, though, that this objection to selection on grounds of expected net contribution assumes that all states will use the same criteria when assessing contribution. But this need not be so. Some features are likely to be prized by only a minority of states. Language competence is perhaps the clearest example. Only a few states will value the ability to speak German; similarly with Portuguese. There may also be specific occupational skills of which the same is true. In that case the objection to cherry-picking, that it leaves other states with a disproportionate number of more socially costly refugees, is dissipated. If Germany is permitted to favour German-speakers and Portugal to favour Portuguese-speakers, this does not seem unfair to other countries (unless language competence is strongly correlated with some other feature such as level of education).

One might take this further, and advocate what has been called a matching system for refugees.²¹ The proposal here is that when states are cooperating under a burden-sharing scheme, they should be asked to specify the characteristics that they value in refugees, while the refugees themselves should be allowed to rank-order the countries in which they

most in need of refuge and those who are most likely to establish themselves in Canada within a year (i.e., integrate successfully). See R. Vineberg, 'Canada's Refugee Strategy: How It Can Be Improved', *University of Calgary School of Public Policy Publications*, 11 (2018), available at https://d3n8a8pro7vhm.cloudfront.net/cdfai/pages/3533/attachments/original/1523488412/Canadas_Refugee_Strategy.pdf?1523488412.

²¹ See W. Jones and A. Teytelboym, 'Matching Systems for Refugees', *Journal on Migration and Human Security*, 5 (2017), 667–81; W. Jones and A. Teytelboym, 'The International Refugee Match: A System That Respects Refugees' Preferences and the Priorities of States', *Refugee Survey Quarterly*, 36 (2017), 84–109.

might be given the right to settle. A computer algorithm would then determine the optimal allocation of particular refugees to particular countries, given the overall quotas that had already been agreed. Defenders of this proposal point to its efficiency when compared with a random system of allocation, and the fact that it gives some weight to the preferences of the refugees themselves (without of course guaranteeing that every refugee is offered resettlement in their top-choice country).

These are important virtues of a matching system, but the issue of fairness remains, unless we assume that refugees' preferences are quite heterogeneous, in which case we might expect that each country will be allocated a sizable number of refugees who would be ranked highly by its own criteria. If refugees' country rankings converge, on the other hand, then the system will assign the most-favoured countries the refugees they are most keen to accept, which, we can assume, will often be the ones who are easiest to integrate, are expected to be most economically productive, and do not have special needs. So there will unavoidably be trade-offs between efficiency, sensitivity to the agency of the refugees themselves in choosing their country of resettlement, and fairness between the receiving states who have agreed to participate in the matching scheme.²²

5 Why Some Selection Criteria Are Inadmissible

What this discussion has revealed more generally is that, in resettlement cases, there may be good reasons to allow states to select refugees on grounds other than relative vulnerability, subject to considerations of fairness *between* states when a burden-sharing scheme is in place. In this last section of the chapter I want to look more closely at the selection criteria that might be used in this context. Intuitively, some seem more acceptable than others, but what explains this?

We have little difficulty in understanding why selection on grounds of race is unacceptable: it merely bows to the prejudices of some citizens, while failing to capture any feature of the applicant that is relevant to her entry into the social contract. Nor, on the other hand, do we have a problem in explaining why it should be legitimate to select people for permanent settlement when they can show that they have skills that are in

²² To tackle the fairness issue, a monetary compensation scheme might be proposed for states that find that they are allotted a disproportionate number of 'expensive' refugees. Although this would not require putting a price on the head of individual refugees, it might still be accused of stigmatising groups of refugees, whereas it is a claimed virtue of the matching scheme itself that no monetisation of refugees is involved.

high demand: there are benefits to both sides in using this as a criterion. The difficult cases are those that involve features that are *de facto* relevant to the refugee's capacity to integrate successfully, such as their ethnic or religious background, but that we may still feel are illegitimate as selection criteria.

Note first that these features may well be morally relevant when they correlate with special vulnerability – that is, when people are being oppressed in their home country precisely on account of their ethnic or religious affiliation. That could justify selecting them ahead of others for either sanctuary or resettlement. The problem arises with cultural attributes that are not in themselves relevant sources of vulnerability, yet affect their bearer's capacity to function well in the society he is joining. What explains this? One reason might be the norms of behaviour embedded in the refugee's home culture, which may be closer to, or more distant from, the norms of the receiving society. Norms governing how men and women should behave to one another are an oft-cited example. Someone who arrives with strongly held patriarchal values will find it harder to adjust to a society where equality between the sexes is the proclaimed norm, if not always the reality. A patriarchal father may be unwilling to allow his wife to find paid work, or his daughters to complete their education, with obvious implications for equality of opportunity and social mobility. Another reason may be the presence or absence within the host society of groups with the same cultural background as the refugee. We know empirically that immigrants of all kinds tend to do best when they are able to interact with denizens who share their cultural background, and immigration choices will often reflect this. For both these reasons, a refugee's cultural background is likely to determine how easy it is for her to integrate, measured by markers such as learning the local language and finding a job. So if, as I am assuming, 'ability to integrate' is a legitimate reason when considering candidates for resettlement (though not for sanctuary), then we may be tempted to conclude that cultural selection is sometimes permissible.

Yet we may still feel uneasy about this conclusion. Cultural selection just sounds wrong. One reason for thinking so is that it might serve as a proxy for racism, if the culturally favoured groups happen also to be largely white. That is no doubt a real possibility in practice, but it can be set aside here on the grounds that most criteria of selection, however defensible in themselves, might be adopted for indefensible reasons. I will also set aside a second challenge to cultural selection, namely, that if we select refugees on this basis, we seem simply to be embracing the status quo – that is, we are

favouring those whose cultural norms are closest to the ones we happen to have already, and/or those who belong to cultural groups who are already well represented in our society, and these, it might be argued, are merely arbitrary facts, open to change. However, although the present cultural configuration of our society is indeed in one sense arbitrary, it is still a hard fact, unchangeable in the short term, and therefore relevant to how refugees from different backgrounds will actually fare. In other words, although it may be an accident of history that our society already hosts a thriving community of Sikhs, say, it is surely relevant to the question whether incoming Sikhs are likely to integrate successfully, as compared with other immigrants.

The real problem with cultural selection, I believe, lies elsewhere. To understand what is wrong with it, consider by analogy racial profiling – practices like police stop-and-search operations aimed at members of groups known to have a higher than average likelihood of carrying drugs or concealed weapons. Profiling of this kind is objectionable because it targets individuals on the basis of a statistical fact about the group they belong to – membership being assigned externally by skin colour – rather than on the basis of pertinent facts about them as individuals. It attaches a significant burden – being regularly stopped by the police in a way likely to cause significant anxiety and distress – on the basis of an assumption that in the case of any particular individual may be entirely false.²³ The analogy, I suggest, is that if a person is disadvantaged in refugee selection by virtue of belonging to a cultural group that is perceived as less likely to integrate successfully, this also imposes an unfair burden on them as an individual.²⁴ After all, they might be eager to throw off their inherited culture, or adapt it creatively so as to fit more easily into the society they are joining. Of course, we have no reliable way of knowing that in the case of any particular refugee, but this just shows that we should not make selection decisions on the basis of guesses about how easy or hard it will be for a person to integrate culturally. The contrast here is with job-related skills, where a selection agency can often determine reliably enough

²³ For conflicting views about the level of harm that racially profiled groups such as African Americans will suffer as a consequence of police profiling, see M. Risse and R. Zeckhauser, 'Racial Profiling', *Philosophy and Public Affairs*, 32 (2004), 131–70; A. Lever, 'Why Racial Profiling Is Hard to Justify: A Response to Risse and Zeckhauser', *Philosophy and Public Affairs*, 33 (2005), 94–110.

²⁴ Notice also that there are no offsetting benefits that accrue to the members of the disadvantaged group, unlike the social order benefits that Risse and Zeckhauser suggest will mitigate the harm that blacks suffer from racial profiling by the police, in their (qualified) defence of the practice.

whether a person has the skills and qualifications that will enable her to find paid work in the society she has applied to join.

6 Conclusion

To conclude, I have been exploring the grounds on which liberal states may select refugees for admission, on the assumption that selection will be unavoidable in the third-best world we currently inhabit. The distinction between offering (notionally short-term) sanctuary and (notionally permanent) resettlement turned out to be important. I considered briefly the idea of selection by lot, but claimed that this was unacceptable where we have clear evidence about the relative strength of refugees' claims. I argued that when sanctuary alone was being offered, the main ground of selection should be vulnerability – the depth and urgency of the threat to the refugee's human rights – though some weight may also be given to personal factors linking the refugee to a particular state. But when resettlement is being offered to refugees currently living elsewhere but whose rights are not immediately at risk, it is reasonable in addition to consider their capacity to integrate and become contributing members of the society they join, so long as this does not involve 'skimming the cream off the milk' at the expense of other refugee-receiving societies. And finally I suggested why selection by cultural background was wrong, even though we may have statistical evidence about how refugees from different backgrounds are likely to fare if admitted.

My hope is that these proposals can pass the twin tests of ethical acceptability and democratic legitimacy. As citizens, we have a legitimate interest in preserving social cohesion and the conditions for what Rawls called 'a well-ordered society'. But we also have obligations to help protect the human rights of outsiders, especially those whose own states deprive them of the opportunity for a decent life. These two imperatives can perhaps never be perfectly reconciled, but a refugee selection policy of the kind I have described responds to them both, and offers a resolution.