

The Conditions of Asylum as Reparation

INTRODUCTION TO PART II

With a basic case that asylum can function as a form of reparation in place, I now move to apply the principle of reparation that I introduced in the previous chapter to the case of a refugee in need of asylum in another state. In doing so, I seek to identify the conditions under which asylum should act reparatively. This principle of reparation, it will be recalled, runs as follows:

When an agent bears outcome responsibility for causing another agent unjustified harm, the first agent bears a special obligation to provide the second agent with the most fitting form of reparation for that harm that is available, where the first agent has the capacity to do so.

If this principle is applied to the case of a refugee seeking asylum in another state, then the basic conditions under which asylum should function as a form of reparation flow relatively simply. They can be stated as follows:

1. An external state must bear outcome responsibility for causing the refugee's lack of state protection¹;

¹ I write 'lack of state protection' instead of 'flight' to include refugees who have fled and those who either remain in their countries of origin or had originally left voluntarily, in the case of refugees *sur place* (that is, individuals who chose to leave their states of

2. That refugee must either have experienced unjustified harm, or be at risk of unjustified harm, as a result of this lack of protection²;
3. The provision of asylum by that state must be the most fitting form of reparation for that harm available;
4. The external state must have the capacity to offer asylum as reparation to the refugee owed it.

This list lays out what I see as the *necessary* conditions for a state to bear an obligation to offer asylum as reparation to refugees, and the fulfilment of any one condition alone is not sufficient. It is also a simplification for the purposes of initial exposition given that, in cases in which multiple states bear joint responsibility for refugees' predicaments, the word 'state' would have to be pluralised. Moreover, as I observed in the introduction, laying out these conditions allows for an identification of other moral considerations, pertaining to issues of causality, justice, capability and fittingness, which might ultimately militate against the assignment of a reparative obligation towards certain refugees to particular states.

Formulated in a single sentence, my contention is that an external state owes asylum as reparation to a refugee when it bears outcome responsibility for unjustified harms experienced by that refugee, or that he or she is at risk of experiencing, as a result of his or her lack of state protection; when asylum is the most fitting form of reparation that is available to that state; and when that state has the capacity to offer such reparation. In the following three chapters, I discuss and defend each of the elements in this formulation in turn, identifying in the process some of the key premises and sub-conditions of my account of asylum as reparation, as well as working through some of the philosophical and more practical issues raised by each condition of my theoretical framework.

origin but subsequently became unable to return given a deterioration of the human rights conditions in those states).

² These criteria parallel Matthew Gibney's contention that '[f]or the harm principle to be applicable in the realm of entry two things need to be shown: first, that the outsiders seeking entry have actually been harmed (or risk being harmed); second, that the states of attempted entry can be said to be responsible for that harm' (Gibney, 2004: 50).

REFERENCE

Gibney, M. J. (2004). *The ethics and politics of asylum: Liberal democracy and the response to refugees*. Cambridge University Press.