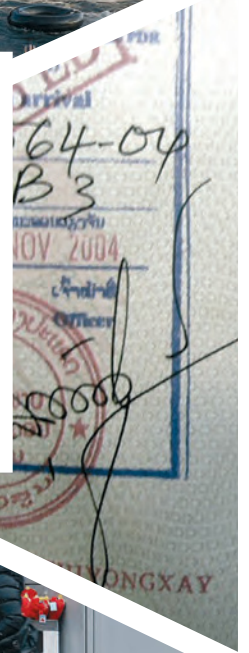




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**Studying Migration Policies at
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Matthias Hoesch & Lena Laube (eds.)



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**Comment on Lukasz Dziedzic:
What Is Owed to Refugees when Attributing
Responsibilities to States in Institutionalized
Responsibility Sharing Regimes?**

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Comment on Lukasz Dzedzic: What Is Owed to Refugees when Attributing Responsibilities to States in Institutionalized Responsibility Sharing Regimes?

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Comment on Lukasz Dzedzic: What Is Owed to Refugees when Attributing Responsibilities to States in Institutionalized Responsibility Sharing Regimes?

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Abstract

This paper comments on a talk given by Lukasz Dzedzic at the 2018 ZiF Workshop "Studying Migration Policies at the Interface Between Empirical Research and Normative Analysis", September 2018, in Bielefeld. Dzedzic addresses an important question: When states form a scheme of fair distribution of refugees, do they have to take into account the interests and preferences of the refugees? Or is getting protection from somewhere the only moral claim that refugees have? Although I don't disagree with Dzedzic's conclusions and proposals, I doubt that some of his arguments are useful to justify his conclusions. Furthermore, I claim that the focus on the European Union puts him (and others) at risk of fallacies. Dzedzic's paper is available under doi: 10.17879/95189437167.

Keywords

Cluster of Excellence "Religion and Politics"; asylum; refugees; responsibility sharing

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In his paper, Lukasz Dzedzic addresses an issue of great importance: Suppose there is some system of sharing the burdens for asylum seekers between states. Are states entitled to distribute refugees amongst each other without considering the interests

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and preferences² of the refugees? That would include the right to deport asylum seekers against their will and in the face of their resistance to other countries that offer refugee protection. Or are refugees, on the contrary, entitled to choose which state they will live in in the future? Or should there be a procedure of distributing persons to states that gives some weight to both sides, the interests and preferences of the asylum seekers and the ideal of fairness in burden-sharing?

I believe that the third option is the most plausible one. As Dziedzic mentions, in political reality we are far away from a satisfying balance of interests that is implied by the third option. In normative debates, however, there has been a growing interest in the question that Dziedzic has raised in recent years, in part caused by a criticism levelled by authors in the tradition of critical theory: they claimed that the liberal mainstream views asylum seekers as passive objects in need, instead of recognizing them as political actors that have their own preferences and moral convictions.³

Let me start with the question why the interests and preferences of refugees should be taken into account at all. I'm not sure whether we really need to look for special arguments that support that demand. Maybe it is enough just to point out that refugees are persons, and just because of that simple fact we have to consider their claims, perspectives, interests, and preferences, at least as long as there are no opposing reasons. Or we could highlight the fact that the starting point of normative discussions should be individual freedom, and thus it is up to the states to offer arguments for coercing refugees to live in a certain country, and not up to the refugees to explain why their preferences and interests should be taken into account.

Dziedzic seems to believe that there is more burden of proof on the side of those who support of taking into account the perspective of refugees, and he offers two particular arguments: firstly, he draws on Raz' conception of autonomy, and

² I believe that two different things are at stake if we require states to take into account the perspective of refugees: on the one hand, there are objective interests to live in a certain country, such as the fact that there are family ties to a country, that someone is familiar with language and culture, or that someone has good prospects at the labour market. On the other hand, and maybe more important, there are subjective preferences of refugees. In many cases, refugees have certain preferences because they also have objective interests, but that is not always the case. As I see it, even the pure fact that someone has a certain preference morally matters, regardless of whether that preference is based on an objective interest.

³ I am not sure that Dziedzic in his paper adequately describes the current debate. He first mentions writers who claim that refugees do not have a right to choose their destination. Then, he writes: "Thus these authors indicate that what is being owed to refugees is the protection of their basic needs that can potentially be provided in any country, while they do not need to have a say in where this might be." However, denying a right to choose is perfectly compatible with claiming that it is necessary to have a say.

secondly, he follows Gibney in making an analogy to caring for children. I'm not convinced that these two arguments really establish a stronger justification than the one I have indicated.

As is well-known, Raz holds that there are three conditions for leading an autonomous life: appropriate mental abilities; an adequate range of options to choose from; and independence from coercion in making such choices. Dziezic builds on the second of these conditions: persons need an adequate range of options, and therefore, he argues, they should not be coerced to live in a certain state, but they should be free to choose from a limited number of several states. However, in my view that argument is misleading: To lead an autonomous life, you will find an adequate range of options within every single state: no matter if you live in Germany, in France, or in Poland, you can choose between a wide range of professions, between many people to come into contact with, between living in a city or living in rural areas and so on. Thus, there is no need to have a range of options of which country to live in in order to have an adequate range of options of how to lead your life. Of course, things change if we no longer link the concept of autonomy to the leading of an autonomous life, but to the choice of the country where one will live, that is to query the conditions of having an autonomous choice of that country. But that begs the questions, since what we are looking for is an argument of why there should be an autonomous choice between countries.⁴

Dziezic's second argument uses an analogy between the responsibility towards refugees and a state's responsibility for abused and battered children in domestic society. In the same way a state should make efforts to promote the best long-term welfare of a child (and not only rescue it from the threat of abuse), a system of states should make efforts to provide the best opportunity for refugees to flourish in their new country. Obviously, there is some truth in that analogy. However, refugees should not be treated in the same way we treat children. In the case of children, the state should first and foremost take into account objective criteria for well-being. As I see it, in the case of refugees, at least the same weight should be given to their subjective preferences. The demand to take into account the perspective of refugees is not primarily based on prospects for well-being, but is based on respecting the freedom and choices of autonomous persons.

⁴ Some writers refer not to the second, but to the third condition of Raz' analysis; see Hoesch, M.: "In welchem Sinn kann es ein Recht auf offene Grenzen geben?" *Jahrbuch für Recht und Ethik* 25 (2017), 49–73. However, those writers try to justify open borders in general, and not a particular claim of refugees.

Other than my critical remarks concerning some of Dzedzic's arguments, I believe that there is no disagreement between us concerning the conclusion that refugees have a *prima facie* right for their interests and preferences to be taken into account within a scheme of burden sharing between states. Let me now turn to the question of whether states, in contrast, have a similar claim to determine the destinations of refugees. As I see it, the following statement could plausibly be true:

A state has a *prima facie* right to deport asylum seekers against their will to other states that provide protection, or to refuse them entry, if that state has already fulfilled its fair share and the state that is made responsible for the asylum seeker by that act has done less, proportionally to its own fair share, and there are no other options for compensation.

According to that principle, states have a *prima facie* right to improve fairness between states, or to come closer to what would be a fair distribution of burdens, and they are entitled to use coercive means to achieve that aim. Of course the principle is controversial. Those who are generally in favour of open borders won't be convinced that fairness between states trumps individual freedom. Others will claim that the statement will seldom apply, since in most cases there is an opportunity to financially compensate those states who have admitted more refugees than their fair share; according to that view, refugees should be free to choose their destination, and afterwards those states that were chosen by many refugees receive money. I'm not going to discuss that in detail, since it seems that Dzedzic would be able to accept the principle I proposed. Instead, I would like to use Dzedzic's paper as an opportunity to cast doubt on the idea that a focus on the European Union might serve as a step from theory to practice – an idea that can be observed in many publications.

Dzedzic focuses on the EU mainly on pragmatic reasons: A burden-sharing scheme within the EU seems to be more feasible and more likely to become a political goal in the nearer future than a burden-sharing scheme on an international level. In the debate, views can also be found that hold that fair burden sharing is only morally required within a framework like the EU. I am not convinced by that position, and I will follow Dzedzic's approach.

If we focus on the EU, it seems natural to hold that European states who actually take a greater burden than other European states are morally entitled to deport refugees to these less-burdened states. Suppose we had some metrics by which to measure the burden caused by refugees, adjusted by factors that reflect criteria of fair burden sharing like GNP, size of population, size of territory, etc. Suppose now that Italy, Austria and Germany have a burden of, say, 8; France a burden of 3, and

Poland a burden of 1. Now it seems that Italy, Austria and Germany would be entitled to deport refugees to France and Poland, up to the point that those countries reach the average burden of European states. Deporting refugees to these countries (thereby restricting the refugees' freedom and using coercive means) would be justified, it seems, by the legitimate goal of the states to achieve a fair sharing of burdens.

However, it could turn out that states outside the EU carry much more burden. Suppose Jordan and Lebanon have a burden of 20, and a full protection of all those in need would require every receptive state to take a burden of 10. Now, the picture has changed. It now seems that Italy, Austria and Germany are not morally entitled to shift any burden to Poland and France; on the contrary, they are morally obliged to accept more burden for themselves. As a consequence, there is no justification to use coercive means to deport refugees against their will to these less-burdened countries.

For some writers, using the EU as an example is a step on the way to bringing theory into practice, and thus combining ethical theorizing with empirical observations and political proposals. I am convinced that in doing that, there is a big danger to fall into fallacies. As long as the EU as a whole does not accept its fair share, the discussion of how to share burden fairly within the EU comes to somewhat resemble the discussions of mafiosos of how to share the loot from a bank heist: if the EU as a whole does not accept its fair share, the EU has illegitimately gained some advantage, and the extensive discussion between the member states of who should be responsible for those few who reach the EU border is a discussion of how to share that illegitimate advantage.