***2015 Michigan Law School Young Scholars' Conference* Abstract (500 words excluding notes)**

Why Location Matters in Refugee Debates

Dr. Max Gabriel Cherem

The Refugee Convention defines a refugee as, "any person who: owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country".[1] This definition is controversial. Philosophers overwhelmingly favor an expanded refugee definition that replaces "being persecuted" with "absence of state protection", and being "outside the country" with "access by the international community".[2]

There is some debate about whether the persecution criterion makes sense.[3] Yet, the locational criterion is rarely defended. Whether a person has crossed an international border seems to be normatively arbitrary.[4] Few philosophers think location makes a moral difference. In contrast to this consensus, I give a partial normative defense of the location criterion.

I claim the criterion normatively matters in two ways. First, irregularly exiting one's own state and coming under another authority's effective jurisdiction tracks when one presumptive right (a potential refugee's right to claim-adjudication) rebuts another (a state's right to unilaterally control admissions). This is somewhat similar to Michael Blake's claim that "those who cross territorial borders impose new obligations on others in virtue of their crossing"[5] into foreign territory. But, on my account, these new non-consensually imposed obligations are wider in scope yet thinner in content: they arise earlier in the migration process[6] and may merely be adjudicative obligations aimed at respecting rights instead of direct protection or fulfillment. Yet, while they are thinner, they must also be applied far more stringently than current practices.

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[1] 1951 United Nations Convention Relating to the Status of Refugees, amended by the 1967 Protocol.

[2] Shacknove (1985) first suggested these replacements. Some of the most notable philosophers who subscribe to an expanded definition are: Carens (2003), Miller (2007), Kukathas (2005), Pogge (1997), Dummett (2001).

[3] I defend the persecution criterion in *REDACTED* (under review). For others who defend it see: Walzer (1983), Price (2009), Martin (1991), and Lister (2014).

[4] As Michael Walzer famously asked, "Why be concerned only with men and women actually on our territory who ask to remain, and not men and women oppressed in their own countries who ask to come in? Why mark off the lucky or aggressive, who have somehow managed to make their way across our borders, from all others?" He claims we "don't have a satisfactory answer" and appeals to pragmatic concerns as the closest thing to a justification.

[5] Blake (2014), 110 n 15.

[6] Irregular exit (which may not involve irregular entry) triggers such obligations. I interpret jurisdiction as functional instead of territorial. This is similar to Gammeltoft-Hansen (2011).

Second, there is a key normative difference between refugees in camps and irregularly arriving potential refugees. In principle, refugees in camps have received status adjudication, their most basic human rights are (non-durably) secured, and they are protected against *refoulement*—being returned to their persecutors or a situation where their lives or freedom are threatened.[7] But, irregularly arriving potential refugees have not yet received status adjudication. Their potential entitlements to *nonrefoulement* and new membership are therefore insecure. In contrast to prior defenses of this distinction,[8] my account explains the distinction in terms of how non-voluntarily and voluntarily undertaken obligations show up within international refugee law.

These are the two main ways location matters.[9] They are connected because states cannot avoid non-voluntarily incurred obligations to adjudicate cases and arrange for resettlement with respect to irregularly arriving potential refugees but, strictly speaking, they *could* avoid them with respect to many refugees in camps.[10] As it happens, most states with the capacity to absorb refugees have *voluntarily* taken on these obligations through international law.[11] Unfortunately, international law is vague and unenforceable with respect to the resettlement of camp refugees. This has led to a tragic situation where these obligations are not fulfilled to the extent they should be. Theoretical clarity in this regard can help to better discern the obligations we have, where they are grounded, and the practical obstacles to discharging them.

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[7] I refer to camps run by the United Nations High Commission on Refugees (UNHCR) and a Convention signatory.
[8] If the distinction is noted, it is weakly defended or rejected. Carens (1992) gives a brief defense in a wider argument that appeals to consequences. Singer and Singer (1988) reject it. Walzer (1983) rejects any principled distinction.
[9] It is sometimes claimed that location matters because sovereignty matters. I have some sympathy with this worry. I don't attend to it here because it is false in many cases, and far from clear that the slippery slope towards imperialism is inevitable. Predictive modeling and empirical social sciences seem better equipped to study this worry than philosophy.
[10] Provided states were not responsible for the situation refugees fled. If they were, they may have an obligation to take in certain refugees as members. See Souter (2013) and Walzer (1983).
[11] Many non-signatories are very small (Micronesia), poor (Nepal), unstable (Libya), or there are geopolitical reasons why they hesitate to sign (India and Pakistan).