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Refugee-based Reasons in Refugee Resettlement – The Case of LGBTIQ+

<https://doi.org/10.1515/mopp-2021-0069>

Published online June 28, 2022

Abstract: This paper discusses a recent turn in the ethics of refugee resettlement which involves taking the interests of refugees themselves into account in the distribution of refugees among potential refugee receiving countries. It argues that there is an important category of interest that does not align with the two commonly held views on what is owed to refugees: ‘safety’ or ‘conditions of a good life’. This category, focussing on the refugees’ interests in not being subjected to a variety of non-asylum-grounding injustices, should, by default, take precedence in the assessment of the refugee-based reasons in refugee resettlement. The normative salience of this category – not being subjected to injustice – is illustrated with the help of the case of LGBTIQ+ refugees, and the kinds of injustices they may be subject to in countries that provide them with asylum.

Keywords: refugees, resettlement, refugee distribution, LGBTIQ+, refugee-based reasons, safety, injustice, good life

1 Refugee-based Reasons in Refugee Resettlement – The Case of LGBTIQ+

In recent years, it has become increasingly common to argue that the interests of refugees themselves should be taken into account in refugee resettlement (see, e.g. Betts 2013; Fine 2019; Gibney 2015; Jones and Teytelboym 2017; Owen 2018; Parekh 2017). The argument for taking refugees’ interests into account can be formulated in a number of ways. According to instrumentalist views, refugees’ interests in resettling in a particular country can be seen as supportive of some further goal or interest, such as successful integration or efficient refugee distribution. Apart from, or in addition to, instrumentalist views, the interests of refugees can also be seen as valuable in themselves, based on human dignity or respect for refugees’ own agency, for example.

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What it means to ‘take refugees’ interests into account’ can also be understood differently. On the one hand, refugees’ interests can be understood according to some objective criteria that define refugees’ interests in relation to a particular good or set of goods, for example, security, stability, employment, family life, etc. Taking refugees’ interests into account would then mean assessing the refugees’ prospects of success, where success is measured by the extent to which refugees are able to attain these goods, or to lead meaningful, good lives in their host society. Different kinds of matching schemes – whether cultural, linguistic or skills based – can also be seen as promoting the interests of refugees in this sense of the term, although in most cases, the rationale behind such schemes is based on the interests of receiving states rather than refugees themselves.

Alternatively, or in addition to the above, taking refugees’ interests into account can be understood in terms of giving refugees a say in where they themselves would want to be resettled. This can be understood separately from the previous criteria. Giving refugees a degree of choice with respect to their destination country may cater for refugees’ interests in terms of providing for their agency, while simultaneously not catering for their interests in terms of enhancing their prospects of success. This may be the case for example when a refugee’s interest to be settled in country N is based on misinformation or false beliefs.

Regardless of which view of refugees’ interest – objectively or subjectively defined – one adopts, taking refugees’ interests into account can be viewed as a *refugee-based reason*¹ in refugee resettlement. It is refugee-based by virtue of adopting the perspective of refugees, contra the perspective of states or the international community, for example. In an important sense, it is also *refugee-dependent*, that is not all refugees have the same interests in resettling in the same destination country.

My focus, in this paper, is the following: If the interests of refugees themselves should be taken into account in refugee resettlement,² how should these interests be understood, and which types of interests should, normatively speaking, refugee resettlement be primarily concerned with? The answers to these questions will also have important implications for the ways in which different groups of refugees are resettled among the potential refugee receiving countries – or so I argue.

I proceed as follows: In part 2, I discuss some of the commonly held positions on *what is owed to refugees*, in order to identify potential candidates for the kinds of interests that refugees may have, such as ‘interest in safety’ or ‘interest in a good life’. In part 3, I elaborate on Matthew Gibney’s (2015) argument for more stringent

¹ By ‘reason’, in this context, I simply mean a relevant kind of consideration that has (or should have) an effect on the ways in which refugees are resettled.

² Note that I do not give an independent argument to this effect.

duties of states towards refugees, based on the refugees' interests in leading good lives. In part 4, I develop my own position, which emphasizes refugees' interests in 'not being subjected to injustice', which, I argue, should, by default, take precedence over the more general category of interest in 'a good life' in refugee resettlement. The normative salience of this category, 'not being subjected to injustice', is illustrated with a specific case of LGBTIQ+ refugees and a partial, but important, discrepancy between those states that provide safety (asylum) to refugees who are LGBTIQ+ and those that are also willing and able to protect LGBTIQ+ persons against a variety of other non-asylum-grounding injustices. In part 5, I defend my position against some objections, before in part 6, presenting my conclusion.

2 What Is Owed to Refugees?

In debates on the ethics of refugee resettlement, two broad positions on *what is owed to refugees* have emerged. On the one hand, there are those who argue that refugees are owed safety (refuge/asylum),³ and that anything beyond that is supererogatory. On the other hand, there are those who argue that refugees are owed something more than mere safety, for example, conditions of a good life or opportunities to thrive and flourish.

While the view that refugees are owed at least safety is relatively uncontested,⁴ the interpretation of what this view entails is not. According to a narrower, and less demanding, formulation, refugees are owed protection against the kinds of persecution they are fleeing from, that is, from those grounds that made them refugees in the first place. This interpretation of somewhat minimal duties towards refugees can be seen to draw upon international law and the UN Refugee Convention that defines a refugee as 'a person outside their country who has a well-founded fear of persecution owing to their race, nationality, religion, political opinion, or membership of a particular social group' (UN General Assembly 1951, Art 1). The principle of *non-refoulement* prohibits states from sending refugees back

³ Note that not all theorists who argue that refugees are owed safety think that refugees are also owed refuge or asylum – especially in cases where safety can be provided by other means, for example external interventions (see Wellman 2008). For some, however, the status of a refugee is inherently tied to the fact that no other means are available, thus grounding the duty to grant asylum (Cherem 2015).

⁴ I say 'relatively uncontested' as one's views on the extent to which states are allowed to decide how many refugees they admit may affect the feasibility of holding such a view. For example, if we argue (along with e.g. Miller 2016) that states are relatively free to decide their own point of 'enough', we may have to accept that not all refugees are owed safety – or at least that no corresponding duties to provide such safety exist.

to countries where they would face persecution, thus creating a duty for states (and the international community as a whole) to protect refugees against the kinds of persecution they are fleeing from.

According to a broader formulation, refugees are not only owed protection against the types of persecution they are fleeing from, but also against other human rights violations, stemming from different sources, such as war and famine. Two issues need to be kept separate here. First, contrary to the definition of the UN Refugee Convention, both existing international practices, as well as a substantive number of scholars (see, e.g. Betts 2013; Carens 2013; Gibney 2004, 2015; Miller 2016; Owen 2018; Shacknove 1985; in defence of the persecution requirement, see Cherem 2015; Lister 2013), have adopted a more inclusive notion of a refugee as a person fleeing from severe human rights violations, largely independent of the source of such violations. Given this expansion of the notion of a refugee, the above narrower formulation of safety can be expanded to include protection, not only against persecution, but also against other severe human rights violations that refugees are fleeing from. Hereafter, when I talk of refugees being owed safety (refuge/asylum), I refer to this expanded, yet narrow understanding of safety from the types of persecution and/or human rights violations that cause refugees to flee in the first place.

Second, however, not all human rights violations are such that they would be seen as grounding asylum, nor do existing systems of refugee protection necessarily guarantee protection against such violations – even if safety, in the narrower sense, could be provided. The situation in many refugee camps, as well as refugee routes and temporary reception centres, may well be such that they provide refugees with safety in the narrower sense of the term, that is protection against persecution or the kinds of severe human rights violations that refugees are fleeing from, but not in the wider sense of protection against a number of other human rights violations. Notably, as agreed by the UNHCR and the international community more generally, the plight of refugees in refugee camps is far from acceptable, thus pointing towards the latter, and more demanding, interpretation of what is owed to refugees (see also Parekh 2017, 2020). Refugees are not only owed safety in terms of protection from those sources that make them refugees in the first place, but also protection against other types of human rights infringements – even if these would not be such as to ground asylum on their own. This point will come to play an important role in my argument later on, regarding refugees' interests in 'not being subjected to injustice'.

For my purposes here, it is important to note that both the narrower and broader formulation of what is owed to refugees in terms of safety can *also* be formulated in terms of the interests of refugees themselves. No doubt, refugees have an interest in being protected against the types of persecution or severe

human rights violations that they are fleeing, and they also have an interest in their other basic rights being protected. But neither of these is typically what people have in mind when they say that the interests of refugees themselves should be taken into account in refugee resettlement. Rather, what they have in mind is that refugees have interests in something that goes beyond safety or basic rights protection, and that it is these interests – for example, in living fulfilling lives – that should play a part in refugee resettlement. These views align with the more substantive accounts of what is owed to refugees, to which I will now turn.

3 Refugees' Interests in a Good Life

According to Matthew Gibney (2015), a fair distribution of refugees among potential refugee receiving states should be based on the integrative capacities of these states.⁵ Such distributive justice among states, according to Gibney, must however be balanced against the legitimate interests of refugees to be settled in particular countries and the duties of states to ensure that refugees are settled in places where they are likely to flourish. For Gibney, the question of what is owed to refugees cannot be answered without answering the question of *what is owed to refugees qua refugees*, and the answer to that question will inevitably impact any possible scheme through which refugees are resettled.

Gibney gives two independent arguments for why the distribution of refugees among potential refugee receiving countries should take refugees' interests into account, where the relevant type of interest also goes beyond the previously discussed interests in safety: the argument from analogy, and the argument from the nature of the harm that resettlement is aiming to compensate. According to Gibney, the roles of the international refugee regime can be viewed as analogous in relevant respects to the roles of child protection services in any given state. While in cases of domestic violence or abuse, the most immediate duty of these services is to bring the child to safety, in the long term, it is the broader interests of the child that come to play a decisive role. Once the child is out of the immediate danger of violence or abuse, it becomes the duty of the protection services to find suitable long term placement for the child – and in this task, it is not only the safety of the child that should matter, but also the prospects of the child to flourish. Analogously, Gibney argues, the most immediate duty of the international community is to provide refugees safety, but once this duty has been discharged, additional duties follow. That

⁵ For some alternative views on fair distribution, especially in the European context, see for example Baubock 2017; Holtug 2016; for views promoting the expansion of states' duties owing to the failures of other states to do their fair share, see Owen 2016; Stemplowska 2016.

is, in the long term, it is also the duty of the international community to see that refugees are settled in places where they are likely to flourish (Gibney 2015: 459).

As an additional argument for taking refugees' interests in something more than mere safety into account, Gibney asks us to think of the international refugee regime as a system that aims to compensate for the harms that result from fleeing. Notably, the harms of fleeing are not only associated with lack of safety, or lack of protection of one's basic rights, but also with the deprivation of one's social world. That is, by having to flee, refugees are deprived of their communities, social relations, wants and aspirations – the whole framework within which they have made their lives meaningful. In order to compensate for such harm, Gibney argues, it is not enough that refugees are provided with safety, but that they are also given the opportunity to rebuild their social world in a meaningful way. As the rebuilding of one's social world may be easier for some refugees in some contexts, and others in other, it becomes the duty of the international community to locate refugees in ways that increase their prospects of success (Gibney 2015: 459–460). Translated into the language of interests used in this paper, the distribution of refugees among potential refugee receiving countries should take the refugees' interests in leading meaningful lives into account, and – given the *refugee-dependency* of such interests – to resettle refugees in countries where they are most likely to flourish.

Notably, according to Gibney, what is owed to refugees is clearly something more than mere safety from persecution or basic rights protection. Refugees have an interest in leading good lives and the task of the international community, in distributing refugees among potential refugee receiving countries, should take this into account. This view, it should be made clear, need not deny that the primary and the most immanent duty of the international community is to provide refugees with safety (refuge/asylum), but that, once this duty has been discharged, additional duties follow. I will call this view the 'interest in a good life' view, as the duties of states and the international community in resettlement are seen as affected by the acknowledgement of the refugees' interests in leading good lives: in thriving, flourishing, living autonomous lives, building meaningful social worlds, etc.

In what follows, my intention is not to deny Gibney's claim that refugees' interests in leading good lives are relevant for refugee resettlement. However, I aim to show that, in addition to the two commonly discussed categories of interest – 'interest in safety' and 'interest in a good life' – there is an important, and often overlooked, category of 'interest in not being subjected to injustice' that should play an important role in our discussions. Furthermore, I argue that this category of interest should, by default, take precedence over the refugees' more general interests in 'a good life' in refugee resettlement. I will first show why the fact that refugees' interests are *refugee-dependent* excludes an understanding of the relevant kinds of interests as interests in safety (from persecution or the kinds of

human rights violations that refugees are fleeing from). After that, I will demonstrate the normative salience of this category – ‘interest in not being subjected to injustice’ – with a case of refugees who are LGBTIQ+.

4 Refugee Dependency and Refugees’ Interests in Not Being Subjected to Injustice

Not all refugees may have the same interests in settling in the same refugee receiving countries. For example, French speaking refugees may have strong interests in resettling in France or Canada, while refugees with other language skills may wish to settle in other areas more suited to their language competences. The refugee dependency of the types of interests that refugee resettlement should take into account is apparent regardless of whether the interests of refugees are objectively or subjectively defined. The prospects of a French speaking refugee prospering in France or Canada, for example, may be (objectively speaking) higher than in some other countries, and the subjective wishes of the refugee may also be to settle in these countries, while the objective prospects and subjective wishes of other refugees may be directed elsewhere.⁶

The acknowledgement of the refugee dependency of refugees’ interests has important consequences for the ways in which the types of interests, relevant in refugee resettlement, are understood. As noted in part 2, we can also think of refugees’ interests in terms of safety (protection against persecution or severe human rights violations), but this is hardly what the promoters of refugees’ interests in refugee resettlement have in mind. This is so, as a person’s interest in safety can be seen as a fundamental human interest that grounds a right, and the refugees’ right to safety (refuge/asylum) operates at the very basis of the whole refugee regime. The potential refugee receiving countries are seen as such precisely because they are able to provide refugees with safety (refuge/asylum) – and taking refugees’ interests in safety into account would thus only mean resettling refugees to countries that can provide them with refuge/asylum, but have little impact in differentiating between these countries. Given our view of the relevant interests of refugees as refugee-dependent,⁷ these interests must be viewed as

⁶ At times, the objective prospects and subjective wishes of any one refugee may, of course, also be in conflict.

⁷ In an important sense, refugees’ interests in safety are also refugee-dependent as some refugees, such as those fleeing certain religion-based persecution, may be protected by a particular group of countries, while other refugees (e.g. fleeing persecution based on sexual orientation) may be protected by a (partially) different group of countries.

referring to something other than mere interests in safety, for example, to interest in a good life.

While there is much to be said for the idea of taking refugees' interests in leading good lives into account in refugee resettlement, what I wish to argue in the rest of this paper is that this category of interest in 'a good life' fails to capture something important about the different *kinds* of interests that refugees have (beyond their interests in safety), as well as about the relative strength of these interests in refugee resettlement. Instead of categorizing refugees' interests in terms of the common categories of 'safety' and 'a good life', I argue that there is an important intermediate category of interest in 'not being subjected to injustice' that should, by default, take precedence over the more general interest in leading good lives in refugee resettlement. In order to demonstrate this, let us look at a series of examples involving four types of countries (P, S1, S2, S3) and two groups of refugees (R1, R-lgbtiq+), and an assessment of the ways in which the different interests of these refugees may (or may not) be fulfilled in the said countries.

4.1 P, S1, S2, S3 and the Resettling of Refugees R1 and R-lgbtiq+

The normative salience of the three categories of interest ('safety', 'a good life' and 'not being subjected to injustice') can be illustrated with an example of four types of countries, P, S1, S2 and S3, and their treatment of two groups of refugees, R1 and R-lgbtiq+ (anticipating my usage of refugees who are LGBTIQ+ as an example). For the sake of simplicity, I view the two groups of refugees, R1 and R-lgbtiq+, as fleeing from the same country, P, and as also having the same three potential refugee receiving countries where they may end up: S1, S2 and S3. In what follows, I give a brief explanation of the kinds of countries that P, S1, S2 and S3 refer to.

P is a country of persecution. It offers no safety to either group, R1 or R-lgbtiq+, but persecutes them to the extent that they have to flee. Note that the grounds for the two groups to flee may be different. R1 may be fleeing because of being persecuted on religious grounds while R-lgbtiq+ may be fleeing because of being persecuted as LGBTIQ+. ⁸ Regardless of the grounds of persecution, neither R1 nor R-lgbtiq+ are safe in P. (Notwithstanding the real-world complexities of the case, a concrete example of such a country could, for instance, be present day Syria.)

⁸ I say 'may be fleeing' as it is not necessarily the case that refugees who are LGBTIQ+ are fleeing qua being LGBTIQ+, but may also be fleeing for other reasons. I intend my argument to apply to both groups: LGBTIQ+ refugees, and refugees who are LGBTIQ+ (see also Vitikainen 2020).

S1 is a country of minimal safety. It offers minimal protection for refugees against the kinds of persecution they are fleeing from, but not much more. In S1, refugees may still be subject to various types of disadvantage and mistreatment, although they are, strictly speaking, safe from active state-sponsored persecution. Many refugee hosting countries in the immediate proximity of P, with substantive refugee populations, large refugee camps, etc. could be considered as countries of S1. (For concrete examples, if we think of Syria as P, we could think of neighbouring Turkey or Lebanon as S1s.)

S2 and S3 deserve a slightly more thorough presentation. Both countries, it should be noted, are potential refugee receiving countries that offer at least minimal safety to those refugees they admit. In addition, both S2 and S3 have relatively successful resettlement programmes that aim to cater for the successful integration of refugees in the host society. For our purposes, it could even be said that both S2 and S3 are genuinely concerned about refugees' wellbeing, and thus aim to provide conditions in which the newcomers can live good lives, that is, to thrive and flourish. (At this point, the providing of concrete examples becomes even trickier, but let us, without extending our imagination too much, say that the two countries might for instance be Poland (S2) and Norway (S3).)

As discussed earlier, the prospects of any particular (group of) refugees thriving in any particular country may depend on a number of factors, making the different countries also more or less well positioned for different (groups of) refugees to thrive. For example, the country's and refugee's languages, the compatibility of the country's employment needs with the refugee's employment skills, and the extent of existing networks for the refugee to join, for example family or country of origin community, often make a substantive difference to the refugees' prospects of success. The refugees' own views on where they would like to resettle may also play a part due to the motivational links between being able to flourish and being in a place where one also wants to flourish. These factors make countries S2 and S3, and their capacities to contribute to the refugees leading good lives, *refugee-dependent*. That is, while both S2 and S3 aim to provide all newcomers with the conditions for a good life, some refugees may have better prospects of thriving in S2, while others may have better prospects of thriving in S3.

Let now approach the crux of the matter: let us presume, for the sake of argument, that the above kinds of differences in language, employment opportunity and existing support networks are, in our case, relatively constant between the two countries S2 and S3. They are alike in nearly all relevant respects, and the interests of R1 and R-lgbtiq+ are also alike, in nearly all relevant respects.⁹ There is

⁹ It should be noted that, when it comes to the existing support networks, the nature of these networks for the two groups in question may be very different. For example, while the existence of

one crucial difference between S2 and S3 however. That is, that in S2, LGBTIQ+ persons, whether citizens, refugees or other non-citizens of S2, are subject to widespread discrimination, stigmatization and prejudice, whereas in S3 they are not.¹⁰

Importantly, the kinds of disadvantage and discrimination faced by LGBTIQ+ persons in S2 are not of the kind that would make S2 fundamentally unsafe for LGBTIQ+ persons, at least, not in the sense described in the refugee convention. That is, the disadvantage and discrimination in S2 falls short of persecution, or severe human rights violations, and would thus not ground asylum for LGBTIQ+ persons elsewhere. Contrary to many of the LGBTIQ+ refugee producing countries, S2 does not have a criminal code against LGBTIQ+, but neither does it have effective legal protections or recognition of LGBTIQ+ persons or their partnerships.¹¹ Lacking such protection, LGBTIQ+ persons in S2 are subjected to various forms of injustice, including, for example workplace discrimination, social stigmatization, homophobic violence (accompanied by insufficient police protection), etc.¹² However, despite its less than accepting attitudes towards LGBTIQ+ persons, S2 can, and it also does, grant asylum to refugees who are LGBTIQ+,¹³ thus

family or country of origin community is generally viewed as a positive factor for the newly arrived refugees, for refugees who are LGBTIQ+, such communities may be viewed as negative factors, or even create a danger for the newly arrived refugees who are LGBTIQ+ (UNHCR 2021). In the case that I build here, however, such differences in the effects of for example family or country of origin community play no part, as the effects (whether negative or positive) are judged to be constant – that is the same effects pertain to the two groups of refugees, regardless of which country they end up in.

10 This is not to imply that LGBTIQ+ persons in S3 would never be subject to such discrimination, stigmatization or prejudice, but simply that such negative actions and attitudes are far less common than in S2.

11 The proxies used here – those of criminal codes and lack of protection and recognition – may not, of course, be entirely accurate when describing the lived realities of LGBTIQ+ persons in different countries. They may, nevertheless, give some indication of the types of country in question, at least from a legal point of view. For the current legal situation of LGBTIQ+ persons around the world, see ILGA 2020.

12 It may, of course, be that, in some cases, the systematic lack of police protection accompanied by widespread homophobic violence does, indeed, provide a case for asylum for LGBTIQ+ persons, although for our present purposes, I presume the existence of these factors in S2 not to be so severe as to provide grounds for this. For the general possibility of persecution by non-state actors as constituting case for asylum, see for example Lister 2016.

13 Admittedly, the number of LGBTIQ+ based refugee claims in such countries (e.g. Poland, and some other Eastern European nations) are comparatively low although not non-existent (Śledzińska-Simon and Śmiszek 2013). However, as I intend my argument to be applicable to all refugees who are LGBTIQ+, and not only to those refugees who are also fleeing due to being

providing these refugees with safety against the types of persecution they are fleeing from.

4.2 S3 and the Flourishing of all Refugees, R1 and R-lgbtq+

I have elsewhere argued that the failure of states, such as S2, to protect refugees who are LGBTIQ+ from various types of (non-asylum-grounding) injustices, provides those states most willing and able to protect LGBTIQ+ persons, such as S3, with strong moral reasons to take in and to prioritize refugees with LGBTIQ+ status in refugee admissions (Vitikainen 2020).¹⁴ Here, I wish to turn this scenario around and focus, not only on the moral reasons pertaining to the failure of other states, but also on the moral reasons derived from the interests of refugees themselves. I wish to show that, if we take the relevant kinds of interests of refugees into account in refugee resettlement, then states such as S3 have strong moral reasons to take in and to prioritize refugees with LGBTIQ+ status in refugee admissions. Further, I argue that this follows even in cases where the differences between S2 and S3 are not restricted to differences in their treatment of LGBTIQ+ persons, but that they may be different in ways that, overall, make S3 a more likely country for *both* R1 and R-lgbtq+ to flourish in.

Let me explain. Given my stipulation of S2 and S3 as alike in all ways other than in their treatment of LGBTIQ+ persons, it makes no difference for R1 which of the two countries they are to resettle in. All other things being equal, the prospects of R1 to live good lives – to thrive and prosper – are equal in S2 and S3, whereas for R-lgbtq+ this is not the case. While it would be an exaggeration to say that refugees who are LGBTIQ+ could not also live reasonably fulfilling and meaningful lives in S2, it is clear that, qua being LGBTIQ+, their prospects of success are substantively better in S3. The same point, however, does not apply to R1, whose prospects, qua being non-LGBTIQ+, are the same in both countries.

It may be noted, however, that without further qualification, all I have shown so far is that, if we care about the interests of refugees in refugee resettlement, we

LGBTIQ+, I take the potential numbers of LGBTIQ+ persons who are either seeking asylum, or being potentially resettled in such countries, to be substantively higher.

14 Notably, as I argue in more detail in Vitikainen 2020, there are no equivalent moral grounds for states like S2 to give priority to refugees who are non-LGBTIQ+, as the moral grounds for such prioritization are derived from the failures of other states. That is, while S3 has strong moral reasons to prioritize R-lgbtq+ (due to S2 not being either willing or able to do so), the opposite does not apply. Refugees who are not LGBTIQ+ are not subjected to the same kinds of non-asylum-grounding injustices (qua being non-LGBTIQ+) in either S2 or S3, thus making the opposite system of prioritization ungrounded.

should also care about the interests of refugees who are LGBTIQ+, and their prospects of success, qua being LGBTIQ+, in different countries. This does not, however, say anything about the normative difference between the refugees' interests in not being subjected to injustice, and their interests in leading good lives, or why the concerns for the first should, by default, take precedence over the more general concerns for the second.

Let us adjust the scenario somewhat and say that S2 (that is, the country with widespread LGBTIQ+ discrimination) also happens to be a country that, in many respects, struggles to provide for the successful integration of refugees, thus also making it less likely for either group, R1 or R-lgbtiq+, to flourish. This may be for a variety of reasons, both refugee-dependent and refugee-neutral, and I do not wish to go into detail about such possible reasons here. Suffice it to say that, due to general political climate or lack of economic prosperity, for example, S2 is, in both objective and subjective terms, a worse option for both R1 and R-lgbtiq+ to settle in than S3, when it comes to the assessment of the refugees' prospects for leading good lives. For present purposes, it is also presumed that S2 can provide for the basic safety and subsistence of both groups of refugees,¹⁵ even if the more general prospects of success – the extent to which the two groups of refugees can be seen to thrive and flourish – is substantively lower in S2 than in S3.

The question then arises, as to why the interests of R-lgbtiq+ to be resettled in S3 should take precedence over the interests of R1, when both groups are set to benefit from being resettled in S3. One possible answer would be to say that, all other things equal, R-lgbtiq+ are set to benefit *more* from settling in S3, as their potential position in S2 is substantively worse than the position of R1. However, while this may also be the case – R-lgbtiq+ refugees' prospects of success in S2 are, after all, not only diminished by the general lack of economic opportunities, for instance, but *also* by LGBTIQ+ discrimination – I think this answer is unsatisfactory.

Firstly, it is not necessarily the case that R-lgbtiq+, or some member of R-lgbtiq+, would be set to benefit more from resettling in S3 than what R1, or some member of R1, are set to benefit. Some refugees who are LGBTIQ+ may well be better off in S2 than some R1 refugees (for whatever reasons, financial, educational, cultural competence, etc.), and the relative benefits for some R1 refugee being

¹⁵ This is important, as my argument is intended to apply only to cases where the two countries, S2 and S3 are, indeed, viewed as providing for the basic safety and subsistence for both groups of refugees. This is also stipulated in the initial description of the receiving countries, thus restricting the scope of my argument to those refugee receiving countries (S2 and S3) that are genuinely in a position to provide for the basic safety and subsistence of both groups of refugees – and thus excluding countries (S1) where the prospects of any group of refugees may be akin to a permanent state of despair and suffering.

resettled in S3 rather than S2 may well be substantively higher than for some R-lgbtiq+.¹⁶ Secondly, and more importantly, arguing that R-lgbtiq+ are set to benefit more from resettling in S3 than would R1 is, I believe, akin to a category mistake, confusing the refugees' no doubt legitimate interests in living good lives, and their more fundamental, rights-grounding interests in not being subjected to injustice. While the disadvantage and discrimination encountered by R-lgbtiq+ in S2 falls short of the kinds of persecution or severe human rights violations that would ground asylum elsewhere, they can still be viewed as rights violations and injustices that LGBTIQ+ persons have a right to be protected against. This is not, however, the case with R1 in S2, where their worse off situation, in comparison to S3, is not a result of rights violations, but a result of other things, such as, for example the country's weaker economic status, restricted job market, smaller country of origin community, etc. In short, I believe that the interests of R-lgbtiq+ in not being subjected to injustice, in the form of LGBTIQ+ discrimination or lack of legal protection, for example, should, by default, take precedence over any refugee's broader interests in leading a good life, when the prospects of doing so are not hampered by systematic rights violations comparable to those discussed above. This, I believe, will also have important implications for the ways in which one distributes refugees among potential refugee receiving countries, since some groups of refugees, such as R-lgbtiq+, have, by default, a stronger interest in being resettled in countries such as S3 than other groups, like R1. In order to see what this may mean in practice, let me, however, first assess – and qualify – my position in the light of some possible objections.

5 Some Objections

My proposal for giving precedence to the interests of refugees in 'not being subjected to injustice' over their more general interests in 'leading good lives' may be criticized from a number of directions. First, as a conceptual matter, it may be asked why I frame my discussion in terms of refugees' 'interests' rather than their 'rights'. The types of injustices that refugees who are LGBTIQ+ in non-LGBTIQ+ friendly, yet refugee receiving countries may be subjected to are largely akin to LGBTIQ+ rights violations, and LGBTIQ+ refugees arguably have a right, rather

¹⁶ In some cases, this may even apply on a group level, for instance in cases where R1 is a particular linguistic or religious group that would have substantively better prospects of success in S3 (a country with the same language/religion) than S2 (a country with a different language/religion), and where the relatively lower prospects of success in S2 are not based on linguistic or religious discrimination.

than a mere interest, to be protected against such violations. I agree that this may be the case, that refugees have a right to not be subjected to systematic discrimination, while they may not have a right to economic prosperity. However, I do not think that much, in my argument, hangs on this choice of terminology. Further, it should be noted that my focus, in this paper, is with those theories that argue that refugees' interests *should* be taken into account and that, in some important sense, refugees may well also have a right for their more general interests in a good life to be considered. While I do not wish to say much on whether refugees really are owed consideration of such broader interests, what I wish to show, for those who hold such a view, is that there is also a third, and often overlooked, category of 'interest in not being subjected to injustice' that has some normative force in refugee resettlement. This category of 'interest in not being subjected to injustice' may, of course, intersect with the broader category of 'interest in a good life' (e.g. not being subjected to LGBTIQ+ based work discrimination may certainly have an effect also on one's economic prospects and on one's more general prospects to thrive and flourish), but this does not take away the normative relevance, and the potential primacy, of this category of interest. Contrary to the conventional categorization of interests in safety and interests in a good life (where one's interests in safety certainly intersects with one's interests in a good life), one's interest in not being subjected to injustice is brought forth as an intermediate category of interest that may not have the same force (i.e. operate as grounds for asylum) as interest in safety, yet be more forceful than the general interest in a good life.

Second, some may wonder whether my position – given my usage of refugees who are LGBTIQ+ as an illustrative example of a more general principle – may be too broad and, when applied in practice, infeasible. After all, refugees who are LGBTIQ+ are not the only group that may be subject to such non-asylum-grounding injustices, but the same may also apply to a variety of other refugees, for example disabled persons, children, some religious and ethnic minorities, women, and – this is important – some more so in some refugee receiving countries than in others. A comprehensive system of refugee resettlement distribution that takes such interests seriously would thus need to take into account *all* of these vulnerable groups, the kinds of injustices they would be subjected to in any particular context, and to also make comparisons about the extent of the injustices. This, however, may turn out to be too complex a task and, at worst, turn refugee resettlement into a type of 'injustice Olympics',¹⁷ where different groups of refugees are set against one another, competing on their levels of vulnerability and subjection to injustice in order to be resettled in their preferred country of destination. However, while I acknowledge these worries, I do not think that they

17 I thank Cyril Ghosh for the apt term and discussion.

detract from the value of the general principle, or from its clear, practical implications for some particular cases. While many, perhaps even most, refugees may be subject to relevant kinds of injustices in different refugee-receiving countries, these injustices are not distributed equally among refugees, nor among countries. Thus, it remains true that, *by default*, a particular R-lgbtiq+ refugee whose basic rights would be violated in S2, should not be resettled in S2, while a particular refugee R1, whose basic rights are not violated in S2, could well be. This, as noted above, may even be the case irrespective of the economic prospects of the two refugees. This, I maintain, is perfectly compatible with the view that some other refugee, say, a refugee with a certain disability, should also not be resettled in S2 due to the kinds of rights violations inflicted on refugees with such disabilities there.¹⁸

Which brings me to my third qualification relating to the potential counter-intuitive implications of my proposal in cases where the injustices (rights violations) that the resettlement distribution is aiming to counter seem relatively minor in comparison to the economic prospects of some alternative distribution. For example, say that the rights violations against LGBTIQ+ persons in S2 are relatively minor. For instance, S2 does not recognize equal marriage, but has relatively well functioning protections against, for example, LGBTIQ+ discrimination in the workplace or other areas of life. Say further that, for whatever reasons, some LGBTIQ+ persons would have much higher prospects of economic success in S2, where some of their rights, such as the right to equal marriage, are violated, than in S3. Such comparisons between rights violations versus economic success can, of course, be both intrapersonal, as in the example above, and interpersonal: for example, R1 could be far better off economically in S3, while R-lgbtiq+ would only be slightly worse off rights-wise in S2. In these cases, some might argue, the far higher differences in economic prospects should outweigh the relatively minor differences in rights protections, making my claim about the principled precedence of ‘interests in not being subjected to injustice’ over more general ‘interests in a good life’ suspect.

However, I believe that my proposal is able to accommodate such cases, and different resettlement distribution, without abandoning the proposed basic principle. As I have stated, a refugee resettlement system that takes refugees’ interests in not being subjected to injustice seriously does not, *by default*, resettle R-lgbtiq+ to S2. This is due to the fact that the refugees’ interests in not being subjected to

¹⁸ Mollie Gerver (2020) has recently argued for a general model for selecting refugees based on their relative needs and prospective gains from being admitted, although this model does not include a differentiation on the types of gains that different refugees may receive depending on the country in which they are settled.

injustice are, by default, given more weight than their general interests in leading good lives. This principle, however, could be overridden for example by the subjective interests of R-lgbtqi+ in being resettled in S2, despite its rights violations. This qualification, I believe, is important in order to cater for refugees' own agency, as well as for recognizing that one's status and treatment as LGBTIQ+ may not always be the defining feature via which one's interests are formed. Furthermore (and perhaps more controversially), in some cases, even the objectively defined circumstances of, for example, economic or societal success may counter the default position. While the details of how to balance between such general prospects for a good life versus relatively minor rights infringements remains beyond the scope of this article, some basic principles for guiding such calculations may be given. For example, it would seem clear to me that there needs to be some threshold for what counts as a relevant kind of injustice that justifies the default position argued for here. For example, it may be questioned whether the above mentioned lack of equal marriage rights, while all other LGBTIQ+ rights are respected, suffices to justify this default position. The ILGA annual reports on LGBTIQ+ laws around the world (ILGA 2020) as well as other human rights organizations, including local LGBTIQ+ associations, already provide useful tools for assessing the extent of LGBTIQ+ rights violations in different countries, thus also providing important data for our categorization of different countries as S3 and S2. After all, it may well be the case that no country – however LGBTIQ+ friendly – qualifies as a country where *no* LGBTIQ+ person would be subjected to *any* form of discrimination or disadvantage, although in some countries (S3) less so than in others (S2). While it thus remains an open question where to draw the line between the relatively minor rights infringements that the broader prospects of, for example, economic gain may override, and the more severe infringements upholding the default position argued for here, the lack of such an exact line need not distract from the general principle. Regardless of the exact details of implementation, I believe that any refugee resettlement distribution that aims to take refugees' interests into account should, *by default*, give precedence to refugees' interests in not being subject to injustice over the more general interests in leading good lives – although this default position can, for example in cases pertaining to refugees' own agency, or in cases of substantively minor rights violations, be overridden.

6 Conclusion

In this paper, my focus has been on those theories of refugee resettlement that argue for refugees' own interests to be taken into account when distributing

refugees among the potential refugee receiving countries. My purpose has been both conceptual and normative. Conceptually, I have attempted to clarify the ways in which refugees' own interests, typically, in 'safety' and in 'a good life', can be understood, and how an intermediate, and often overlooked, category of interest in 'not being subjected to injustice' has a vital role for understanding the different types of interests that refugees may have for resettling in different countries. Normatively, I have argued that refugees' interest in 'not being subjected to injustice' should also play a prominent, and indeed primary, role in the discussions on refugee resettlement. By utilizing an example of refugees who are LGBTIQ+, and the kinds of non-asylum-grounding injustices that they are subjected to in a number of non-LGBTIQ+ friendly, yet refugee receiving states, I have argued that, *by default*, refugees likely to be faced with such injustices in certain countries (S2), should rather be settled in countries where such discrimination does not exist, or is, at least, substantively less widespread (S3). While this might not seem like a particularly radical conclusion, it may nevertheless have important implications for the ways in which refugees are resettled among potential refugee receiving countries. This is so, as I have also argued that, *by default*, refugees' interests in 'not being subjected to injustice' should take precedence over their more general interests in leading good lives. Thus, the justice based considerations, such as LGBTIQ+ persons' right not to be subjected to LGBTIQ+ based discrimination, should, *by default*, override a number of other considerations commonly viewed as important for the prospects of success for refugees in their resettlement countries, such as economic, linguistic or even family/country of origin community-based considerations. While my intention has not been to offer a clear blueprint or guidance as to how such prioritization of refugees' interests in not being subjected to injustice, as opposed to more general interests in a good life, should be applied in practice, I nevertheless believe my present analysis to be useful for a number of discussions in refugee resettlement. Most notably, as I have tried to show, understanding refugees' own interests via the common categorization of 'safety' and 'a good life', overlooks an important, and normatively salient category of interest in 'not being subjected to injustice'. Taking this category seriously in discussions on refugee resettlement helps to show not only some of the complexities of different types of interests at stake, but also why, in some cases, considerations pertaining to refugees' interests in leading good lives, including economic, linguistic and other aspects aiding integration, may be overridden by other refugees' interests in not being subjected to injustice.

Acknowledgements: Earlier versions of this paper were presented at the Society of Applied Philosophy annual conference in Cardiff, the Philosophy Research seminar at UiT, and the Pluralism, Democracy and Justice workshop at UiT. I thank

the participants of these occasions for their useful feedback. Special thanks to Cyril Ghosh, Patti Lenard, Kasper Lippert-Rasmussen, Sune Lægaard, Michael Morreau and Kieran Oberman for helpful comments and discussions on many of the themes, as well as to the two anonymous reviewers for their constructive criticisms. **Funding statement:** This work is part of the Good Integration (GOODINT 2021-2025) project, funded by the Research Council of Norway, grant number 313846.

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