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# OUTSOURCING REFUGEES BY THE EU: WHY IT IS MORALLY IMPERMISSIBLE

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## Abstract

In this paper, I question whether EU states should be permitted to outsource refugee protection to non-EU states, in exchange for (financial) benefits to these non-EU states. My main argument is that such schemes will not be in line with the EU's duties that stem from global justice. I argue that outsourcing schemes should be seen as a postcolonial form of exploitation, that outsourcing schemes conflict with needed colonial reparations, and that outsourcing schemes would result in an even more unfair distribution of refugee protection worldwide. These considerations make outsourcing schemes problematic to me. Furthermore, I refute the main argument in favor of outsourcing schemes, that they would improve the status quo by providing more refugees with sufficient protection. I refute this argument by arguing that a new perverse incentive of less affluent states will undermine the effectivity of the asylum system. Moreover, I argue that EU states cannot guarantee sufficient protection in non-EU states. By appealing to the arguments above, I conclude that EU states should not be permitted in outsourcing refugees to non-EU states.

## 1. Introduction

Despite multiple international regulations, how to deal with refugees has been a divisive topic in Western politics, Europe being no exception. The European Union (EU) has a long tradition of trying to keep migrants from entering European territory<sup>1</sup> and might now establish a new form of non-arrival policy, initiated by Denmark. In 2021, Denmark passed legislation to implement a new strategy to prevent migrants to be housed on their territory. A new law made it possible for Denmark to send incoming migrants to a third country, where their asylum applications would be processed and where they would get protection if their asylum claim was accepted.<sup>2</sup> The envisioned third country for this scheme turned out to be Rwanda, which signed multiple agreements with Denmark. It was agreed upon that Denmark would have the ability to transfer arriving refugees to Rwanda. In return, Denmark would provide funding to Rwanda for building facilitations where these refugees would get their protection while waiting for their cases to be reviewed. Additionally, Denmark would provide support to Rwanda's social and economic development on multiple areas.<sup>3</sup> Essentially, Denmark hereby established a way to buy off their obligations towards incoming refugees by externalizing asylum applications and refugee protection. Further talks about this matter between Denmark and Rwanda are now on hold, because Denmark wants to establish such a cooperation together with other EU countries or the whole EU.<sup>4</sup> The Dutch parliament, for example, already asked the Dutch cabinet to cooperate with Denmark on this matter.<sup>5</sup> From here, I will call such policies an outsourcing scheme, which I define in general as: *“states A and B agree that state A may outsource the processing of asylum applications and refugee protection to state B under the condition that state A covers the costs of the processing and protection, and provides state B with additional (financial) benefits”*.

The reason why Denmark and Rwanda tried to establish this cooperation, was to try to improve the current asylum system. The current asylum system with Europe as final destination for many Middle-Eastern and African refugees is said to be problematic for several reasons. I will present these reasons in this section, but I do not wish to evaluate these statements here. I merely want

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<sup>1</sup> Moreno-Lax & Lemberg-Pedersen 2019

<sup>2</sup> Olsen 2022

<sup>3</sup> Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda et al. 2021; Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda & Ministry of Foreign Affairs of the Kingdom of Denmark 2021; Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda & Ministry of Foreign Affairs of the Kingdom of Denmark, 2022

<sup>4</sup> The Local 2023

<sup>5</sup> NOS 2023

to provide these reasons of Denmark and Rwanda to contextualize the topic of this paper for now. First of all, most European governments lack the political will to accept a great amount of refugees, resulting in non-arrival policies at the European borders. This has a great impact on the refugees' possibilities to get the protection they so desperately need.<sup>6</sup> Andrea Sangiovanni<sup>7</sup> summarizes it as a classical collective action problem. States do wish that a greater number of refugees are protected than there currently are, but at the same time they do not wish to offer this protection themselves. This makes that states try to keep refugees out, resulting in refugees being left without proper protection even though they need and deserve it. The aforementioned non-arrival policies of the EU have contributed to the second issue: refugees wanting to come to Europe have to embark on dangerous journeys over the Mediterranean Sea to reach, e.g., Greece or Italy. As a result, between 2014 and 2022 more than 25 thousand refugees have died trying to cross the Mediterranean Sea. The Mediterranean Sea has in fact been the deadliest migration route over this period, worldwide.<sup>8</sup> For human traffickers, on the other hand, this migration route has been a lucrative business, since refugees hardly have any other choice to come to Europe than taking their boats. The high prices human traffickers ask also makes that only refugees with sufficient resources are able to go to Europe, while the most vulnerable refugees remain in the regions of origin.<sup>9</sup> Lastly, refugees are said to (ab)use their right to asylum to pursue their hopes of a better life in more prosperous economies than their country of origin. This is said to be true for migrants who do not qualify for protection (*mala fide* migrants) and for migrants who do qualify for protection (refugees or *bona fide* migrants). This latter group is believed to benefit from the system by trying to get additional personal gains besides getting the protection they need, while the first is said to exploit the system to try to resettle in a more prosperous state.<sup>10</sup>

Denmark and Rwanda see an outsourcing scheme as explained above as a first improvement for the asylum system, but this outsourcing does not focus on all improvements that have to be

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<sup>6</sup> Himmelreich 2019, p.217

<sup>7</sup> Sangiovanni 2023, p.407

<sup>8</sup> Statista Research Department 2023

<sup>9</sup> Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda et al. 2021; Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda & Ministry of Foreign Affairs of the Kingdom of Denmark, 2021; Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda & Ministry of Foreign Affairs of the Kingdom of Denmark, 2022

<sup>10</sup> Himmelreich 2019, p.217

made. In their view,<sup>11</sup> a new asylum system should be established which meets several criteria. First, a new system should be able to address the root causes of irregular migration. Second, Rwanda and Denmark hold that there is a need for more and better protection of refugees in the regions of conflict where they flee from. Third, host nations, countries of origin and transit countries should get more assistance from the international community to be able to take good care of the refugees. Fourth, the great inequalities between Africa and Europe in human capital resources should be addressed. Fifth, Denmark holds that a new asylum system should include that the processing of asylum applications is done outside the borders of the EU. The envisioned outsourcing scheme seems to be mostly focused on this last criterion, and on providing assistance to host nations. Whether such a new system meeting the above criteria would suffice is outside the scope of this paper. I do think that especially the first, third and fourth criteria are essential for a new system, but the second<sup>12</sup> and fifth might be more controversial.

In this paper, I will explore the ethical permissibility of outsourcing schemes. Outsourcing schemes, or so-called refugee markets (either with or without initial refugee quotas), have already been discussed in the literature,<sup>13</sup> although not extensively. Most of the literature has focused on whether such schemes could make the asylum system more efficient, and whether it would be in line with the rights and dignity of refugees themselves. The tension that is portrayed in the literature is that outsourcing schemes might lead to an increase in refugees being protected, but that refugees might lose some of the possibilities they currently have in the asylum system, e.g., choosing where to apply for asylum. Moreover, the perspectives of states, mostly affluent Western states, are considered in the literature, which would possibly benefit from outsourcing schemes. I do think these are all important considerations, but other considerations are missing. Therefore, I wish to contribute in this paper to the debate on outsourcing schemes by adding considerations on global justice and argue that outsourcing schemes can hardly be in line with global justice. Before I will turn to this, I wish to clarify who I understand to be a refugee and what assumptions I will make in this paper.

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<sup>11</sup> Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda et al. 2021; Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda & Ministry of Foreign Affairs of the Kingdom of Denmark 2021; Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda & Ministry of Foreign Affairs of the Kingdom of Denmark 2022

<sup>12</sup> As will become clear in *Chapter 3*, most refugees already stay within the region of conflict.

<sup>13</sup> Gibney 2007; Kuosmanen 2013; Blocher & Gulati 2016; Gerver 2018; Himmelreich 2019; Sangiovanni 2023. These will be extensively discussed in *Chapter 2*.

### i. Who Is Considered a Refugee?

In this paper, I want to follow EU regulation on who is deserving protection. The EU mainly follows the United Nations High Commissioner for Refugees (UNHCR) on who deserves international protection, which bases itself on two United Nations accords: the *1951 Convention Relating to the Status of Refugees* (1951 Convention from here) and the *1967 Protocol Relating to the Status of Refugees* (1967 Protocol from here). The 1951 Convention was established not long after World War II by the United Nations (UN). This convention was later complemented by the 1967 Protocol to expand the term refugee to a universal level. After the 1967 Protocol, anyone “*who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion*“,<sup>14</sup> should be considered a refugee. The EU and UNHCR hold the same definition for who qualifies as a refugee, but others might be entitled to so-called *subsidiary protection*, which is in general the same protection as refugees would get, but given to them on different grounds. This subsidiary protection should be offered to anyone who does not qualify as a refugee, but is expected to suffer serious harm in their country of origin. Such harms include the death penalty or execution, torture or other inhumane treatments/punishments, and indiscriminate violence in situations of armed conflict.<sup>15</sup> The United Nations High Commissioner for Refugees (UNHCR) explains that these documents provide refugees with three fundamental rights: i) non-discrimination, ii) non-penalization, and iii) *non-refoulement*. The first right means that the protections as agreed to in the Convention should be provided without discrimination as to sex, race, religion, sexual orientation or other prohibited grounds of discrimination. The second right ensures that refugees will not be penalized for seeking asylum, even when this includes breaching immigration rules. Thirdly, the right to *non-refoulement* ensures that refugees will not be expelled against their will to a place where they have to fear for their life or freedoms.<sup>16</sup> In this paper, I will use the term refugee for both those who are a refugee according to the 1951 Convention and those who qualify for subsidiary protection. I will further assume that the three rights mentioned above apply to all refugees.

Note that there is extensive philosophical debate on who should be regarded as a refugee.<sup>17</sup> The definition I use here does not involve people fleeing from severe poverty or from natural

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<sup>14</sup> UNHCR 2010, p.3

<sup>15</sup> Official Journal of the European Union 2011

<sup>16</sup> UNHCR 2010, p.2-5

<sup>17</sup> Wellman 2022

disasters, whereas such reasons might well be a morally significant factor to obtain a right to international protection if their home country cannot (help) improve their situation. Moreover, it is not clear why someone necessarily has to be outside the country of their nationality to be a refugee. Furthermore, one might ask if granting refuge is the most suitable solution. Such questions are outside the scope of this paper, however. Since I am focusing on the duties of the EU, I have chosen to take the EU's definition on who has a right to international protection.

## ii. Nonideal Theory

My thesis will be grounded in non-ideal theory. The distinction between ideal and nonideal theory was first introduced by John Rawls in his influential *A Theory of Justice*.<sup>18</sup> A. John Simmons<sup>19</sup> provides us with an extensive overview of this distinction by Rawls. Ideal theory of justice should be understood as a set of principles which under full compliance would give us a perfectly just society, either domestic or global. This is not without assumptions, because the idea is to construct a so-called *realistic utopia* in which we take the psychological natures of humankind into account. Ideal theory of justice can in Rawlsian political philosophy be seen as the objective a society should work towards. Nonideal theory could then be seen as the route to this objective, focusing on how to deal with current injustices, or noncompliance with principles of ideal justice. Since nonideal theory, for Rawls, should focus on how to achieve perfect justice, any policy should bring us a step closer to *overall* perfect justice, not justice on only one issue. This notion of nonideal theory has been criticized, however. As summarized by David Schmidtz,<sup>20</sup> Amartya Sen does not agree that there is a need for an ideal theory. The point of theorizing, according to Sen, should be to compare the status quo with its injustices to available alternatives. We should ask ourselves if an alternative would be better or worse than the status quo, but we do not need a theory of perfect justice which we have to work towards. Schmidtz also recognizes that there is diversity of thought on what would be the ideal conception of justice. So, how should one try to transition to a perfectly just society when there will presumably never be agreement on what is the conception of ideal justice?

In this paper, I will leave the discussion whether there is a need for a conception of ideal justice to the side. I will assume that there currently are injustices in the world which result in, amongst others, persons becoming a refugee. A nonideal refugee theory is therefore required. I hold that

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<sup>18</sup> Rawls 1971

<sup>19</sup> Simmons 2010, p.7-25

<sup>20</sup> Schmidtz 2011, p.772-780



such a theory should focus on at least two aspects. First, nonideal refugee theory should consider how to prevent people from becoming a refugee. States would therefore have to be concerned with how to erase grave injustices and human rights violations from global society. This is, however, not what I want to focus on. I want to focus on the second aspect which nonideal theory in relation to refugees should focus on: how to take care of people fleeing their home country. We currently live in a world with refugees, and until there would be no refugees at all, which might well be a utopia, refugees are in need of international aid. This international aid, or the current asylum system, is nonideal. States are sovereign and mainly act out of self-interest in the current world order, which undermines the effectivity of the asylum system. I think it is an illusion that we could change these habits, so I will assume that states keep sovereign, will not open their borders completely,<sup>21</sup> and will remain acting mainly out of self-interest. Partial compliance (at most) should therefore be expected regarding the (legal) obligations states have towards refugees. Similar assumptions were made by others.<sup>22</sup>

### iii. Thesis & Structure

With the above interpretation of the term refugee in mind, and the above assumptions about states, I now wish to turn to the debate on outsourcing schemes. I will question whether EU states should be permitted to outsource incoming refugees to non-EU states, and argue that they should not be. In order to do this, I will first offer two defenses of outsourcing schemes in *Chapter 2*. These include that outsourcing schemes are in line with the right to asylum and that outsourcing schemes would improve the status quo regarding refugee protection. This last defense is mainly a utilitarian argument on the effectivity of the asylum system. I will contrast this argument with global justice concerns which I hold to be overlooked in this utilitarian argument. *Chapter 3* will be dedicated to these concerns and include both a postcolonial critique and a concern over how the burdens of refugee protection are shared between states. The postcolonial critique will be twofold, by arguing that (i) outsourcing schemes should be seen as a new, postcolonial form of exploitation, and (ii) that outsourcing schemes are not in line with colonial reparations. At this point, it will not be clear yet how the arguments for and against outsourcing schemes should be weighed against each other. To come to my conclusion that outsourcing schemes should not be permissible for EU states, I will in *Chapter 4* return to the second argument in favor of outsourcing schemes, and illustrate why it is questionable that the status quo will be improved. I will argue that this is questionable because there will be a new

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<sup>21</sup> Open borders are sometimes seen as an improvement for the asylum system. See, e.g., Carens 1987.

<sup>22</sup> See, e.g., Philips 2023, p.159.

perverse incentive undermining the effectivity of the asylum system. Moreover, I will argue why it is an illusion that EU states could ensure sufficient protection when outsourcing refugees, while I do hold that this would be a necessary condition for outsourcing. By weakening the main argument in favor of outsourcing schemes, it becomes clear that EU states should not be permitted in outsourcing refugee protection to non-EU states.

## 2. Moral Defenses of Outsourcing Schemes

Outsourcing refugee protection is not a new idea, multiple authors have discussed the ethical considerations with so-called refugee markets or systems with tradeable refugee quotas. In this chapter, I will extend the defenses that are given for these systems to the outsourcing scheme as envisioned by Denmark. First, let me introduce these systems and discuss the relevant similarities and differences.

A refugee market was proposed by both Johannes Himmelreich and Mollie Gerver. Himmelreich<sup>23</sup> envisions an addition to the current asylum system, which would make it possible for the refugee *services* to be traded. These services that states could offer on the market can include processing the asylum applications, the protection and housing of the refugees, and eventually the settlement and integration of the refugees in their society. In such a market, buyers are the states that want to outsource their incoming refugees, and sellers are the states that will take over these refugees. The price the buying states will have to pay for outsourcing their refugees, depends on how much the receiving state asks for accepting the refugees. Himmelreich also holds that there are conditions on both the transactions and on the states that could participate in the market. Selling states might for example be required to meet minimal conditions on refugee protection, opportunities open to refugees, political stability and governance practices. This also calls for some institution overlooking the market, for which Himmelreich suggests the UNHCR. This institution would also have to ensure that the selling states meet certain requirements regarding how they process asylum applications. Otherwise selling states might abuse the system by taking over many asylum applicants, and then denying them asylum based on overly strict terms. Himmelreich therefore suggests there must be some sort of condition on the transaction, e.g., that the financial gains for a selling state would be dependent on the number of refugees they eventually accept. In essence, Himmelreich envisions a market which would make outsourcing schemes such as the one suggested by Denmark and Rwanda globally possible. The main difference is that in Himmelreich's market there is an institution overseeing the market itself. The UNHCR already oversees refugee protection, but this role would be extended and strengthened when they got an overseeing role for trades involving refugee services. Gerver<sup>24</sup> already speaks of refugee markets when this is not introduced globally, so if only Denmark and Rwanda trade refugees, this is already a refugee market for Gerver.

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<sup>23</sup> Himmelreich 2019, p.218-222

<sup>24</sup> Gerver 2018, p.45

Trading refugee quotas, on the other hand, is somewhat more different from the envisioned outsourcing scheme. Such a scheme, as defended by Jaakko Kuosmanen,<sup>25</sup> begins with a distribution of refugee quotas over the states which are resourceful enough to host refugees. In part, it is therefore a *burden-sharing* scheme. Similar to the refugee market from Himmelreich, tradeable refugee quota schemes will also be institutionalized. This institution distributes the quotas and oversees that states abide this distribution. For Kuosmanen, this scheme would not have to be implemented globally, it could also be implemented by a select group of states, e.g., the EU. This burden-sharing scheme is complemented by a market element or *compensatory scheme* in the tradeable refugee quota scheme. This entails that participating states can sell and buy quotas to and from other participating states, so states get compensation when they accept more refugees than what is considered their fair share in their obligations towards refugees. What sets this apart from the refugee markets, is the involvement of the initial quotas. This makes that states are obligated to take up their fair share of refugees when they do not find another state which is keen on accepting more refugees in exchange for compensation. This is as well a relevant difference compared to outsourcing schemes, and should be taken into account when extending its moral defenses.

With these explanations in mind, let me now turn to the moral defenses of outsourcing schemes. First, I will consider whether outsourcing schemes are in line with the right to asylum and, second, I will explain why outsourcing schemes are expected to improve the status quo. Thirdly, I will cite three objections to outsourcing schemes focusing on the dignity of refugees, and explain why these are not considered to be morally problematic. I notice that a reader might already want to pose questions related to fairness during this chapter, these will be considered in *Chapter 3*.

### **i. Why Outsourcing Schemes Are in Line With the Right to Asylum**

All authors mentioned above hold that new practices in the field of refugee protection should be in line with the right to asylum. If this right would not be protected, a new practice could hardly be morally defended, since this right is regarded as one of the most important human rights. In these proposals for trading with refugees, refugees lose the ability to choose in which country they wish to exercise their right and receive the needed protection. The same holds for outsourcing schemes which are of interest in this paper. If permissible, a refugee might apply for asylum in Denmark, believing they would receive the best protection there. Denmark,

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<sup>25</sup> Kuosmanen 2013, p.104-107

however, could then decide to outsource the refugee to Rwanda, which cannot reasonably be expected to be in line with the refugee's preferences given the differences between Denmark and Rwanda. The question is therefore what value these preferences have in the context of exercising the right to asylum.

Kuosmanen<sup>26</sup> and Himmelreich<sup>27</sup> argue that these preferences should not be included in the right to asylum. They, in line with others<sup>28</sup>, hold that the normative foundation for this right is basic needs, which I believe is defensible. These so-called basic needs are often defined as those needs of which nonsatisfaction leads to serious harm to a person, and for which there is hardly no substitution to avoid this serious harm. Basic needs are often considered to be objective and universal, although there are debates on how to construct a list of basic needs or what kind of harm should be considered (e.g., should it harm your autonomy, agency or ability to perform social roles?). Since basic needs nonsatisfaction leads to serious harm, it is argued that ensuring basic needs satisfaction should be a normative goal for political institutions.<sup>29</sup> In the context of refugees, it is the basic needs that are not protected by the country of origin, and that is why other states have the moral responsibility to ensure that refugees will be able to meet their basic needs (again). Moreover, it is argued that the right to asylum is an imperfect right, in the sense that there is no initial duty-bearer who is supposed to provide protection to the refugee. As there is more than one state who can provide the protection, it is according to Kuosmanen and Himmelreich not clear why a refugee in general should be morally entitled to choose where they will get their protection. I think this is a defensible way of interpreting the right to asylum. States are sovereign and might have reasons<sup>30</sup> to keep refugees out. Since all states might have such reasons, this would call for burden-sharing.<sup>31</sup> Giving refugees a choice right would unnecessarily complicate this.

Exceptions should be made, however. Kuosmanen argues that there might be preferences that stem from basic needs, of which reunion with one's direct family is the most obvious. Moreover, Kuosmanen makes a distinction between strong interests and non-fundamental preferences. These strong interests have more weight than non-fundamental preferences and less weight than

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<sup>26</sup> Kuosmanen 2013, p.108-111

<sup>27</sup> Himmelreich 2018, p.225-228

<sup>28</sup> See, e.g., Carens 2013.

<sup>29</sup> Pölzler 2021, p.2-7; Brock & Miller 2019

<sup>30</sup> See for a discussion on what reasons states could have to keep refugees out: Philips et al. 2023.

<sup>31</sup> Himmelreich follows Gibney in this. Later in *Chapter 3* there will be a discussion on burden-sharing.

basic needs, and might include opportunities like social integration in the country of asylum. When a refugee is expected to face severe complications with integrating within society, this would be a morally relevant factor to take into account. It remains a question, though, where we should draw the line between strong interests and non-fundamental desires. For an outsourcing scheme, however, it would mean that a state would have an obligation to meet these preferences. If one's family already got asylum within the state where the refugee seeks asylum, outsourcing them would be impermissible. Regarding the strong interests, I think this would mean that the refugee could only be outsourced to several states which meet these strong interests. The right to asylum, however, remains unchanged as the right to have your basic needs met, wherever that might be.

Gerver<sup>32</sup> acknowledges as well that the right to asylum does not necessarily have to include a right to choose where to get asylum. However, similarly to Kuosmanen, Gerver holds that preferences of refugees can hold moral value. Gerver explains this by discussing what it means to be displaced from one's home community. Refugees might experience the wrong of displacement due to something other than not having their basic needs met, for example when a war breaks out in one's country. In such cases, refugees have to pause their lives and find a place where they can (temporarily) resettle. This includes cutting ties with loved ones and stopping with pursuing their life plans. It is questionable whether they can again pursue their life plans or build new, flourishing relationships if they would only be entitled to their basic needs. Gerver argues that refugees are the ones in the position to know best where they would be able to build up their life again. This is why refugee preferences regarding the country of asylum have moral weight for Gerver. Gerver therefore holds that preferably these preferences are granted, but the right to basic needs is stronger and should in any case be satisfied. This sounds appealing, but I do think that this is prone to a critique which Himmelreich has to the current asylum system. As explained in the next section, Himmelreich argues that refugees tend to use the system to get into more prosperous states for economic reasons and not necessarily for the social reasons Gerver mentions here. One would therefore have to evaluate the preferences of the refugees, but whether this is feasible is questionable to me. I will therefore follow Himmelreich and Kuosmanen in interpreting the right to asylum.

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<sup>32</sup> Gerver 2019, p.58-61

Another question regarding the right to asylum should be answered as well: can a state be discharged of its duties towards a refugee, or is this duty inalienable? To answer this question and argue that states can outsource their duties to offer protection, Himmelreich (ibid.) distinguishes between first-order and second-order duties associated with the right to asylum. The second-order duties include overseeing that the refugee in question gets the deserved protection, whereas the first-order duties include the actual fulfillment of the protection. Himmelreich argues that the oversight of the protection cannot be discharged, the state where the refugee asks asylum should oversee that they get the needed protection. However, the actual provision of this protection may be done by another state. Just like a parent may bring their kid to kindergarten, where the care of the child is (temporarily) taken over, a state could transfer refugees to another state for protection. In the case of the parent, they still have the duty to oversee the kid is given appropriate care at the kindergarten, since this duty is inalienable unless the kid is given up for adoption. The same holds for the state transferring the refugee, it still has the duty to oversee the protection meets reasonable standards, but this is a different duty than actually providing the protection. At first glance, I believe this to be a correct understanding of duties related to the right to asylum. Contextual circumstances might, however, give us reasons to prohibit states from outsourcing the first-order duty.

If we can indeed understand the right to asylum in the above way, outsourcing schemes, given certain constraints, seem to be in line with this right. Such constraints should reasonably at least include the rights to non-discrimination, non-penalization and non-refoulement, as written in the 1951 Convention and 1967 Protocol. With this conception of the right to asylum in mind, let us now consider how outsourcing schemes are further defended.

## ii. Outsourcing Schemes Are Expected to Improve the Status Quo

As was introduced in the introduction, the current asylum system is far from perfect. Due to a lack of political will in Europe to host more refugees and the resulting non-arrival policies, refugees are left with the option of purchasing their crossing of the Mediterranean Sea from human traffickers. These crossings are very dangerous and have resulted in many deaths. Moreover, the prices these human traffickers ask makes that only rich refugees can afford the crossing and the poorest stay in the regions of conflict, where the protection of refugees has questionable standards.<sup>33</sup> Lastly, it is argued that refugees (ab)use the asylum system to get the

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<sup>33</sup> Parekh 2016, p.28-36

chance to build a better life in Europe, despite having the opportunity to ask for asylum in another country.

The main line of reasoning in the literature to defend refugee (quota) markets is that they would improve the current asylum system, the status quo. These improvements would include at least two aspects. First of all, it is argued that trading with duties of refugee protection would avoid two perverse incentives that are in place in the current asylum system, both for states as for refugees and *mala fide* migrants. As explained by Himmelreich,<sup>34</sup> European states tend to take a tough stance on immigration and try to limit this, often justified by giving in to public opinion. Since these countries can only influence immigration via visas and asylum provision, they try to restrict immigration by non-arrival policies and strict asylum regulations. This leads to differences between states how asylum applications are processed, which makes that refugees have better chances to get asylum in certain countries. This is, and I agree, considered unfair. Himmelreich argues that the perverse incentives for states will be rectified when they could trade in asylum duties. Since they can buy off their duties, states do not have to keep refusing protection to refugees and therefore would accept them, after which they will outsource them. Such outsourcing would even be economically beneficial for states, according to Himmelreich. Himmelreich assumes that the protection of refugees would be cheaper in the selling state. The selling state will presumably still ask a higher price than the price for protection, but this could reasonably still be lower than the costs of protection in the buying state. This would presumably be highest if there is a big market with many selling states, as this would lead to competing prices by the selling states.

Himmelreich also argues that refugees will have less incentive to take long journeys to apply for asylum in prosperous states, like those in Northern and Western Europe. This is what is currently happening and, I believe, is rather understandable from a refugee's perspective. If you have to resettle anyway, why would you not try to resettle in a country with more (economic) opportunities? For Himmelreich, however, this is problematic, as *mala fide* migrants get the opportunity to abuse the system in this way. This fuels populism resulting in the harsh immigration policies, which undermines the effectivity of the current asylum system. This should be tackled according to Himmelreich. I agree with Himmelreich that undermining the effectivity of the asylum system is problematic. However, I hold that the problem mainly lies

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<sup>34</sup> Himmelreich 2018, p.223-225



in the populist narrative and not in the incentives of refugees or migrants. Especially in nonideal theory, but arguably as well in ideal theory, we should take for granted that persons will want to better their economic positions, especially if you have to resettle anyway. Regardless, outsourcing schemes could help tackle this incentive, since it (partly) disentangles destination and protection and it would still be in line with the right to asylum. Himmelreich envisions that *mala fide* migrants will have less incentive to try to abuse the system, assuming that states prone to attracting *mala fide* migrants will be the ones outsourcing asylum applicants. This would in the end result in more effective protection of real or *bona fide* refugees. However, they might not be able to get the protection in the prosperous state as they would wish. This is no problem for Himmelreich, however, since the right to asylum only entails a right to protection, no matter where as long as the protection adheres to certain standards.

Second of all, outsourcing schemes might give potential host nations an incentive to accept (more) refugees than they otherwise would. Nowadays, states hardly have such an incentive other than their moral compass which tells them they have a responsibility towards refugees. This is, however, not enough as we see that many refugees do not get the protection they need. Based on a comparison between different refugee trading schemes, Blocher & Gulati<sup>35</sup> argue that states need an incentive to host refugees. States are sovereign and mainly act out of self-interest, which makes that it is most effective to reform the asylum system in such a way that states can indeed act out of self-interest. If an asylum system would mean that governments have to spend the tax money of their own citizens to protect refugees, as is the case now, there is no incentive to accept refugees. I believe outsourcing schemes could provide such an incentive for the selling states, as they will be able to gain benefits from hosting refugees. Buying states, however, would still not have this incentive. But as the buying states are expected to be the most prosperous states, this might be less of a problem for them. Moreover, as argued by Himmelreich, outsourcing schemes could still be beneficial for prosperous states as trading prices might be below the costs of actually hosting the refugees.

By combining both considerations above, assuming for now these are all the relevant facts, we can construct a utilitarian argument in favor of outsourcing schemes. For this, there should be an overall increase in welfare. Since perverse incentives are rectified, and states are given a positive incentive to participate in outsourcing schemes, it could reasonably be expected that

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<sup>35</sup> Blocher & Gulati 2016, p.60-74

outsourcing schemes will increase the total amount of refugees given proper protection. This would, potentially, increase the total welfare of all refugees combined. It might also increase the welfare of both the buying and selling state, if we follow insights from market ethics.<sup>36</sup> In welfare economics, it is believed that participating parties benefit from an exchange if the parties want to lose what they offer in exchange for what they get in return. It is essential that all parties involved in the exchange actually benefit from the exchange, and if this is the case, this will result in an increase in overall welfare. Outsourcing could therefore increase overall welfare of the selling and buying states. It is expected that the selling states will be less affluent states, and this is why Himmelreich argues that such outsourcing could even help reduce poverty in those states. These states will both get a capital injection from participating in the scheme, and the refugees can eventually increase economic productivity in the selling state. Combined, I think, given the facts we have considered so far, it can be argued that outsourcing schemes will, or at least have the potential to, increase overall welfare. If we can indeed understand the above considerations, assuming they are true, as a utilitarian argument, I think this would be a fairly strong argument in favor of outsourcing schemes. Whether the premises are indeed true, and I do not believe they are, is my focus in *Chapter 4*.

Outsourcing schemes are thus argued to be an improvement from the status quo, and it could therefore be argued that implementing such schemes would be morally preferable to prohibiting them, given the current situation. Such outsourcing could also be implemented in the short term, which makes it even more preferable for now, since system reforms should reasonably be expected to take a long time before they are agreed upon and implemented. However, we might question whether an improvement of the status quo is a good argument. If we follow Rawls in his thinking about nonideal theory, implementing a new policy should bring us a step closer to the achievement of perfect justice, whatever conception we might have for this. Whether outsourcing schemes can achieve this requires more analyses than what I can offer here, but I think we can be skeptical about this. For Sen, on the other hand, it would be a good argument, assuming that it would fight injustices currently experienced in the world.

Nevertheless, trading refugee services has not been uncontroversial. Trading refugee services has mainly been objected by concerns over the dignity of refugees. The following section will be focused on these objections, and what responses defenders of outsourcing schemes offer to

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<sup>36</sup> Himmelreich 2018, p.222-223

these objections. Note that these objections are not the main interest of this thesis. I do think, however, that these objections are needed to contextualize the debate surrounding outsourcing schemes and are important as well for the further debate on this topic. However, in this thesis I wish to offer additional concerns over global justice regarding outsourcing schemes, which will be the main focus in *Chapter 3*.

### iii. The Refugee's Dignity Is Not Significantly Impaired

In this section, I want to discuss three objections that are discussed in the literature, which all focus on the refugee's dignity. Dignity, here, should be understood broadly as the inherent worth or value all persons equally possess and which should not be impaired.<sup>37</sup> The first concern is that outsourcing refugees implies that refugees are valued negatively. The second concern is that refugees are commodified and the third concern is that outsourcing schemes will enable states to discriminate against certain refugees. Given the limited length of the paper and that these concerns have already been discussed in the literature, I am not going to thoroughly evaluate the debates.

Let us first consider the negative valuation objection. Gibney<sup>38</sup> considers trading with refugee protection closely analogous to trading with toxic waste, which humiliates the refugees according to Gibney. Gibney makes this analogy since in both cases the good that is traded is considered some kind of harm, and therefore has negative value. Gibney acknowledges that current measures to stop refugees from entering states are prone to this objection as well, but these non-arrival policies are justified to stop *mala fide* migrants from entering. These *mala fide* migrants indeed have a negative value to Gibney, since they do not qualify for asylum and just want to enter more prosperous states to better their life, thereby undermining the effectivity of the asylum system. If refugee protection would be traded, this negative value would be extended to the (*bona fide*) refugees who are entitled to protection. Kuosmanen<sup>39</sup> and Gerver<sup>40</sup> respond to this that this objection only holds if states actually buy protection elsewhere for xenophobic reasons. This does not have to be the case, since a state might positively value both the offering of protection themselves and the buying of protection in another state. Opting for buying protection could have multiple reasons, for example because a state does not have the capacity to host new refugees. Moreover, it could be argued that other burden-sharing or compensation

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<sup>37</sup> Debes 2023

<sup>38</sup> Gibney 2007, p.69-74

<sup>39</sup> Kuosmanen 2013, p.111-115

<sup>40</sup> Gerver 2018, p.47-50

schemes such as non-tradeable quotas would have the same negative valuation in it as xenophobically motivated outsourcing refugee protection. Outsourcing schemes might therefore not be more problematic than other schemes. This I agree with, since it is hard to imagine that refugees are not seen as some kind of burden for states in the current world, at least initially. Protecting refugees will always require the reallocation of resources, while states tend to be partial to their own citizens.

Even if the negative value would not be problematic, Gibney (ibid.) argues that it might be problematic to put a price on how much refugees are unwanted by a state. This commodification of refugees would further humiliate the refugees. Kuosmanen (ibid.) tries to place this in perspective by referring to Kant's notion of dignity: "*In the kingdom of ends everything has either a price or a dignity. What has a price can be replaced by something else as its equivalent. Whatever by contrast is exalted above all price and so admits of no equivalent has a dignity*".<sup>41</sup> Kuosmanen does not believe this to be a problem for trading in refugee protection, since he, in line with earlier authors, claims that dignity as explained above should be understood as not being able to trade persons against each other. Price should therefore be understood in the sense of a utilitarian calculus which can be used to decide how many lives saving one other life would be worth. With outsourcing schemes or tradeable refugee quotas, refugees are not traded against each other or against other persons. The essential thing is that, if implemented correctly, the refugees will still get the appropriate protection, and therefore their dignity would stay intact according to Kuosmanen. Or, in Kuosmanen's words: "*instead of understanding the scheme [tradeable refugee quotas] as something that aims to treat refugees as means, we should rather interpret it as an effort by all member states to restore for each person circumstances where she or he can be in the position of an end*".<sup>42</sup> If we can indeed understand Kant's words like this, I believe this to be an adequate response to Gibney's objection. However, it should at the same time make us cautious to really think such schemes through and consider whether each person will indeed be positioned as an end.

Lastly, outsourcing schemes, like refugee markets or tradeable refugee quotas, might be used to discriminate between different groups of refugees. If there is a sudden influx of refugees coming from a certain culture, states can choose to suddenly apply outsourcing to the incoming refugees because they would not like to have a major influx of this culture in their country. The

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<sup>41</sup> Kant 2002, p.235

<sup>42</sup> Kuosmanen 2013, p.113

Netherlands has been more welcoming towards Ukrainian refugees, for example, than towards Afghan refugees. The worry of Gibney (ibid.) is that the possibility for trading refugee protection would lead to this kind of discrimination, which would humiliate certain groups of refugees and thereby affect their dignity. Gerver (ibid.) acknowledges this concern and states that discriminatory practices are often unavoidable in markets. Gerver therefore holds that trading in refugee protection would come with a moral cost of discrimination, but that this should not mean that trading refugee protection is necessarily immoral. The benefits should outweigh this moral cost of (possible) discriminatory practices. For Gerver this would mean that trading schemes would be morally superior to other schemes if “*it makes no refugee worse off compared to alternative schemes*”.<sup>43</sup> When comparing two schemes, Gerver claims that, despite discriminatory practices, a scheme might be morally superior if this scheme would give the same refugees protection as in the other scheme, with an additional amount of refugees given protection selected by discriminatory practices. Under nonideal theory, I think moral costs are sometimes unavoidable, and I can therefore follow Gerver in her reasoning. This is not to say, however, that we should not do everything we can to keep the moral costs of our systems as low as possible.

Since the main interest of my thesis does not lie in issues surrounding the dignity of refugees, although very important in this debate, I will not further dive in these issues. What I think we should take away from these three objections is that there are potential moral costs with outsourcing schemes, and if permitted, we should try to prevent these moral costs from becoming reality. However, and I follow Gerver here, compared to the status quo, outsourcing schemes might still be morally superior and could therefore be justified based on that, given the facts we have considered so far.

#### iv. Conclusion

In this chapter, I have extended moral defenses of refugee markets and tradeable refugee quotas to outsourcing schemes. We have seen that outsourcing schemes can be argued to be in line with the general right to asylum. Moreover, we have seen that they are argued to improve the status quo, since they would lead to more refugees being protected. It is argued that this will happen since two perverse incentives, for states and for refugees, are rectified and host nations are given an incentive to host refugees. Moreover, market ethics teaches us that trading would

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<sup>43</sup> Gerver 2019, p.57

increase the welfare of both participating states. The argumentative strategy in favor of outsourcing schemes is therefore mainly utilitarian. In the next chapter, I will turn to questions relating to fairness between states, or global justice, which I think are missing in the current academic debate about trading in refugee protection. The last chapter will then be focused on the argument that the status quo will be improved with outsourcing schemes and why I think this should be considered an illusion.

### 3. Concerns over Global Justice

In this chapter, I want to contrast the utilitarian/efficiency considerations of the previous chapter with fairness considerations, specifically concerns over fairness between states or global justice. I will see these concerns as reasons for EU states not to pursue outsourcing schemes, since it does not align with their duties from global justice. A utilitarian, however, might still think at the end of this chapter that outsourcing schemes are justifiable, since it would increase the total number of refugees being given sufficient protection. To rebut this, I will in *Chapter 4* explain why this increase should be considered an illusion. As for the concerns over global justice, I will first give a postcolonial critique to outsourcing schemes. I will do this by both arguing that outsourcing schemes should be seen as a form of postcolonial exploitation and that outsourcing schemes do not align with reparations for colonialism. Secondly, I will argue that outsourcing schemes will shift the burdens of refugee protection even further towards low- and middle-income countries, and that this should be considered unfair.

#### i. A Postcolonial Critique

Before offering my two postcolonial critiques, let me elaborate on how I will understand postcolonialism or postcolonial political theory here in the context of global justice. Global justice is often concerned with what the affluent Western states, or sometimes called developed states, owe to the less affluent states which are primarily situated in the Global South and which are sometimes called developing states. Such a narrative where the West is contrasted with the Global South can diminish the perceived agency of the Global South, as explained by Margaret Kohn.<sup>44</sup> The West is often portrayed as the savior, whereas the leaders of less affluent countries are portrayed as predators. This makes it important to include the perspectives of the Global South in debates on global justice. I agree on this with Kohn, but I will nevertheless mainly take the perspective of the EU here. I will argue why the EU should refrain from setting up outsourcing schemes, since the EU *itself* should believe that such schemes are not in line with their duties that follow from global justice. I hereby hope not to diminish the agency of states in the Global South.

One of the debates in global justice literature is whether history should have a place in global justice theories.<sup>45</sup> The colonial and imperial histories are often ignored in normative accounts

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<sup>44</sup> Kohn 2019, p.164-166

<sup>45</sup> Morefield 2019, p.186-197

of a cosmopolitan Europe,<sup>46</sup> while cosmopolitanism<sup>47</sup> is an important concept in global justice and refugee literature. I do not agree with this neglect of colonial and imperial history, and will therefore follow postcolonial scholars. The field of postcolonialism is broad and can provide different perspectives on global justice. What I hold to be important is that the history of colonialism and imperialism has long-lasting effects that can still be felt in the current world. As is explained by Robert J.C. Young,<sup>48</sup> the world has been transformed during colonial times into an economic system which was primarily shaped by the West. The West had great control over this system during colonial times, and continues to dominate it in terms of political, economic, military and cultural power. It is especially this continuation of these power dynamics that colonial history still has great significance in today's world. Although former colonies have gained formal independence through political liberation, this has not resulted in economic liberation and essentially this economic dependence undermines their political liberty. This gives rise to the reproduction of structural injustice and oppression, making former colonies more prone to, e.g., poverty or severe human rights violations.<sup>49</sup> Postcolonialism, moreover, cannot be seen independent of global justice, since the postcolonial is highly concerned with the reasons why there is such grave inequality between Western states and the Global South.<sup>50</sup>

Postcolonial political theory, then, focuses on how current practices can still be seen in this wider history of colonialism which resulted in oppression and domination by the West. In the end, the goal would be the real liberation of formerly colonized states, e.g., through equal access to material, natural, social and technological resources.<sup>51</sup> Postcolonial political theory is also associated with a critique of moral universalism, i.e., a critique of seeing Western culture as the superior culture which would justify its spread over the world.<sup>52</sup> So-called postcolonial critiques in this field, which I wish to offer here, tend to challenge the continuity of colonial power relations and the nationalist perspectives on the common histories of the West and Global

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<sup>46</sup> Bhabra 2017, p.405

<sup>47</sup> Cosmopolitanism is often contrasted with nationalism and holds that all human beings belong to a single community: global society. It is mainly a challenge to nationalist beliefs about the obligations political institutions have towards people from different nationalities in the current state system. See, e.g., Kleingeld & Brown 2019.

<sup>48</sup> Young 2016, p.5-11

<sup>49</sup> Lu 2019, p.256

<sup>50</sup> Young 2012, p.20

<sup>51</sup> Young 2016, p.5-11

<sup>52</sup> Kohn 2013, p.190



South.<sup>53</sup> Having mentioned the above, let me now turn to the postcolonial critiques I have in mind for outsourcing schemes, focusing on exploitation and colonial reparations.

### Outsourcing Schemes as Postcolonial exploitation

In order for me to argue that outsourcing schemes should be seen as exploitation, let me first consider how we should understand exploitation. Jonathan Wolff<sup>54</sup> provides us with a thorough discussion on this. Wolff distinguishes between a Kantian, Aristotelian and Utilitarian form of exploitation, which would, respectively, mean that A uses B's "*vulnerable circumstances to obtain their actual compliance with a situation that violates norms of fairness; with a situation which interferes with their flourishing in some way; or with a situation which involves them in some sort of avoidable suffering*".<sup>55</sup> Given that I am concerned with global justice, or international fairness, in this section, I will take Wolff's Kantian definition of exploitation here that specifically focuses on norms of fairness. Exploitation, at least how I will use the term, should thus involve some form of unfairness. This unfairness can be either procedural, substantive or attitudinal.<sup>56</sup> Regarding procedural unfairness, an interesting question is in what light we should see past injustices like colonialism and imperialism. Most theorists agree that past injustices would be a necessary condition to call something exploitation. The problem in such cases is that the exploited party is not treated with respect and their vulnerability is not protected. Moreover, the substantive injustice in exploitation is not that it necessarily makes the exploited party B worse off than before, but rather that B is made worse off than B should have been. Lastly, it is important to mention that exploitation is regularly seen as morally problematic, which I believe is true. To summarize, exploitation, for me, should mean that (i) state A profits from an interaction with state B, in which (ii) B's compliance is obtained through A using B's vulnerable circumstances, and in which (iii) a norm of procedural and/or substantive fairness is violated. Therefore, for me to argue that we should see outsourcing schemes by the EU as exploitation, I have to show that all three conditions are met.

Let me begin with condition (i). Does the EU state profit from outsourcing schemes? I think we can conclude they do. The (populist) narrative is that refugees form a problem for Western states. It is, e.g., argued that refugees are free-riding on Western welfare states, that their cultural background is incompatible with Western culture, or that they form a threat for society because

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<sup>53</sup> Manzo 1997, p.388

<sup>54</sup> Wolff 1999, p.110-116

<sup>55</sup> Wolff 1999, p.114

<sup>56</sup> Zwolinski et al. 2022

they might belong to terroristic groups.<sup>57</sup> Refugees are thus seen as a problem in Western countries, and outsourcing schemes should therefore be seen as externalizing this problem. EU states hereby benefit from outsourcing schemes, which would meet condition (i). Even if Western states would not hold refugees to be a problem, as discussed in the ‘*negative valuation*’-objection,<sup>58</sup> but Western states would prioritize distributing public goods among its own citizens, condition (i) would still be met. Both refugee protection and furthering the interests of a state’s own citizens might be valued positively, but by outsourcing the refugee protection the welfare of the state’s own citizens is prioritized. Outsourcing the refugee protection was argued to be financially beneficial for EU states,<sup>59</sup> so more financial resources will be left to further the interests of the EU state’s own citizens. Therefore, EU states benefit from outsourcing schemes, even if they do not see the refugees as a problem.

The next question, now, is whether condition (ii) will be met. Do EU states use the vulnerable circumstances from non-EU states in outsourcing schemes to obtain compliance with the scheme? I hold that they do, as I will explain here. First of all, I believe that most states to which EU states would want to outsource their refugees would be former colonies. European states, although not all, have a long history with colonization in South-America, Africa and South(-East) Asia. As explained above, this has resulted in a political and economic world order highly benefitting these formerly colonizing states, such as certain EU states. The stark inequalities that have originated between Western states and the rest of the world cannot be neglected, as I follow postcolonialism here. Due to these inequalities, which we should see as vulnerable circumstances, European states know that the less affluent states, mainly former colonies in the Global South, will be sensitive to economic benefits. We can therefore expect that outsourcing schemes will be mainly established with formerly colonized states, similar to the envisioned scheme between Denmark and Rwanda. Now, can we say that EU states would *use* the vulnerable circumstances of former colonies to obtain their compliance? I think they do, given that they will only try to establish outsourcing schemes with these states because they have vulnerable economic circumstances. It is rather unthinkable, I believe, that outsourcing schemes will be established between two affluent states, given that the additional economic benefits a state would have to offer would be too high for this. The economic vulnerability compared to the EU state is, I think, the deciding factor to try to establish an outsourcing scheme with a less

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<sup>57</sup> Campo et al. 2021, p.5,13,31

<sup>58</sup> See *Chapter 2*, p.18

<sup>59</sup> See *Chapter 2*, p.16

affluent state, and this makes that these circumstances are *used*. It has been argued, however, that outsourcing schemes do not have to be coercive,<sup>60</sup> because states who cannot provide its own citizens with their basic needs would not be allowed to participate in outsourcing schemes. I think this condition would indeed prevent coerciveness, but it does not prevent that the economic vulnerability of other states cannot be used by EU states. There will still be multiple less affluent states which would be considered sufficient in providing their own citizens with their basic needs. At the same time, these states would also still be economically vulnerable to the EU, given the great economic power of the EU. The EU can therefore still use the vulnerable circumstances of multiple states, including former colonies, to obtain their compliance with outsourcing schemes.

The final question, then, would be whether norms of procedural and/or substantive fairness would be violated, i.e., if condition (iii) will be met. First, I want to focus on procedural fairness. From a postcolonial perspective, the process seems to be unfair given the initial position the participating states in an outsourcing scheme are in as a result of former colonial practices. We could therefore, I think, already call this exploitation given the procedural unfairness. A rebuttal to this might be that not all states the EU could outsource refugees to, are former colonies. Would the EU state still violate a norm of fairness in this case? I think it does, by following Richard W. Miller. As argued by Miller,<sup>61</sup> affluent states have a general duty not to take advantage of less affluent states. Taking advantage of less affluent states should be considered morally wrong, even though the interactions between affluent and less affluent countries can often be mutually beneficial. They are often still considered unfair, in the absence of further justification, because the benefits to the affluent state are derived from the difficulties the less affluent states have in advancing their own interests in the interaction. This makes that the less affluent state is made vulnerable to being taken advantage of. This, I believe, is a form of procedural unfairness. Moreover, this state that is not formerly colonized, is subjected to the global world order that has risen in colonial times. The EU could, I think, therefore still be argued to profit from the former injustices of colonial times, even with states it has not formerly colonized. A common colonial history is therefore not a necessary condition to regard an outsourcing scheme as a violation of a norm of procedural fairness.

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<sup>60</sup> See Kuosmanen 2013, p. 115-118 for a discussion on this.

<sup>61</sup> Miller 2010, p.60-62

Furthermore, I think we can state that a norm of substantive fairness is violated as well. At first glance, we might think it is not, since all parties seem to benefit from the deal. However, it still sounds dubious that European states could actually benefit from transferring their ‘problem’ to former colonies. Without outsourcing schemes, European states would be obliged to protect the incoming refugees themselves in the current asylum system. One way the outcomes of an outsourcing scheme might be considered fair, is if they would reduce global inequalities, since this could be seen as a sort of reparation for colonial history. However, I think we can still argue that the former colony is made worse off than it should have been, since the reparation (or developmental aid) would now be conditional on whether it is willing to host extra refugees. The former colony deserves this reparation regardless of this condition,<sup>62</sup> and therefore this would be problematic. Moreover, whether outsourcing schemes can effectively reduce inequalities is questionable to me. The selling states are indeed offered additional resources which could be used for developmental purposes, but European states will benefit from these deals as well by saving costs. Furthermore, outsourcing schemes will only give less affluent states more resources, but as long as the global system is dominated by the West, I think it would be naïve to think that such schemes could significantly reduce inequalities.

Since I have shown that all three conditions for exploitation are met in outsourcing schemes by the EU, I want to conclude that outsourcing schemes should be seen as a (postcolonial) form of exploitation. This would be morally problematic, and therefore EU states should refrain from establishing such schemes if they wish to be respectful towards non-EU states. In the next section, I will argue that establishing outsourcing schemes do not align with needed colonial reparations, which would be an even stronger motivation for EU states not to opt for outsourcing schemes.

### Outsourcing Schemes Conflict with Colonial Reparations

Apart from the (postcolonial) exploitation that I explained above, there is another postcolonial critique, which has its origin in reparations for colonialism. Given the injustice of colonial practices, multiple authors have argued for the need of reparations.<sup>63</sup> As explained by James Souter,<sup>64</sup> reparations can have three components: restitution, compensation and satisfaction. Restitution would mean that states attempt to return to the status quo before the harm was done

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<sup>62</sup> Tan 2007, p.283-302. In the next section, I will further elaborate on colonial reparations.

<sup>63</sup> See, e.g., Tan 2007; Collste 2010; Táiwò 2022

<sup>64</sup> Souter 2014, p.329

that has to be repaired. In the case of colonial reparations, this seems impossible and is therefore not of interest here. Compensation entails monetary or material transfers to compensate for the harm that was done, and satisfaction can be achieved by apologies and guarantees of non-repetition. Here, I want to focus on this last form of reparation, satisfaction, since I think it is questionable whether outsourcing schemes can be in line with this type of reparation.

What does satisfaction exactly entail? It is mainly a symbolic form of reparation, Souter (ibid.) argues, since it is merely words and intentions that are expressed as reparation. However, they can be argued to be the starting and essential point of reparations, since it is exactly this acknowledgment of wrongdoing that would give strength to other forms of reparation. Without satisfaction, it is hard to imagine that an action is really intended to be reparative. In this paper, I want to follow Kok-Chor Tan<sup>65</sup> that certain European states with a colonial past owe reparations to former colonies, which I think should minimally include apologies and guarantees of non-repetition. Following this claim, I now want to argue that outsourcing schemes are not in line with guarantees of non-repetition.

When a state provides its former colonies with reparations in the form of satisfaction, it acknowledges that former colonial practices were wrong and unjust. Such practices included intrusions, conquest, economic exploitation and domination<sup>66</sup> by European states.<sup>67</sup> Reparation by satisfaction thus means acknowledging exploitation and domination were wrong, and that this should not happen again. Is it morally permissible, then, for European states with a colonial past, to outsource their incoming refugees to former colonies? As outlined above, I hold that this strategy should be regarded as another form of exploitation in which European states (ab)use their superior economic power to buy off their problems. Especially to their own former colonies, this would be detrimental to their intentions of non-repetition. But I hold that all kinds of outsourcing to former colonies, either their own or former colonies of other (European) states, would be detrimental for this intention. Reparation through satisfaction by a certain state would first be an apology towards their own former colonies, to state that what their forefathers did was wrong and that this still influences the state the former colonies are in. This apology or

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<sup>65</sup> Tan 2007, p.283-302

<sup>66</sup> Exploitation can be linked to the concept of domination, which often involves exploitation. Nicholas Vrousalis does this by stating that “*A dominates B if A and B are embedded in a systematic relationship in which A takes advantage of his power over B, or the power of a coalition of agents A belongs to, in a way that is disrespectful to B*”. See Vrousalis 2013, p.139.

<sup>67</sup> Fonkem 2020, p.55

acknowledgment of wrongdoing should be coupled with a guarantee for non-repetition towards those former colonies. However, only a guarantee for non-repetition towards your own former colonies is not enough. Colonialist practices were immoral, and should therefore happen to no state again. If we indeed consider outsourcing to be postcolonial exploitation, this should not be permissible with any former colony. Otherwise European states might just shuffle the former colonies so every state gets a former colony which was colonized by another state. This would still be the same type of postcolonial exploitation, where European states buy off their problems in former colonies.

Given these lines of postcolonial critiques, I argue that outsourcing schemes should be considered morally problematic. Given the history of exploitation and domination by the West, EU states should be careful not to keep abusing their power. By setting up outsourcing schemes, and again falling back to a tactic of exploitation, EU states would do essentially this. Therefore, if EU states are really committed to international relationships based on mutual respect and non-repetition of the past, they should refrain from employing outsourcing schemes. I now wish to move to another line of reasoning against outsourcing schemes that we could construct related to global justice: the need of burden-sharing.

## ii. The Burdens of Refugee Protection Are Distributed Even More Unfairly

As for many aspects of world distribution, we can also ask ourselves what would be a just distribution of refugees over safe countries with regards to global justice. Refugees are typically seen as a burden, since they require resources like housing, food and education, while, at least at first, they will not be able to return any economic benefits. Given that the right to asylum does not specifically lay any duty on any specific state until a refugee asks for asylum in a state, I hold that this would call for some form of burden-sharing, in both the provision of refugee protection and the costs of global refugee protection. Such burden-sharing between states has also been defended by Gibney,<sup>68</sup> who considers fair shares in refugee protection to be an important normative goal. Before I will consider how Gibney understands these fair shares, there is a more fundamental question I would like to raise.

This question is whether a state should be allowed in buying off their obligations regarding their fair share in refugee protection. Up until now, this has been assumed in this paper, but this is a

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<sup>68</sup> Gibney 2015, p.456-457

question that should be asked as well. If not, outsourcing schemes could hardly be regarded morally permissible. Michael J. Sandel<sup>69</sup> discusses how the introduction of markets in certain fields might corrupt or crowd out moral values. Sandel therefore argues that we should always first think about what values and norms should govern important social practices. Refugee protection is, I think, and Sandel seems to agree with this, such an important social practice for which it is not obvious that commodifying it will not corrupt the moral values that should govern it. Partly, we would come back to the concerns related to the dignity of the refugees, which I do not want to discuss further than what I did in *Chapter 2*.

Another question related to the above is what it means to have an obligation as a state, and how a state can fulfill these obligations. One type of duties which are considered not to be alienable, are citizenship-based duties like jury duties. Sangiovanni therefore contrasts states' duties of refugee protection to jury duties citizens might have in certain law systems to investigate whether refugee protection duties could be alienable or marketable.<sup>70</sup> A market in such citizenship-based duties are thought to devalue the social meaning of such duties. These duties should be regarded as reflections of what a citizen owes as a fair return to the state and its fellow citizens for contributing to the flourishing of the citizen. They are grounded in the equality of all citizens to the state and trading them would devalue this. The question is whether such inalienable duties should also exist for global duties on a state level. The duties of refugee protection, as explained by Sangiovanni, stem from the state system that makes refugee flows inevitable, yet contributes to the welfare of all states. Since all states are assumed to benefit from the system, these duties should be considered collective duties which need to be shared fairly. The comparison between jury duties and refugee protection duties, stated like this, seems to hold, but Sangiovanni problematizes this. Whereas inalienable jury duties additionally secure that the accused is judged by an impartial jury which reflects wider society, refugee protection duties should ensure refugees can claim their right to asylum. Securing the impartial jury in another way than randomly selecting citizens is probably not possible, and therefore citizens should fulfill this duty themselves. Sufficient refugee protection in line with the right to asylum, however, almost always is possible elsewhere. By financing the provision of public goods like housing and food for the refugees, states that outsource refugee protection still share in the burdens of refugee protection. It is therefore that selling jury duties devalues the practice, but it is not clear that selling refugee protection would devalue it in the same way. Given this

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<sup>69</sup> Sandel 2013, p.121-125,127-128

<sup>70</sup> Sangiovanni 2023, p.409-411

additional purpose of jury duties, I agree with Sangiovanni that the comparison does not hold. This makes it questionable why refugee protection duties *as such* should be considered inalienable in the global state system. This is also in line with Himmelreich<sup>71</sup> who assumed a distinction between first-order and second-order duties in refugee protection.

Let me now return to Gibney and how he understands fair shares in the field of refugee protection. Gibney<sup>72</sup> starts from the statement that the current distribution is unfair and compellingly holds that merely the abolition of non-arrival policies will presumably not result in a fair distribution of refugees. Currently, both due the fact that most refugees originate in the Global South and due to the non-arrival policies of Western states, the majority (76%) of refugees is hosted in low- and middle-income countries and 70% of refugees is hosted in neighboring countries of countries in conflict.<sup>73</sup> Given the stark inequalities between the West and the Global South, Gibney and others<sup>74</sup> consider this unfair, which I agree with. The current unfair distribution is partly due to the non-arrival policies by the West. Lifting these would, however, presumably result in Western states being unproportionately burdened by refugees claiming protection, which would also be unfair. There is therefore a need for a scheme which would be effective in establishing fair shares regarding refugee protection. It is a question, though, what fair shares should look like. For Gibney, fair shares should be based on the integrative abilities of states, so if a state would have a higher integrative ability, it should host more refugees and vice versa. Such integrative ability could possibly be measured by the population size, gross domestic product (GDP) and refugee population size of a given country. This way, both economic burdens and burdens of a transforming society would be considered. I will follow Gibney in this, since I think costs on both aspects should be considered. The difficulty, however, is that a fair distribution might be too idealistic, given that states act mainly out of self-interest. At most, I think, we could expect partial compliance with fair shares. This is not to say that we cannot condemn the current distribution and try to make it more fair, or at least prevent it from becoming more unfair. This is, though, exactly what I foresee will happen when outsourcing schemes would be permitted for the EU.

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<sup>71</sup> See *Chapter 2*, p.14

<sup>72</sup> Gibney 2015, p.456-457

<sup>73</sup> UNHCR 2023

<sup>74</sup> See, e.g., Sandelind 2021



Let me spell it out why this would be the case. If we follow Gibney, there should be some kind of balance between the three factors determining the integrative capacity: population size, GDP and refugee population size. This balance is already disrupted because of the restrictive policies in place in the world, making it that the West protects too few refugees. If incoming refugees are outsourced by Western states, the refugee population size in non-Western states will increase. In order for there to be a fair balance, either the population size or the GDP of non-Western states should increase as well. Increasing the population size is hardly possible, so the GDP should rise. This means that the inequality in GDP should decrease between Western and non-Western states. However, for this to happen, the compensation to selling states should be way higher than we can expect it to be, given that affluent states, most of them Western states, possess 60% of the world's wealth.<sup>75</sup> The compensation is argued to be beneficial for Western states as well, in the sense that this will cost less than protecting the refugees themselves. To me, outsourcing schemes therefore do not seem to be in line with requirements of global justice regarding the distribution of refugees. It would only make the distribution more unfair.

Although most of my thesis is grounded in non-ideal theory, let us now take a little step to a more ideal initial state. Would outsourcing schemes still be morally problematic regarding the global distribution of refugees if there is an initial fair distribution of refugees over the states? I hold it does, as I will explain here. If outsourcing schemes will be deployed, we can expect that less refugees will threaten their life to go to Europe over the Mediterranean Sea. This is because they know there is a likelihood that they will be deported again when arriving in the state where they want to apply for asylum. It would both be a waste of money for the refugee to pay a human trafficker to take them over the Mediterranean Sea and an unnecessary threat to their life if they have no future at the other side of the Mediterranean Sea. This is of course also what European states would like to pursue, that refugees will have a disincentive to even come to Europe. These refugees will have to be hosted somewhere else, though. This will increase the burdens on non-European states, which are often either low- or middle-income. These states where the refugees will apply for asylum will have less resources to try to outsource their incoming refugees. Moreover, outsourcing is presumably only possible to states that have less financial power than your own state, or at least it is highly unlikely that low- or middle-income countries will be able to outsource refugees to high-income countries. The financial benefits that lower-income countries can offer to higher-income countries will presumably never be

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<sup>75</sup> UNHCR 2023

enough to incentivize these higher-income countries to take up extra refugees. This means that high-income countries effectively keep out refugees by their outsourcing schemes, and that they will not take up extra refugees because they would have no incentive to do so, other than their moral compass maybe. What this means is that the burdens, which were shared fairly over global society, will shift towards the states that are less affluent. Given the need for a fair distribution of burdens, this does seem unfair to me. Again, the balance between population size, GDP and refugee population size will be distorted, with the less affluent countries being unproportionately burdened. With the current distribution of burdens, it would seem even more unfair if the burdens are shifted even more towards the lower- and middle-income countries, which I argue will happen when outsourcing schemes would be permissible. This makes outsourcing schemes problematic to me.

In summary, although fair shares would not necessarily request from states that they fulfill the refugee protection duties on their own territory, outsourcing schemes would make the distribution of refugee protection worldwide even more unfair. This is something to be prevented, and therefore outsourcing schemes are morally problematic.

### iii. Conclusion

In this chapter, I have tried to contrast the more or less utilitarian/efficiency arguments in favor of outsourcing schemes with arguments that are concerned with global justice. First of all, I have given two strands of a postcolonial critique, one focusing on why we should see outsourcing schemes as postcolonial exploitation and one focusing on why outsourcing schemes are not in line with postcolonial reparations. Secondly, I argued that outsourcing schemes would make the distribution of burdens regarding refugee protection even more unfair between states. Low- and middle-income countries would end up being burdened even more compared to high-income countries, while it should be the other way round.

It is still a question whether these concerns outweigh the expected improvement of the status quo. For someone who is more in favor of deontology, like myself, these concerns combined with the concerns over the dignity of the refugees might be enough to convince them, although these concerns should still be weighed against the increase of refugees being offered sufficient protection. However, for someone who supports utilitarianism, these concerns might not be enough. For them, sufficiently protecting more refugees than before might be too important, and I do not think this is unreasonable of them. Therefore, to make my case, i.e., that

outsourcing schemes should be impermissible for EU states, stronger and to convince the utilitarian, I will now return to the '*improvement of the status quo*'-argument. I will argue why I think it is an illusion that outsourcing schemes will significantly improve the status quo, which would undermine the utilitarian argument in favor of outsourcing schemes.

#### 4. The Illusion of Improving the Status Quo & Unguaranteed Protection

In this chapter, I want to return to the main argument in favor of outsourcing schemes, that it would be an improvement of the status quo, and criticize it. I will do this twofold. First, I want to raise an empirical concern focused on whether outsourcing schemes can really incentivize the collective of states to take up more refugees. Secondly, I want to raise a more fundamental concern about the human rights of the refugee and question if states can ensure that outsourced refugees will obtain sufficient protection.

Before I do this, let me briefly recap the '*improvement of the status quo*'-argument in favor of outsourcing schemes. Compared to the status quo, the asylum system would be improved on at least two aspects. Firstly, two perverse incentives would be lifted, one at the level of states and one at the level of the refugees themselves. European states currently take a tough stance on immigration, to prevent to be burdened too much, from their perspective, by asylum applications. Refugees, on the other hand, have an incentive to try and get asylum in Europe, given the better economic opportunities, while they could also apply for asylum in other states they travel through. Himmelreich argued these two incentives to be perverse, and argued that outsourcing schemes would be a way to avoid these, thereby contributing, e.g., to less refugees drowning in the Mediterranean Sea. Secondly, outsourcing schemes are argued to give states a positive incentive to take up more refugees, since hosting refugees would now come with compensation by states outsourcing them. The improvement on both aspects is expected to result in an overall increase of refugees who are given proper protection, and this would be an improvement of the status quo.

##### i. A New Perverse Incentive That Undermines the Effectivity of the Asylum System

The '*improvement of the status quo*'-argument is premised on a change of incentives which is expected to result in an improvement of the status quo. This is an empirical argument and it is therefore questionable whether these incentives will indeed result in the expected behavior of both states and refugees. I do agree, however, that the abovementioned change in incentives are likely to take place. Nevertheless, I hold that this is not the full story and we should consider at least one more incentive that poorer states will now get: an incentive to implement (stricter) non-arrival policies themselves. I will elaborate on this in this section.

If outsourcing schemes would become a new reality in the asylum system, this would mean that states could get economic benefits for hosting refugees if they are outsourced to them. Let us

take the perspective of poorer states here, which would be sensitive to being the selling state in outsourcing schemes. These states can have refugees entering their territory in two ways now, either via the usual way where refugees pass the border, or via outsourcing agreements with other states. Whereas refugees entering the state via outsourcing agreements will bring economic benefits to the state, refugees entering in the usual way will not. For states, it would therefore be more beneficial to have refugees entering via outsourcing agreements than via the usual way. I therefore think it is not unreasonable to expect states to implement (stricter) non-arrival policies, in order to effectively not have to host more refugees while obtaining the benefits of agreeing to outsourcing agreements. Maybe it will not necessarily be the states surrounding a region of conflict who would implement such policies, since I find it hard to believe that any state would purposely let refugees be trapped in a conflict zone. However, for states further away from regions of conflict, this could be an interesting approach, economically speaking.

If many states would opt for such strategies, this could be devastating for the asylum system overall. First, this could lead to a distribution which would seem to be even less fair than it is now. Currently, the majority of refugees are already hosted in states neighboring the region of conflict. With (stricter) non-arrival policies, it will be harder for refugees to leave these states and continue their travel to a state further from the region of conflict. This would again be problematic if we would like to pursue a fair distribution of refugees. Outsourcing would be an option for the states, but most states surrounding a region of conflict are, at least in the current world, often states that can be expected not to have enough economic power to do this. Moreover, states outside the region of conflict will, as we see nowadays, not feel obliged to go rescue refugees from the conflict region in order to release some burdens from the states surrounding the region of conflict.

Second, if such an incentive would be created and acted upon, it can even become questionable whether more refugees will be given proper protection. With this, the main argument in favor of outsourcing schemes would fall. Let me elaborate on this. In the current system, refugees flee from their homes to states where they hope to get safety. They might stop at the first country they flee to, or travel further to, e.g., Europe. As stated earlier, hosting refugees is a burden for a society, given the resources that need to be used for it. If states have an incentive to implement (stricter) non-arrival policies, as I think states further away from the region of conflict would have, refugees will have a harder time to get outside the region of conflict to find the needed

safety. The neighboring states of their country of origin might provide them the needed protection, but given that these neighboring states are already burdened by many refugees and the economic resources are presumably not abundant, it is questionable to me that all refugees will get proper protection. Nowadays, there are already reports about questionable standards in the refugee camps in which most of the refugees stay long-term.<sup>76</sup> It would be naïve to think that these standards of living in these refugee camps will suddenly increase up to a decent level once more refugees have to be hosted. More presumably standards of living will even decrease when more refugees have to be hosted in these states neighboring the region of conflict. To me it is therefore questionable whether adding outsourcing schemes to the current asylum system will result in more refugees being given sufficient protection. This is, of course, an empirical concern just like the positive change in incentives Himmelreich envisioned. Without implementing the scheme, we might not know who is right in this.

#### ii. EU States Cannot Ensure Protection Elsewhere

Let me move on to a more fundamental point now. For outsourcing schemes to be morally permissible, I think it is not unreasonable to request that states outsourcing their incoming refugees ensure that the refugees are given sufficient protection in the selling state. This is in line with the second-order duty of refugee protection, that cannot be outsourced, as explained in *Chapter 2*.<sup>77</sup> I here want to question whether this would be possible by imagining what possibilities states could have to ensure other states comply to the standards of refugee protection.

One way in which states could try to let selling states comply with sufficient standards of protection would be to make the economic benefits dependent on whether the selling state upholds the standards. This would give selling states a great incentive to keep up sufficient standards for refugee protection, since otherwise they will not obtain the economic benefits for hosting the additional refugees. This is, however, no real ensuring of proper protection for refugees. It is still possible that refugees will not be protected sufficiently, and this is most detrimental for the refugees themselves. They already flee from a place where their human rights are not respected, and by being outsourced they are still dependent on the selling state for whether their protection will be sufficient. It is also a question what would happen if the buying state observes that the protection is not sufficient. Will the buying state feel obliged to

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<sup>76</sup> Parekh 2021, p.28-36

<sup>77</sup> See p.14

retrieve the outsourced refugees? Or would they think it is sufficient that they do not pay the economic benefits to the selling state? Regardless, it cannot be ensured in this way that the refugees will not be harmed when they are being outsourced. If it would not be the protection of other human beings for which the buying state would try to find a service provider, this might not be so problematic. If, for example, a state would want to build houses and tries to find a contractor for this purpose, it would not be problematic that the actual building of the houses is outsourced. If the contractor turns out to be incapable of building sufficient houses, no direct harm is done to human beings to which the state has obligations to. The state can then, when it finds out the contractor is insufficient, find a new contractor. However, with outsourcing refugees, there is the possibility of direct harm towards the refugees, human beings to whom the buying state has obligations. I hold that it is problematic to impose such risks on refugees when the refugees themselves do not have a say in whether they are outsourced or not. Especially given the history of the refugees with the harms they have experienced, it seems problematic to outsource them while not being able to guarantee that their protection in the selling state is sufficient.

Another way of trying to ensure that the protection would be in line with at least minimal standards for protection, could be for buying states to send their own supervisors to the selling state and oversee the protection. To ensure sufficient protection, this could be an effective strategy, but this might be problematic in another way. I think that this could give rise to an even stronger postcolonial critique. When buying states would send their own people to the selling state to supervise or manage the refugee protection, it could be seen as EU states buying their way into another sovereign state. Although agreed to by the selling state, the EU state would, I hold, essentially be colonizing a small piece of land in that state to externalize refugee protection. Given the injustices of former colonialism, I hold that EU states should be very hesitant in employing such schemes. I do not see another effective way to ensure protection, and therefore think it is an illusion that sufficient protection can be ensured in a respectful manner towards the selling state.

Yet another question regarding refugee protection that arises is what conditions selling states should meet for being eligible to be a selling state. Providing a thorough discussion on this question is outside the scope of this paper, but I would like to focus on one example: LGBTQIA+ protection. As the EU is committed to human rights, they must be committed to the protection of LGBTQIA+ people as well. Both inside and outside the EU, LGBTQIA+

persons face discrimination and violence. However, whereas in most EU states LGBTQIA+ persons are protected by law, this is not always the case outside of the EU. In 2020, consensual same-sex sexual acts between adults in private was still illegal in 69 countries, with the majority of the states having these laws being in Africa or the Middle-East. Moreover, 42 countries, mostly in Africa and Asia, have legal restrictions on the freedom of expression on sexual and gender diversity issues. On the other hand, protection against discrimination based on sexual orientation was found in only 57 states, mostly in Western and Latin American states.<sup>78</sup> Would LGBTQIA+ protection be a necessary condition to being eligible for being a selling state in an outsourcing scheme? I think this is no question when it is related to LGBTQIA+ refugees, they should never be outsourced to states where they are not protected. But what about other refugees? Would such policies also be a morally relevant factor to consider for refugees who have not identified as LGBTQIA+ (yet)? I think, at least for some, it does. Refugee children and adolescents might have not come to the realization yet how they identify themselves, or who they love. This might even be true as well for adults, since people might realize this only later on in life. Could it be considered sufficient protection when children and adolescents are sent to LGBTQIA+-unfriendly states? I think this is questionable, given that this might harm them in the future. Moreover, it could even lead them to becoming a refugee once more in the future, which I think should be prevented as well as possible. LGBTQIA+ persons may not be the only (minority) group facing difficulties in several states. Think about women's rights or the right to freedom of religion. The general point I want to make here, is that human rights violations take place in many states, as presented by Human Rights Watch.<sup>79</sup> There should therefore be a critical reflection on what counts as sufficient refugee protection and how such human rights violations in potential host states should be regarded related to refugee protection.

### iii. Conclusion

My goal in this chapter was to critique what I consider to be the main argument in favor of outsourcing schemes, that it would be an improvement of the status quo. I have tried to do this by arguing that potential selling states will have a new/stronger perverse incentive to implement non-arrival policies. This, I believe, will undermine the effectivity of the asylum system, making it questionable whether outsourcing schemes will indeed lead to more refugees being granted sufficient protection. Furthermore, I have tried to argue that it is for buying states not possible to really ensure refugee protection in a respectful manner to selling states, while I hold

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<sup>78</sup> Mendos et al. 2020

<sup>79</sup> Human Rights Watch 2023



that this should be a condition given the buying states' second-order duty of overseeing refugee protection.

## 5. Conclusion

In this paper, I have explored the moral permissibility of EU states outsourcing incoming refugees to non-EU states. First, I considered what would be a moral defense to such outsourcing schemes. I believe the main, and fairly strong, argument in favor of such schemes would be that they are considered an improvement of the status quo, given several premises, and that they are in line with the right to asylum. The status quo would be improved because perverse incentives are relieved from the asylum system, and states are given a positive incentive to host more refugees in the form of compensation. In *Chapter 4*, I have argued that it is questionable whether the status quo would actually be improved, by considering a new perverse incentive in an asylum system with outsourcing schemes and questioning whether refugee protection can be ensured. More importantly, though, I have contrasted the utilitarian ‘*improvement of the status quo*’-argument with global justice concerns in *Chapter 3*. These considerations should, as I have argued, refrain EU states from employing outsourcing schemes with non-EU countries. I have given these global justice concerns on two fronts. First, I gave a postcolonial critique on outsourcing schemes by arguing that they are a form of (postcolonial) exploitation and that they are not in line with needed colonial reparations. Secondly, I argued that outsourcing schemes would make the distribution of refugees over different states even more unfair than it already is.

So, to come back to my research question, should EU states be permitted to outsource incoming refugees to non-EU states? I want to conclude in the negative. It is, as I have argued, questionable that outsourcing schemes would actually be an improvement of the status quo for refugees. This undermines the main argument in favor of outsourcing schemes. Moreover, outsourcing schemes are not in line with norms of global justice, and would therefore be unjust towards non-EU states. This makes it that, without further justifications in favor of outsourcing schemes, they should not be regarded morally permissible under nonideal theory.

This conclusion does not mean that I want to defend the current asylum system. Change is needed in order for all refugees to be successful in finding sufficient protection outside their country of origin. This should still be an important normative goal for global society. Outsourcing schemes, however, seem not to be the way to achieve this. I think it is therefore important to analyze other possible fixes for the system’s flaws. I do not have such solutions at hand, and these would be outside the scope of this paper. I therefore hope future research can be focused on this.

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