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Abstract:

There is a significant risk that some Small Island States will become uninhabitable due to sea level rises, driven by anthropogenic climate change. Should this happen, citizens of such states will be forced to migrate but, under the current system of international law, these migrants could become stateless. Inspired by the Nansen passport, the first travel document issued to stateless persons, this paper proposes that migrants from threatened island states (the territorially dispossessed) should be provided with a modern equivalent: a "Passport for the Territorially Dispossessed" (PTD). A PTD also gives its holder a right to choose their new nationality. The PTD proposal has an advantage over competing suggestions that states should admit a set proportion of these migrants. Quota schemes will generally fail to appropriately compensate the territorially dispossessed. The principle of free choice, by contrast, allows them to retain a measure of control over their destiny and to migrate with dignity.

Keywords: climate change; justice; Small Island States; statelessness; responsibility, migration.

A New Nansen Passport for the Territorially Dispossessed

Introduction

It is widely thought that the effects of global climate change will result in human migration, perhaps for many millions (Stern, 2007: 77).[1] Whilst making precise estimates of the numbers of persons displaced directly or indirectly because of climate-change is beset with methodological difficulties (Gemenne, 2011: 45-6), it is reasonable to expect that many existing environmental drivers of migration will be sensitive to climate change, especially in the developing world (Black *et al*., 2008: 18; see also Black *et al*., 2011: 8-9). Changes in climate will cause local environmental changes: soil erosion, water shortages, water pollution and deforestation. Any of these might cause people to migrate if no other options are available. A particularly conspicuous cause of environmental displacement is rising sea levels. Regional variances in sea-level rise will likely result in Small Island States (SISs) suffering disproportionate consequences in terms of land loss (Bindoff *et al*., 2007: 413-414; Mimura *et al*., 2007: ch. 16). Indeed, according to some estimates, we might within fifty years witness the physical disappearance of a number of SISs (Park, 2011: 1). The Maldives, the Marshall Islands, Tuvalu, Kiribati are oft-cited examples of states facing the risk of having their territory submerged as a consequence of rising sea levels (e.g. Barnett and Adger, 2003: 322; Kelman, 2008: 20; Yamamoto and Esteban, 2010: 1).

Citizens of SISs thus appear to form a special category of *environmental refugee*.[2] They stand to lose not only their homes and livelihoods, but their membership of a

[1] Stern quoted the estimate of up to 200 million made by Myers and Kent (1995: 1). This figure was repeated many times since, including by Myers himself (2001: 609), but Myers has since said it was the product of “heroic extrapolations” (Brown, 2008: 12).

[2] The term “environmental refugees” has been in use since the mid 1980s, but because of the link between refugee status and direct persecution, it is more common to talk about “climate migrants”. Both concepts are contested however. Some argue that because of the multi-causality associated with these issues there are no genuine cases of environmental or climate induced migration. It is claimed instead, that individual decisions to migrate depend on combinations of socioeconomic factors (see Laczko and Aghazarm, 2009, for an overview of the debate). In the case of the SISs however, it is

self-governing political community. There is a danger that they will become stateless persons (see e.g. Blitz, 2011; McAdam, 2010: 118-119; Park, 2011: 14). The plight of stateless persons is serious, wherever they are. They are denied the protection of a state, refused the political rights and socio-economic benefits of citizenship in their country of residence and can frequently suffer discrimination or abuse. International travel, which could improve their prospects, is all but impossible without the documentation that governments require for admission and which citizenship provides.

Call those who will become stateless, due to the climate change-induced loss of their former state's territory, the *territorially dispossessed*. This paper focuses on two interrelated questions concerning the territorially dispossessed. First, whilst the general idea that the territorially dispossessed have a moral right to citizenship in another country is well established in the normative literature (see e.g. Risse, 2009), we still have to ask how this right should be specified and institutionalised. Is it a right to become a citizen in *some* country, or is it a right to become a citizen in *some specific country of your choice*? Our second question concerns how the correlate duty of the right of the territorially dispossessed to a new citizenship should be distributed. In particular, it focuses on the duty of states *to admit and naturalise the territorially dispossessed*. We treat this as distinct from the broader question of which states should bear the financial costs of implementing such a programme.[3] In this paper we argue that:

i. The territorially dispossessed should be provided with a modern equivalent of the Nansen Passport. The Nansen passport was the first travel document issued to stateless persons initially issued to Russian refugees after the First World

arguable that there is a *bona fide* environmental cause: the state territory will be inundated due to rising sea levels. These people migrate not simply because they can no longer make a living, but because their state's territory no longer exists. For further discussion on this point, see McAdam, 2011: 12-14.

[3] The distinction between the duty to act in a certain way and the duty to bear the (full) costs of that action is, we hope, intuitively plausible. The principle of free choice for the territorially dispossessed does not necessarily entail that the state receiving the PTD holders must also bear the financial costs of resettlement. Indeed, this separation of duties to act and duties to bear the costs helps ensure that this proposal is not unfairly demanding on poorer states.

War. Let us provisionally call this new passport the Passport for the Territorially Dispossessed (PTD).[4]

ii. All states have an obligation to accept holders of this new passport and to permit them to be naturalised regardless of their usual rules for citizenship and naturalisation. This means that the territorially dispossessed have *a right to choose their new nationality*.

The argument proceeds as follows. In the next section, because the PTD scheme is not intended to apply to all climate migrants, but only those who will be rendered stateless, it is explained how the problem of statelessness might become an important issue in the context of climate change and the SISs. The following section criticises a popular approach to the territorially dispossessed, the setting of a quota of the territorially dispossessed for each state. The following two sections argue that instead, the territorially dispossessed should be admitted to the country of their choice. The penultimate three sections consider three different objections against the idea that *all* states have a moral duty to accept the PTD. The final section concludes.

Small Island States, Climate Change and the Risk of Statelessness

A stateless person is any person who is not effectively recognised as a national by any state, and who therefore lacks the political and social rights commonly associated with citizenship. There are several reasons for why a person might become stateless, e.g. state succession, arbitrary deprivations of nationality, and contradictions between different nationality legislations (cf. Walker, 1981: 110-114). People displaced from SISs also face the risk of becoming stateless. It is often stressed that the possibility of a total loss of territory due to environmental disaster, or the total displacement of a population is entirely novel. There have been cases of extinction of states before, but they have occurred in the context of succession, whereby another state has replaced

[4] After presenting this idea for the first time, at the 5th Uppsala Forum Workshops on Global Climate Change in April 2012, we learned about the 'Nansen Initiative' which was officially launched in October 2012. The Nansen Initiative is a state-owned consultative process, chaired by Norway and Switzerland, aiming to build consensus among states about how to best address cross-border displacement caused by sudden- and slow-onset climate-related and geophysical disasters (See Kälin, 2012).

the extinct one. The disappearance of a SIS would be without precedence in this sense, insomuch as there would be no successor state (Park, 2011: 8).

There are two ways in which an environmental migrant from an SIS *might* become stateless in such a situation. We say “might” because we want to stress that it is a controversial issue whether these migrants really will become stateless. There is no precedence for cases like these and hence the resultant legal status of the former population of disappeared SISs is unclear (Cf. McAdam, 2010: 118). Our argument is conditional upon the premise that these migrants become stateless.

First, an SIS might become extinct according to international conventional law because it lacks a defined territory along with a permanent population. These criteria form part of the 1933 Montevideo Convention on rights of Duties of States, and are generally accepted as representing customary international law insofar as they define a State (McAdam, 2010: 110-113; Park, 2011: 4; Rayfuse, 2010). If the migrants from an extinct SIS are not accepted as citizens in some other state, they might become stateless. Whilst there is no general right to nationality in customary international law (McAdam, 2010: 118), Article 15 of the United Nations Declaration of Human Rights proclaims the right to a nationality (understood as referring to membership of a nation state). Two UN conventions deal specifically with statelessness: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. However, both are poorly ratified and embody a narrow definition of statelessness which applies only to *de jure* statelessness, i.e. to people who are not recognised as nationals by any state under the operation of its law. They do not address *de facto* statelessness, when individuals who are formally under the purview of a state's nationality law, but lack effective citizenship (Manly, 2007: 256; McAdam, 2010: 118).

This latter fact presents an even bigger problem when we consider the second way in which a migrant from an SIS might become stateless. Notwithstanding the definition of a State embodied in the Montevideo Convention, there is a strong presumption in international law that states continue to exist even when the criteria of statehood are unfulfilled for considerable periods of time (McAdam, 2010: 116; Park, 2011: 7). Continuity of states has been accepted on several occasions despite sometimes considerable loss of actual authority, and sometimes even in cases, e.g. Somalia, when

a central government has been lacking all together (Park, 2011: 7). Once again, there is no precedence when it comes to cases of total loss of territory or the total displacement of a population, but if continuity is presumed disappearing SISs could continue to exist as states even after they have been abandoned. Presumably, these states would be severely incapacitated. This might create a situation where the population of a SIS would find itself abroad without access to the effective protection of a state. They would then be considered *de facto* stateless (Park, 2011: 14). Because of the way current international law is constructed, the territorially dispossessed migrants from SISs run a serious risk of becoming stateless. To address this "rights gap", some institutional innovation is necessary.

One might ask what is so special about the territorially dispossessed compared to other kinds of migrants from developing countries. There are billions of migrants in the world trying to escape severe poverty. There are also millions of people who have been forced to leave their homes because of environmental destruction, but where this destruction is localised. Hence these environmental migrants do not fall within the category of the territorially dispossessed. Should these economic and environmental migrants not receive rights equivalent to those afforded by the PTD? It might be true of many economic and environmental migrants that they cannot expect to be protected by their own states and that they do not have effective political or socio-economic rights. Indeed, *de facto* statelessness is a gradual concept and many people living in states with poorly functioning state institutions could perhaps be considered *de facto* stateless. Why should not they also be given PTDs even if they are not even migrants?

Whilst there is undoubtedly a moral imperative to create well-functioning institutions in developing countries and avoid all forms of statelessness, the territorially dispossessed are a special case. They are particularly vulnerable because they cannot even be potentially helped by their own state. A majority of the proposals on how to solve the problem of global poverty assume that e.g. global redistribution, foreign aid, capacity building etc. should be channelled through the state. The same is true about suggestions on how to help, often internally displaced, environmental migrants. In the case of the territorially dispossessed, however, reforming state institutions is useless if

that state has no territory over which to exercise jurisdiction. Hence we need policy innovations such as the PTD in order to deal with this particular problem.[5]

The scope of the PTD

The PTD proposal is inspired by the first travel document issued to stateless persons, which became known as the Nansen Passport. The League of Nation High Commissioner for Refugees under the direction of Fridtjof Nansen, created these passports in 1922. These legal documents gave stateless refugees a recognisable status and allowed them to travel more freely. They were originally issued to Russian refugees who had been displaced following World War I and the Bolshevik Revolution in Russia. The scheme was later extended to include to Armenians in 1924, and Turks, Assyrians, Syrians, Assyro-Chaldeans, and Kurds in 1928. In 1942 the passport was recognized by 54 states, and hundreds of thousands of passports were issued (Barnett, 2002: 242-243; Hathaway, 1984: 350-357; Marrus, 2002: ch. 2).

Nansen passport holders had the right travel to any of the countries who were part of the agreement to seek employment, or to reunite with family. If a special provision was obtained by the issuing state, the passport also made it possible for a holder to travel without losing the opportunity to return to the original receiving state (Kaprielian-Churchill, 1994: 283). It did not, however, give the holder an automatic right to citizenship. Our PTD proposal goes further in this respect, giving the holder the right of naturalisation. Moreover *all* states bear a moral duty to accept the PTD.

The case for this is made by considering two rival accounts. Byravan and Rajan (2011) argue that states who are historically responsible for the harms brought about by climate change are beholden to grant citizenship to the territorially dispossessed. Risse's (2009) proposal, inspired by the Grotian natural law tradition, takes both ability and historical responsibility into account. We argue that the very idea of determining resettlement by such principles is problematic. Whilst ability and

[5] Our proposal does not presuppose a cosmopolitan or open borders philosophy. It is indeed consistent with such views, but we believe it to be consistent with some (but not all) non-cosmopolitan views as well. We will therefore remain agnostic on the issue of what is, ultimately, the correct theory of global distributive justice. Our focus is rather on finding a justifiable solution to a particular problem.

historical responsibility are important moral considerations, they are unsuitable to determine the question of which states should admit and naturalise the territorially dispossessed.

Byravan and Rajan argue for an international treaty to institutionalise the idea that “climate exiles” should be provided with a new set of rights (political, social and economic). Climate exiles (including the citizens of SISs) should be allowed to migrate “to a particular or previously agreed upon country” (Byravan and Rajan, 2011: 253). States with historically large greenhouse gas (GHG) emissions should take responsibility for immigration rights, according to their share of cumulative GHG emissions. The principle of historic responsibility, they argue, is a reiteration of the polluter pays principle, which already is recognised in international law. Since states who emitted large quantities of GHGs reaped economic benefits in doing so, historic responsibility will generally track ability (Byravan and Rajan, 2011: 254). Noting that developing countries’ GHG emissions are projected to increase, Byravan and Rajan argue that over time, those countries must admit a proportionate number of climate exiles.

Risse takes a similar approach but unlike Byravan and Rajan, who simply stipulate that in general, ability tracks historical responsibility, Risse treats relative wealth as a consideration to be factored in its own right. Based on the Grotian idea of common ownership of the Earth, Risse (2009: 290) argues that all persons have an immunity from living under political and economic arrangements that interfere with those subject to them having opportunities to satisfy their basic needs. The territorially dispossessed will have this opportunity removed and therefore, a Grotian right of necessity takes precedence over any state’s preference to keep out the territorially dispossessed. If (but only if) a state is “under-using” its territory, it has a duty to admit those that have lost their own (Risse, 2009: 294. See also Blake and Risse 2009: 150-151). Given that climate change can be said to be due to the actions of some states rather than others, Risse argues that there is a rectificatory aspect as well. This means that the territorially dispossessed are owed more from these states than the basic subsistence that is demanded by appeal to common ownership of the earth (Risse, 2009: 296-7). Risse thus argues that the two principles of historical responsibility and relative ability should be combined, equally weighted, in an aggregate index, whereby

states would have to shoulder burdens depending on where in the index they find themselves (Risse, 2009: 296).

Another apparent difference between Risse's proposal and that of Byravan and Rajan is that Risse's index applies to all kinds of climate-change related duties. Mitigation and adaption duties are taken together and distributed according to the same principles. When it comes to the *particular* duty of resettling the territorially dispossessed, Risse argues that "preexisting relations, cultural or linguistic ties, historical connections, or practical capacity" (Risse, 2009: 297) are factors which might make some states more suitable to undertake this kind particular kind of action. Ultimately, however the aggregate index sets the limits upon the extent of duties of any state to redress injustices caused by climate change, including admitting the territorially dispossessed.

Note that for Byravan and Rajan, as well as for Risse, redress for the territorially dispossessed is conceived in terms of the duty of certain countries to expand their immigration quotas. Each eligible state must undertake to admit a certain proportion of the territorially dispossessed, the limits of which are set by a principle, or combination of principles, of justice. The difference between these two accounts, and others (e.g. Kälin and Schrepfer, 2012: 12, 60, who criticise historical approaches) rests in the principle(s) chosen which set the maximum quotas. The next subsection will argue that the approach taken above is problematic: setting immigration quotas for the territorially dispossessed is morally questionable. The patterns of resettlement across the world should instead depend on the free individual choices of the territorially dispossessed.

A defence of free choice for the territorially dispossessed I: compensation

We now come to the core idea of the PTD: that the territorially dispossessed should be given a free choice over where to migrate, due to the specific losses which they suffer. By the time they migrate, the territorially dispossessed will have already lost

their homeland and their status as a self-governing, sovereign political community.[6] They will have lost their homes and livelihoods. Their plans of life, hopes for the future, must change to fit in a new country. In short, they will have lost control and determination over many of the most important aspects of human well-being. Their control over how their lives go has been vastly reduced because of anthropogenic climate change. Accordingly a scheme of redress should aim to restore to the territorially dispossessed as much control over their future as possible.

This idea is based on the notion that the territorially dispossessed ought to be *compensated* for the fact that they have lost control over many of the most important aspects of their lives and, further, that *in some respects* such compensation is actually impossible to achieve. This latter fact motivates that other compensatory measures should be taken, such as giving the territorially dispossessed a free choice in deciding where to relocate.

Goodin (1991) persuasively argues that it is the importance of protecting people's legitimate expectations which forms the normative basis for compensatory justice. He argues that (i) people reasonably rely upon a settled state of affairs persisting when forming their life plans, (ii) it is morally desirable that people should be able to plan their lives, and (iii) compensation would, ideally, restore the conditions people were relying upon when they formed their life plans, and so would allow them to carry on with their plans with minimal disruption.

As Butt (2009: 45) points out, it is a concern for the capacity of individuals to form and carry out their life plans which gives us good reasons to support principles and institutions which protect people's opportunities to live autonomous lives by (i) upholding their legitimate expectations, and (ii) when this fails, by reversing certain kinds of damage to them. Compensation thus becomes a matter of respecting individual autonomy in the sense that, when someone's life plans are seriously disrupted by our actions we ought to act in a way (e.g. by setting up certain

[6] In this paper we focus solely on the *individual* rights of migrants from SISs. But the fact that, as a collective, they risk losing their status as a sovereign political community raises issues of whether their collective rights have been violated, and if so how this should be compensated (see Nine 2010; Kolers 2012; and Ödalen [forthcoming]).

institutions) which protects their capacity to form and carry out their life plans by restoring the conditions they were relying upon when their life plans were formed.

We take it that it is quite uncontroversial to claim that the territorially dispossessed are owed compensation. But to restore the conditions they were relying upon when they formed their life plans seems impossible. As stated above, not only they have lost their homes and livelihoods, they have also lost their belonging to a self-governing political and cultural community. They will inevitably have to adjust their life plans to fit the new situation, and there is just no way to restore the conditions which they were relying upon when they formed their original life plans.[7]

If full compensation is impossible to achieve, the compensatory measures undertaken should aim at giving the compensated individual the greatest opportunities possible to form new life plans which are subjectively aligned with the previous plans to such an extent that as minimal a disruption as possible occurs. A principle of free choice, embodied in the PTD, seems to be the best way to satisfy this requirement since it gives the territorially dispossessed the greatest degree of control possible under the circumstances.

By contrast, any proposal which involves determining quotas puts the interests of more privileged states against those who have been rendered extremely vulnerable by the loss of their own state. As such, it is incompatible with the idea of respecting the autonomy of those who have been territorially dispossessed.

Any quota system, regardless of the principle determining the quota will have the following problem: what happens in cases of "oversubscription" where a greater number of individuals wish to be admitted than that prescribed by the quota? How should the receiving state determine which individuals will be taken in and who will be left out when the equivalent to maximum (obliged) capacity is reached. There are good reasons to try to keep families together (a point to which we shall return shortly) but this does not solve the problem. What kind of principle could possibly determine,

[7] See Ödalen (forthcoming), and also de Shalit (2011) who similarly argues that it is impossible to fully compensate "climate change refugees" because you can never rectify "the loss of the place and a sense of place" (p. 323). See also Bell (2004) for similar ideas on the impossibility of full compensation to climate migrants.

for example, who should get US citizenship and who should get French, Russian or Chinese citizenship?

It might be suggested that the fairest from a procedural point of view is to design a lottery system to determine which individuals will be taken in and who will be left out when the quota for a certain receiving state is reached. The problem with a lottery system however, is that it still sees citizenship as something which is *given* to the territorially dispossessed rather than something to which they are entitled through compensation. What we are arguing is that proper compensation to the territorially dispossessed requires that the choice of were to migrate and naturalize must be left to the individual migrant. Any lottery system would leave those migrants with losing tickets without the compensation they are actually due.

The same problem faces suggestions entailing quite generous quotas. To be sure, quota systems can be more or less morally problematic, and some systems with very generous quotas could be quite decent. One can imagine quota systems were the sum of all receiving state quotas outnumbers the potential number of SIS migrants. On such a scheme some migrants would not get their first choice destination country, but at the same time no one would get their last choice. This would raise issues of fairness concerning how we should determine who get their top choice, who get their second choice, and so on. Perhaps a lottery system would once again be the fairest from a procedural point of view. But again the problem is that those who do not get their top choice would be inadequately compensated.

A defence of free choice for the territorially dispossessed II: strong interests

In a recent article, Craig Johnson (2012: 319) notes two further problems with resettling the territorially dispossessed. Johnson argues that proper respect for dignity and identity of the territorially dispossessed entails that families and friends should not be separated in any scheme of migration. However, this raises two challenges: "[o]ne largely procedural question is whether the individuals who claim to be friends or family are actually who they say they are. A second, more normative challenge concerns the ways in which we define family, friendship and other important social relations" (Johnson, 2012: 319-320).

The notable thing about this paragraph is that the posing of the "procedural" question and especially the "normative" question clashes considerably with the commitment to a principle of dignity. Arguably, it does not constitute a dignified process to require of these migrants to prove that they are who they say they are and that their friends and family are just that. More importantly however, with regard to the normative question this must depend on who is the "we" who define family, friendship and other important social relations. To have anyone except the territorially dispossessed define their most important social relationships is again to fail to treat them with respect.

If the principle of free choice is adopted, then these issues would never be raised. Instead, an individual would be guaranteed to be admitted to the country that the most important people in his/her life had also gone to. This way she would be able to satisfy interests which are deeply embedded in the life plans of most of us, and which are indeed considered to be some of the strongest interests we have as human beings (Kousmanen 2012).

Of course, this does not mean that such an individual might not face hard choices, for example, if parents wished to emigrate to one country and a sibling or partner wished to emigrate to another. But such issues are not uncommon in an age of global travel and there is the consolation that one is separated from some family or friends because each person involved has made a free choice about their own future. That such a choice is necessary might well be a matter of great regret and sorrow, but this applies to any scheme of resettlement.[8]

[8] Johnson points out that there are some potential problems with assuming that individuals have the ability to determine their relocation. He warns that individuals might make choices that in theory or practice do harm to themselves or others. They might not fully know the consequences (or range of possible consequences) of their choices. Or they might not care about the far future consequences. Or, they might have limited expectations of what is possible (Johnson, 2012: 313). Obviously, there is the possibility that individuals will make choices that they later come to regret, that are not good for them, or they might not realise the full range of possibilities. The PTD is useful with respect to the last point because it embodies the idea that the territorially-dispossessed have the fullest range of possibilities available to any one individual in such circumstances and this also crucially involves the possibility to travel around and investigate different alternatives before making the final decision on were to apply for citizenship. Johnson's point means that the territorially dispossessed must have information provided in order to be able make a good choice, but it does not show that the principle of free choice

There are many factors which are relevant in deciding where to relocate (see Risse's list above). Any quota scheme would presumably have to bear these in mind, but doing so will be difficult. Indeed, it seems that the best agents to assess which countries are best suited to resettle territorially dispossessed individuals will be those individuals themselves. The list of factors Risse gives seems quite reasonable, but the relative importance that an individual attaches to each might be quite different. There are other factors too. The principle of free choice also allows the opportunity for territorially dispossessed people to join family or friends who migrated long ago and for different reasons. Moreover, for Risse, these factors only come into play after the duty-bearing parties are identified via his aggregate historical-ability index. But it is not entirely implausible that some of the territorially dispossessed might wish to join extended family who have made a life for themselves in neighbouring South Pacific or Indian Ocean countries. These countries might not have the highest human development index, nor a high emissions record, but an individual might have good reasons to go there nonetheless.

When considering possible objections against tradable refugee quota schemes Kuosmanen (2012) acknowledges that such schemes run in to problems when we consider refugees who have strong, or fundamental, interests to access a particular country. Normally we think of a refugee's right to asylum as a right based on basic needs to get access to *a* country where these needs can be satisfied, but not to some *specific* country. If a refugee holds a preference for going to some specific country, this is usually not a preference based on basic needs but rather on some non-fundamental interests. In so far this is true a refugee do not have a right to choose her place of asylum. But in some cases refugees might arguably have strong or even fundamental interests which carry enough moral weight to give them a right to choose their place of asylum. One such example mentioned Kuosmanen is the one discussed above; the desire to be unified with one's family. Other cases mentioned by Kuosmanen where a refugee might have strong interests in getting access to a specific country are when she risks facing 'severe complications regarding social integration,

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of the territorially dispossessed should be abandoned. Lack of sufficient information and failure to take a sufficiently long term view will be present under any scheme. Our conjecture is that a person who has to make the momentous decision: where to migrate to, live and gain citizenship will be more motivated than any other agent to seek information and to give the matter serious consideration.

and encounter difficulties in living a flourishing life more generally in certain countries'. Arguably, the territorially dispossessed will find themselves in a position where several of their fundamental interests are threatened. Kuosmanen's solution regarding refugees is that we should specify a number of 'suitable countries' which are all able to accommodate the refugees' strong interests. But notice the difference here between refugees and the territorially dispossessed. The claims of the territorially dispossessed are not merely based on a right to asylum combined with some strong interests, but also on a right to be compensated. This creates a stronger requirement to not only supply these migrants with some range of options of 'suitable countries' to choose from, but to allow them to choose to become citizens in a particular country.

Objections to a Global PTD Scheme

The most obvious objection to the PTD concerns the global scope of the duty to admit and naturalise. There are three reasons why the claim that all states have a duty to accept the Passport might be disputed. Firstly, it might be objected that all that is required from the point of view of fairness is that the territorially dispossessed have a *sufficient* range of choices of where to migrate. The second objection is that a free choice principle (even among a set) could result in a situation where a majority of PTD holders chose to go to one and the same state. That could be viewed as being unfair to that state. A third objection is that it is unfair to require states who have not contributed to the problem (i.e. in virtue of their low historical emissions record) to admit the territorially dispossessed. The PTD scheme should apply only to states with a high emissions record. We shall take these in turn.

Is it enough that the PTD holders have a range of choices?

This objection holds that the PTD scheme is too generous in giving the holders a choice of any state in the world. Some range of options is necessary, but not a global range. This objection is drawn from discussions in liberal political theory on what implications freedom of movement has for migration. Some have argued that freedom of movement requires open borders (see e.g. Carens, 1987: 258), while others have replied that it only requires that an adequate range of options on where to move is

available for migrants (Miller, 2008: 205-207). A full treatment of this issue is not possible here, but also it is not necessary. Even if it is true that freedom of movement usually requires only the provision of a range of options, practically, the PTD scheme will be fully fair if it is globally implemented.

Accept, *arguendo*, that each individual is treated fairly if a range of options for resettlement is provided. The question then becomes how to define those options. We think that they must be "live" to the individual, that the individual concerned must regard them as viable and valuable options. For example, one individual might value the option to become a citizen of, for example, the Philippines, because doing so would result in living in a reasonably similar climate and with extended family. Another individual would not regard this as a live option: he would not regard his autonomy being enhanced by its presence, whereas he would value the option to resettle to Papua New Guinea, on the same grounds. A third individual would value neither option, but instead value Chinese citizenship. Even if it is granted that respecting an individual's autonomy consists in providing a sufficient range of options, if those options must be live options, we can expect that the members of the set of live options will vary considerably, due to the personal circumstances and values of the individuals concerned. We might expect each individual to be best placed to be the judge on what counts as a live option for him or her.

Given the myriad of reasons highlighted earlier as to why persons might choose to settle in a particular state, to determine in advance which states should be included in the set of "sufficient" options, will be near-impossible without ruling out some live options for some individuals. Like the setting of a quota scheme, setting a restriction on the number of states to be included in the scheme is problematic (although perhaps to a lesser degree) because it involves making judgements about the lives, personal relationships and circumstances, as well as the values held by territorially dispossessed individuals. As we have argued above, this is disrespectful to those individuals. Even if in theory, a scheme of restricted scope would be fair and treat territorially displaced individuals with respect, in practice, in order to be fully acceptable, the duty to admit Passport holders must be global.

Could the PTD impose overly-demanding duties on some states?

Notwithstanding the diversity of values and goals among the territorially dispossessed, it is possible that a large proportion or a majority opt to resettle in one state. That state would then be required to admit them as citizens, which would have implications for its economy and perhaps its culture. Its officials would be required to establish schemes to integrate the passport-holders, to provide housing, training of language and skills in order that they can seek work, as well as schooling for their children. The citizens and officials of a receiving state might question why they have to make these efforts, when other states do not. For example, it is at least possible that the vast majority of the territorially dispossessed would elect to become citizens of Australia and the Australian government might complain that it has to do more than other states in providing for the territorially dispossessed. They might claim that they are being treated unfairly under this scheme, compared to other states.

There is a two-fold response to this complaint: one normative and one more practical. The normative response is that whilst it is the case that, in this example Australia is doing more than other states, this does not provide sufficient grounds to limit the number of PTD holders that are admitted. The plight of the territorially dispossessed is more morally serious than that of the Australian government and citizens having to make adjustments to accommodate the territorially dispossessed. As Casal (2003: 18) has written, there is a difference between vertical and horizontal inequality. Horizontal inequality obtains amongst a set of potential duty-bearers, when one agent, but not the others are singled out to avert or redress an injustice, or a morally bad situation. Vertical inequality obtains between the victim of the situation and the set of potential duty-bearers. Casal gives the example of a man who has fallen down a cliff, who appeals to one individual in a group of hikers for rescue. The individual in question might object that it is unfair to be singled out when there are other similarly situated individuals who could also perform the rescue. Despite this, Casal suggests there is a strong intuition that the individual should act, because it would be so much worse for the man to risk death, than for that one hiker to be inconvenienced. The vertical inequality between the individual hiker and the injured man takes moral precedence over the horizontal inequality between the hiker and the rest of his group (Casal, 2003: 18).

To impose restrictions on the numbers admitted on the grounds of over-demandingness would be to value the interests of the citizens of the receiving state over the interests of the territorially dispossessed. It would be to favour considerations of horizontal fairness over considerations of vertical fairness. This is not to say, however, that horizontal fairness does not matter at all. Three points can be made to assuage the concerns that the PTD scheme might be overly demanding to states who receive large numbers of PTD holders.

Firstly, as an initial response, we could point out that it is questionable as to whether this would occur under the PTD scheme. The four states most commonly cited as being at risk of submersion, the Maldives, the Marshall Islands, Kiribati and Tuvalu have a combined population of approximately 576000 – less than 1% of the UK's population. Including Vanuatu increases this number to 803200. Adding the Cook Islands, the Federated States of Micronesia, Nauru, Niue, and Palau brings the number of potentially territorially dispossessed to approximately 953000.[9] Fears that the receiving states might suffer cultural losses due to being "swamped by immigrants" will be rather difficult to sustain unless the state in question has a population of similar magnitude to the PTD holders who wish to be naturalised there. So, if for example, every citizen of Vanuatu chose to apply for Icelandic citizenship, the Icelanders might, for example, be reasonably concerned about the impact on their way of life of admitting such a large culturally distinct population. However, we conjecture that this would be too unlikely an occurrence to count as an over-riding objection against the PTD. Indeed, by allowing for the possible dispersion of climate-induced migration, the PTD scheme has a potential advantage over group-focused proposals (e.g. Nine 2010), where a receiving state is automatically be expected to admit, or even cede territory, to the entire population of the territorially dispossessed nation.

If, nevertheless, there turned out to be a legitimate concern that the PTD scheme was overly demanding on receiving states, this could perhaps be ameliorated by taking measures to moderate the pace of migration so that necessary adjustments could be made. For example, a queuing system could be set up, in which it would be determined how many immigrants it would be feasible for some popular receiving

[9] All figures are taken from the CIA *World Factbook* (CIA, 2012).

countries to admit on a yearly basis. When that number has been reached on a given year, some PTD holders might have to stay in their home state (if that is possible), or in some transit state, and await their turn before they can be admitted to the country of their choice. Note the difference between such a queuing system and a quota system. The queuing system is not based on some notion of "sharing the burdens" between receiving states. The basic idea is still that every PTD holder has the right to become a citizen of any state they choose, but some might have to wait a bit longer than others.

The second response recalls the distinction made earlier, between the duty to act and the duty to bear the costs of the scheme. The PTD scheme concerns the former; it is not the case that states who receive PTD holders necessarily bear the costs of doing so. Some will be able to make claims for financial support based on the numbers accepted. Depending on the principles chosen for the funding of the scheme, it might be the case that the amount they pay into the scheme's fund will be greater than the support they are entitled to claim. Given that the majority of proposals of distributing costs of climate change distribute the lion's share of costs to wealthy, industrialised states, it seems likely that developing countries will be able to make claims for financial compensation.[10]

Thirdly and finally, the duty to admit and naturalise the territorially dispossessed is but one of many actions that will be required to address the injustices caused by climate change. There could be grounds for ameliorating any horizontal inequality in the resettlement of the territorially dispossessed by reducing duties to act in other ways. For example, if a state was acknowledged in making great sacrifices, economical, social, cultural or otherwise, in meeting its obligations under the PTD scheme, perhaps that state could have a claim to doing slightly less than what would otherwise be its "fair share" with respect to, for example, contributing to adaptation initiatives.

[10] The principles usually discussed when it comes to financing or bearing overall costs are those of appealing to relative ability, historical responsibility, or benefitting from past GHG emissions (see e.g. Shue 1995). Hybrid accounts, combining two or more principles are usually defended. See for example, Caney (2009), Page (2008) and Heyward (2012).

Therefore, whilst we can offer only a partial response here, there seem to be at least three potential replies to the over-demandingness objection, provided that the scope of the PTD scheme is restricted to the group of potential migrants from SISs.

However, this charge might resurface if the international community's failure to adequately mitigate climate change results in the displacement of very large numbers of people. For example Bangladesh could be affected by climate change induced flooding, increased warming and intensified natural disasters to such an extent that large parts of the country's territory is rendered uninhabitable. This could potentially cause movements of the 30-50 million Bangladeshis who populate remote and ecologically fragile parts of the country (Walsham, 2010). However, unless a very large part of Bangladesh becomes submerged, the state of Bangladesh will continue to exist. Therefore the situation of these displaced persons is slightly different: they are not territorially dispossessed, but will continue to be Bangladeshi citizens. This is not to deny that such displaced persons are vulnerable and that there are duties to safeguard their basic interests. It is simply to claim that they are vulnerable in a different way to the territorially dispossessed, in that these displaced persons do not lose their citizenship or the protection of their state. As such, their interests can be safeguarded by strengthening their state institutions. By contrast, the territorially dispossessed do lose their entire state, and permanently: the state institutions have will have no territory over which to exercise jurisdiction. Their state institutions, no matter how just, cannot be effective in the case of submersion. The territorially dispossessed are therefore a special case and the PTD is intended to address this special case, based on current estimates. Obviously, it is possible that other countries will suffer much greater impacts of climate change than currently projected and that some countries will lose enough territory for their citizens to be counted as territorially dispossessed. In such a case, the PTD scheme would have to be reconsidered or revised, as, we conjecture, would many other proposed responses to climate change.

Historical responsibility again?

A final objection is available to developing countries only. It might be objected that positing a moral duty of developing countries to join the PTD scheme effectively requires them to participate in solving a problem that is not of their making. The

scheme should apply only to those who have a high level of GHG emissions, on the grounds that it was their actions that have brought about the situation. Note that accepting this objection would lead to a different scheme than those criticised earlier. In those schemes, the immigration quotas of each state are set either partly or wholly in proportion to the state's emissions record. Using the principle of historical responsibility to reduce the scope of the PTD scheme would still mean that the principle of free choice to the territorially dispossessed would apply *within* the scheme; there would be no setting of quotas. However, some states would be exempted from the scheme, on the grounds that they did not play a (significant) role in bringing about the prospect of global climate change and therefore should not have to contribute to solving the problems it creates.

Given that there is no existing state without any emissions record, defining the threshold above which a state incurs a moral obligation to join the PTD scheme is going to be difficult – empirically as well as politically. Putting those problems to one side, however, can it be the case *in principle* that a state with a near-undeniably negligible causal role in bringing about climate change (call this a "low-emitting state") nevertheless has a duty to accept and naturalise territorially dispossessed individuals?

All states have moral obligations towards stateless persons, regardless of the cause of the statelessness, so a low-emitting state might have an obligation to accept those who are territorially dispossessed by climate change-induced sea level rise, regardless of their lack of historical responsibility. However, this would be justified by reference to that state's pre-existing general international obligations. Would there be an obligation to accept the PTD, i.e., to have duties to the territorially-dispossessed comparable to states whose GHG emissions can be regarded as making a significant contribution to the problem? Would a "low emitting" state, for example, have to accept all territorially-dispossessed individuals who wished to naturalise, as the PTD scheme requires? Or might they be entitled to impose limits to the numbers admitted, even they have a duty to admit *some*?

Intuitively, a state in such a position has greater justification for setting limits than in the previously discussed cases. However, it is another matter as to whether this greater justification is of sufficient weight to over-ride the duty to accept PTD

holders. Allowing the receiving state to set limits privileges the convenience of the receiving state over the more fundamental interests of the territorially dispossessed. Vertical inequality can trump horizontal inequality regardless of any historical or causal relation (recall that in Casal's example, none of the hikers had done anything to make the injured man fall down the cliff, but merely chanced upon him). Again, this is not to say that horizontal inequality matters for naught. As noted earlier, there are other ways to reduce horizontal inequality. It seems perfectly plausible that a state with low emissions could have a justified claim to greater compensation, more assistance, increased flexibility in meeting other climate-change related duties, or concessions in areas not directly linked to climate change, than those with historically high emissions. Moreover, all of this is premised on the idea that there can be a meaningful practical distinction made between "high" and "low" emitting states, when such a distinction would be subject to intense political contestation.

None of the above objections provide decisive reasons to reject, on moral grounds, the global scope of the PTD. This is not to say that when it comes to implementation, political considerations might mean that limits are imposed. As global schemes are difficult to secure and administer, there might well be a case, for example, on grounds of expediency, for the scheme being initiated by a coalition of the willing. The Nansen Passport scheme functioned reasonably well with over 50 states and was, after all, a significant step forward. It is to say, simply, that should climate change result in the inundation of the territory of SISs, the more options the territorially dispossessed have as to their new state, the more justice will be served. It is to say that there is no principled justification to limit the scope of the PTD: all states have a moral duty to participate in the scheme and admit PTD holders.

Conclusion

Whilst the significance of environmental changes in causing migration continues to be disputed in the wider migration studies literature, there is one definite case in which migration will be prompted by environmental changes brought about by global climate change. This is the case of some Small Island States, whose territory stands to be rendered uninhabitable due to rising sea levels inundating the island territory. Citizens of these states face the risk of becoming stateless unless there is a response

from the global community. In this paper, we have argued that this response should take the form of an initiative similar to that of the Nansen passport – the passport for the territorially dispossessed. The citizens of the Small Islands states who will be territorially dispossessed should be given the right to migrate to a state of their choice and to be naturalised.

This proposal is quite different in content to previous suggestions for accommodating the territorially dispossessed. The typical approach is to argue that states have a duty to admit a set proportion of the territorially dispossessed and to expand their immigration quotas accordingly. The proportion is set according to a preferred principle. Our contrasting suggestion of free choice for the territorially dispossessed, and the corresponding moral duty on all states to accept the PTD is defended on the grounds that quota schemes privilege the receiving states over individuals who have been rendered extremely vulnerable. Free choice allows the territorially dispossessed to retain at least some control over their destiny, whereas any quota scheme fail to satisfactorily compensate them for their losses. In practice it is sadly unlikely that all states would agree to take part in such a scheme. Should the scheme be implemented, it would be more likely to be by a coalition of the willing, as was the case in the Nansen scheme. However, we argued, in considering three objections, that there is no principled reason for limiting the scope of the PTD: to be a fully just response, it should be a global scheme. Whether anything even approximating a just solution will be implemented obviously remains to be seen, but hopefully this proposal will stimulate greater reflection on what such a solution might involve.[11]

[11] This paper has been presented at the Uppsala Forum Workshop on Global Climate Change on April 23 and September 18, 2012, at the annual meeting with the Swedish Network in Political Theory in Uppsala on May 3, 2012, at the annual meeting with the Nordic Network in Political Theory in Roskilde on October 26, 2012, and at the Workshop on Democracy, Justice and Climate Change in Bergen on November 5, 2012.We thank the participants for their helpful comments. We are especially thankful to Göran Duus-Otterström, Sune Lægaard, Malcolm Langford, Aaron Maltais, Ed Page, Jouni Reinikainen, Jonas Hultin Rosenberg, Avner de-Shalit, and Alexa Zellentin.

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