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Money, Refuge, and Justice

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Abstract: Margit Osterloh and Bruno S. Frey have introduced a novel, and potentially powerful, vision of migration rights, on which European states might respond to the current crisis of migration by conditioning admission on the payment of an entry fee. In this comment, I raise a worry about the morality of a world governed by such a principle. While Osterloh and Frey foresee a world in which migration is made more sustainable, with benefits for all stakeholders as a result, I am worried their program would lead to a lessening of support for the moral principles that gave rise to the 1951 Convention Relating to the Status of Refugees. This Convention, I argue, ought to be preserved as a public statement of the principle that wealthy states have an obligation to bear some costs in the defense of human rights; Osterloh and Frey, I argue, might be undermining support for those moral principles we currently have the most need to reinforce. Nevertheless, I argue that under emergency circumstances we might have a need for experimentation and political innovation, even if we are confident that what they produce will necessarily involve some degree of political wrongdoing; we might, in short, have a reason to try out proposals of the sort Osterloh and Frey defend, even if the moral worries I defend here are correct.

Keywords: asylum, equality, distributive justice, political experimentation

The flow of asylum seekers into Europe has put pressure on any number of institutions. It has led to a renewed debate about how, and when, European states may close their borders and refuse admission to needy outsiders. We have heard a great many voices raised in opposition to, or in defense of, the claims of those arriving on European shores from the Middle East and from North Africa. What we have not heard as frequently, though, are possible policy innovations, in response to this ongoing crisis.

The intervention of Margit Osterloh and Bruno Frey (2018) is, therefore, a welcome one. Osterloh and Frey propose a plausible, and powerful, vision of migration rights, in which migrants from outside pay an admission fee for entry into a European state. That state is understood as a sort of cooperative, from which its members might derive benefits; the migrant pays for an entry permit, and thereby

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becomes a member, capable of both contributing to and drawing benefits from the labor of other members. This vision of migration rights, they argue, would be better at reducing the flow of migrants than any number of initiatives designed to prevent migrants from arriving at the borders of the state. Instead, the migrant may decide for himself where he most wants to go, and may use his skills right away once he has arrived. In this way, we might see an increase in any number of desirable goods. Migration would be relatively constrained, so that the dire predictions of widespread migration away from the Middle East and North Africa might be averted. The migrants who do arrive will be more skilled, and their immediate entry into the workforce will give those migrants incentive to integrate quickly into their new societies. The increased flow of remittances, finally, will effectively work for development abroad—thereby limiting the number of people who will be likely to seek emigration in the years to come.

There is an enormous amount of appeal in this vision of migration. What, though, can the political philosopher add to the conversation Osterloh and Frey have begun? The political philosopher is most at home, of course, in moral discussions such as the justice (or lack thereof) of political institutions. There are, I think, at least two ways in which a discussion of justice and right might be integrated into this conversation. The first is the more ambitious, and asks whether or not the policy that is recommended is one that comports with basic liberal values such as rights and justice. This vision of political philosophy is the more familiar; it suffers, though, from familiar defects as well. In its purity, it refuses to acknowledge the constraints faced by actual political agents—and, too often, the limited good will and compassion of humans as we know them. The second way of approaching a policy proposal such as this one, though, is less ambitious, and seeks to determine if that policy would actually be an improvement from the standpoint of rights and justice, in comparison to what we have now. This version of political philosophy is, perhaps, less ambitious; it does not seek to inquire about the possibility of radically rethinking our shared institutions, nor does it hope to revise at a fundamental level the limits of what is politically possible. But, precisely because of these limits, it is more likely to help us in understanding whether or not the policy alterations before us are worth pursuing.

The distinction between these two visions might be reducible to that between *Gesinnungsethik* and *Verantwortungsethik*—although I confess I am not always sure about the boundaries between the two. Like Max Weber, I do not think either one of these visions is always superior; the statesman designing policy ought to develop and display both sets of virtues (Weber 1921). A productive discussion of political justice would likely have to include both visions, at different times and on different topics. The latter vision, though, seems especially useful in an emergency, in which we have to respond to sudden and unexpected shocks to the po-

litical systems we have built. The present European crisis seems like exactly this sort of emergency; and it is therefore right, I think, for us to examine the proposal of Osterloh and Frey primarily with reference to how that proposal would be distinct from the status quo. Would their proposal make things worse, or better, on those moral criteria we have reason to value?

There is, of course, no single set of moral criteria we might invoke to decide this question; the moral purposes of migration law are as much a part of the conversation as any more specific topic. But I think we might at least assert this much: the effective protection of the least advantaged is rightly held as a chief criterion for the moral acceptability of migration policy. This, I should note, might be defended by looking at relatively pure political philosophy, such as that of John Rawls's vision of justice as fairness (Rawls 1971). But we need not appeal to this sort of vision, in order to defend the thought that the least advantaged ought to be taken as especially important, in the evaluation of migration policy. Recall, most importantly, that the 1951 Convention Relating to the Status of Refugees, which announces a shared global commitment to use migration policy to defend the basic rights of those who face persecution in their countries of origin (Maley 2016). This Convention, it should be noted, emerged out a shared experience of shame, after the recognition that many of those who sought refuge from the genocidal policies of Germany were denied—with many of those denied refuge being murdered during the Holocaust. The 1951 Convention, with its focus on persecution, has been criticized by many since its enshrinement in international law; and, indeed, I do not here want to claim that there is a powerful moral reason to focus on persecution, rather than related evils such as state failure or widespread hunger. I only mean to ask the following: if we adopted the vision of migration policy defended by Osterloh and Frey, would we lose sight of the moral importance of the least advantaged—and would this be a reason for us to hesitate, before adopting the policy they recommend?

My answer to both questions, I think, is a qualified *yes*. It is, I believe, possible that a move away from a focus on asylum determination, to one in which migration rights are accorded by means of entry pricing, would be a world in which the rights of the most vulnerable are even less well-protected than they are at present. I would note, to begin, that Osterloh and Frey are somewhat suspicious about the distinction between the economic migrant and the refugee; they note—rightly—that the two sets of people travel similar paths, and present similar tales of need. But I do not think that this is sufficient for us to think that the Convention does not make a moral difference. I think the moral commitment that produced the Convention might make a difference, even in a world of political practice that often ignores and rejects such commitments. The Convention, in particular, announces that some people have a *right* to cross borders, and that the states within those

borders have a *duty* to let those migrants cross—and, it should be noted, a duty to bear some costs associated with housing and integrating those migrants. The Convention, in short, is a statement of moral principle, and even if that principle is frequently ignored in practice, to simply reject that principle might make a great many things worse. We might examine, by means of comparison, the Convention Against Torture, which announces that member states will not torture, even when torture is political useful. The actual effects of this assertion are not always easily determined (Hathaway 2002). But to *refuse* to make the assertion—to undermine the political centrality of the prohibition on torture—is unlikely to do anything good for the vulnerable population of the world.

Osterloh and Frey, of course, provide us with some reason to think that the policy they defend will not entail the rejection of the Convention. Those who claim asylum, they note, will be refunded the price of their admission, if their claim is proven worthy. This, though, might not be quite enough to avoid the implication that some Convention refugees will be denied entry. In the first instance, it seems as if the implication of this thought is that even people claiming asylum under the Convention will have to pay the fee associated with admission. This is, I should note, a violation of Article 29(1) of the Convention, which prohibits states from imposing fees or taxes ‘of any description whatsoever’ on asylum seekers as a part of their admission into state territory. I am not, I should note, worried here primarily about the fact that this proposal violates the terms of the Convention; a great many laws violate the terms of an international treaty, and I do not want to claim that they are all morally defective in doing so. I am more worried that the moral power we tend to ascribe to the Convention is going to be undermined, by a policy that so violates that Convention—and, even if the Convention is not actually morally defensible, the moral reasons that brought it into being *are*, and we do a wrong thing if we fail to maintain and defend these moral reasons.

Osterloh and Frey, of course, want to assert that even Convention refugees should not find the payment of the admission fees to be all that onerous; a fee that is refunded is functionally akin to no fee at all. The problem, though, is that not everyone is going to be able to raise the funds needed to pay for admission, under the policy at issue. The most needy of the poor will find it exceptionally hard to raise the money. Osterloh and Frey point out that credit markets, and sponsorships, might emerge in response to the need to provide refundable money to asylum seekers. Not everyone, though, is going to be equally able to raise this sort of capital, even in the presence of a credit markets (or effective charity). The most profoundly dispossessed—those for whom the Convention itself was written—are those who are the least able to make claims about credit-worthiness, and very likely the least able to engage in the sorts of public campaign needed to bring their attention to light. (As Stephen Hopgood has pointed out: in a media- satu-

rated world, the one thing a population of asylum seekers must be above all else is *photogenic* (Hopgood 2013.) Osterloh and Frey point out, further, that many refugees right now pay human smugglers in order to arrive at the borders of a European state. This is true, of course. But it does not seem to follow that the states of Europe should act in accordance with the moral logic of the human smuggler. A human smuggler does not care about the lives he protected; if you cannot pay, you will be left behind. This, though, should not be the response of a European state to a world of profound misery and need.

I am therefore worried about the proposal of Osterloh and Frey; it might seem to undermine the public statement of moral commitment contained within the Convention. It is not, I want to emphasize, that the Convention itself has adequately lived up to the lofty statements of those who drafted it. It is, instead, that abandoning that Convention, given the natural human impulse for self-regard and moral blindness, might result in a world even worse than the one in which we now find ourselves. Once we make the move recommended by Osterloh and Frey, I fear we may begin to lose sight with a very important principle implied by the Convention: that all states are under a duty to bear some *costs*, in response to the wrongdoing of other states. The Convention, I think, has a moral logic similar to that of the more recent idea of the Responsibility to Protect; the states of the world have a 'residual responsibility', to step in to help needy outsiders, when a foreign state has become either unable or unwilling to help its own citizens (Bellamy 2015). If we respond to migrants from North Africa and the Middle East by seeking self-interest, we are likely to choose different migrants—and we are likely to make things better for ourselves, while worse for a great many of the worst off. I am, finally, concerned that the moral logic of this proposal might actually tell against integration—or, at least, against the sort of felt duty and affinity that often makes integration work. If I am rescued from horror, by a state that announces it is extending this benefit to me, I think my reaction is often gratitude. Not always, of course; but often. If, in contrast, that state announces that it is selling admission to citizenship, and I purchase that package of citizenship rights, then what is a highly moralized vision of citizenship and patriotism is transformed into something very much like a market transaction. Many states in the world have programs through which citizenship is already sold—albeit, so far, only to the rich; one can acquire Barbudan citizenship for an investment of \$250,000, while French citizenship requires a minimum investment of 10 million Euros (Myers 2016). Many critics have argued that this vision of citizenship undermines the solidarity and trust needed to maintain the 'social model' rightly praised by Osterloh and Frey. If there is any power to these worries, it is likely that they will become more worrisome still, in a world where citizenship as commodity is provided not only for the rich, but for everyone.

All of the above, though, is intended only to answer the first question: is it possible that the proposal of Osterloh and Frey might make things worse? The answer is, put most simply, yes—it is possible. Possibility, though, is not certainty; and that leads to our second question, regarding whether or not we might hesitate before adopting their proposal. I think the answer here, too, is yes—but I say *hesitate* deliberately. When the status quo is not only morally deficient, but likely deteriorating quickly, we might have a reason to experiment with policy proposals that bring with them significant moral costs. The reason for this, I think, reflects the distinction above, between *Gesinnungsethik* and *Verantwortungsethik*—between, that is, an ethic of conviction, and an ethic of responsibility. I have above used a version of *Verantwortungsethik*, and argued that we have a shared obligation to avoid making things worse for vulnerable people through our innovations in policy. This notion, though, might also be used to tell us how we ought to treat the process of policy experimentation. One who is an ethical purist might refuse to accept any possibility of doing wrong in the course of seeking to do right; if one cannot be certain that one will not violate rights, one will do nothing at all. This sort of ethic, though, seems perhaps irresponsible when applied to an ongoing crisis like the crisis of migration in Europe. Instead, I might argue for an impure ethic—one that seeks experimentation, that recognizes the inevitability of wrongdoing, but which accepts that the cost of doing good for the world is frequently that one will end up doing wrong within it. I thus want to conclude with the thought that we ought to hesitate before accepting the proposal of Osterloh and Frey; but that we might, by that word, mean only that we accept their proposal in a due recognition that we might nonetheless think that proposal a worthwhile experiment. The proposal defended by Osterloh and Frey, to echo the words of Michael Walzer, might leave us all with dirty hands; it might undermine respect for certain values, with the eventual result that the world is made worse than it already is (Walzer 1973). But to avoid this sort of dirty hands is, in itself to make a moral choice to privilege one's own purity over the possibility of an effective response to global political reality. The choice to remain ethically good, in short, might sometimes be a luxury. We might stand in need of policy interventions that might do good, while still having some risk for making things worse. The existence of a risk, in short, might not provide us with adequate reason to avoid making the attempt.

All this, then, is to come back to the thought that the proposal of Osterloh and Frey is a valuable one, and a useful policy innovation in a world sorely lacking in novel possibilities. What I have emphasized here is the risk to the world's vulnerable people that is a part of their proposal. I have argued that this proposal might reduce support for the moral principle defended by, and implicit in, the Convention Relating to the Status of Refugees. I want to conclude, however, by acknowledging that even this risk might not be adequate reason for rejecting the

proposal they defend. We have reason, of course, to be aware of this sort of risk, and to make it as unlikely as possible that the worst cases come to fruition. But we might, in view of what is already happening in Europe, accept that we may have to do what is risky, when what is justified is unobtainable. I am grateful to Osterloh and Frey for their proposal, and look forward to the debates to come.

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