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VULNERABILITY, RESPONSIBILITIES, AND MIGRATION

abstract

Vulnerability is commonly considered as a feature of human beings on which our duties towards each other are grounded: we ought to help the vulnerable in virtue of their being such. Our duties seem rather clear when those in need are close to us, both physically and culturally, but less so when they are distant in either of the two senses. In this essay we wish to investigate the strength of our duties towards migrants, who are often either culturally or physically distant, yet vulnerable by definition – fleeing from wars, dictatorships, poverty, climate change, or other calamities. The view we aim to defend, is that our duties towards them, unlike what has been suggested by David Miller, are duties of justice, not of beneficence, and involve duties to host. This, we claim, is owed to migrants' very vulnerability, which is not due to some kind of misfortune, but, eventually, to some form of injustice. We will also claim that taking into account migrants' own responsibility, either as individuals or as members of a collectivity, is of no practical use when establishing our duties to host them.

keywords

vulnerability, responsibility, migration, justice

1. The concept of vulnerability

In his almost universally acclaimed *The Concept of Law*, philosopher of law Herbert Hart investigates, among other things, what law and morals have in common, that he calls “the minimum content of natural law”. He grounds such content on some very fundamental human characters, the first of which, Hart claims, is human vulnerability. Law and morality share one main goal: the protection of human life, attainable through the mandatory restriction of the use of violence, since, in the words of Hart, “men are both occasionally prone to, and normally vulnerable to, bodily attack” (Hart, 1961, pp. 193-194). Without this general rule, no other would make any sense. This is why the first and most important norm, of both law and morals, is the one that prescribes not to kill.

Human beings are vulnerable, and such vulnerability requires protection. Vulnerability is not only physical though. Violence, hunger and diseases might threaten bodily integrity, but there are other evils, as Simone Weil notice, that can do just as much damage. Humans are also *morally* vulnerable, she claims, and there are forms of cruelty that can damage human life just as much as physical violence do. Moral and physical vulnerability is, to Weil, what grounds our duties – duties that she describes as eternal, unconditioned by culture or social customs, and not grounded on special conventions (Weil, 1990, p. 3). To Weil, protecting people acknowledging this double form of vulnerability is a duty that we all have towards each other. According to sociologist Bryan Turner, vulnerability, being a universal and undeniable feature of human beings, is also what grounds human rights. People in the world have different cultures, religions, concepts of happiness, “but misery is common and uniform” (Turner, 2008, p. 9). Vulnerability makes humans dependent upon each other, as no one can respond to her vulnerability in isolation (Turner, 2008, p. 10); reducing vulnerability and attaining security is the reason why social institutions are created (Turner, 2008, p. 28). And the list of thinkers who have reasoned on human vulnerability and its implications could go on and on, and back in the centuries as well (just to mention one: Shachar, 2000).

From what has been said so far, we can argue that the aim of both law and rights is to some extent to protect individuals, especially with regard to their vulnerability, and that such vulnerability implies duties, for both institutions and individuals. Practically all moral theorists, whether deontologists, consequentialists or virtue ethicists would agree that we have duties towards each other, and that we have such duties when we can make a difference on their suffering; when we are not sure whether we actually can; and in some occasions even when we cannot (much has been written of such topics: see Parfit, 1984 as one of many). The extent of such duties is what needs to be examined.

When we see someone suffering or someone at risk of harm, we have some sort of duty towards her. Such duty is not supererogatory, but rather mandatory, and we have strong moral intuitions about the strength of it. We can recollect multiple examples made by philosophers recently and less recently: think of Peter Singer's child at risk of drowning in a pond (Singer, 1972); or Peter Unger's multiple examples of people in need that can be rescued by our intervention (Unger, 1996), just to mention a few.

The fact of "seeing" someone suffering and to perceive directly her harm, it will be said, adds a particular strength on our duty, if we happen to be there. However, we must acknowledge that, if we change significantly the contextual variables, the perception of our duties changes accordingly; and perhaps not only the perception of them, but our duties as well. We could, for example, not directly see, but learn to know about not one, but a hundred people at risk of harm. Assuming we can help them anyway, the cost for us may be significant, even if not comparable to their suffering. People can be very distant from us, not only physically, but also culturally, for example embracing some political ideals, or religious beliefs we do not share at all. Does this change our duties towards them? (on duties related to distance: see R. Miller, 2004)

In this paper we wish to investigate our duties towards those vulnerable people who are "distant" - and not necessarily physically. Those are people to whom, traditionally, we think we owe less, in so far as they are not our fellow citizens (on the special responsibility towards the members of our community: see D. Miller, 2007; Wellman, 2005; Walzer, 1983; Hart, 1955); they are often culturally different from us (sometimes not even sharing some of our basic democratic beliefs, such as gender equality or freedom of religion); and in so far as we are not the primary duty-bearers of their human rights (at least for what concerns "positive rights", following most theories of human rights' related duties - see for example O'Neill 1996; 2005). We wish, in brief, to establish the extent of our duties towards migrants.

Since we claim that we have duties towards migrants in so far as they are vulnerable, we need to analyze in depth some characteristic of the condition of migrants themselves, as to be sure that they can be defined vulnerable in a sense that demands the help of others not as a matter of beneficence, but rather as a matter of justice. To do so, we need to clear the field from the claim that migrants' own responsibility in their urge to migrate influences, and in some cases weakens, our duties towards them (a point made by David Miller in the name of collective responsibility). We will argue, instead, that in the case of migrations, it is too difficult, if not impossible, to isolate injustice (whether present or past) from migrants' responsibility in causing the state of affairs that lead them to leave their countries. Even if the idea of taking into account migrants' own responsibility is indeed appealing, as it seems as a fair criterion on which duties towards migrants can be assigned, we claim that in the case of migration it is of practically no use.

In the introduction of his book *National Responsibility and Global Justice*, Miller, reflecting upon the suffering of the victims of famines in Africa, of war in the Middle East and of migrants trying to reach Europe, makes an interesting point. On the one hand, he observes, we are inclined to see them as victims, as vulnerable human beings who have suffered harm, therefore in need of help we have obligations to provide. On the other, we also see them as agents, thus responsible for their actions and their lives, who should, as we all do, enjoy the benefits deriving upon their success, and bear the burdens of eventual failure without imposing its costs on others. If we wish to defend the position that we hold duties out of justice considerations, we cannot avoid regarding people (even suffering people) not only as victims, but also as agents. Such people might have had, for example, the chance to improve their condition and not have caught it, or might have not made good use of their opportunities, or

2. Miller's account on (migrants') responsibility

acted in a way that was supposed to damage others and ended up in self-damage as well. What does (global) justice require us to do in these cases? The answer is, according to Miller, less than obvious, and requires some further thinking (Miller, 2007, pp. 5-6).

Miller argues that everyone is *outcome responsible* for her own situation when her current condition is produced by her own agency, and no other major factor or previous state of affairs can be blamed (or praised) for it. Outcome responsibility is different from causal responsibility, which considers individual agency as one of, possibly, many other causes, and which include also non-intentional actions performed by the subject. It is also different from moral responsibility, which is concerned with the moral intentions of the subject rather than with the state of affairs produced (Miller, 2007, pp. 86-96).

Remedial responsibility begins, instead, once the state of affairs has already been produced and needs remedy. Remedial responsibility is what we will appeal to for motivating our duties to help the vulnerable or the suffering; leaving momentarily aside whether those in need are outcome responsible for their own situation, Miller claims that there is remedial responsibility to help victims of accidents, famines, wars, natural disasters, and so on. Such responsibilities need to be allocated through some reasonable criterion that identifies someone who holds some special role in the situation, otherwise, and especially when multiple agents are in the position to intervene, their needs risk to be unmet (Miller, 2007, pp. 98-99).

What if, though, agents are in fact themselves outcome responsible for their being in need? Miller argues that, together with individual responsibility, also collective responsibility must be considered. As members of a society, people are responsible of the decisions of the government they voted for, therefore can be held collectively (outcome) responsible for the wrong choices taken by their own governments (Miller refers to this as *national responsibility* - the whole chapter 5 is dedicated to defend this view). This means that if citizens of a state are in need because of their government's disastrous policy, remedial responsibility of other countries to provide help fall in the domain of beneficence. When we need to allocate remedial responsibilities towards the world's poor, indeed, we cannot simply and by default assign such responsibility to rich countries, claims Miller. If poor countries are outcome responsible for their own condition, then rich countries will still have duties towards them, as Miller does not discuss the fact that we do owe something to who is suffering. But such duties will not be duties of justice, they will rather be *humanitarian* duties: less strong, implying a more careful reasoning on the costs it implies for those who help (Miller, 2007, pp. 247-248). It seems obvious that such duties will not include a duty to host migrants, as hospitality implies very high costs on host-countries, and according to Miller is to be reserved to special cases (Miller, 2007, pp. 214-221).

3. The controversial notion of "national responsibility" and its implications

We will sketch two different arguments to challenge Miller's position. First, we will show that Miller's concept of national responsibility, conceived as a form of collective responsibility of all individuals belonging to a country, ends up attributing a too heavy burden on them. This has, as a consequence, an unjust allocation of remedial responsibilities. Secondly, we will claim that *injustice* is in most cases involved, when it comes to the world's worst off countries: it is practically impossible to exclude rich countries from outcome responsibility. Therefore, when it comes to (remedial) responsibility towards migrants, the idea that in some cases only humanitarian duties are owed, is at least controversial.

As concerns the first point: Miller's claim about national responsibility is that "people who make up a nation may sometimes properly be held liable for what their nation has done" (Miller, 2007, p. 113). For proving that, Miller shows i) how collective groups can be held responsible for what they do, in such a way that individual members of the collectivity are responsible; ii) how nations' features allow to apply to them the general analysis of

collective responsibility (*ibidem*). Collectivities might be like-minded, and thus share a group responsibility for what the group, together, does: a mob might take place and cause several damages to cars, streets, houses. Single individuals taking part in it may have caused different kinds of damages, or no damage at all: but they all shared a “general attitude”, and since individual responsibility may or may not be possibly allocated, they can be held responsible as a group (Miller, 2007, p. 115). Something similar can be said for people belonging to a community, such as American Southern whites: some of them might have disapproved racism, but shared with their community the responsibility for what was done to the blacks (Miller, 2007, p. 118).

The problems of collective responsibility, in the sense Miller intends it, arise, for his own admission, when we want to establish how members can escape from collective responsibility for what their group did. Inaction or voicing dissent are, to him, not enough. Miller has to admit that “it is difficult to say anything more precise than that he or she must take all reasonable steps to prevent the outcome occurring” (Miller, 2007, p. 121). An important element, though, belongs to individuals who take part in groups (even when they happen to dissent) and is part of the reason why we hold them collectively responsible: they *voluntarily* took part in such groups. This is a problem when Miller wants to make an analogy with people belonging to nations and, *as such*, consider them collectively responsible. Members of national state never chose to be part of it. But according to Miller, members of a same state share a common identity and a public culture, therefore are somewhat similar to like-minded groups (Miller, 2007, p. 127), and if the governments are democratic, there can be said to be collective responsibility falling on each individual member (Miller, 2007, p. 128). In case of autocracy, or elite-government, responsibilities of citizens for wrong or unjust governmental policies are more difficult to attribute: we can assume the duty to resist to an authoritarian sovereign, but even resistance has limits (of personal costs, feasibility, etc.). In such cases, Miller admits, the extent of individual responsibility for collective choice is controversial (Miller, 2007, p. 129). But in general, for democratic states, “we are not wrong to hold contemporary fellow-nationals responsible for actions performed in their name” (Miller, 2007, p. 134).

Miller’s arguments seem plausible, if one did not consider the implications they bring about in the case of migrants. It seems that individuals who belong to countries who are somewhat responsible for their own misfortune (such as poverty) are, individually, less entitled to receive help. Since there is no precise way to dissociate from membership, although Miller considers the right to associate and dissociate as a genuine human right (Miller, 2007, pp. 209-213), it does not seem right to infer that, in absence of such genuine right, people may be held responsible anyways for what a collectivity they might strongly disagree with is *outcome* responsible for. This is particularly apparent when considering would-be immigrants: it is impossible to allocate individuals’ role in the collectivity who is outcome responsible for the state of need that forced them to migrate.¹ Should we consider, then, all individuals equally responsible and deny them hospitality *in so far as* they are member of such nation?

One last point needs to be made on individual responsibility and its role in determining how much help, or in the case of migrants, hospitality one is entitled to, in order to clear some possible ambiguity. When individuals are guilty of some previous crimes, they are legitimately excluded from admission (Carens, 2013). This is valid for collective crimes too (such as being

¹ We could still imagine border police investigating not only about immigrants’ electoral choices, but also on their level of political information, general education, ability to reasonably foresee the consequences of their vote, and after that establish if they be held outcome responsible and thus not entitled to admission. Even if this was possible (and we doubt it is), it would raise questions of fairness.

members of terroristic associations). Individual culpability can indeed – and justly – preclude the access to further rights. What we disagree with, instead, is to consider state membership a case of individual responsibility in a collective choice that brings about undesirable state of affairs. This looks particularly wrong when implying the preclusion of hospitality to migrants. And even if individuals indeed made wrong political choices and freely and willingly support corrupted governments who destroy their countries, their own responsibility is way too little (recall Parfit on individual responsibility for contribution to vote, Parfit, 1984), while what is denied to them is disproportionately important, and in many cases crucial for survival. Finally, as Raz has observed, vulnerability stems also from lack of political agency. People can be rightly considered autonomous when they can exercise their agency without coercion, having a sufficient number of alternatives among which to choose (Raz, 1986). What if such agency is compromised?

4. Duties of beneficence vs. duties of justice

As concerns the second point, we claim that what is owed to migrants is due to their condition of vulnerability, which is in turn due to some form of previous injustice, and that this is what grounds duties to host, and not some generic duties of beneficence.

In order to clear the field from possible doubts, we do not maintain that the right to migrate is somewhat connected to a maximalist interpretation of human rights such as one that would claim that all people are entitled to “the best option available” in terms of rights met (following O’Neill, 2005). First, as a matter of political realism, we acknowledge that there are serious issues of feasibility that need to be taken into account. Although we do not adopt Walzer’s view according to which special obligations towards our fellow citizens are of such strength that allow to deny admission to our own country (Walzer, 1983, pp. 34-35), we think, with Horton, that membership still creates one form of political obligation, that is to be balanced by other forms of obligation, such as moral obligations towards humankind (Horton, 1989, pp. 186-188). We have duties to help and host migrants, but there are duties towards fellow citizens as well, and when those duties happen to conflict, some sort of balance needs to be found.

When it comes to migrants, the kind of vulnerability that requires countries to host has to be defined carefully. Duties of justice require to help the worst off, but many authors would suggest that people can be better helped in their own country, through repatriation. And it is indeed true that helping people “at home” is a more sustainable strategy; and when possible it is preferable for both parts involved (rich democracies and migrants themselves, who do not need to leave their home). Furthermore, it is what contributes to permanently improve life conditions in a way that would allow people to live better lives without need to escape (see, among others, Nida-Rümelin, 2018). This has to be specified, in order to define who, instead, cannot be helped “at home” and needs to be hosted abroad.

We could accept therefore to restrict duties to host just to those whose situation cannot be successfully improved at home: those fleeing from wars, from governments who violate civil and political human rights (for which, unlike for social and economic rights, foreign intervention cannot do much), of course from all cases included in the *Geneva Refugee Convention* and in general from countries whose political situation is so deteriorated that people lack access to even very basic rights. This could be the case of countries such as Eritrea, whose political regime does not allow for any kind of individual freedom, and which is closed to any kind of foreign intervention (even NGOs, let alone UN organizations, are banned from it). And a special place ought to be reserved for climate migrants whose life conditions in their home countries are rapidly worsening, such that in a few decades human life could even not be possible anymore (this is the case of many Pacific islands, of some of the Maldives, etc.). In some cases there is still space for help “at home”: if the environmental risk is restricted, we

can suppose that, as far as a country is made more resilient through some external help, it can be able to avoid migration as adaptation measure to climate change. But where people's life is at stake and no help is possible, migration is the only available choice, and duties to host are therefore duties of justice. Furthermore, the case of climate migrants can help showing why it is inappropriate to frame duties of acceptance as based on individual or collective responsibilities: climate migrants are collectively responsible of climate change (as they are indeed part of those people who do enjoy to some extent the benefits of industrialization - as we all do). Do we owe them any less because of this co-responsibility? Certainly not: what we owe them, is due to other factors, such as their vulnerability (see Pongiglione, Sala, 2018). Furthermore, it has to be noted that repatriating people is in most cases an unfeasible, and extremely expensive, strategy, and is not equivalent to help people who have never left their own countries. Since we are talking about migrants, who are by definition those who have already left their home countries, our duties have to be thought of considering the fact that those people are already away from home (thus the option of helping them "at home" is not available). Once it is clear who are the migrants whose vulnerability requires international hospitality, we have to define according to which principles we have a duty of justice in this sense (and not just "humanitarian" duties, or mere beneficence).

As we have seen, being "innocent" in the sense of not being directly, indirectly or collectively outcome responsible for the state of affairs that led to migration is irrelevant in establishing why we have duties towards migrants. What is instead relevant, is that what makes forced migrants so vulnerable is in most cases not a simple "misfortune" for being born in the wrong part of the world, but also a previous history of injustice. And this because misfortune is not simply misfortune, if by it we mean that we cannot but resign to it, perhaps uncomfortably. Following Shklar (1990), we incline to see injustice rather than misfortune in such afflictions of vulnerable people. Helping them is not a matter of philanthropy, but it is a matter of justice. What is at stake is a sort of change in thinking: if we remember - Shklar suggests - that we are all potential victims, we should start seeing injustice as an independent experience, i.e. irreducible to a lack of justice. Injustice has indeed a specific moral status, that asks for a deeper investigation (Shklar, 1999, pp. 15-19). Moral foundations give strength to this psychological argument: suffice to remind of the Kantian lesson of the *Perpetual Peace* (Kant, 1795).

According to Kant, a stranger has a right not to be treated as an enemy when he arrives in the land of another. It is not a request for beneficence; on the contrary, it is properly a right. A stranger has a right of temporary sojourn, which all people have "by virtue of their common possession of the surface of the earth, where, as a globe, they cannot infinitely disperse and hence must finally tolerate the presence of each other" (Kant, 1795, Sec. 2, § 15). Of course, the Kantian thesis cannot naively be "translated" into a cosmopolitan outlook. We would correct the naiveties of the Kantian theory of global justice maybe by indicating how features of the lived experience of migrants may create new "associative" moral obligations within states; and explaining how the absence of "transnational" political rights exposes migrants to domination (see to this purpose Zavediuik, 2014, or Shachar, 2009).

Said that, let us emphasize the idea of misfortune as a face of injustice. In some case, misfortune must be called by its name, and this name is injustice. People are not ready to recognize injustice, and they prefer to call it misfortune in order not to assume their responsibility - at least co-responsibility for what happens to a lot of people. Be the victims responsible or not, it does not absolve us from our own responsibility to compensate histories of disadvantage or even exploitation. On the border between misfortune and injustice, we must deal with the victim as best we can, without insisting on which side her case falls (Shklar, 1990, p. 55).

In the end, we believe that a refusal to face up the injustice is neither realistic nor fair: it may be comfortable to elude the nature of injustice of many misfortunes and to see injustice as the

denial of justice as a theory may depict. This clear-cut way of reasoning may be of a comfort because we strongly need to believe in a just world (also in a just social order) in which people should get what they deserve. In a way, we feel sympathetic with what Krause writes about political theory: our judgements of good and bad, right and wrong, are also a function of feelings as much as intellectual understanding (Krause, 2008, p. 4). We should understand of course when those feelings may be incorporated into a deliberative process, how far such kind of concern should reach. But the core idea is that a deliberative process should include perceiving the original connections between our obligation and the things we care about both as citizens and as human beings (Krause, 2008, p. 158).

In appealing to feelings, we are not interested in challenging any theory of justice: we only want to take injustice seriously and focus on it as linked to vulnerability being a common human experience, caused by the moral arbitrariness of luck. Vulnerability is indeed a trait of being human: it depends on the contingencies of human life, in which nothing can be said to be certain or immutable (Nussbaum, 2007, p. 382). To capitulate to the inevitability of misfortune or to unpredictability of luck is the first and more severe way of treating others unfairly, as we are condemning them to a career of helpless victims.

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