



Why Tradeable Refugee Quotas Can Be Better for Refugees and States: Egalitarian Considerations

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Abstract

The application of brute luck and social egalitarianism to the provision of asylum services shows that compensatory burden-sharing schemes, especially the unconventional Tradable Refugee Quotas (TRQs), have considerable normative and economic advantages over geographical, quota-based refugee allocation proposals. Under the supervision of an international agency to ensure adequate asylum services and fair bargaining, the utilisation of cost differences allows TRQs to improve well-being and mitigate brute luck for both refugees and states. However, to overcome the objection that it leads to the commodification of refugees, their well-being and dignity must be a central concern for states when engaging in TRQs.

Keywords: TRQs, Refugees, Asylum, Egalitarianism

1. Introduction

The rise in global conflicts, an unprecedented number of refugees (UN 2020) and insufficient institutions to address these refugee flows have given the need for an effective and just mechanism of international burden-sharing to address the provision of refugee new significance. This paper extends an egalitarian framework consisting of (1) brute luck and (2) social egalitarianism to the protection of refugees due to the distinctive and complementary nature of these theories (Voorhoeve 2019): (1) Brute luck egalitarianism highlights the strength of compensatory schemes and Tradeable Refugee Quotas (TRQs) to increase the provision of asylum services for the least well-off while TRQs mitigate potentially exploitative practices. (2) The application of social egalitarianism to TRQs can be viewed as a constraint to the scheme which emphasizes the importance of participating states' motivation to protect refugees.

2. Burden sharing: Rights and Responsibilities

International, legally binding treaties grant protection to persons with a “well-founded fear of being persecuted” (UNHCR 2020: 5). The convention establishes states as duty-bearers towards refugees and asylum seekers, who are recognized as legal and moral right-bearers. However, the disproportionate responsibility and burden that is placed on countries of first entry, primarily the neighbouring states of the refugees’ country of origin in Africa and the Middle East, has increased demands to share the burden and commitment towards rights-bearers more justly.

The burden-sharing systems are classified into physical burden sharing schemes (PBSS) and compensatory burden-sharing schemes (CBSS). In PBSS, the number of refugees each country has to accommodate is established based on economic, geographic and demographic capacity criteria. The refugees are then relocated from countries which exceed the quotas to countries with fewer refugees (Thielemann et. al. 2010). Rather than physically relocating refugees, CBSS “provide compensation to those states that encounter a disproportionate number of refugees on their territory” (Kuosmanen 2012: 4). TRQs present a hybrid system: Each country is initially assigned a quota of refugees based on similar criteria as PBSS. Country A, for instance, can then either choose to provide the asylum services itself on its own territory or instead offer compensation to other countries (Country B or C) to accommodate the assigned refugees (Kuosmanen 2012). Country B and C can respectively make formal offers to Country A at international auctions to accommodate A’s refugees for compensation (Moraga and Rapoport 2014). If no suitable bidder country is found, the originally assigned country (A) is legally obliged to provide asylum.

The subsequent argument implies that duty-bearers possess a second-order duty towards refugees (Himmelreich 2017). They can transfer the obligation to provide asylum services to other countries while maintaining the obligation to oversee an adequate provision of these services. Moreover, refugees’ preferences for a destination must be considered if these preferences have normative force in the form of basic needs such as security or strong interest including social integration (Kuosmanen 2012). The second-order duty and preference accommodation limit the participating states to countries that can fulfil asylum services at equivalency.

Having established the foundation of burden-sharing schemes and their prerequisites, the following section discusses these schemes in the context of brute luck egalitarianism.

3. Brute Luck Egalitarianism

Brute luck egalitarianism is concerned with brute luck as “a matter of how risks fall out that are not in that sense deliberate gambles” (Dworkin 2000: 73). Other things equal, differences in people’s well-being based on brute luck are seen as unfair because they do not present people’s deliberate choices (Voorhoeve 2019). The theory therefore implies that “the lucky should transfer some or all of their gains due to luck to the unlucky” (Arneson 2008: 80). The subsequent analysis is not only based on brute luck egalitarianism due to its prevalence among egalitarians but primarily due to its humanitarian concern for those whose unequal life prospects are a result of their circumstances (Arneson 2008). Thus, the framework is particularly fitting in the context of refuge since refugees and the neighbouring states to conflict zones find themselves in precarious positions through no substantial fault of their own. The subsequent argument follows Voorhoeve’s pluralist brute egalitarian framework with posits that besides the concern for inequality, “it is in itself better if people have more valuable life prospects” (Voorhoeve 2019: 4).

Justification for burden-sharing

Although brute luck egalitarianism is primarily concerned with interpersonal justice, it also serves as a justification for the requirement to distribute the protection of refugees in the first place. In the case of the Syrian conflict, neighbouring countries including Jordan which hosts approximately 800,000 Syrian refugees (UNHCR 2021) are not more responsible for the war than many other less burdened states farther away. The mass influx of refugees has negatively affected Jordanians through increased competition on the labour market and difficulties in the provision of public goods (Alshoubaki and Harris 2018). Hence, the bad luck of Jordanians being located close Syria compared to other nations is a source of injustice that can be rectified by allocating the burden either through geographic relocation of refugees or financial compensation; creating a moral requirement for burden-sharing based on brute luck egalitarianism.

Advantages of CBSS

Further, brute luck egalitarianism highlights a crucial advantage of CBSS over PBSS to allocate this duty: the elimination of relocations that are required under physical relocating schemes and utilisation of cost advantages in countries of first entry allows for more funds to be spent on the provision of asylum services for a greater number of people.

Thielemann's (2010) study of the direct unit costs of asylum application estimates that the German government incurs costs of over €50,000 per asylum application which is among the highest in the EU as seen in Figure 1.

Figure 1: Total cost per asylum application in euros (Thielemann et. al. 2010: 85)

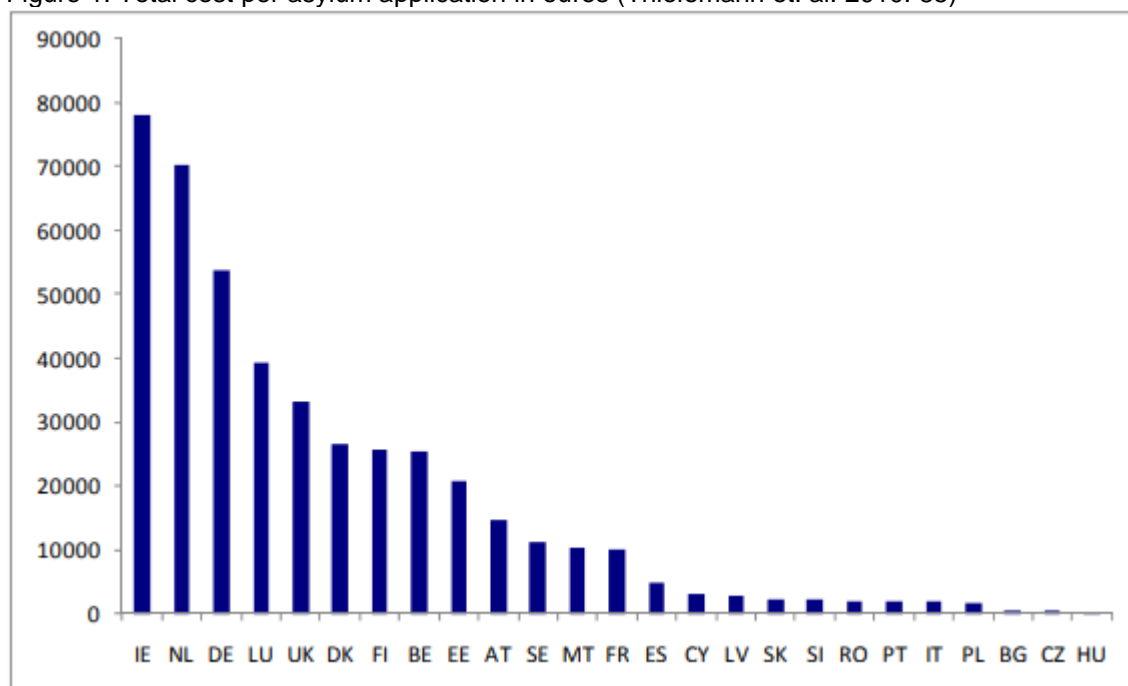


Figure 1 illustrates strong differences in the cost of asylum applications that can be largely attributed to differences in countries' costs of living, comprehensiveness of asylum services, expensive detention practices and public sector efficiency (Thielemann et. al. 2010). In comparison, the World Bank finds that annually, the Jordanian government spends around €3,100 per refugee on asylum services including education and healthcare (Malik 2013; Verme et. al. 2016).

These figures indicate that every asylum application in Germany could fund 16 refugees in Jordan annually. Nonetheless, it could be objected that one refugee in Germany is made substantially better off while the 16 refugees are only provided the means to satisfy their basic needs. However, this objection should be rejected: Firstly, Jordan provides comprehensive access to education and healthcare reaching beyond material support and accommodation (Verme et. al. 2016). Secondly, the argument above not merely appeals to greater cost efficiency that would be obtained in Jordan but primarily to making a larger number of refugees – sixteen compared to one – better off. According to brute luck egalitarianism, making a large number of the most deprived refugees better off in Jordan, rather than determining one refugee by chance to be made substantially better off in Germany, yields a morally superior outcome – especially during the asylum application or for temporary protection. The calculation above does not include the additional savings in relocation costs that would occur under CBSS compared to physical relocations. These costs have been particularly high for previous pilot including the European Relocation from Malta (EUREMA) program (Thielmann et. al. 2010; Moraga and Rapoport 2014) and could be further employed for compensation of countries of first entry. Moreover, an improvement of conditions in these countries due to compensation can eliminate the traumatising and often deadly journeys that refugees undertake to reach their destination (UNHCR 2019).

Nevertheless, Gibney (2007) maintains that CBSSs can be exploitative: wealthier countries abandon their obligations by paying poorer counties off. This objection should also be partially rejected. Compensation is not a form of abandonment of obligation but rather realizing this obligation in another form by enabling other countries to collectively provide protection. Yet, CBSSs can be exploitative for a different reason: Due to the non-refoulement principle that (rightly) prohibits the expulsion of refugees to places where their life is threatened (Kuosmanen 2012), countries of first entry are in weak bargaining positions. They can neither send refugees back to their country of origin nor are other states obliged to welcome the refugees as they have already found a safe haven. Thus, these countries could be coerced into accepting any compensation above zero. This potentially exploitative practice of other countries taking an unfair advantage of countries' of first entry's position can be primarily classified as unjust based on brute luck: their weak bargaining position and the subsequent high financial burden is a primarily a matter of their unfortunate location bordering conflict zones.

Why TRQs are preferable to traditional CBSS

TRQs can rectify this problem of unjust coercion in traditional CBSS by creating an initial level playing field between nations through quota assignments that are based on objective economic, geographical and demographic criteria similarly to those for PBSS. Thus, the brute luck of initially having to bargain from a position with disproportionately more or less refugees is eliminated because TRQs' quota allocation becomes the default option for the allocation of refugees in case no suitable bidder can be found (Schuck 1997). If the quotas assign 1,000 refugees currently in the country of first entry to Country A, A cannot simply pay any amount greater than zero to that country. If the offered compensation does not cover a country's actual costs, the country rejects the compensation and the 1,000 refugees will be physically relocated to A. Nevertheless, an international agency such as the UNHCR would be required to oversee that the initial quotas indeed reflect a fair allocation and further to ensure that no coercion takes place in the bargaining process (Moraga and Rapoport 2014).

Besides, eliminating brute luck, TRQs offers several political and economic advantages to states that can act as powerful incentives for the implementation of TRQs:

- (1) The provision of refuge is seen as an international public good that reduces negative spill-overs to other states such as the instability from refugee streams (Moraga and Rapoport 2014). Due to a current under-provision of refuge (as a result of public good free-riding), TRQs can ensure a more effective supply of refuge which is in each state's self-interest. The resulting benefits of refuge are largely non-excludable and non-rivalrous affecting neighbouring states and can therefore make the international community better off.
- (2) TRQs can act as individual countries' insurance against unpredictable refugee flows because the financial burden of asylum services will always be allocated among participating states regardless of refugees' country of first entry (Schuck 1997).
- (3) Compensatory schemes and TRQs can lead to an overall reduction in the costs of asylum services with "all countries facing lower costs as a percentage of GDP" (Thielemann et. al. 2010: 123). Thielemann's Policy Option 3.1b (see Figure 3) is based on fund-based redistribution that allocates 50% of EU funding proportional to the number of asylum seekers of each member state and 50% of the fund to countries where the number of asylum seekers exceeds an objective capacity quota. In principle this fund is similar to a CBSS scheme as it does not require physical relocation but rather attempts to balance the burden through financial compensation. The net costs for the provision of asylum services under this fund are modelled in Figure 3 compared to the baseline scenario in which each member state primarily funds the asylum services itself (Figure 2). A comparison of both figures highlights two important advantages: Firstly, it allocates the financial burden of asylum provision more evenly among states: the most highly burdened state incurs costs of approximately 0.16% of GDP compared to 0.26% under the baseline scenario (Thielemann et. al. 2010). Secondly, it lowers the level of costs for every state by utilising cost advantages. For instance, Malta which incurs the highest costs as a percentage of GDP in the baseline scenario (due to the high number of refugees) will receive significant funding that reduces its costs by about 90%. Thanks to lower costs per asylum application in Malta – approximately 85% lower compared to the Netherlands or 80% lower compared to Germany (Thielemann et. al. 2010: 85) – the burden that other countries as net contributors to the fund will face falls since asylum application can be financed at lower costs in Malta. The net contributing countries can therefore lower their own costs which would be higher if they had to accommodate the refugees themselves (Thielemann et. al. 2010: 123).

TRQs can reduce these costs even further. Under the supervision of an international agency to ensure equivalent standards and non-coercive practices, a country will accept the offer from the country that requires the lowest compensation for the provision of asylum services (Moraga and Rapoport 2014). This mechanism can therefore not only reduce relocation costs and utilise cost advantages of countries of first entry (see CBSS above) but also factors in other comparative cost advantages that different participating countries have. These include difference in purchasing power and inflation, leading to greater efficiency and further cost reduction for participating states.

Combined, these aspects can provide sufficient incentives for states to engage in TRQs. However, the subsequent section will emphasize that countries participation cannot be solely driven by self-interest but also has to be motivated by their moral duties towards refugee.

Figure 2: Total costs as percentage of GDP under the baseline scenario (Thielemann et. al. 2010: 119)

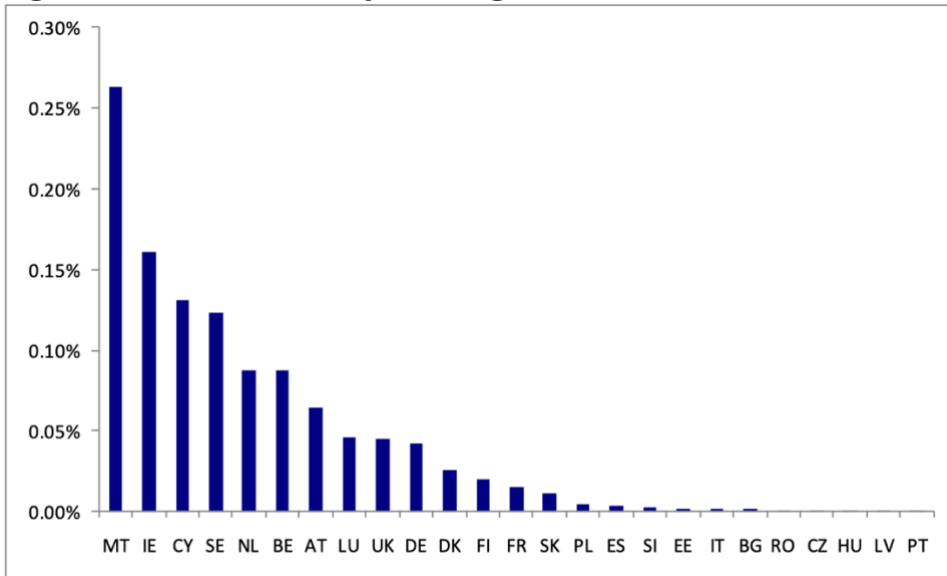
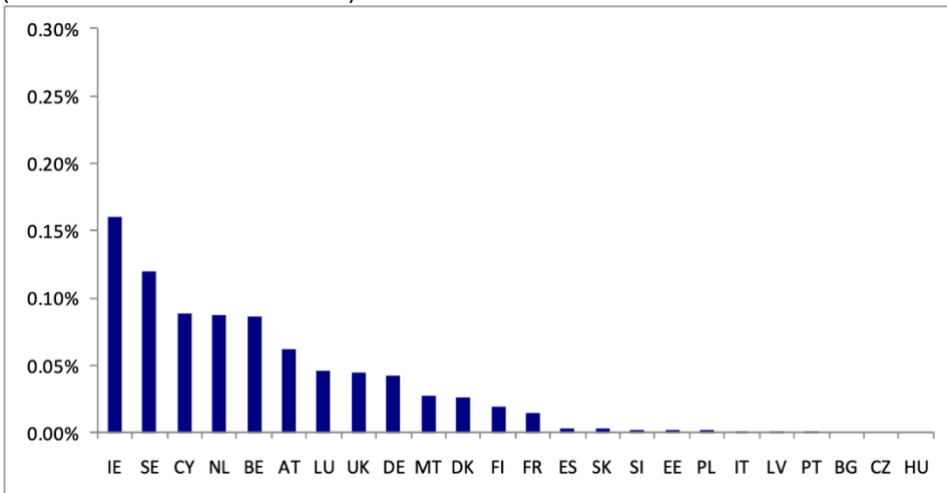


Figure 3: Total costs as percentage of GDP under the Policy Option 3.1b with 50%/50% allocation (Thielemann et. al. 2010: 123)



Relational Egalitarianism

The brute luck egalitarian emphasis on individuals’ choice or circumstances only expresses how individuals’ welfare compares to their peers. However, the theory is incapable of expressing how people relate to each as citizens that are owed equal respect and concern based on their abilities to “freely form, revise and pursue a conception of a good life” and their “sense of justice” (Voorhoeve 2019: 11). Given the important consideration for individuals’ life prospects that have been outline above, this section does not discard brute luck egalitarian principles of redistributive justice (contrary to Anderson 1999) but rather follows Voorhoeve (2019) in his approach of supplementing and constraining the brute luck egalitarian framework with relational egalitarianism. The latter stresses that

“people should relate to one another as equals or should enjoy the same fundamental status” (Arneson 2013).

This concern for the dignity of individuals is particularly relevant to TRQs: TRQs not only attach a cost to refugees that needs to be shared, but the scheme also allows countries to trade asylum services with each other based on market principles. Although refugees themselves are not transacted, (rather the service of processing their claims and providing them with assistance) Sandel (2013) stipulates that being viewed as “economic goods” that can be traded between states would be humiliating for refugees. Brennan and Jaworski (2015) call this a semiotic objection: The perceived ‘distastefulness’ of the market allocation originates in the market itself. It might appear to be permissible to allocate refugees through other means of physical or compensatory burden-sharing, but markets (which are the central element of TRQs) not only facilitate allocation but also expresses certain attitudes towards refugees, namely that refugees possess instrumental disvalue much like economic goods and burdens that are usually allocated through market systems (Brennan and Jaworski 2015). Therefore, commodifying refugee quotas is perceived to undermine the respect that refugees are owed.

However, this view of market transactions is contingent on the conception of markets as an exchange of instrumental goods driven by self-interest (Brennan and Jaworski 2015). Unlike Adam Smith’s commonly adopted view of self-interested market transactions, the Italian Enlightenment thinker Antonio Genovesi highlights markets as enabling reciprocal relationships: Besides being conducive to the fulfilment of individual self-interest, agents can exhibit collective intentionality to achieve mutually beneficial goals (Bruni and Sugden 2008). For instance, a nurse can possess intrinsic motivation to care for patients. Financial reward through the market (her salary) does not have to corrupt her intrinsic motivation but allows her to pursue her intrinsically motivated profession in the first place – rather than having to work in another profession. Thus, intrinsic motivation to care for others (patients or refugees), respecting them as non-instrumental equals, can occur in market transactions alongside self-interest. Similarly, in the context of TRQs, the market does not have to be viewed as a mere pursuit of states’ shared aim. The transaction can be motivated by states’ self-interest *and* states’ shared aim to protect refugees as ends in themselves.

If states enter TRQs with this intention of achieving protection for refugee and not only the pursuit of self-interest, then the semiotic commodification objection that is based on the criticism that refugees are only viewed as instruments (Sandel 2013) fails. However, states actually have to have the non-instrumental value of refugees as equals at heart – not only self-interest. Most importantly, these intentions also have to be communicated to refugees and the public: refugees not only have to be treated as equals but also have to be perceived to be treated in this manner in order to see themselves as enjoying the fundamental status of beings of non-instrumental value. As a result, mutually beneficial outcomes for refugees and states can be achieved.

4. Conclusion

The brute luck egalitarian framework explores the normative requirements of interstate burden-sharing. In this context, TRQs can improve the well-being of the most deprived while eliminating the potential exploitation of countries of first entry in the refugee allocation process. The utilization of cost advantages is not only conducive to the efficient provision of asylum but also creates incentives for states to engage in the system alongside risk insurance and public good considerations. However, the social egalitarian approach has illustrated an important limitation to TRQs: not merely states’ self-interest but the concern for the dignity of refugees has to guide the states’ involvement – otherwise the objection that the

scheme only serves states' interests rather than the protection of refugees remains an insurmountable obstacle to TRQs' implementation.

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