Justice in waiting: The harms and wrongs of temporary refugee protection

Rebecca Buxton
University of Oxford, UK

Abstract
Temporarily has become the norm in contemporary refugee protection. Many refugees face extended periods of time waiting for permanent status, either in camps or living among citizens in their state of asylum. Whilst this practice of keeping refugees waiting is of benefit to states, I argue that not only is it harmful to refugees but it also constitutes an injustice. First, I outline the prevalence of temporary assistance in the refugee protection regime. Second, I outline the orthodox view on temporary refugee protection – it is acceptable as long as it is not indefinite. I then spend the remainder of the article considering four arguments against temporary refugee protection: the plan argument, the reciprocity argument, the domination argument, and the compounding injustice argument. I contend that the first two arguments, which already feature in the literature, merely show that temporary protection is harmful to refugees. My own arguments on domination and compounding injustice show, instead, that giving refugees temporary protection constitutes an injustice. The domination argument allows us to critique the current practice of temporary refugee protection, whereas the compounding injustice argument shows that temporariness in any form constitutes an injustice.

Keywords
Asylum, domination, justice, refugee, temporary protection

Corresponding author:
Rebecca Buxton, St Johns College, University of Oxford, St Giles’ St Oxford, OX1 3JP, UK.
Email: rebecca.buxton@sjc.ox.ac.uk
I don’t know where I’ll be one year from now. Already I’ve been travelling and waiting for more than a year. Sometimes I feel like I’m crazy...I just want to live happily somewhere with my daughter. And I want to pay back the money I borrowed. I’m just so tired, I’m really so tired. I don’t know what tomorrow will bring. (Afghan woman interviewed by the Danish Refugee Council, 2017)

In the summer of 2015, nearly 1 million people arrived on the beaches of Europe. Most were fleeing war in Syria, which had become increasingly violent. Although escaping from the Middle East and North Africa to Europe by boat was far from new, the huge increase of deaths in the Mediterranean led to a discourse of ‘crisis’ in the West.\(^1\) Under increasing pressure, German Chancellor Angela Merkel offered sanctuary to these new arrivals, with Germany accepting almost a million refugees by the end of November that year.

Soon after these refugees had been given formal status, discussions began about how quickly they could be forcibly returned. In December 2017, the German interior ministers discussed a proposal concerning when Syrian refugees might be forcibly repatriated to areas considered safe by the Government (Foreign Policy, 2017). They rejected the proposal and instead extended their memorandum on halting deportations to Syria for one year, when they again considered the possibility of forced returns (Deutsche Welle, 2017, 2018). In 2019, German interior ministers again decided against conducting deportations, extending the policy for another year (InfoMigrants, 2019). Many Syrians in Germany receive ‘subsidiary protection’ introduced by the EU Qualification Directive, as opposed to holding refugee status as defined under the 1951 Geneva Convention; this subsidiary protection is initially granted for only a year, at which time the holder must reapply.\(^2\) After several cycles, Syrian refugees can eventually apply for permanent residence. Until then, their temporary status is extended each time by one or two years – they must then wait to see what decision is taken the next time around.

Protection for refugees has also become more precarious in the United Kingdom. In a 2016 speech, then-Home Secretary Theresa May announced the introduction of ‘safe-return interviews’. Previously, refugees had automatically qualified for indefinite leave to remain after holding formal status for five years. Under the new policy, the Home Office would consider whether it was safe for refugees to be repatriated after five years of protection. Announcing the policy (Independent, 2015), May said:

When a refugee’s temporary stay of protection in the UK comes to an end, or if there is a clear improvement in the conditions of their own country, we will review their need for protection. If their reason for asylum no longer stands and it is now safe for them to return, we will seek to return them to their home country rather than offer settlement here in Britain.

It is clear from both cases that refugees spend many years in limbo, waiting to receive some form of permanent status. This is a growing trend across European
states that continue to treat refugees as transients and, thus, eventually deportable individuals. Some non-Western refugee-hosting countries adopt a different approach. For instance, Tanzania granted citizenship to over 160,000 refugees from Burundi in 2014 (UNHCR, 2014). Such a difference in treatment might be seen as another way in which Western states are failing in their duties to refugees and other refugee-hosting states. Temporary protection, then, is not a universal practice. But it is becoming more dominant across Europe and may well soon be adopted elsewhere.

This article argues that this growing presumption of temporariness in refugee protection constitutes an injustice. First, I outline the concept of ‘temporariness’ and its place in the practice of refugee protection. Second, I discuss what I take to be the orthodox view undergirding the practice of temporary refugee protection: the view that temporary status for refugees is acceptable as long as it is not indefinite. Third, I make the stronger argument that any form of temporary protection for refugees should be avoided. Here, I consider various approaches to explaining what (if anything) is wrong with temporary protection. After outlining and discussing (a) the plan argument and (b) the reciprocity argument – which already figure in the literature – I offer two new explanations: (c) the domination argument and (d) the compounding injustice argument. These arguments help to illuminate what is troubling about temporary forms of protection for refugees in particular.\(^3\) The domination argument shows why the current practice of temporary protection constitutes an injustice. The compounding injustice argument goes further, showing that temporariness in refugee protection is an injustice in itself. This gives us a reason not just to change the way that temporary refugee protection is practised, but to avoid it altogether. Of course, in certain circumstances, there may be reasons why temporary protection is the only available option. Even in these extreme cases, looking at the potential harms and wrongs of temporary protection head on enables us to better consider when and whether non-permanent protection is acceptable.

For the sake of this article, I define ‘temporary’ negatively as non-permanent. Notably, the need for non-temporary protection does not necessarily entail that refugees are entitled to citizenship in their state of asylum; citizenship is more than just permanent residence. Permanent residence with an expedited pathway to citizenship, then, would be acceptable in my view. Furthermore, I make this argument outside of discussions concerning the correct moral definition of refugeehood. Specifically, I am not adopting the ‘membership’ view which holds that refugees are those who have lost their previous political membership and are therefore owed surrogate membership by their host state (Price, 2009). Instead, I aim to make an argument that supporters of all the major definitions of refugeehood could in principle accept. Therefore, I will adopt a general humanitarian definition of refugeehood. A refugee is someone whose basic rights are unprotected by her state of origin and who requires international assistance in the form of asylum.

If you do not accept this definition, feel free to use whichever you prefer, and I hope my argument will remain convincing.
‘Temporariness’ in the refugee protection regime

When considering temporariness in the refugee protection regime, the first thing that may come to mind is the emergency mechanism, historically used to manage sudden, large-scale movement. ‘Temporary protection’ as an emergency mechanism became increasingly common in Europe in the 1990s, particularly for those fleeing conflict in former Yugoslavia and Kosovo. In the case of former Yugoslavia, the United Nations High Commissioner for Refugees (UNHCR) requested that European states accept forced migrants on a temporary basis (Gibney, 2000: 14). Those fleeing therefore did not receive the same rights as refugees with full Geneva Convention status.4 A similar approach was taken in the case of Kosovar Albanians displaced by the 1999 NATO bombing campaign. This led to the introduction of an EU policy to deal with large-scale emergency migration by lowering the standard of protection to allow for large-scale temporary sanctuary (European Union, 2001).5 Readers might also think of ‘Temporary Protected Status’ in the United States, which is designed to give individuals temporary sanctuary when returning to their own country is unsafe. This usually only applies under conditions of ongoing conflict or extreme environmental disaster. Those granted Temporary Protected Status cannot be removed from the US for the period of their protection and are given the right to work (US Citizenship and Immigration Services, 2020).

Whilst emergency mechanisms such as these constitute an important part of the refugee protection regime, temporariness also permeates the broader framework. Even formal refugee status, under the 1951 Geneva Convention, is an inherently temporary status that aims to fill the gaps resulting from a lack of state protection. This is because:

as a subject of international law, the refugee is inherently temporary: refugee status exists in order to fill the gap caused by a breakdown of the normal bond between citizen and state with ‘international protection’, until this bond can be restored, either with the original state of nationality, or with another state. (Durieux, 2014: 221)

Hathaway (2001: 42 ) argues that ‘the legal obligation [of states] remains only to host refugees for so long as return presents a risk of persecution and to honour their human rights during that risk-defined period of asylum’. Therefore, whilst Convention refugee status may appear stable, it is still ultimately temporary. As the Convention notes, refugee status ends either when the refugee has gained a new nationality through the process of naturalization or when the convention no longer applies, through a process known as cessation.6

However, states are subject to international laws and norms when determining whether a refugee can be returned. The principle of non-refoulement prohibits states from removing individuals ‘when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return’ (United Nations, 2018: 1). The principle of non-refoulement is considered jus cogens in international
It cannot be violated even by states who are not formal signatories to the Geneva Convention and other human rights instruments (Allain, 2001). Of course, whether states actually treat the principle of non-refoulement as such a strong constraint is certainly questionable, with violations becoming increasingly common. For instance, Germany was recently criticized for forcibly returning thousands of Afghan refugees even when states were aware that to do so would be unsafe (Pro Asyl, 2018). However, refugees can legally be returned when doing so is considered safe. Indeed, of the durable solutions pursued by UNHCR, return is now overwhelmingly the preferred option (Executive Committee of the High Commissioner’s Programme, 2016; Warner, 1994). Since repatriation is favoured by states, it is not difficult to see why more precarious forms of temporary protection are becoming the norm across Europe. No state currently offers refugees permanent residence on first entry, although some do give refugees expedited access to naturalization with lower procedural barriers. We can see why temporary protection policies are attractive to states. Keeping refugees in situations of limbo enables states to have greater control over their eventual membership – temporariness allows states to determine when more permanent forms of status might be offered and gives them greater flexibility over eventual return.

This article focuses on temporariness in Geneva Convention refugee status in liberal democratic states, with a focus on Europe. I do this in order to separate out the question of temporariness and protection of the refugee’s basic rights. Given that liberal democratic states are relatively successful at securing refugee access to other basic rights during the period of protection, I hope this approach allows me to pinpoint temporariness as doing the moral work behind my argument.

The rights of refugees in the state of asylum

Although a refugee’s entitlement to permanent status is not commonly discussed in depth, most who support temporary protection for refugees implicitly adopt what I call the orthodox view, arguing that refugees become entitled to membership only after a period of residence. This is best interpreted as a version of Carens’s (2003) social membership view, which holds that the state’s right to exclude people from membership erodes as social bonds are developed. Or, as Shachar (2009: 171) puts it, ‘the longer they stay, the deeper the social connectedness, the stronger the claim for inclusion’.

Some also adopt such a view when considering permanent status for refugees. On this view, refugees are initially owed temporary protection in the state of asylum, but once they have remained in the state for a significant period they become entitled to membership (Gibney, 2004; Miller, 2016). Such a view reflects a commonly held sentiment; that refugees can be placed in temporary forms of protection, but not for too long. Therefore, states do not need to avoid temporariness per se, but ‘permanent temporariness’.

We might simply think of the orthodox view undergirding the presumption of temporary protection as a kind of compromise between the rights of states to
determine their membership policies and the claims of refugees to a secure form of protection. Gibney (2000), for instance, argues that temporary refugee protection can be viewed as a compromise between control and humanitarianism. Therefore, whilst we might hope that states would offer more stable protection to refugees, temporary measures allow states to expand their humanitarian efforts without giving up control over membership. It is not obvious that this compromise between the rights of states and the rights of refugees is immediately problematic. In fact, it might ultimately be what is required in situations where many people need access to protection.

I argue that the orthodox view is the background presumption for European policy towards refugees. As evidenced by the German and UK policies mentioned above, temporary protection is assumed to be acceptable as long as refugees can eventually access permanent status. Instead, on such a view, refugees become entitled to membership only when they have resided in the state for a prolonged period of time. My argument in this article is not that the orthodox view is necessarily incorrect; the development of social ties might indeed entitle an individual to membership in her state of residence. Rather, I argue that the orthodox view is superseded by other considerations which show that temporary refugee protection constitutes an injustice towards refugees. Once we have considered these arguments, which will be the focus of the remainder of this article, social membership arguments of this kind seem not so much mistaken as simply redundant.

The harms and wrongs of temporary refugee protection

This section considers four possible arguments against temporary refugee protection. The first two, the plan argument and the reciprocity argument, already feature in the literature (Gerver, 2019). I argue that these two approaches only show that refugees suffer setbacks when placed in temporary protection situations. I contend that the issues that I raise later in the article – domination and compounding injustice – show that temporary refugee protection is also a wrong and therefore constitutes an injustice. The domination argument critiques the current practice of temporary refugee protection, while the compounding injustice argument shows that all forms of temporary protection for refugees constitute an injustice.

(a) The plan argument

It is often thought that placing people in situations of temporary protection should be avoided because it frustrates people’s ability to make plans. Such an argument begins with the widely shared assumption that ‘a minimally decent life includes the ability to enter social, economic, and romantic relationships with others’ (Gerver, 2019: 7). To be able to enjoy this component of a minimally decent human life requires being able to make plans for yourself and your future. As many refugees lack permanent status, they do not know if they will be able to remain in their state
of asylum on a permanent basis. Because of this, they are often unable to plan for the future, since they do not know what that future will look like. Temporary protection is, as Gibney (2004: 699) puts it, ‘time spent in limbo, in which planning for the future is almost impossible’. This inability to plan due to lacking secure status is, of course, not only experienced by refugees. Instead, it may be part of the experience of disadvantage in general. Wolff and DeShalit (2007: 96) note that ‘a person who believes themselves subject to risk suffers what we could call “planning blight”’. That is, ‘those facing uncertainty in employment or housing may find it very difficult to plan other aspects of their life; they may put off marriage or having children, for example, until their situation settles’. This inability to plan is therefore not special to refugees but can be more generally applied to people lacking security.

Since plans are an important component of a minimally decent human life, and temporary status can undermine the ability to make plans, this may give us a reason to offer more secure, permanent forms of protection to refugees (or, indeed, people more generally). The plan argument is similar to those that focus on the importance of place to autonomy and human flourishing; Birnie (2020: 371) argues that ‘the enjoyment of our basic needs, individual autonomy and much of what makes life valuable takes place against the background of, and in constant interaction with a distinct geographical space, and depends therefore on stable and secure residence there’. Similar arguments are made by Moore (2015: 38), who outlines ‘the moral right to residency’ on similar grounds, and Stilz (2013: 327), who develops an account for ‘occupancy rights’ along the same lines. A minimally decent human life requires stable background conditions, and so if one’s background conditions are unstable then one’s chances of a minimally decent human life are greatly diminished. To see this, we can simply imagine the case of two departmental philosophy lecturers, one on a permanent, secure contract and the other on a fixed-term contract that must be renewed each year. Even if they receive the same pay and benefits, we would surely prefer to be in the position of the first lecturer. Knowing that you have a secure job is valuable because it allows you to make plans, settle down and not worry about what will happen when the year is up.

Gerver considers whether the plan argument gives us grounds to argue against the eventual removal of refugees. She argues that we can imagine situations in which refugees could plan whilst still being removed from the state of asylum. She offers the following example (Gerver, 2019: 8):

In a world where refugees were required to move every five years, they could still gain some ties, entering romantic relationships lasting five years, friendships lasting five years, and employment contracts lasting five years. In such a world refugees could even plan for their future if they were aware they would leave after five years. While they could not plan for long-lasting attachments, they could at least gain temporary attachments for a limited period of time. If one holds that humans have a right to
mere temporary attachments for a limited period of time, it seems [that] refugees have no right to remain.

We should note here that Gerver’s argument concerns whether refugees have the right to remain in their original state of asylum. She contends that the plan argument is not successful in her case because refugees could make plans even whilst being moved every five years. Our worries about plans, therefore, do not give the refugee the right to stay in one place. She argues that we need ‘an additional theory explaining why the sorts of ties arising when one remains are better than the ties arising when one moves’ (Gerver, 2019: 8). But what does Gerver’s example mean for our case? In the above example, it seems that refugees can plan, as well as enter into some relationships that we take to be valuable. However, these are possibly not the kinds of plans that concern us when thinking about temporary protection. So, when we claim that temporary protection makes it difficult for refugees to plan, we really mean that it makes it difficult for refugees to develop autonomously chosen life plans. In Gerver’s example, refugees can plan to some extent – of course they can – but they cannot develop long-term life plans that many of us view as valuable.

However, even if we claim that refugees are not able to form autonomously chosen life plans when in limbo, it is not obvious that this constitutes a wrong rather than simply a setback in their interests. My own rejection of the plan argument is therefore slightly different from Gerver’s. On my view, there are often times at which individuals are unable to plan that do not prima facie constitute an injustice. There may be reasons why life plans need to be put on hold or suspended for a period of time. To be clear, it does seem wrong if someone is never able to form autonomously chosen life plans, but it does not seem to be wrong when they experience a period of time in which they cannot form autonomously chosen life plans. For instance, if our fixed-term contract lecturer cannot choose where she will buy a house, this constitutes a setback. It may become a wrong if she is kept on the precarious employment contract for too long – for instance, if short-term contracts are the only option in the early-career academic job market. However, if she has a good chance of getting a permanent contract somewhere at the end of the year, perhaps this inability to plan for a period of time is acceptable from the perspective of justice. Her inability to plan of course gives us a reason to avoid such arrangements, but not a duty of justice. The orthodox view underpinning the temporary protection framework, as I outlined above, seems to be able to absorb our worries about plans. It would be better if refugees were able to plan their lives and see those plans through. But so long as they are not kept in this position of ‘planning blight’ for too long, it does not constitute an injustice. When discussing the compounding injustice argument later on, we will return to the idea of plans. Here I argue that the disruption of life plans and stable background conditions does constitute an injustice because it compounds and exacerbates the already existing injustice of displacement. But for now, according to the plan argument alone, temporary refugee protection is not unjust.
(b) The reciprocity argument

In developing the intuitions behind the plan argument, Gerver outlines and defends what she calls the reciprocity argument. Gerver argues that refugees have a right to enter into reciprocal relationships with citizens in the state of asylum – for instance, they have a right to enter into employment contracts, housing arrangements and romantic relationships. Because citizens are unlikely to enter into reciprocal relationships with refugees if they do not know when or whether they will leave, temporary protection undermines refugees’ ability to enter into these relationships. By ‘reciprocal relationships’, Gerver means a relationship that:

occurs when X provides an offer to Y with the expectation that Y will later provide an offer back, which Y later provides back with the expectation that X will later provide another offer back, which X later provides with the expectation that Y will later provide another offer back, and so forth. (Gerver, 2019: 9)

The example of a reciprocal relationship that Gerver gives is a training contract. Such a relationship is entered into, Gerver argues, because the employer knows that they will receive something of benefit from the employee. Therefore, ‘both parties are aware that the other party is acting as she does – or possibly acting as she does – with the expectation that the other will reciprocate’ (Gerver, 2019: 9).

She therefore argues that, since the threat of potential return undermines the refugee’s ability to enter into these reciprocal relationships, the refugee should be entitled to stay in their state of asylum. As she puts it:

Refugees have a right to remain in one country, and to remain when returning is safe, to develop reciprocal relationships during a period when remaining is unsafe. A refugee in Germany who cannot safely return to Syria will struggle to obtain a loan if a lender is not certain when the refugee will be required to leave... Refugees have a right to remain so that citizens can be fairly certain they will remain, assisting them to enter relationships in the present. (Gerver, 2019: 17)

Therefore, to place refugees in temporary protection situations in which they do not know whether they will leave undermines their ability to enter into such reciprocal relationships.

There are two reasons why I think this argument is unconvincing. First, it relies on an empirical assumption that is not obviously true. For Gerver’s argument to succeed, it should be the case that individuals are unlikely (or perhaps less likely) to enter into short-term relationships, as well as long-term ones, on the basis of temporariness. For instance, take romantic relationships: it is not obviously true that someone is less likely to enter into a romantic relationship with another person based on their immigration status. Or at least, we would need empirical evidence to show that this is the case. Second, whilst the empirical assumption might be acceptable in the case of employment and housing, there are other
policies that could be put in place which would discourage this sort of discrimina-
tion. For instance, the government could ensure that landlords do not know the
immigration status of their tenants. Therefore, the fact that someone is poten-
tially at risk of removal could not be taken into account. Since there are other ways
to ensure that refugees could enter into reciprocal relationships, this argument does
not seem to give us a case against temporary refugee protection.

The following sections offer two new potential arguments for why temporary
refugee protection in unjust.

(c) The domination argument

This section considers whether temporary protection places refugees in a particular
position of vulnerability to domination. My eventual reasons for supposing that
the domination argument is limited are similar to those which rebut the reciprocity
argument in the previous section: that a shift in current policy would go much of
the way to eliminating domination in the realm of refugee protection without the
need for removing temporariness altogether. I argue that the domination argument
shows that the current practice of temporary protection is unjust but cannot crit-
tique temporariness per se. A focus on domination gives us a case for reform but
not abolition.

Domination occurs when one agent holds a certain power over another, in
particular power that can be exercised on an arbitrary basis (Pettit, 1997: 52).
The classic example of domination, given in Pettit’s Republicanism, is that of the
slave and the benign master. In this case, what matters is not whether the master
actually interferes with the slave’s actions, but that the master could potentially do
so on an arbitrary basis. They are therefore ‘dependent upon his will and vulner-
able to interference’ (Laborde and Maynor, 2008: 4). Power is arbitrary when it
depends on the will of the power holder (Draper, 2020). There are several ways to
cash out what we mean by arbitrariness – for instance, some argue that it depends
on the appropriate procedural mechanisms and institutions being in place (Lovett,
2011). Others argue that power is arbitrary when it is wielded without considering
the interests of the affected person or group, something which might be achieved
through democratic participation (Pettit, 2012: 57–58). In this section, I consider
both notions of arbitrariness and how they relate to the question of temporary
refugee protection.

To determine whether it is temporariness itself that generates worries about
domination, we need to compare the position of the ‘temporary refugee’ and the
‘permanent refugee’: let us imagine that the former has Geneva Convention refugee
status in a liberal democracy, and the latter has the same status but is also subject
to non-deportability (Birnie, 2020). That is, she has permanent residence and
cannot be returned. Note that the permanent refugee does not hold citizenship
in the state of asylum – something which will be important in our discussions of
varying accounts of arbitrariness later on. The main difference between the two
cases, then, is that the permanent refugee is not subject to the threat of expulsion.
That is, even when return is safe, she will not be compelled to leave by the state of asylum. In this section, we will compare these two cases to consider whether the temporariness in the former refugee’s case exacerbates the threat of domination.

First, let us consider arbitrariness as a lack of appropriate institutions or procedures. The discretionary nature of refugee protection is important here, particularly when considering the state’s legal entitlement to expel under certain circumstances. There are two ways in which one might use the term ‘discretion’ here that I want to distinguish. First, some state might have discretion if the law in question is such that there is room for interpretation. That is, it can perhaps be interpreted and executed in a number of different ways. However, a state might also hold de facto discretion. In these cases, the content of the law is not up for interpretation but there are not the legal checks and balances in place to hold states to the nominally accepted legal standard. So, a law, in this latter instance, is discretionary to the extent that states do in fact exercise discretion over whether they abide by the law, whether or not they are supposed to.

As mentioned earlier, states do not have the legal entitlement to expel refugees whenever they wish. Instead, they are subject to the international legal norm of non-refoulement which holds that states cannot return refugees when doing so would threaten their life or freedom (United Nations, 2018). However, even with the existence of such a strong norm in place, states do still often violate the norm of non-refoulement. So, even though states are not in principle entitled to expel refugees whenever they wish, the practice of refugee protection is such that they often have the power to do so with little consequence. Consider, for instance, the case of the forced repatriation of Afghan refugees from Germany, which led to many refugees seeking protection for a second time (Pro Asyl, 2018). Refugee advocacy groups continuously argued that returns were unsafe. However, the German government pursued the policy of returns with the assistance of the UN Migration Agency (IOM). In cases such as these, decisions around refugee policy are often made to suit the state’s political interests without necessarily abiding by international law, particularly if they are powerful international actors.

Many have commented on the UNHCR’s inability to condemn state behaviour because it depends on these states for institutional funding (Loescher, 2001). The appropriate checks and balances are therefore not in place to allow refugees to enjoy protection without potentially being subject to the arbitrary power of states. On this understanding of arbitrariness, the temporary refugee appears more vulnerable to domination because she is subject to the threat of return which, as we have seen, is currently not governed by the appropriate institutional checks and balances. The permanent refugee, however, appears to face a similar threat. Given that states are overwhelmingly free to determine their own domestic refugee policy, it is of course possible that the state of asylum might choose to rescind her permanent residence; this is unlikely, but it is possible and therefore important when considering domination. When we understand arbitrariness as a lack of appropriate checks and balances, then, the temporary refugee and the permanent refugee are in similar positions.
Importantly, here we should consider what exactly this argument allows us to say. Even though the temporary and permanent refugees are both potentially vulnerable to domination, temporary protection seems to make the actual exercise of this dominating power far more likely. However, because of this first interpretation of arbitrariness as focused on institutional checks and balances, we can only use this framing to critique the practice of temporary refugee protection, rather than the fact of temporary refugee protection. To illustrate this, consider again the case of the temporary vs. the permanent employee. Here we might have two possible solutions: (a) we could make all jobs permanent, or (b) we could put in place a robust regime of workplace protections in order to alleviate worries about domination. If both options are open, then the argument does not successfully critique the fact of temporary employment but merely the current practice of temporary employment. One solution open to us, then, is to call for more institutional checks and balances in order to make the decisions made vis-à-vis refugee return less arbitrary. That is, states could agree to make the UNHCR independent from state funding and offer it the tools necessary to monitor and critique the actions of powerful states, or refugees might be offered the power to properly contest removal decisions in the state of asylum, with full legal representation and assistance. This might assuage the worries about domination on this understanding of arbitrariness. Under this regime, temporary protection could still persist in some form; it would just be subject to an extensive system of checks and balances.

Now let us consider the second possible interpretation of arbitrariness as lack of democratic voice. This focus reflects Pettit’s more recent attempts to contrast domination with functioning democracies; he argues that we can avoid domination when the people have an equal share of control in the state (Pettit, 2012). Temporary refugee protection – at least in current practice – results in forced migrants having no say in how the institutions that govern asylum are run. Refugees do not receive the right to vote in their state of asylum and are often also unable to participate in elections in their state of origin, for instance through external voting mechanisms. The UNHCR does not offer refugees a formal route through which to participate in or challenge its internal decision making. As a general rule, then, refugees do not have a democratic say in the institutions that govern them and have no alternative political institutions to call upon. They also did not consent to living under institutions with no political voice. On this understanding of arbitrariness as lack of political voice, the difference between the temporary refugee and permanent refugee also appears negligible. Neither the temporary refugee nor the refugee with permanent residence holds the right to vote in the state of asylum. If we take this understanding of arbitrariness seriously, then, it may be that non-deportability as permanent status is not enough. Instead, if this form of arbitrariness worries us, then the refugee would be entitled to political enfranchisement. But, again, it does not follow from this argument that there is anything wrong with temporariness per se. It may be that this argument for the enfranchisement of refugees is a good one, but it is neutral on the question of temporariness.
There is also an additional worry for the domination argument here; that offering permanent status to some might lead to more domination in the protection system elsewhere. That is, on the republican view, a case for institutional reform must demonstrably be superior to the status quo in terms of non-domination (Ronzoni, 2017). We might worry that requiring states to offer refugees permanent status would lead to fewer refugees overall receiving protection. Opting for a more permanent scheme – although it would be better for those who actually receive protection – would lead to more domination overall because many people in need of protection would not receive it. States, presumably, would be less likely to accept refugees if doing so was a permanent, substantial commitment. It is not entirely obvious that permanent status is actually a better option than the status quo in terms of total domination.

So, what can we conclude from the domination argument? On either interpretation of arbitrariness, the domination argument can only critique the practice of temporary refugee protection as it currently functions, rather than temporary protection per se. The temporary refugee is perhaps more likely to be subject to arbitrary power than someone with permanent residence, but the possibility of domination in both cases still remains. Again, an evaluation of the current practice of refugee protection in this form gives us a potential new path towards a more just refugee regime. But, according to this argument at least, there is nothing wrong with temporary refugee protection itself; we can imagine ways in which temporary protection may be practised without generating worries about domination.

(d) The compounding injustice argument

My final argument holds that temporary refugee protection compounds the central wrongs of displacement. That is, the temporariness of such protection needlessly exacerbates and prolongs the harm that displacement causes such that it constitutes an injustice. This argument, I believe, succeeds where the previous arguments have failed; it demonstrates that, in many cases, the fact of temporary refugee protection is itself an injustice that cannot be avoided other than by offering refugees permanent status.

A powerful argument for the duty to avoid compounding injustice has recently been made by Deborah Hellman. Hellman’s argument focuses on the wrongness of indirect discrimination. She argues that this discrimination is often wrong because indirect discrimination compounds the former injustice of direct discrimination. She writes:

When we interact with people who have been the victims of wrongdoing, does the fact that they have been wronged by others affect our obligations to these victims? Our obligations could be affected in (at least) two distinct ways. First, the fact that people have been wronged by others may give us positive obligations to them—obligations over and above what we owe to all people. For example, perhaps the fact that someone is a victim of wrongdoing provides special obligations to aid this
Second, the fact that someone has been a victim of wrongdoing may limit our freedom of action when we interact with him or her. (Hellman, 2017: 3)

In Hellman’s view, to ‘compound’ an injustice means two things. First, the actor must ‘interact with the injustice’ in some way. Second, this interaction with the injustice must ‘increase or magnify’ harm to the individual (Hellman, 2017: 4). To compound an injustice is wrong, then, because it exacerbates and carries forward the ongoing effects of an injustice that has already occurred – it makes the situation of an already wronged individual even worse. Hellman offers the following example:

**Insuring victims of domestic violence**

Life insurers use a variety of factors to determine what price to charge a person applying for life insurance. Age is one important factor, but insurers also try to determine whether a particular purchaser is likely to die earlier than the average person of the same age. In doing so, a person’s status as a victim of domestic abuse is relevant. Domestically abused women are likely to die earlier than the average woman of the same age. This is true whether the woman stays with or leaves the abuser. Should the insurance company take into account the fact that battered women are victims of wrongdoing when determining whether to include this relevant risk factor?

Hellman argues that in the above case insurance companies have a duty not to charge domestically abused women more for their cover. First, if they were to increase the cost of insurance, the decision would be based upon the fact of the previous injustice – these women would be singled out precisely because they are victims of domestic abuse. Second, as Hellman points out, ‘the insurer amplifies the original injustice because the harms caused by the battery now include not only the physical and mental suffering caused by domestic violence but also the economic loss of high priced insurance’ (Hellman, 2017: 6). Such a case therefore shows that, even though the insurance company was not involved in the original injustice, they nevertheless have special duties towards these women precisely because they are victims of an injustice. The original injustice therefore generates constraints on how the insurance company can interact with these women.

The question here then is whether, in the case of temporary refugee protection, the state is ‘sufficiently implicated in carrying forward the prior injustice to make the state partially responsible for the latter harms caused by the original injustice’ (Hellman, 2017: 4). I stated at the outset of the article that I want my argument to be compatible with any definition of refugeehood. But to determine whether temporary refugee protection compounds the wrongs of displacement, we need to establish what the wrongs of displacement are. For each of the potential definitions, the wrongs of displacement may be slightly different. For instance,
Price (2009) argues that the harm of displacement is the loss of political membership itself, which he believes can only come about through persecution. Since the harm of displacement is membership loss, a new form of membership is precisely what is owed. However, I do not want to adopt this view here as it limits my final argument on the injustice of temporary protection to those who agree with Price’s membership view. So here we need to consider whether there are other displacement-based harms on which the different approaches to ‘refugeehood’ could agree. Only then will we be able to reach an ecumenical view of how temporary refugee protection compounds an already existing injustice. However, without considering all the possible definitions of refugeehood, I believe that we can pull out a few common threads in the various approaches.

Similar to the argument made concerning plans, I propose that a major displacement-based harm that most theorists can agree on is the refugee’s lack of stable background conditions. We should agree that the refugee is someone whose background conditions have been significantly disrupted, causing her to flee across an international border. As we saw above when discussing the plan argument, many take stability as an essential background condition of autonomy (Birnie, 2020; Moore, 2015; Stilz, 2013). Displacement is therefore at least partially harmful because it disrupts the essential background conditions of one’s life. As we saw with the plan argument, temporary protection for refugees also disrupts the background conditions of one’s life. It does not allow refugees to settle in one place or make plans for their future. I dismissed this argument originally because I argued that it was a worry that the orthodox view could accommodate. My reply to the plan argument was that as long as refugees are not kept in this position for an unnecessarily long time, it does not constitute an injustice. However, given the nature of the compounding injustice argument given by Hellman, we are now in a position to go back to the plan argument and see whether it can be restated in a way that shows that this disruption does in fact constitute an injustice.

I contend that temporary refugee protection prolongs and exacerbates the disruption of the background conditions of an individual’s life such that it compounds it. This is because temporary refugee protection continues and expands the disruption that refugees already face because of displacement. Therefore, as refugees have already been victims of an injustice, they are owed something different to voluntary migrants. In some ways, states already recognize this. For instance, refugees are given diplomatic protection by their state of asylum when travelling abroad, something which is not afforded to voluntary migrants (Ziegler, 2017). This is, at least in part, because of the different relationship that the state seems to have to refugees as opposed to voluntary migrants. The state already recognizes, then, that refugees are owed something different to voluntary migrants, precisely because they have been wronged already. However, this kind of distinction in treatment does not go far enough in recognizing the difference in the disruption of background conditions. Instead, if we can agree that a central harm of displacement is the disruption of the essential background conditions of one’s life, then states also have an obligation to ensure that this wrong is not needlessly
prolonged. As we saw with the plan argument above, temporary protection does expand and prolong this wrong. If this is correct, then the plan argument given above gives us the ammunition to complete the compounding injustice argument – temporary refugee protection constitutes an injustice, then, because it makes the refugee’s already bad position even worse when we centre this notion of disruption. There are good reasons to think that temporary refugee protection does prolong this kind of disruption. Indeed, the UK’s safe return reviews were criticized for just this reason. The Refugee Council noted that the policy would ‘prolong the anxious limbo many refugees are forced to endure while their asylum claims are processed by a further five years as they worry about their long-term futures’. Likewise, Colin Yeo noted that ‘retrograde change of policy means that any refugee granted protection in the UK will no longer be secure in their status and will be unable properly to start rebuilding their life’ (Travis, 2017). The beginning quote of the article from an Afghan refugee likewise substantiates this claim – that temporary protection is often exhausting, confusing and hugely disruptive.

One might wonder whether a standard of comparison is needed in order to determine whether some wrong is compounded. My argument here is not that a refugee’s situation remains as dire during the period of temporary protection as before the granting of asylum. There is a substantial difference between refugees who are recognized and protected by liberal democratic states and those who are not. In this way, the refugee’s situation is not the same as the life insurance example used by Hellman. In that case, victims of domestic violence are made worse off. They are harmed and then charged more money as a result of that harm. They are therefore not able to buy life insurance at the same cost as other people the same age or in the same kind of employment. One might be tempted to argue that in placing the refugee on some temporary form of protection, any harm that persists is merely a spillover from the original displacement. That is, if the background conditions of the refugee’s life continue to be disrupted – because she does not know whether and when she might be forced to return – then this is a misfortune but not an injustice. However, I think that this wrongly paints temporary forms of refugee protection as an inevitability rather than a political choice. As we saw at the beginning of the article, temporary refugee protection is becoming increasingly popular across Europe, but it is not the only available option. Other countries can and do offer more permanent status of forced migrants, with some offering permanent residence and the possibility of citizenship almost immediately. Temporary protection is therefore not the neutral policy option, but an active policy choice which prolongs the central harm of displacement for longer than is necessary. In this instance, such a policy decision might be conceptualized either as (a) having the intention to produce an adverse effect – in perhaps encouraging the refugee to return – or, perhaps more likely, (b) being negligent or reckless to the risk of such an effect (Feinberg, 1987: 107–108). The cost in this case, then, is the needless prolonging of the disruption of the background conditions of the refugee’s life – a continuation which is entirely dependent upon the choice of the receiving state in
question. The cost, then, is not an additional new harm (like the increased cost of insurance) but the needless prolonging of an already existing harm.

There may be some confusion over exactly where the injustice in question here is located. I think there are two possible answers, though here I only focus on the second. First, it may be that the act of forcibly returning a refugee who has already been displaced constitutes an injustice. That is, the return itself amounts to a use of force against someone who has already been displaced and is now being displaced for a second time. This secondary displacement worry is interesting, but not what I am discussing here. Instead, the injustice is located in the necessary period of temporariness that precedes the potential return. Even if an individual is never returned because her need for protection persists, being kept on temporary protection for several years until this becomes clear would still constitute an injustice. Indeed, it is unjust even if eventual safe return does become possible. Consider the example of an Afghan refugee who flees an abusive husband and a corresponding lack of state protection. This displacement seriously disrupts the background conditions of her life: she has to leave her job, her family and her country. She receives temporary protection in Europe and has to wait for seven years to be given permanent status. However, it so happens that her ex-husband is terminally ill – it is therefore relatively likely that he will die in the near future and her need for protection will be undermined. She therefore spends many years not knowing whether she will be forced to return to Afghanistan – her ex-husband is the only threat to her life. During this time, she is not able to rebuild her life – the background conditions of her life therefore remain unstable because of the possibility of forced return. In fact, her ex-husband does die in her final year of temporary protection. She therefore now faces the threat of forced return as she is no longer entitled to international assistance. The compounding injustice argument shows that even if eventual safe return is possible, as in this case, the very fact of having to live in this state of temporariness is what is unjust. The background conditions of this woman’s life were hugely disrupted through the process of displacement, and temporary protection prolonged this disruption in such a way that the wrong was compounded.

So, if successful, what are some of the implications of the compounding injustice argument? This argument makes a case against temporary refugee protection in liberal democratic states, even for a limited period of time. It does so because the fact of being on temporary protection whatsoever, on this view, constitutes an injustice. However, there may still be overriding reasons for why temporary protection is sometimes necessary, which I want to touch on briefly here.

First, there might be concerns about the capacity of certain states. If all states have an immediate obligation to give refugees permanent status, then states who are more likely to receive refugees would continue to host larger numbers. Such a system might therefore exacerbate existing inequalities between refugee-receiving states. To this extent, such an argument might depend on a just refugee-sharing regime already being in place. Of course, the argument is open to the idea that permanent status could be offered by a state that the refugee is not currently in.
For instance, when a refugee arrives in Italy, Germany might then offer her permanent status. She could then perhaps choose whether to stay in Italy on a temporary visa if she wishes, but she will always have the option of permanent residency in Germany. Second, there might be a similar concern about states using the fact that they need to provide permanent status as a reason to exclude other, potential refugees. The compounding injustice argument might therefore be vulnerable to a similar worry faced by the domination argument – that the total amount of protection would in fact decrease under this scheme. Even if this is the case, I want to be clear that under my framework states using the fact that they need to offer permanent protection to refugees as a reason to reject more people for eventual protection would be wrong, unless it generated serious worries about capacity. If this were the case, then a permanent refugee protection regime might be a second-best option. Third, there might likewise be concerns about the refugee’s right of return. If a refugee is given permanent status in one state, does that mean she has to renounce her ability to return to her state of origin? Of course, this depends on what kind of permanent status the refugee is given – being offered permanent residence does not require abandoning previous citizenship. Therefore, to alleviate this worry we simply need to ensure that any permanent status offered in a state of asylum does not undermine such a possibility.

At the outset of this article, we noted that temporariness has now become the norm in the European refugee protection regime. European states benefit from keeping refugees in limbo as it allows them to send refugees back to their state of origin, giving them greater control over membership. However, I hope to have shown not only that this is harmful to refugees, in generating setbacks in their interests, but also that it constitutes an injustice. In particular, I have offered two new arguments: the domination argument and the compounding injustice argument. If either of these arguments are convincing, then the refugee regime as it currently stands needs to be rethought such that refugees do not find themselves in situations of temporary protection. I want to finish by simply stating that I do not believe that a shift away from temporary refugee protection is particularly likely any time soon. European states are making it more difficult for refugees to receive permanent status, not easier. But this argument is, I hope, still one worth making. It shows, again, that there are many problems with the current regime of refugee protection, and points us to a potentially more just framework for the future.

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ORCID iD
Rebecca Buxton https://orcid.org/0000-0002-4518-5307

Notes
1. For information on arrivals to Europe by boat before 2015, see Pugh (2001).
2. After a period of one year, subsidiary protection may be extended for two years and then two years again each time. Once they have remained in Germany for five years or more, forced migrants are eligible to apply for residency, though this is not automatic.
3. Notably, the concept of ‘temporariness’ and what is potentially troubling about it could help us to evaluate other policies in different areas, such as temporary supported housing for homeless people. Although I do not consider such cases in detail here, I would take any application of my argument to these areas to be an advantage.
4. The Geneva Convention defines refugees as ‘someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion’. Forced migrants who are the victims of indiscriminate violence or climate disaster therefore often do not meet the Convention’s focus on persecution. Other forms of status, such as subsidiary protection and humanitarian visas, attempt to fill this protection gap. However, they often come with fewer rights for the forced migrant (UN General Assembly, 1951).
5. This emergency policy has never been triggered by the European Commission.
6. Articles 1C(5) and (6) in the Geneva Convention on the Status of Refugees determine when the process of ‘cessation’ can be triggered. First, a refugee may be stripped of refugee status because of her individual conduct. Refugees might also be stripped of status if there has been a change of circumstances in the state of origin. Therefore, if protection is no longer required, a refugee may legally be deported as long as the conditions for doing so are safe. In most countries, this only applies to refugees who sought asylum by arriving in the state, the exception being Denmark who also applies this measure to refugees who have been resettled from the region of displacement – for instance, from camps (UN General Assembly, 1951).
7. For more information on which countries give exceptions for refugees, see the GlobalCit database on Global Nationality Laws: http://globalcit.eu/databases/1.
8. As previously stated, not all states adopt the practice of temporary refugee protection. However, for those states that do make it difficult for refugees to access permanent status, this is the standard background view. By orthodox, then, I do not mean shared by everyone, but rather orthodox within the context of countries that pursue temporary refugee protection policies.
9. Carens himself does not apply his social membership argument to refugees. In the case of forced migrants, he instead argues for expedited access to permanent membership (Carens, 2013: 194).

10. A similar point has been put forward by Carens (2008) when he argues in favour of creating a ‘firewall’ around migrants with irregular on undocumented status. Therefore, providers of protection or services -such as hospitals or schools -would not know the immigration status of the recipient and would therefore be meaningfully separated from border enforcement.

11. I also take my lead in attempting to build an ecumenical account of the refugee’s vulnerability to domination from Draper’s paper.

12. For more work on domination and migration, see the special issue on domination and migration in the *Critical Review of Social and Political Philosophy* 17(1), 2014.

13. Some states are now allowing refugees to vote in local and national elections. For example, Scotland recently introduced an Act that allows refugees to vote once they have successfully passed the Refugee Status Determination (RSD) stage (Scottish Government, 2020).

14. I am indebted to an excellent presentation by Kate Yoon at the Oxford *Philosophy and Borders* workshop in November 2019 for making me aware of Hellman’s argument.

15. There is a potential question here about whether all forms of displacement constitute an injustice. Instead, there might be cases of displacement which we think are ‘just’ in some sense; for instance, some cases of well-managed development-induced displacement, or displacement caused to stop a genocide. In any case, even if the displacement itself is not unjust, it seems reasonable to assume that displacement produces a number of wrongs that should not be compounded. In any case, this gap does not seem so large as to undermine my argument. It may just be that, in cases where the original displacement is not in fact unjust, the *compounding injustice* argument is no longer convincing.

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