

ORIGINAL ARTICLE

Direct and structural injustice against refugees

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1 | INTRODUCTION

The dominant philosophical approach to understanding the moral duties that states in the Global North have toward the 26 million refugees worldwide is what we can call the *Duty of Rescue Approach*.¹ According to this approach, states in the Global North (hereafter Northern states) are mere innocent bystanders overlooking the humanitarian crisis of refugee displacement unfold, and these states have moral duties to rescue refugees from this situation, at least if such states are able to do so at little cost to themselves.²

Serena Parekh's recent normative analysis (2017, 2020) has sought to challenge this dominant approach. Parekh highlights certain Northern state policies and practices used in response to refugees while they are displaced and suggests that refugees endure extensive harms as result of such policies and practices, including the harms of containment and encampment, and their being prevented from accessing adequate refuge. These harms, Parekh argues, are an injustice. Thus, for Parekh, certain Northern states, far from being mere innocent bystanders, are responsible for injustice against refugees.

In this article, I fully endorse Parekh's claims that refugees endure certain harms as a result of Northern state practices, and that such harms constitute an injustice against refugees. Yet, I will explore how we ought to understand this injustice. I contest Parekh's claim that the harms refugees endure as a result of Northern state practices are, and ought to be understood as, a *structural injustice*—an unfortunate, unintended unjust outcome resulting from structural processes (call this Parekh's *Structural Injustice Approach*). Instead, I contend that these harms are, and ought to be understood as, a *direct injustice* against refugees—an unjust outcome directly resulting from specific and avoidable policies enacted by relatively unconstrained actors (call this the *Direct Injustice Approach*). I argue that Parekh's Structural Injustice Approach fails to accurately capture the causal and normative relations between Northern state practices and the

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harms endured by refugees, and that this approach fails to provide any advancement on, and suffers from some of the problems as, the standard Duty of Rescue Approach to which it is ostensibly an alternative. I instead advocate a Direct Injustice Approach to understanding the harms that refugees endure as a result of Northern states practices. If these harms are indeed a direct injustice, then responsible Northern states are certainly not mere innocent bystanders, and are not merely involved in structural processes that have an unintended unjust outcome (as on Parekh's Structural Injustice Approach), but are instead directly committing a grave injustice against innocent refugees and thus have urgent negative duties to refrain from unjustly harming the world's displaced.

Section 1 explains Parekh's arguments in more detail. Section 2 revisits Iris Marion Young's (2010) account of structural injustice (on which Parekh's arguments are based) to establish the necessary conditions of structural injustices. Section 3 casts doubt on whether the harms that refugees face due to Northern state practices can accurately be cast as a structural injustice according to the necessary conditions. Section 4 advances normative arguments against understanding these harms as a structural injustice, since such an understanding will (among other shortfalls) fail to provide any advancement on the Duty of Rescue Approach and will fail to ground (weighty) moral duties to address the injustice against refugees. Section 5 concludes.

2 | PAREKH'S STRUCTURAL INJUSTICE APPROACH

Parekh (2020) criticizes the dominant Duty of Rescue Approach to understanding obligations to refugees on which “[Northern states] are often seen only as rescuers unconnected to the harms that refugees face once displaced.” On this “rescue frame” Northern states “have not done anything wrong. They have not caused refugees to come into harm's way, but are merely stepping in to help” (p. 18). This frame fails to capture the reality of “the harms experienced by refugees and the role that [Northern states] have played in this outcome” and “the harms that we [Northern states] have created” (pp. 19, 158). Parekh, across two books, draws attention to two particular harms that refugees endure as a result of Northern state practices: first the *containment and encampment of refugees*, and second the *inability of refugees to access refuge*.

In *Refugees and the Ethics of Forced Displacement* (2017), Parekh focuses on the *containment and encampment* of refugees. Northern states, through a variety of policies and practices, have sought to contain refugees in regions in the Global South away from Northern territories. In these regions, refugees are left to reside in refugee camps indefinitely, and Northern states financially and politically support housing refugees in such camps as their preferred response toward refugees (as opposed to resettling or granting asylum to large numbers of refugees; Parekh, 2017, pp. 37–9). The harms of such containment and encampment include “a sense of captivity as well as the denial of freedom, autonomy and basic human rights [...] for prolonged periods of time” (p. 5). Refugees in camps are passively dependent on international aid, face anxiety-inducing uncertainty over future prospects, and lack the opportunities necessary for an adequately autonomous existence. Refugees endure such conditions for years, decades, and sometimes generations (p. 3).

Parekh further demonstrates how camps affect refugees' rights. “First refugee camps rarely uphold the rights that refugees are entitled to based on the [1951 Refugee Convention].” Second, “because refugees in camps are so vulnerable, basic human rights are routinely violated both by other refugees and by the state and NGOs, and refugees lack the ability to claim their rights or have violations redressed” (p. 31). Parekh draws upon empirical studies which find the

full catalogue of human rights violations in certain camps and conclude that the very structure of camps—as enclosed spaces, beyond the rule of law, that deny free movement—entails that enclosing refugees in camps cannot be reconciled with respecting their human rights (Verdirame et al., 2005). Parekh notes that among the most severe and pervasive violations in camps is sexual violence. “Domestic violence, sexual exploitation, and various kinds of sexual torture occur at extremely high rates.” This “is known to occur globally in all camp settings” (2017, p. 34).

In *No Refuge* (2020), Parekh focuses on the harm of refugees *being unable to access refuge*. Parekh understands *refuge* as “the minimum conditions of human dignity,” which consist of an adequate standard of living (including food, water, clothing, adequate housing, and medical care) as well as physical security against threats to basic human rights (pp. 11–3). Parekh notes that the vast majority of refugees (86%), once displaced from their states of origin, reside in regions in the Global South where they effectively face three options: spend prolonged periods of time without adequate autonomy or security in squalid refugee camps; live in destitution without formal assistance and face exploitation and human rights violations in urban areas; or risk their lives on dangerous journeys and endure extensive human rights abuses to reach adequate security and subsistence in Northern states. Each of these three options fails to provide the minimum conditions of human dignity, and thus the vast majority of the world’s refugees are unable to access refuge (pp. 105–6).

For Parekh, this inability to access refuge is a harm that results from Northern state practices. Northern states, seeking to control their borders, have adopted a variety of policies and practices that serve to contain refugees away from Northern territories and prevent them accessing asylum. Parekh cites examples including pushbacks against refugees at European borders, child separation policies in the United States which deter refugees from seeking asylum, Australian interception at sea and returning refugees to off-shore detention centers in Nauru, the detention of refugees in camps and centers in Greece, an EU arrangement with Libya which detains refugees in centers on the Libyan coast and contains refugees in regions in North Africa, and the EU-Turkey Deal which blocks migratory routes and prevents refugees from arriving in Europe (2016, pp. 121–40). In addition, instead of providing adequate access to asylum, or resettling large numbers of refugees, Northern states have opted for providing and funding refugee camps in the Global South as their preferred response to refugees, which, as we saw above, entail a sense of captivity and extensive human rights violations (p. 105).

Due to these practices, refugees are precluded from effective access to asylum in Northern states, and are consigned to endure the squalid camps or destitution in urban areas in the Global South, or risk their lives on the now increasingly difficult and dangerous journeys to Northern states. Thus, as a result of Northern state practices, “we have created a situation in which the vast majority of refugees are effectively unable to get refuge in any meaningful sense; that is, they are not able to access the minimum conditions of human dignity” (p. 159).

For Parekh, the two above harms—the containment and encampment of refugees, and refugees’ inability to find refuge—represent injustices against refugees. Thus, far from being innocent bystanders or mere potential rescuers, Northern states are responsible for injustices against refugees.

2.1 | Structural injustice

For Parekh, these injustices are *structural injustices*. In Parekh’s words, “structural injustices are not necessarily the result of deliberate wrong-doing or explicitly unjust policies, but are the

unintended outcome of the actions of different agents each working for their own morally acceptable ends” (2017, p. 110).

The containment and encampment of refugees is one such structural injustice: “prolonged encampment [...] and the violations of dignity and rights that go along with it, is clearly morally wrong, yet it is not the result of deliberate or explicit policy” (2017, p. 121). Parekh writes:

That the displaced are often forced to live in squalid camps that systematically violate their human rights for decades is clearly a moral injustice; yet this injustice is not usually the result of the deliberate policies of a given state intended to harm the displaced, nor the result of ill-intentions on the part of international agencies: it arises out of different states acting in their own best interests (2017, p. 6).

Parekh explains that:

Encampment arises out of various states acting according to their interests and encouraging international organisations like the UNHCR to do what seems best for the displaced, namely keeping them in camps close to their countries of origin, for their own safety and for the sake of facilitating repatriation. No state is acting on an immoral principle, since they are acting to protect their citizens and the well-being of their states, and, in principle at least, acting in the interests of the displaced themselves. States are acting according to a widely accepted moral norm: that states have a sovereign right to control admission to their state. Nonetheless, these processes create structural barriers that prevent the displaced from accessing resources such as security, education, and healthcare and ultimately a permanent solution, and contribute to one of the worst harms of displacement: encampment (2017, p. 121).

The second harm—the inability of refugees to access refuge—is also “not intended by any individual country or global institution,” and it is not “the result of a single policy or set of laws. It is the result of each state passing laws and acting according to its own interests [of] keeping refugees far from their borders” (Parekh, 2020, pp. 165, 180). Parekh explains that:

[The unjust outcome is not] deliberately caused by any individual state and, for the most part, did not originate in malice. Though some may think of certain policies as immoral [for example, the US child separation policy], these policies are often justified by principles that are morally neutral or even positive: national sovereignty, border protection, or the rule of law (2020, p. 179).

The result of states enacting such policies and practices is a structural injustice:

[It is] the cumulative effect of many different policies around refugee resettlement, refugee camps, humanitarian and development aid, immigration and border security enacted by countries around the world. The way these policies, laws, and norms interact create the unjust outcome for refugees: their inability to access the minimum conditions of human dignity (2020, p. 159).

Thus, for Parekh, both the harms of containment and encampment, and the inability to access refuge represent structural injustices. This is where I part company from Parekh. I am in full

agreement that containment and encampment, and the inability to access refuge constitute significant harms to refugees. I am also in full agreement that these harms constitute injustices against refugees for which Northern states are responsible. However, I disagree that these are structural injustices.

Instead, I will argue that these are *direct injustices* against refugees. A direct injustice is straightforwardly an unjust outcome that is directly caused by, and can be attributed to, specific and identifiable policy (or policies) enacted by a relatively unconstrained actor or actors. For example, a paradigm direct injustice would be the disenfranchisement of a racial minority due to a specific policy (such as the “Grandfather Clauses” which legislatively prevented African American suffrage). This is an *injustice* in that disenfranchisement on racial grounds is patently unjust, and it is *direct* since it derives from an identifiable source (the legislation) and it was enacted by relatively unconstrained actors (the legislators). Analogously, the containment and encampment of refugees, and their inability to access refuge, are both harmful and unjust, and, as I shall argue, this injustice is direct, not structural. To see how, I now turn to the paradigmatic account of structural injustice, advanced by Iris Marion Young (2010), on which Parekh’s arguments are based.

3 | YOUNG’S ACCOUNT OF STRUCTURAL INJUSTICE

Young’s paradigm case of a structural injustice, which forms the foundation to motivate the concept, is an example involving a single mother named Sandy who faces housing insecurity and homelessness in the United States. It is worth considering this example in full:

A developer has bought the central-city apartment where Sandy, a single mother, has been living with her two children; he plans to convert it into condominiums. The building was falling apart and poorly maintained, and she thought the rent was too high anyway, so she seizes the opportunity to locate a better place. Sandy works as a sales clerk in a suburban mall, to which she has had to take two buses from her current residence, for a total of three hours commuting time each day. So she decides to look for an apartment closer to where she works, but she still needs to be on a bus line.

She looks in the newspaper and online for apartment rental advertisements, and she is shocked at the rents for one- and two-bedroom apartments. One of the agents at an apartment finding service listens to her situation and preferences, diligently looks through rental listings, and goes out of his way to arrange meetings with Sandy.

Sandy learns that there are few rental apartments close to her workplace—most of the residential property near the mall is single-family houses. The few apartments nearby are very expensive. Most suburban apartments in her price range are located on the other side of the city from her job; there are also some in the city but few that she can afford which she judges decent and in a neighborhood where she feels her children will be safe. In either case, the bus transportation to work is long and arduous, so she decides that she must devote some of the money she hoped

would pay the rent to make car payments. She applies for a housing subsidy program and is told that the waiting time is about two years.

Sandy searches for two months, with the eviction deadline looming over her. Finally she settles for a one-bedroom apartment a forty-five-minute drive from her job—except when traffic is heavy. The apartment is smaller than she hoped she would have to settle for; the two children will sleep together in the bedroom and she will sleep on a foldout bed in the living room. There are no amenities such as a washer and dryer in the building or a playground for the children. Sandy sees no other option but to take the apartment, and then faces one final hurdle: she needs to deposit three months' rent to secure the apartment. She has used all her savings for a down payment on the car, however. So she cannot rent the apartment, and having learned that this is a typical landlord policy, she now faces the prospect of homelessness (2010, pp. 43–4).

Young states that Sandy's facing homelessness is not the result of individual wrongdoing from other persons: "Sandy suffers an injustice but [...] no particular agent she encounters has done her a specific wrong" (p. 46). The injustice is also not the result of a particular policy or set of policies, "the wrong that Sandy suffers [cannot] be attributed to some particular unjust law or policy that has kept her and others like her from having a home" (p. 47). On this Young is clear: "Some laws, such as municipal zoning laws, and some policies, such as private investment policies, contribute to the structural processes that cause Sandy's plight, but none can be singled out as the major cause" (p. 47). Thus, in a statement: "Structural injustice is a kind of moral wrong distinct from the wrongful action of an individual agent or the repressive policies of the state" (p. 52).

Instead, the injustice is the *unintended* outcome of *structural processes*:

Social structure refers to the accumulated outcomes of the actions of masses of individuals enacting their own projects, often uncoordinated with many others. The combination of actions of others, often producing outcomes not intended by any of the participating agents. Sometimes these unintended outcomes even run counter to the intentions of most of the actors (pp. 62–3).

The sources of the unjust situation are "multiple, large-scale and relatively long term. Many policies both public and private and the actions of thousands of individuals according to normal rules and accepted practices contribute to producing these circumstances" (p. 48).

Though Young does not explicitly specify the necessary conditions, we can infer from her analysis that a structural injustice is: an unjust outcome that is (1) distinct from harms and wrongs that result from direct individual interaction; (2) distinct from harms and wrongs that are the direct result of actions and policies of states (or other institutions); and is instead (3) the unintended consequence of (4) structural processes constituted by (5) a multitude of uncoordinated agents and policies (6) adhering to morally acceptable ends.

I will now argue that the two harms—containment and encampment, and the inability to access refuge—which refugees endure as a result of Northern state practices are not structural injustices understood in the above way. My argument is comprised of two interconnected components. The first is a theoretical-conceptual claim: these harms do not fit the conceptual criteria of a structural injustice and are more accurately understood as direct injustices. The

second is normative: a Structural Injustice Approach problematically distracts attention away from direct injustices that must be addressed, absolves state actors of wrongdoing, and entails a framework of weak responsibilities to address the injustice, which, in turn, provides no advancement on the standard Duty of Rescue Approach.

To pre-empt the implications of this discussion, if the harms that refugee endure as a result of Northern state practices are a structural injustice, then it is merely an unfortunate, unintended outcome, and no Northern state is blameworthy or acting wrongfully or causing direct harms to refugees, and these states will thereby have only weak, discretionary responsibilities to amend structural processes that cause the injustice. By contrast, if these harms are direct injustices, then certain Northern states have indeed acted wrongfully and *are* directly causing harms to refugees, and we are able to hold primary state actors and policies to appropriate account for the unjust harms caused, and such actors will have urgent and compulsory negative moral duties to refrain from causing this injustice against refugees. It matters greatly, therefore, whether these harms are indeed direct or structural injustices.

4 | HOW THE CONCEPT OF STRUCTURAL INJUSTICE DOES NOT APPLY

On my analysis, the unjust outcomes of the containment and encampment of refugees, and their prevention from accessing refuge, are not the unintended by-product of structural processes distinct from individual wrongdoing or unjust policies, but are instead the direct result of agents and specific, intentional and (importantly) avoidable policies. For example, consider the details of the 2017 EU arrangement with Libya and the 2016 EU-Turkey Deal.

In the EU arrangement with Libya, refugees are intercepted on the Mediterranean Sea and returned to indefinite detention in Libya (Human Rights Watch, 2018b). This arrangement has two primary effects. First: *detention*: intercepted refugees are placed in detention centers on the Libyan coast, funded by EU states including the United Kingdom (D. Taylor, 2018). Overcrowding and lack of sanitation in these centers has led to starvation, disease (in particular tuberculosis), and death. Refugees, including children, also face grievous maltreatment: being raped, beaten, abused, starved, and even traded as slaves (BBC News, 2018; Human Rights Watch, 2019). Documented footage depicts the torture of refugees being burned, maimed, and electrocuted.³ The second effect is containment: this arrangement blocks refugees from traveling from Libya to the EU where they could otherwise have claimed asylum and found adequate safety. It thereby closes off the main migratory route from North Africa to Europe and so *contains* refugees in harmful conditions in regions in North Africa where their basic subsistence and security needs are not met, and where they are subjected to extensive human rights violations.⁴

The 2016 EU-Turkey deal aims to stem refugee flows from Turkey to Greece and itself has two primary effects. The first is *encampment*: refugees who have crossed the Aegean Sea and arrived on the Greek islands are enclosed into camps without adequate supplies of food, shelter, and medicine and face extensive human rights violations; this has caused “immense suffering for asylum seekers” (Human Rights Watch, 2016). In the Moria camp, “the sewage system is so overwhelmed, that raw sewage has been known to reach the mattresses where children sleep” (International Rescue Committee, 2018).⁵ There is also a significant threat of physical violence, with women and even children being subjected to sexual violence (Human Rights Watch, 2018a). The mental toll caused by encampment is sufficiently significant that “many

people have attempted to end their lives due to the extreme distress and emotional pain they experience” (Human Rights Watch, 2018a). The second effect of the deal is *containment* as refugees are blocked from traveling to Greece from Turkey and so this main migratory route to safety in Europe is closed down. As a result, refugees are contained in regions nearer their countries of origin in Turkey, Jordan, and Lebanon where their security and subsistence needs are not met. In Turkey, refugees live in squalid camps and face destitution in urban areas without adequate human rights protection and 80% of refugees live in severe poverty (Human Rights Watch, 2016; UNHCR, 2016, p. 55). In Jordan, there is a “rapid deterioration in living conditions” and a significant number of refugees live in abject poverty (UNHCR, 2017). In Lebanon, 70% of refugees live under the extreme poverty line and “each day represents a monumental struggle to meet the most basic needs of food, water and healthcare.”⁶

The arrangement with Libya and the EU-Turkey Deal directly result in the containment of refugees, prevent them from accessing adequate refuge, and consign refugees to endure a lack of adequate subsistence and security in camps and urban areas in the Global South. It seems immediately clear that such harmful outcomes cannot be accurately cast as a structural injustice. The containment policies above are precisely that: *policies*—devised and then deliberately enacted by states and institutions, with the express purpose of containing refugees. In these cases, the EU council, comprised of representatives from member states, devised, and implemented such policies with the intention of containing refugees and preventing them from arriving on European territories.⁷

To add to these examples, the Australian government policy of interception and return of refugees either to Indonesia or to off-shore detention centers in Nauru or Manus Island under “Operation Sovereign Borders,” is an explicit policy (the latest in a successive trend of off-shoring policies) that forcibly and intentionally denies access to refuge, detains refugees in abusive conditions in centers, and contains refugees away from Australian territory in regions in the Global South where they endure a life in camps (BBC News, 2017; “Operation Sovereign Borders (OSB),”). The US policy of detention and fast-track deportation of asylum seekers, as well as child separation practices, ‘Title 42’ expulsions and ‘Migrant Protections’ turn-back protocols, are again policies intended to deter and prevent refugees from accessing refuge in the United States, and contain those refugees in Central and South America. This forms part of a larger trend of successive deterrence policies enacted by the US against refugees.⁸

Considering these examples, it becomes clear that the containment of refugees and their prevention from accessing refuge is not an unintended, unfortunate, by-product of structural processes, but instead the direct harmful and unjust outcome of explicit and intentional policies specifically designed and enacted by Northern state actors.⁹ Therefore, the resulting harms cannot be understood as structural injustices, but are more accurately understood as direct injustices against refugees.

4.1 | Objections

It may be objected that these policies are not intended to harm refugees, and the aim, in principle at least, is benign. The aim of containing refugees nearer their states of origin is not to deny refugees’ escape from harmful conditions or their ability to access the minimum conditions of human dignity. The intention instead is to facilitate refugees’ eventual voluntary repatriation to their states of origin once the cause of displacement has been resolved. Northern states are thus

containing refugees in order to help them and are acting in their best interests. Therefore, any unjust outcome is unintentional and so is more accurately understood as a structural injustice.

In response, the claim that helping or protecting refugees was indeed the aim of containment policies is open to dispute. For example, the Libyan arrangement specifies the explicit aim of “stemming illegal migrant influxes,” the first article of the EU-Turkey statement specifies the aim that “all new irregular migrants crossing from Turkey into Greek Islands [...] will be returned to Turkey,” and the official website of Australia’s Operation Sovereign Borders carries slogans of “Australia stands firm, zero chance of illegal migration,” “you have zero chance of success,” and “you will be caught, returned or sent to Nauru.”¹⁰ Indeed, Human Rights Watch (2017) note in the context of EU policies that

The hallmark of most of these agreements—that also serve to prevent asylum seekers and migrants from coming to the EU—does not appear to focus on the advancement of protection of the most vulnerable, but on protecting the EU from having to deal with them on its own territory.

Accordingly, we might wonder whether *protection of refugees* rather than *avoidance of refugees* was the primary motivation of these policies. Claims that these policies are motivated by other benign aims such as preventing dangerous journeys or disrupting smuggling networks also appear dubious. It is an (arguably) open empirical question whether stricter containment measures in fact increase demand for smuggling to navigate the now tougher restrictions and also make land or sea crossings more dangerous. Further, the provision of safe and legal routes for refugees to seek asylum would necessarily remove demand for smuggling, provide an alternative to perilous journeys, and adequately protect refugees, demonstrably more so than containment measures. The fact that states would opt for containment policies as opposed to safe and legal routes casts doubt on the sincerity of the intentions for refugee protection. Thus, it is questionable at best whether the intentions behind these policies are practices are motivated by a benign concern for refugees rather than a concern to prevent those refugees from seeking safety in Northern territories.

Nonetheless, even *if* the intentions behind the policies *were* benign, this fact does not entail that the unintended unjust outcome is thereby a structural injustice. Parekh’s arguments sometimes appear to rest on an assumption that a direct injustice can only obtain if the unjust outcome is intended (e.g., see 2020, p. 161). However, intending an unjust outcome is not a necessary condition of direct injustice. A policy can aim at a morally desirable end yet have unintended unjust consequences. Such a policy will, for that reason, be a direct injustice.

For example, suppose the UK government introduced a policy of benefit sanctions for the unemployed, which reduce social security payments for the long-term unemployed if they fail to apply for a sufficient number of jobs or meet certain commitments. Suppose this policy sincerely aimed at helping and providing incentives for the unemployed to find work, escape poverty, and support themselves. However, suppose this policy instead resulted in further economic hardship, increased poverty as well as food insecurity and acute mental health difficulties for the unemployed. This policy would clearly thereby be unjust, even if the intentions were benign. And, this would be a direct injustice since the unjust outcome derives from an identifiable source: the government policy. Therefore, even if containment practices were enacted with benign intentions, this does not entail a structural injustice. The containment of refugees and their prevention from accessing refuge is instead a direct injustice insofar as this

harmful and unjust outcome derives from specific and identifiable policies, notwithstanding the moral sanctity of the policy-makers' intentions.

Parekh, at times, appears to acknowledge that containment and denial of refuge are the result of specific and intentional policies of states as opposed to unintended by-products of structural processes. Containment and encampment of arose from "a belief that refugees and asylum seekers ought to be contained and controlled. This was accompanied by a number of measures that seek to contain refugee flows at their source" (2017, p. 26). Parekh suggests that "most states in the [North] have understood that their best interests lie in keeping refugees far from their borders" (2020, p. 180), and that "powerful [Northern] states benefit from policies that lead to encampment by having large numbers of people unable to [...] exercise their legal right to seek asylum" (2017, p. 115). In fact, one of Parekh's central arguments is that we ought "to reject the *policy* of long-term encampment as the de facto solution to the problem of unwanted and superfluous people in the world" [my emphasis] (2017, p. 40). Therefore, it appears that on Parekh's analysis, containment, encampment, and the inability to access refuge result from specific and intentional policies enacted by states. This is in tension with the claim that such harmful outcomes are structural injustices. If these harms are injustices, which Parekh and I agree they are, they must be direct injustices.

It may now be objected that the concept of structural injustice can accommodate direct unjust policies within its framework. Young, in her original account, argues that sweatshop conditions in the Global South are another example of a structural injustice. Within the global apparel industry there is a complex multinational chain of "production and distribution involving dozens or thousands of contractually distinct entities" (2010, p. 129). Within this chain there will be unjust state policies on working conditions, unjust factory-owners' policies which make conditions appalling and fail to pay subsistence wages, corrupt officials who wrongfully turn a blind eye to abuses within the factories and so on (pp. 125–29). Therefore, there *are* directly unjust policies and individual actions, but these ought to be understood within broader structural processes that engender these policies and actions. Thus, the concept of structural injustice can account for directly unjust policies. Therefore, even if containment, encampment, and denial of refuge are the result of specific policies, they are still structural injustices, since these policies themselves arose as a result of structural processes.

On my analysis, it is not accurate to understand containment, encampment, and denial of refuge as constituted by structural processes in this way. Young is clear that in the sweatshop conditions case, the unjust policies and immoral acts are undertaken within binding structural constraints, such that those policies or actions are not reasonably avoidable. The lax policies on working conditions adopted by developing states in the Global South are necessary to secure the outside investment from global corporations into their economies, and thereby provide jobs and revenue for their populations. The factory owners cannot afford to improve conditions or pay higher wages as they "operate in a highly competitive environment where competitors can undercut them." Owners need to keep wages and conditions low to stay in business and provide the jobs in the first place. The officials tasked with monitoring conditions are themselves underpaid and impoverished and so easily succumb to bribes to support themselves and their families (Young, 2010, pp. 131 and 132). Therefore, any direct injustices within the broader structural injustice are the result of a severely constrained option-set, which is itself the result of structural processes beyond any agent's control: these acts or policies are not reasonably avoidable and there are a lack of alternatives.

This is not the case with Northern state practices. Northern states are among the most affluent and stable states on the globe, and thus have the capacity and resources to respond to

refugees in ways that do not cause such harms, but instead protect refugees' wellbeing and human rights. Such states are not themselves lower down on a bottom rung in a hierarchical structural chain and thus victims of a constrained option-set as a result of structural processes. Instead, such states have numerous alternative options available to them to act upon. For example, Northern states could financially support local integration initiatives in regions close to refugees' states of origin, which support host societies to build the infrastructure necessary to integrate refugees into their communities and economies and thus protect their security and subsistence.¹¹ As another alternative, Northern states could establish and fund economic development projects in host states near refugees' states of origin, which would provide economic security, autonomy, subsistence, and protect human rights and Refugee Convention rights.¹² Parekh's own suggestion to provide adequately funded, open, and democratically run camps that do provide security and subsistence, and guarantee human rights and Refugee Convention rights is another alternative (2017, p. 2). Even granting asylum extensively, providing safe passage, and/or significantly expanding the resettlement of refugees into Northern societies is an option open to such states. And refraining from introducing policies and practices that actively contain refugees and deny their ability to access refuge is certainly an option open to such states. Current practices are thus not the inevitable or unavoidable result of structural processes, but are policy choices among numerous alternatives from relatively unconstrained actors who could have acted otherwise. Such avoidable practices thereby constitute direct, rather than structural, injustices.

It may finally be objected that the harmful and unjust outcomes did not arise from *any one singular policy or set of laws from any one particular state*. As Parekh suggests, "no one single policy caused the injustice" (2020, p. 161). Instead, these outcomes resulted from numerous *different* states, each initiating their own individual policies of containment, deterrence, and prevention of refugees, un-coordinated with each other. The cumulative effect of each of these states' policies is a situation whereby refugees are effectively locked out of accessing refuge anywhere, even though this situation was not itself the direct outcome of any individual state policy. Because the unjust outcome arose from different policies from different states, it must be a structural injustice.

In response, the fact that an injustice derives from different states and different policies is not sufficient to establish a structural injustice. To demonstrate this, it is worth considering the historical details of the injustice of Jim Crowism.

The system of Jim Crow segregation emerged in the Southern states of the United States from the 1870s to the 1890s, spreading rapidly and increasingly pervasively across different states (Packard, 2003, pp. 39–79). Tennessee is often cited as introducing "the first official Jim Crow law" segregating train carriages (Tischauer, 2012, p. 63). Following this, other states followed with Florida, Mississippi, Texas, North and South Carolina, Virginia, and Louisiana passing their own statutes (Packard, 2003, p. 73). By 1884, 11 different states had passed laws prohibiting interracial marriage, and by 1891, eight different states had introduced formal segregation on all public transport (Tischauer, 2012, p. 68). Concurrently, individual states, municipalities, and cities enacted various laws, practices and codes, often "inspired" by each other. As historian Jerrold M. Packard (2003) notes

From the end of reconstruction [1877] until the Supreme Court's *Plessy V. Ferguson* decision in 1896, Jim Crow Spread like pestilence. The virus settled in community and community, in county after county, in state after state, until its cells had taken over the entire body of the South (p. 65).

Individual states passed varied policies with varying degrees of severity and scope such that, progressively, transport, schools, courtrooms, prisons, housing, factories, restaurants, theaters, bathrooms, hospital emergency rooms, parks, swimming pools, public beaches drinking fountains, and other facilities were segregated (Tischauer, 2012, p. 90). Different states and (even different cities within those states) had their own distinctive policies. Atlanta, for example, uniquely legislated to have “Black bibles” for African Americans in courtrooms, while New Orleans uniquely legislated to segregate prostitution. And Alabama and Mississippi were widely seen as having the most restrictive policies (Tischauer, 2012). The effect of individual states passing their own distinct policies and laws “codified segregation in an increasingly complex and pervasive way” (Fairclough, 2001, p. 16).

Thus, Jim Crowism emerged from a plethora of different codes, policies, and laws instantiated by different states and no one single law or policy caused the overall injustice. It is also interesting to note that segregational policies were not necessarily derived from malicious racial prejudice alone, but also propagated by “modernisers and progressives” who viewed “segregation as a rational solution to the problem of racial conflict [and anti-Black violence] especially in Southern cities” (Fairclough, 2001, p. 16). Yet, the outcome of these codes, policies, and laws enacted by different states is well-known: the comprehensive segregation of African Americans from “white spaces” in the Southern states. Black Americans were locked out of such spaces and consigned to endure separate and inferior social spaces for decades.

Can we plausibly suggest that Jim Crow segregation was simply an unfortunate and unintended by-product of structural processes distinct from individual wrongdoing and unjust policies and laws, such that it represents a structural injustice? The answer is clearly “no.” The fact that the injustice resulted from numerous different un-coordinated policies from different states is not sufficient to establish a structural injustice. Instead, we correctly regard the unjust outcome of Jim Crow segregation as a direct injustice against Black Americans.

Parallel analysis applies to the injustice refugees currently face. With Jim Crowism, each individual domestic state initiating its own policies and laws did not cause the overall outcome of segregation across the South (e.g., the initial Tennessee law did not cause or intend to cause the overall segregation across the South), the unjust outcome is nevertheless attributable to these policies and laws collectively. Analogously, though each individual international state, initiating its own policies and laws around containment and preventing and deterring refugees did not itself cause the overall outcome of refugees being contained and unable to access refuge worldwide, (e.g., the Australian policy of Operation Sovereign Borders did not cause or intend to cause the overall global phenomenon of refugees being unable to access refuge) this unjust outcome is nevertheless attributable to these policies and laws collectively. As Parekh (2020) notes, “all [Northern] countries use deterrence policies” (p. 149), and Parekh draws particular attention to such policies used by the United States, Australia, and Europe, which are (or would ordinarily be) the primary destinations for refuge in the Global North (pp. 121–40). Thus if *all* Northern states, and in particular the primary destination states, adopt policies that deter and prevent refugees from arriving, then it is small wonder that we have an unjust outcome where the majority of the world’s refugees are contained and unable to access refuge. This overall unjust outcome is thus directly attributable to the policies of Northern states, just as the overall unjust outcome of Jim Crowism across the US South is directly attributable to the policies of Southern states. And, just as with Jim Crowism, the fact that the unjust outcome results from numerous different policies from different states is not sufficient to establish it as a structural injustice. It remains a direct injustice insofar as the unjust outcome is caused by and attributable to specific policies.

In my view, the parallels are striking. Jim Crow policies and laws were enacted on facially neutral grounds of “separate but equal facilities for Black Americans” or protecting Black Americans by “reducing interracial conflict,” just as containment practices are enacted on facially neutral grounds of “facilitating voluntary repatriation” or protecting refugees through “reducing dangerous journeys.” And with Jim Crowism, those facially neutral policies and laws served to exclude a group of persons from access to certain “white spaces” and consign them to inferior spaces for decades, just as the facially neutral containment practices of today serve to exclude refugees from access to certain “Northern” or “Western” spaces and consign them to regions where they lack adequate security and subsistence for prolonged periods of time.¹³ In fact, in my view, the parallels are sufficient to establish the broader claim that insofar as the containment and denial of refuge instantiates the unjust separation and exclusion of refugees from access to certain spaces, it represents a form of Jim Crow segregation in the modern era. As such, it is a direct injustice against refugees.

5 | HOW THE CONCEPT OF STRUCTURAL JUSTICE OUGHT NOT TO APPLY

I now present the second component of my argument: the normative case against the Structural Injustice Approach. On a structural injustice model of responsibility, no one agent or policy or set of policies is directly responsible for causing the injustice, no agent has acted wrongfully, and no policy is itself necessarily unjust, and no agent should be blamed for their contribution to the injustice. Instead, the injustice has resulted from structural processes beyond any individual agent’s control or policy contribution. Yet, all agents whose morally permissible actions nonetheless contribute in whatever small way to constituting and reconstituting the structural processes that cause the injustice share responsibility for fixing that injustice (Young, 2010, pp. 100–10). Using this model, Parekh (2017) suggests that responsibility for fixing the structural injustice of containment and encampment, for example, is shared among all those states (and citizens of those states) whose legitimate pursuits of state sovereignty and border controls are nonetheless constituting and reconstituting structural processes that serve to contain and encamp refugees for prolonged periods of time (pp. 122–5).

I argue that this Structural Injustice Approach distracts attention away from directly unjust laws and practices that ought to be the focus for reform, absolves primary actors of (appropriate) moral responsibility and accountability for unjust harms caused, results in an unfair distribution of responsibilities, and entails a problematically weak framework of responsibilities to address the harms against refugees.

First, casting the harms that refugees endure as structural entails that it is difficult to arrive at tangible and actionable objectives when attempting to amend structural processes. How should all those individuals, whose non-wrongful, small-scale actions contribute to structural processes, recognize which and how their actions do so, and then proceed to change them? As Christian Neuhäuser (2014) argues, on the structural model there is no principled means of distributing responsibilities and actions among contributing actors such that “it remains unclear who has to do what” (p. 242). More pressingly, how should Northern states that (on the structural model) are not committing any wrongdoing or adopting unjust policies or directly causing the unjust situation change their ways? There may of course be answers to such questions, but they are not obvious, nor obviously likely to bring substantial change.

For example, promising frameworks of duties and responsibilities have been established by scholars in response to the objection that a structural model of responsibility fails to ground actionable imperatives. Elizabeth Khan (2019) argues that individuals are unable to unilaterally address structural injustices, yet they have a precautionary duty to take action to prevent or mitigate their contributions to ongoing and future structural injustices, which can be discharged through creating and maintaining suitable collectives that are able and willing to address the structural injustice (pp. 41–3). However, applied to the context of understanding state practices against refugees as a structural injustice, this proposal would presumably suggest that individual states are unable to unilaterally address the injustice, but ought to form collectives to address it. This proposal does not obviously yield specific and actionable public policy proposals nor clear imperatives or objectives for reform. Robin Zheng (2018) argues that we can fulfill our responsibilities through the performance of our social roles in different ways according to a *role ideal*, which (if done in accordance with others) can help bring about structural change (e.g., teachers can perform their roles in ways that diversify their syllabi to correct for systemic underrepresentation of minorities) (pp. 9–11). Applied to the context of understanding state practices against refugees as a structural injustice, presumably Zheng's proposal would entail that Northern state actors perform their roles in ways that would help mitigate or address structural injustices. This sounds promising. However, as Zheng acknowledges, performing an ideal social role is indeterminate in content and open to each agent's individual conception of the good and what an ideal social role would be (p. 17). As a result, this understanding does not specify which role-performances, policies, or actions would be mandated for Northern state actors, nor establish incentives or parameters for state actors to perform those roles in ways different to how they currently (wish to) perform them. Moreover, since on a structural injustice approach, no state is acting wrongfully, nor are their laws or policies necessarily unjust or directly causing the injustice, there is little grounds here to determine which actions to take or that amending laws or policies are the required actions, nor is there strong moral imperative for reform (a point I shall return to below). Thus, the Structural Injustice Approach, even with both Khan and Zheng's proposals, does not appear to ground actionable reform in the context of state practices toward refugees.

If instead we recognize specific policies that contain and encamp refugees, and deny their access to refuge as directly harmful and unjust, then this provides a clear and actionable objective for change: to amend or reject those policies. For example, states could end the practice of intercepting and returning refugees to abusive detention centers in Libya. The forced encampment of refugees on the Greek islands can be prohibited and the encamped refugees resettled. The containment policies with Libya and Turkey can be identified as harmful and unjust and their reform, to provide safe and legal routes to safety, can be called for. Moreover, current policies that contain refugees in regions where their lives, liberty, and human rights are under threat can be prohibited under International Law as morally equivalent to the (currently prohibited) refoulement of refugees to regions where their lives, liberty, and human rights are under threat, as I have recently argued elsewhere (Hillier-Smith 2020). These are actionable imperatives that will demonstrably improve the wellbeing of refugees if and when such policies are properly recognized as direct injustices and reformed. Thus, a structural model risks problematically distracting attention away from these imperatives to the detriment of urgent reform. In fact, one could press the point further and suggest that to be inattentive to these urgent reforms through mis-focusing on structural processes and unclear individual structural responsibilities objectionably fails those refugees whose wellbeing and human rights could be more adequately protected if such harmful practices were identified as directly unjust and prohibited.

Defenders of a Structural Injustice Approach may object and suggest that on their approach, one *can* point to certain policies and practices (such as those above) that are contributing to the structural processes as appropriate subjects for reform. However, in response, it is unclear why, on a structural model, such policies and practices *ought* to be subject to reform. After all, none of the policies or practices are themselves unjust but are instead adhering to morally acceptable ends; as Parekh (2020) writes: “structural injustice arises from the actions and policies of thousands of individuals acting according to morally acceptable rules and norms,” and such actions may be “morally neutral or even positive” (pp. 163, 169). Furthermore, on the structural model, none of these actions, policies, or practices are the (direct) cause of the injustice, which is instead the result of structural processes beyond the control and scope of specific actions, policies, and practices. It is hard then to see why, on a structural model, there is an(y) imperative to reform these morally just policies and practices that make little if any difference to the injustice.¹⁴

Second, the Structural Injustice Approach absolves primary state actors of moral responsibility and accountability for unjust harms caused to refugees and thereby “lets them off the hook.” For instance, having detailed numerous practices that Northern state actors have introduced to deny refugees access to Northern territories, including the incarceration of refugees in detention centers in Libya, and the subsequent torture, sexual violence and slavery that refugees face (2020, p. 7), Parekh suggests, that for the harm of refugees being locked out of refuge, “we [Northern states] are responsible not because we have done something wrong [or] something that we should feel guilty about” and that on the structural model of responsibility “we should not blame each other or call each other guilty for [the injustice]” (2020, pp. 170, 171).

This above conception of Northern states’ responsibility risks positing that (groups of) states adopting policies such as the EU arrangement with Libya, or the EU encampment and containment of refugees, or the Australian policy of interception and return—which contain and deny refuge and result in significant physical and mental suffering and human rights violations to innocents—are not doing anything wrong or directly harming refugees, but are simply permissibly pursuing their own legitimate interests and ought not to be blamed. This conception objectionably fails to hold these primary state actors and unjust policies sufficiently to account, undeservedly absolves such actors of any wrongdoing, and fails to capture the gravity of their moral responsibility for the significant harms and human rights violations caused to innocent refugees.

Further, on the structural model, responsibility is distributed away from these primary actors, and instead dispersed among many thousands of persons (e.g., any and all citizens of Northern states) whose small-scale contributions have been negligible and non-blameworthy. This unfairly burdens non-blameworthy actors with responsibilities to fix the injustice comparable to those of the primary actors that cause the injustice. This undiscerning distribution of responsibility is therefore unjustly disproportionate not only in absolving the blameworthy actors of proportionate responsibility, but also burdening non-blameworthy actors with disproportionate responsibility, resulting in the unfairness of distributive injustice. By contrast, on a direct injustice model of responsibilities, primary actors, and policies responsible for causing the injustice are held accurately and proportionately to account for the unjust harms caused to refugees, and these agents bear the primary duties to address the injustice.

It may be objected that a direct injustice model is backward-looking, whereas a structural model is forward-looking. While on a direct injustice model, the aim is to trace causal and moral responsibility, assign blame and accountability, and “to demand punishment or compensation”; on the forward-looking structural model, the focus is on addressing the unjust outcome

itself and “on how to make things more just in the future” (Parekh, 2020, p. 164). Parekh takes it as an advantage of the structural model that the aim is not to single out particular actors or policies for blame, but to more appropriately focus on the unjust outcome and identify ways that we can work collectively to address it (2020, pp. 162, 170). It may also be objected that assigning blame on a direct injustice model will be counter-productive as one simply produces defensiveness, blame-switching, and resentment on the part of the accused (Young, 2010, pp. 114–7).

In response, a direct injustice model does not preclude forward-looking reform nor addressing unjust circumstances. On the contrary, the aim of identifying certain harmful policies and practices as direct injustices and raising awareness of their unjust consequences is necessarily to seek their reform, and to instantiate more just policies and practices in their place. The aim of identifying persons (in particular state actors) as morally responsible for unjust outcomes is to hold them accountable and as subjects of normative criticism and public moral opprobrium, which in turn aims to incentivize conformity to certain norms and disincentivize their transgression in present and future practice.

Furthermore, as Neuhäuser (2014) has highlighted, producing counterproductive defensiveness similarly arises on the structural model. On a structural model, since no actor is primarily responsible or wants to assume (costly) responsibility for the injustice, there is a strong incentive to avoid responsibilities or pass those responsibilities onto others just as there would be with blame and guilt (p. 244). I further add that there is strong reason to doubt that singling out a policy or actor as directly unjust and subject for moral opprobrium is counterproductive. The identification of an unjust policy or act and resultant public moral outrage can exert a powerful influence and change policy. In fact, the policy of separating migrant families at the border in the United States is one such policy that has since been abandoned in part as a result of being identified as morally unjust and the public moral outrage that followed.¹⁵ Therefore, it is not clear that the structural model can claim an advantage in effectiveness and forward-looking reform.

My last and most crucial claim is that the responsibilities on a Structural Injustice Approach are problematically diffuse and weak. Parekh criticizes the dominant Duty of Rescue Approach on the grounds that, on this approach, Northern states are framed as mere innocent potential rescuers who have done nothing wrong (2020, pp. 158–59) and that states then view the humanitarian crisis of global displacement as not their responsibility and view any obligations to help as discretionary (2017, p. 106). Parekh then aims to provide an alternative to the Duty of Rescue Approach by highlighting the injustices against refugees that Northern states are responsible for, and by advancing a new framework of responsibility to fix these injustices to which Northern states are connected. However, it is not clear that Parekh’s approach provides much significant advancement. The responsibility to fix a structural injustice does not appear to be different in kind or have greater weight than duties on the conventional Duty of Rescue Approach, as I shall now explain.

On Parekh’s (2017) analysis of containment and encampment, this injustice has occurred as a result of structural processes, which entails that Northern states are not responsible for causing this outcome, nor have they done anything wrongful. As part of the responsibility to fix the injustice, Parekh’s account posits that states that are connected and well placed to do so ought to help: “[Northern] states have the capacity to help” and “derive benefits from the phenomenon of encampment by avoiding the costs of settling refugees on their territories.” Parekh suggests that “we [Northern states] have remedial responsibility [in part] based on capacity,

effectiveness, and cost [...] we have the capacity to aid effectively and at a relatively low cost” (p. 124).

Similarly, Parekh’s (2020) conception of responsibility for fixing the injustice of refugees’ inability to find refuge “stresses that we are responsible not because we have done something wrong, [and] allows discretion on what we can and should do to address this responsibility” (p. 171). It is true that Parekh suggests that Northern states share responsibility for fixing the injustice since “they played an influential role in how the system is set up,” and “because they have benefited” from the system in avoiding “the burden of hosting large numbers of refugees or processing their asylum claims.” However, Parekh specifies that a “crucial reason” Northern states have a responsibility to fix the injustice is because “we [Northern states] have the capacity to change it” (pp. 173–74). Parekh continues: “in many ways, [Northern] states are like the person watching a child drown in a shallow pond—we are able to do a lot without compromising anything of moral worth” (p. 175).

The above conception of responsibilities appear no different in kind from duties to alleviate the plight of refugees (if one can do so at little cost) on the standard Duty of Rescue Approach. Parekh’s structural conception similarly casts Northern states as the innocent bystanders and potential rescuers, not doing anything wrong or directly harming refugees, but who have responsibilities to help insofar as they are able to do so at little cost.

Further, it is not clear that the responsibilities on a structural model are sufficiently weighty to motivate reform, or any weightier than the duties on a standard Duty of Rescue Approach. On the structural model it is hard to see why an agent should be especially compelled to fix the injustice, or why their obligations are particularly binding. After all, on the structural model, the agent did nothing wrong, is not blameworthy, they are not causally responsible for any of the harms caused, and all the harms are the outcome of structural processes beyond their control (Parekh, 2017, pp. 124–5). Why then, for example, ought a state be compelled to help fix a structural injustice against refugees they have not caused, or done anything wrong toward and should not be blamed for, beyond the fact that there is a morally problematic situation and they are in a position to help alleviate it? Thus, it is not clear how, having established that Northern states are connected to an injustice against refugees, the resulting responsibilities are particularly strong, or any stronger or less discretionary than a simple duty to rescue refugees in dire circumstances to which one is not in some way connected. Therefore, the responsibilities on Parekh’s approach do not seem any stronger or provide any advancement on the standard Duty of Rescue Approach.

In fact, a more serious problem arises. As Martha Nussbaum (2010) identifies, on the structural model of responsibility, which is strictly forward-looking, if an agent fails to fulfill their responsibility in alleviating an injustice to which they are connected, they ought not to be blamed and have not done anything wrong.¹⁶ Therefore, on Parekh’s incorporation of this account of responsibility, states that do nothing to fix the structural injustice are not acting wrongfully and should not be blamed for their omission. This entails that on the structural model, the responsibilities are in fact *more discretionary* and *less weighty* than duties on the Duty of Rescue Approach, since on that approach, states have fundamental moral duties to help refugees if they can do so at little cost, and are acting morally wrongfully if they fail to perform such duties.¹⁷ Therefore, it seems that, in fact, the standard Duty of Rescue Approach has the advantage over Parekh’s approach in giving rise to weightier obligations to alleviate the plight of refugees, which would be wrongful not to perform. Unfortunately, in seeking to provide an alternative to the Duty of Rescue Approach—by showing how Northern states are connected to

harms that refugees endure—Parekh's approach in fact provides a framework of responsibility which is less binding and allows states to fail to aid refugees without acting wrongfully.

Instead, I suggest that once we recognize the harms that result from Northern state practices as indeed *direct injustices* against refugees, we see that such states are certainly not mere innocent bystanders nor potential rescuers but are directly responsible for unjust harms against refugees. As such these states have primary, nondiscretionary, moral duties to amend or abolish specific policies and practices that cause harm. This Direct Injustice Approach leads to actionable and tangible objectives that have substantive impact. The duties are more fairly distributed in being concentrated on primary perpetrators. Such duties are also much stronger: since states are unjustly harming innocent persons, these states have decisive and compulsory negative moral duties to desist. These duties are particularly strong, stronger than a positive duty to help refugees at little cost; and much stronger than a discretionary responsibility to fix a structural injustice to which the states have non-wrongfully contributed.

Yet, it may be objected that the structural model could be amended to ground more stringent responsibilities. For example, Zheng (2021) argues that agents implicated in structural injustices can be held accountable and subjected to “formative moral criticism” which functions as supportive feedback to encourage them to improve and live up to their responsibilities to address relevant injustices (p. 525). Yet, this formative moral criticism does not involve blame or sanction on agents, nor implies that the agent who failed to live up to their responsibilities has acted wrongfully. This framework then does not appear to ground or motivate stringent moral duties on the part of states to address the injustice that would be wrongful not to perform. In another proposal, Khan (2019) argues that while agents cannot be blamed for past contributions to structural injustice, they each bear a precautionary duty to take action to avoid or mitigate future contributions, for which they can be blamed if they do not perform (p. 40). Similarly, Catherine Lu (2017) suggests that while individuals may not be blameworthy for contributions to a structural injustice, they are blameworthy if they fail to act on their responsibilities to address it (discussed in McKeown, 2021). Thus, Khan's and Lu's proposals would yield a framework of responsibilities, which would be blameworthy (and presumably wrongful) not to perform. Note however that this amended framework would still take us no further than a standard Duty of Rescue Approach, and would not ground (as) stringent duties as on the Direct Injustice Approach I advocate.¹⁸ Therefore, proposals for an amended model of structural responsibilities may still fail to ground strong duties or stronger duties than the standard Duty of Rescue Approach to address the injustice against refugees. By contrast, the Direct Injustice Approach accurately captures the normative and causal relations between state actors' policies and practices and the unjust harms endured by refugees as indeed direct injustices, and is thus able to ground compulsory negative moral duties to reform or refrain from unjust harmful policies and practices against the world's displaced.

6 | CONCLUSION

In my view, Parekh's analysis has done more to enhance philosophical understanding of how Northern states are connected to serious harms that refugees face while displaced than any recent work in moral and political philosophy. Parekh's insights have established how Northern state practices result in containment, encampment, and the prevention of refuge and that these harms represent an injustice against refugees. However, I have aimed in this article to constructively critique one aspect of Parekh's important analysis and show that this injustice is not, and

ought not to be understood as, a structural injustice. Instead, certain Northern states unjustifiably harm innocent refugees looking for safety through practices of containment, encampment, and denying access to refuge. This is a direct injustice and ought to be identified as such. I personally believe this injustice is one of the most serious in which Northern states are directly implicated in the contemporary era, and that the movement toward the abolition of unjust harmful practices used against the world's displaced ought to be considered an urgent moral priority.

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ENDNOTES

¹ In this article, I use the terms *states in the Global North* or *Northern States* by which it is broadly meant the political (rather than geographical) category of affluent stable liberal democracies in Europe, North America, and Australasia (as opposed to developing states of the Global South). I acknowledge that these broad categories are necessarily imperfect, but are sufficient for the purposes of this article, since *Northern States* as a mere short-hand does adequately categorize those states such as the USA, Canada, Australia, the UK, and states of the European Union that are implicated in the harms and injustices against refugees which are the focus of this discussion.

² This is the dominant approach in the philosophical literature insofar as nearly all theorists adopt it as (at least part of) a framework for grounding and understanding *moral duties* to refugees. See for example, “If we can provide shelter and safety to refugees without endangering ourselves it would be wrong to turn them away,” Dager (2005, p. 191); “Like the bystander we have an unambiguous duty of rescue toward them” Alexander Betts and Paul Collier (2017, p. 99); The “principle of mutual aid” holds that if two strangers meet and one is in need of help, the other person ought to help if the need is urgent and the risks and costs of helping are “relatively low,” Michael Walzer (1983, p. 33); “There is a parallel here with the duty of rescue born by individuals in emergencies” David Miller (2016, p. 78); “States have an obligation to assist refugees when the costs of doing so are low” Michael Gibney (2004, p. 231); we have obligations to refugees simply because “they have an urgent need for a safe place to live and we are in a position to provide it” Joseph Carens (2013, p. 195); we have obligations to help refugees based on the “Samaritan’ principle” that “one has a natural duty to assist others when they are sufficiently imperiled and one can help them at no unreasonable cost to oneself” Christopher Wellman (2008, p. 124). I thank an anonymous reviewer for pressing me to highlight accounts of what I term *political duties* to refugees. For example, Carens (2013) argues that one ground for obligations to refugees is states’ participation in a global system of states, which, while generally beneficial, is disastrous for refugees insofar as their own state has failed them and they face the perilous task of seeking admission into another state. For Carens, states have an obligation to help refugees to correct for the foreseeable failures of a global state system in which they participate and benefit from (pp. 195–7). David Owen (2016, 2019) argues that states have an obligation to protect refugees (whose own state is unable or unwilling to protect their human rights) in order to maintain the state system as one that does in fact function to protect human rights and thus maintain its legitimacy. Such accounts of political duties may also be vulnerable to Parekh’s criticisms insofar as these accounts fail to sufficiently acknowledge that certain Northern states actively adopt

policies and practices that result in harms to refugees while they are displaced. Thus, these accounts may also frame Northern states as mere innocent bystanders vis-à-vis these harms and so may also need to be supplemented with a recognition of Northern states' responsibility for unjust harms against refugees. Therefore, whether such injustices are direct or structural (the subject of this article) will have implications for these accounts too.

³ Footage in report from Channel 4 News (2018).

⁴ See further details in UNHCR report "North Africa|Global Focus" (2019).

⁵ During the writing process for this article, the Moria camp has since burned down and been replaced by another which aid agencies have called "Moria 2.0" and "worse than the original." See Fallon (2020).

⁶ See "Conditions of Syrian Refugees in Lebanon Worsen Considerably, UN Reports" (UN News, 2015).

⁷ See "EU-Turkey Statement" (18 March 2016) and Human Rights Watch (2019). The text of EU-Libyan arrangement is available here: http://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf.

⁸ For a comprehensive overview of deterrence policies used by the USA, Canada, and Australia see Chapter 3 "Illegal Refugees' and Restrictive Asylum Politics' from Rebecca Hamlin (2014). For further information on Title 42 Expulsions and Migrant Protection turn-backs see "Seeking Safety at the United States-Mexico Border" (UNHCR, 2022).

⁹ I thank an anonymous reviewer for enjoining me to consider the role of non-Northern states in the injustice of containment and denial of refuge. It is undoubtedly true that, for example, states such as Libya and Turkey are participants in these practices and will bear moral responsibility for the resultant harms to refugees. However, Northern states are the primary instigators and authors of these practices. For example, both the arrangements with Libya and Turkey were devised, initiated, and commissioned by the EU council, supported by EU funds, and these practices are orchestrated to serve EU states' ends of containing refugees from their territories. In the terminology of Christopher Kutz's (2000) analysis of complicity, EU states are the authors who executively determine the overall goal, while states such as Libya and Turkey are subsidiary participants playing their part. Accordingly, Northern states bear direct and executive responsibility for the outcome while participating states have complicitous accountability. Therefore, without denying the role and accountability of other states, it is appropriate to focus my normative analysis on the role and moral responsibility of Northern states as the primary actors.

¹⁰ See the text of the Libyan arrangement here http://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf, the EU-Turkey deal here ("EU-Turkey Statement, 18 March 2016," n.d.) and the website of Australian Operation Sovereign Borders here ("Operation Sovereign Borders (OSB),").

¹¹ See, for example, the recommendations in "Towards Medium-Term Solutions for Rohingya Refugees and Hosts in Bangladesh: Mapping Potential Responsibility-Sharing Contributions" (2019).

¹² As proposed by Betts and Collier (2017, pp. 143, 167, 205). I acknowledge this proposal is not necessarily morally unproblematic, see Draper (2020) for criticism. I use this proposal simply to demonstrate the existence of alternatives open to Northern states, and thus to reject the supposed unavoidability of existing practices.

¹³ I do not take a stance on whether containment and denial of refuge is as severe an injustice as Jim Crowism. I am merely aiming to draw parallels to demonstrate the claim that an unjust outcome that derives from multiple sources is not sufficient to establish a structural injustice and can instead be a direct injustice. Importantly, of course, Jim Crow laws were motivated by racial prejudice and discriminated on racial grounds where this is arguably not the case with the denial of refuge and containment of refugees. This may be a moral difference between them. Yet, I thank an anonymous reviewer for pressing me to investigate whether containment policies and immigration policies more broadly could also be plausibly understood as motivated by explicit or implicit racial prejudice and/or have effects of racial discrimination. Indeed, Michael Dummett (2002) espouses this view: "the principal actual motivation for exclusionist immigration policies is, of course, racial prejudice, or sometimes more general prejudice against foreigners, which, when present, is always felt more intensely against those who are of or are thought to be of, a different race" (pp. 58 and 67). More recently, José Jorge Mendoza (2020, 2018a, 2018b) has consistently argued that the implementation and

(domestic) enforcement of immigration policies can variously explicitly use race to deny persons entry, or use facially neutral policies that nonetheless have disparate impacts on certain ethnic or racial groups, or undermine the political equality of racial or ethnic groups within a society. On Mendoza's view then immigration policies can be and often are (explicitly or implicitly) racist either in motivation or effect. Dummett and Mendoza's analyses may then also apply to containment practices against refugees insofar as such practices are motivated by a prejudice against certain racial, ethnic or religious groups overrepresented among refugee populations or insofar as such practices have the effect of disadvantaging persons along lines of membership of racial, ethnic or religious groups. I raise this line of thought simply as a possibility. I believe that to *establish* that containment practices are indeed motivated by or have the effect of racial discrimination is itself a worthwhile but comprehensive project, but beyond the scope of this article. Nonetheless, the fact that (arguably) containment practices are indeed motivated by or cause racial discrimination should at least raise doubts that racial discrimination is a distinguishing factor between Jim Crowism and containment, and this potential shared feature would then further entrench the parallels between them as direct injustices.

¹⁴ Neuhäuser (2014) raises a similar objection to the structural model more broadly, where he argues that without some account of backward-looking liability for unjust harms caused, agents will lack (a principled basis for) motivation to address the injustice (p. 246).

¹⁵ See Gambino and Laughland (2018).

¹⁶ Foreword in Young (2010, pp. xx–xxii).

¹⁷ For one example, “If we can provide shelter and safety to refugees without endangering ourselves it would be wrong to turn them away” (Dager, 2005).

¹⁸ Another promising proposal comes from Maeve McKeown (2021, forthcoming). McKeown suggests that there are three different forms of structural injustices: pure (where no agent is blameworthy), avoidable (where at least one agent culpably failed to prevent or change unjust structures, background conditions and/or the overall injustice), and deliberate (where at least one agent culpably caused or perpetuated the unjust structures, background conditions and/or overall injustice). Applying McKeown's distinction would (I think) yield that the injustices against refugees are deliberate structural injustices perpetrated by Northern states, which McKeown argues would generate *moral duties* to redress. I am broadly sympathetic to this approach. However, it unclear how strong these duties would be (McKeown's model will be spelled out in more detail in her forthcoming book). In any case it is again hard to see (at least at this stage) what the advantage of McKeown's Deliberate Structural Injustice Approach would be compared to the Direct Injustice Approach in accuracy, distinctiveness, or in grounding stringent duties to address this injustice.

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