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## **The political economy of extra-territorial processing: separating 'purchaser' from 'provider' in asylum policy**

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## Introduction

At a time when UNHCR is attempting to outline its embryonic “Convention Plus” approach, the UK Government has attempted to co-opt the concept to promote its proposal for developing extra-territorial methods of processing asylum claims.<sup>1</sup> One of the central characteristics of the UK Government’s proposals for “processing-in-the region” is the idea that the state that initially receives an asylum applicant and holds legal responsibility for safeguarding that claimant’s rights in international law need not necessarily be the state in which that asylum claim is processed. In its most extreme form, this allows the separation of the state that pays for, and is accountable for, that asylum claim from the state that provides the territory on which the claim is processed and possibly even the social and legal services that correspond to the claim.

Through the formation of a contractual relationship between states, it allows a degree of the asylum burden to be passed on to another state that accepts to be compensated in some way. In other words, it separates the “purchasing” state from the “providing” state. While this division exaggerates the extent of devolved power in the current proposals, it characterises the overarching conceptual framework in which a structure of “special agreements” might ultimately operate if taken to its logical extreme.

The logic behind such an approach is not new. It is almost entirely analogous to the so-called quasi- (or internal-) markets approach adopted in domestic social policy in, for example, the UK’s education and health policy in the late 1980s and early 1990s. Such policies were part of a supply-side revolution, intended to introduce greater efficiency and responsiveness by retaining public funding but introducing market forces *within* the state system.<sup>2</sup> Just as such an approach allowed the state to choose between financing its own internal provision of education and health services and funding independent public or private producers,<sup>3</sup> so extra-territorial processing allows states a choice between funding their own provision or contracting-out provision to external and more efficient competing providers (i.e. other states).

As will be argued, in the case of asylum provision, the definition of efficiency extends to cover the minimisation of non-financial costs, many of which are perceived social and political costs that come to be represented in a wider social and media discourse and expressed in political decision. It is these perceived costs that differ from state-to-state. The “special agreements” in the UK proposals allow a proportion of these perceived costs to be passed on to states where the marginal perceived cost per additional asylum-seeker (in economic, social and political terms) of processing a claim may be relatively lower. Just as with quasi-markets, this enables claims to be dealt with where they are regarded as most “efficient” through allowing the “purchasing” state to “buy” burden-shifting, compensating the “provider” at a rate

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1 In early 2003, a joint report by the UK Cabinet Office and Home Office set-out this approach. The report recommended that, with the exception of some special groups, the UK should cease to process asylum claims within British territory. While it has since tempered its proposals, the central concepts of “regional processing” and “protection in the regions of origin” remain. J. Crisp, ‘Assault on Asylum: Globalization, Migration and the Future of the International Refugee Regime’, paper presented at the University of East London, 21 May 2003, p. 11.

<sup>2</sup> N. Barr, *The Economics of the Welfare State*, (Oxford: Oxford: 1998), p. 349.

<sup>3</sup> In practice, the “providers” were public but were made independent from the allocation of funding and placed in competition with other providers for contracts with the state “purchasers”.

that is mutually acceptable. The only major conceptual difference from the domestic experience is that one applies within a state and the other applies between states.

This article therefore seeks to apply insights from the economics of social policy to look at the scope and limitations of applying an inter-state quasi-markets approach to asylum policy, through the separation of purchasing state from providing state. It will do so in four parts.

Firstly, the proposals for extra-territorial processing will be explained and placed within the context of the current academic debate on burden-sharing. Secondly, the article will draw upon the experience of the application of quasi-markets in the UK's domestic social policy and elaborate their relevance to the existing and potential extra-territorial processing proposals. Thirdly, it will develop a conception of "efficiency" that will allow the insights of the quasi-markets approach to be applied to the global asylum regime. Finally, it will evaluate the scope and limitations of the UK's "processing-in-the-region" proposals in the light of this approach.

### **Extra-territorial processing and the burden-sharing debate**

With the unprecedented increase in the number of asylum-seekers arriving in OECD countries, there is a growing recognition that the reactive asylum framework in place during the Cold War is unsustainable.<sup>4</sup> Caught between the dual imperatives of complying with international legal obligations and responding to growing domestic political and media pressure to reduce the number of asylum applications, many states, particularly in Western Europe, are engaged in a race-to-the bottom in asylum standards, increasing entry restrictions while reducing their level of welfare provision to claimants as a means of reducing their relative and absolute burden of asylum-seekers.<sup>5</sup>

Unilateralism and burden-shifting have become the norm, as even previously generous states, such as Denmark, seek to cut their asylum-provision.<sup>6</sup> Without any binding enforcement mechanism, the 1951 Convention and UNHCR's ExCom can only rely on gentle persuasion or innovation to coax states towards greater cooperation to create a more sustainable asylum regime.

In its search for innovative solutions, UNHCR's Global Consultations on International Protection have focused on developing "tools of protection" to ensure greater equity, efficiency and responsiveness in refugee protection. At its 53<sup>rd</sup> Session of ExCom in October 2002, Ruud Lubbers outlined a series of such tools, in the form of multilateral special agreements, intended to complement the 1951 Convention and 1967 Protocol. Such tools he described as Convention Plus.<sup>7</sup> Such special agreements have been outlined by UNHCR as including "development assistance"

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<sup>4</sup> G. Loesher, 'Refugees', in T. Dunne and N. Wheeler (eds), *Human Rights in Global Politics*, (Cambridge: Cambridge: 2001), p. 238.

<sup>5</sup> D. Joly, *Refugees in Europe: The Hostile New Agenda*, (London: Minority Rights Group International: 1997)

<sup>6</sup> Since the July 2002 election of the centre-right Fogh Rasmussen coalition government, legislation has been implemented aimed at dramatically reducing the inflow of asylum-seekers by, for example, cutting the level of welfare provision that they receive.

<sup>7</sup> International Service for Human Rights monitoring, [www.ISHR.ch/UNHCR-ExCom53.h](http://www.ISHR.ch/UNHCR-ExCom53.h)

directed towards countries that host large numbers of refugees or facilitate local integration and reintegration. They may be generic or country-specific and may be agreed within or outside international forums such as ExCom.<sup>8</sup>

Although it remains for such proposals to be fully elaborated, and the potential forms Convention Plus could ultimately take remain almost infinite, the UK Government has produced what it calls a “non-paper” on the issue, proposing “regional protection areas” (RPAs) and “transit processing centres” (TPCs) as a means of realising this vision.

The proposal broadly involves establishing protection centres in states such as, for example, Turkey, Iran, Morocco or Somalia, for those in need of temporary protection, while the latter involves creating processing centres on the edge of the EU where the asylum claims of those on the “safe” white list might be rapidly dealt with.<sup>9</sup> In June 2003, the European Council in Thessaloniki is due to address the British proposal for a joint-EU processing centre on the edge of the EU border.<sup>10</sup> Although the UK Government has attempted to describe this approach as “Convention Plus”, it is a vision of “Convention Plus” with which Ruud Lubbers has only partly aligned himself, explicitly rejecting many aspects of the UK vision.<sup>11</sup>

Indeed, UNHCR has even responded with counter-proposals, suggesting, for example, that regional processing should be limited to asylum-seekers from countries that do not normally produce refugees and that if the EU wishes to establish a regional processing centre this should be within the EU’s territorial boundaries.<sup>12</sup> Consequently, although much of the British press has regarded UNHCR’s “Convention Plus” and the UK’s extra-territorial processing proposals as synonymous, the two should be regarded as distinct.

The UK approach has been summarised as an attempt to ‘separate the concept of protecting asylum-seekers, to which the convention binds them [states], from that of admitting them to the country they want to go to’.<sup>13</sup> In other words, it allows states to curtail the right of the asylum-seeker to choose his or her destination country, while still fulfilling the state’s obligations under international law by sending the asylum-seeker to a 3<sup>rd</sup> safe country where their claim will be processed.

The prospects for extra-territorial processing agreements could ultimately vary in terms of both *the number of states* involved and the *scope of the functions* devolved. They might occur on a multilateral level through, for example, the EU setting-up processing centres in Central or Eastern Europe or agreeing to compensate states outside the EU for doing so, or, alternatively, allow bilateral agreements between a state that perceived itself to be “over-burdened” and a “less-burdened” state. Similarly, the agreements could vary in the level of burden that they seek to transfer.

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<sup>8</sup>UNHCR, *Convention Plus: Questions and Answers*, [www.unhcr.org](http://www.unhcr.org)

<sup>9</sup> U. Fraser, ‘Not In My Back Yard: Reforming The Asylum System’, [www.opendemocracy.net/debates/article6-28-1168jsp](http://www.opendemocracy.net/debates/article6-28-1168jsp)

<sup>10</sup> *The Guardian*, ‘Nowhere to Go’, 9/5/03, <http://politics/guardian.co.uk>

<sup>11</sup> Ruud Lubbers, Address to the High-Level Segment of the UN Commission on Human Rights, 20/3/03.

<sup>12</sup> Crisp, ‘Assault on Asylum’, p. 12.

<sup>13</sup> *The Economist*, ‘Special Report on Asylum’, 15/3/03, pp. 35-38.

For example, at one end of the spectrum, the “purchasing” state(s) might simply “rent” territory on which to process the claim using their own lawyers and directly providing social services, transferring successful applicants back to its own territory, while deporting failed applications. Alternatively, the scope for devolving further functions of the asylum system could be expanded so that legal and social responsibility were transferred and, ultimately, such that refugee or humanitarian status might even be conferred within the “providing” state.

Through facilitating the inter-state transfer of responsibility for functions of the asylum process, the UK’s interpretation of “Convention Plus” represents a new departure in the existing so-called “burden-sharing” debate. The issue of burden-sharing has recently developed as a sub-field of global governance, seeking to respond to normative questions of how costs should be allocated between different stakeholders to ensure equitable and efficient collective action in response to trans-national problems.<sup>14</sup>

In its application to forced migration the literature has focused on the problems and prospects of asylum burden-sharing at both the global,<sup>15</sup> and increasingly, EU<sup>16</sup> level as a means of overcoming collective action failure.<sup>17</sup> In its application, this debate has been channelled to focus upon calls for a European Refugee Fund (ERF). The shift in the focus of burden-sharing from ERF to extra-territorial processing entails two crucial conceptual differences in comparison to this debate, both of which result from the prospect of transferring people and money rather than simply money. Rather than simply involving “fiscal transfers”<sup>18</sup> that financially compensate a country for bearing a disproportionate share of the asylum “burden”, extra-territorial processing allows the physical transfer of the claimants.

The prospect of transferring protection seekers rather than just funding for their protection, firstly, changes the nature and extent of the “costs” that can be shared or shifted and, secondly, facilitates the incorporation of a concept of “efficiency” into the debate, where previously arguments over institutional arrangements for burden-sharing had only been based on equity due to the actual claims continuing to be processed by the same state in the same way. These differences shall be explained in turn.

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<sup>14</sup> Three workshops on burden-sharing were held at LSE in association with UACES between September 2001 and April 2002. These built on a diffuse theoretical literature, amongst which the seminal references include: M. Olson and R. Zeckhauser, ‘An Economic Theory of Alliances’, *Review of Economics and Statistics*, 48: pp. 266-79; T. Sandler and K. Hartley, *The Economics of NATO*, (Cambridge: Cambridge: 1999), pp. 113-16; A. Boyer, *International Cooperation and Public Goods*, (Baltimore: Johns Hopkins: 1993).

<sup>15</sup> A. Suhrke, ‘Burden-Sharing During Refugee Emergencies: The Logic of Collective Action Versus National Action’, *Journal of Refugee Studies* (1998) 11:4, pp. 396-415; M. Barutciski and A. Suhrke, ‘Lessons from the Kosovo Refugee Crisis: Innovations in Protection and Burden-Sharing’, *Journal of Refugee Studies* (2001) 14:2, pp. 95-115.

<sup>16</sup> For example, the forthcoming Special Edition of *Journal of Refugee Studies*, 16:3 (2003), entitled ‘European Burden-Sharing and Forced Migration’ incorporates numerous articles on the prospect of creating more equitable burden-sharing at the EU level.

<sup>17</sup> M. Olson, *The Logic of Collective Action*, (Cambridge, Mass: Harvard: 1965).

<sup>18</sup> A. Acharya and D. Dewitt, ‘Fiscal Burden-Sharing’, in J. Hathaway (ed), *Reconceiving International Refugee Law*, (The Hague: Nijhoff: 1997).

### *Extending the definition of 'cost'*

Firstly, while on an applied level the physical transfer of protection seekers involves a large number of ethical and practical issues<sup>19</sup>, on a conceptual level it means that a larger share of the “burden” can be re-allocated. While fiscal transfers can only offer financial compensation for non-financial costs, the human transfer allows the political, social and economic costs to be directly transferred. This is particularly politically expedient for states in which “cost” is not simply measured in terms of the provision of legal and social conditions<sup>20</sup>, but extends to the marginal perceived cost of taking in another asylum-seeker. This may, for example, be represented in terms of media portrayal<sup>21</sup>, ethnic division<sup>22</sup>, political capital<sup>23</sup>, and a host of other factors that proxy the discursive representation of the ‘outsider’ within the state.<sup>24</sup>

Insofar as these costs reside in the physical presence of the asylum-seeker, rather than simply the financial costs incurred in processing their applications, physical transfer will allow a higher proportion of the perceived burden to be shifted/shared. It is these less tangible costs, stemming from the popular representation of asylum-seekers, that many states are eager to reduce. This will become particularly important when a state reaches the point at which its social and political “capacity” to take-in asylum-seekers is perceived to be close to its limits.

Most authors writing on asylum agree, for example, that the political sustainability of the asylum regime, in the real world, depends for its political sustainability upon its acceptance by the citizens of the state.<sup>25</sup> While this perceived proximity to capacity will vary from state to state, it is something that is increasingly ubiquitous across, for example, Western Europe.

### *Incorporating efficiency*

Secondly, the reallocation of people implies the possibility for “purchasing” states and groups of states to choose between different “providers” of asylum, rather than the

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<sup>19</sup> See, for example, Amnesty International’s Observations to UNHCR’s Consultations on Convention Plus and, in particular, its discussion of Australia’s so-called “Pacific Solution”, [web.amnesty.org/aidoc\\_pdf.nsf/index/IO420012003ENGLISH/\\$file/IO4200103.pdf](http://web.amnesty.org/aidoc_pdf.nsf/index/IO420012003ENGLISH/$file/IO4200103.pdf).

<sup>20</sup> This is, for example, how authors such as Jandl and Liebaut empirically evaluate the cost of asylum from one state to another. M. Jandl, *Structure and Social Costs of the Asylum Systems in 7 European Countries* (Vienna: ICMPD: 1995); F. Liebaut, *Legal and Social Conditions for Asylum Seekers and Refugees in Western European Countries*, (Copenhagen: Danish Refugee Council: 2000).

<sup>21</sup> I. Tiechmann describes the link between the media portrayal of asylum-seekers in Europe and the creation of xenophobia, ‘Asylum Seekers, Refugees and Racism’, in G. McCann and S. McCloskey (eds), *From the Global to the Local*, (London: Pluto: 2003), pp. 199-216.

<sup>22</sup> *The Economist*, Special Report on ‘Europe’s Minorities’, 10/5/03, pp. 23-26, highlights the growing difficulties of minority integration in the UK, Netherlands, Germany, France, and Italy, in particular.

<sup>23</sup> Asylum has increasingly become a major political issue. In the UK, for example, the Labour Government have been forced to outmanoeuvre the opposition Conservative Party’s increasingly populist threat to withdraw from the 1951 Convention.

<sup>24</sup> O. Waever, for example, discusses the social construction of societal security faced with immigration, ‘Societal Security: The Concept’, in O. Waever, B. Buzan, M. Kelstrup and D. Lemaitre (eds), *Identity, Migration and The New Security Agenda in Europe* (London: Fisher: 1993), p. 18.

<sup>25</sup> M. Gibney, ‘Liberal Democratic States and Responsibilities to Refugees’, *American Political Science Review*, Vol. 93(1) (1999), p. 177; M. Weiner, ‘Ethics, National Sovereignty and the Control of Immigration’, *International Migration Review*, Vol. 30 (1996), pp. 185-6.

choice being determined by the asylum-seeker's own circumstances and choice. This proliferation in the options for the way in which the application is processed implies a need to establish criteria for choosing between "providers". This means that evaluating different institutional arrangements for burden-sharing requires not only consideration of equity criteria but also efficiency criteria.

Up until now, the focus of the burden-sharing literature has been directed towards creating equitable burden-sharing. Empirically, the debate has focused on the inequity of the implicit burden-sharing of the *status quo*<sup>26</sup>; normatively, it has tried to assess desirable ways of equitably allocating burdens<sup>27</sup>; and, in terms of policy, it has attempted to propose institutional solutions to bridge the gap between the empirical and the normative.

In this endeavour, the predominant explicit or implicit end has been greater equity in the distribution of costs. Improved efficiency has only ever been dealt with superficially or seen as a by-product achieved through improved equity overcoming the sub-optimal provision that results in collective action failure.<sup>28</sup> In no case has efficiency in asylum policy been rigorously conceptualised or explored as a goal in creating a burden-sharing regime beyond the question of resolving Prisoner's Dilemma.

In contrast to a fiscal burden-sharing arrangement, extra-territorial processing implicitly aims to create not only greater equity but also a more productively efficient form of burden-sharing. This is because, based on the recognition that marginal perceived costs of asylum provision vary from country-to-country, the prospect of re-allocating claimants allows an assessment of the extent to which a given output (i.e. the processing of an asylum claim in compliance with international refugee law and human rights law obligations) can be produced while minimising net costs. This will occur through each state implicitly weighing-up the marginal perceived cost of providing asylum with the marginal perceived cost of paying another state to provide asylum.

Given a differential marginal perceived cost of taking-in asylum-seekers, such an exchange would be expected to yield an efficiency gain in both states. This would implicitly create an incentive for states to allocate asylum-seekers equally across all states until each state equated its marginal willingness to receive or pay compensation with its marginal perceived cost of taking in another asylum-seeker. Minimising the net perceived costs of the global asylum system offers the prospect that the capacity and long-run sustainability of the existing asylum framework could be maximised. An understanding of extra-territorial processing, therefore, requires a conceptualisation of efficiency in asylum provision, which the burden-sharing debate

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<sup>26</sup> E.g. M. Vink and F. Meijerink, 'Asylum Applications and Recognition Rates in EU Member States 1982-2001: A Quantitative Analysis', forthcoming in *Journal of Refugee Studies*, 16: 3 (2003); C. Boswell, 'Spreading the "Costs" of Asylum in the EU: Lessons from the German and UK Experience', Paper Prepared for Workshop on *European Burden-Sharing and Forced Migration*, LSE, 12 January 2002.

<sup>27</sup> For example, Suhrke, 'Burden-Sharing During Refugee Emergencies' refers to the UN's Grahlmadsen formula to look at factors such as population and GNP, p. 397.

<sup>28</sup> G. Noll, 'Prisoner's Dilemma in Fortress Europe', Paper presented at the Second Informal Meeting on Legal Aspects of Temporary Protection, Stockholm, 14-15 March (1997); Suhrke, 'Burden-Sharing During Refugee Emergencies', p. 399.



previously marginalized. This will be undertaken in the third part of the article after the historical basis of the purchaser/provider split in social policy has been outlined.

### **Quasi-markets**

In the UK, from 1988, a series of radical reforms were introduced to the welfare state. Where previously the state had produced, allocated and distributed education, health and other social services within a centralised and bureaucratic monopoly, the relationship between funding and provision was altered by the introduction of so-called “quasi-markets”.

While the reforms were broad and diverse, their central feature was for the state to stop being both the funder *and* the provider of services. Instead, it was to become primarily a funder, purchasing services from alternative and independent producers, whether private, voluntary or public.<sup>29</sup> Propper defines quasi-markets as ‘markets in which government agencies arrange care for their clients by placing contracts for the delivery of care with independent, “arm’s length” suppliers’.<sup>30</sup>

This purchaser/provider split was intended to allow competition on the supply-side, resulting in increased efficiency in service delivery and increased responsiveness to the needs of clients by allowing the most efficient providers to be selected by either the purchaser or the consumer.<sup>31</sup> This improvement was intended to arise from increased productive efficiency, a measure which, rather than simply taking cost as the key variable, relates cost to the quantity and quality of service provision. In other words, ‘a provider unit is said to be efficient if its activities are organised in such a way that the costs of providing any given quality or quantity of a service are minimised’.<sup>32</sup>

The calls for such a reform arose in an analogous situation to the current climate of asylum policy in Western Europe. Criticism from the Right and the popular media accused a bureaucratic welfare state of wasting resources on a system that was condemned as an unsustainable and inefficient drain on scarce resources.<sup>33</sup> The economic aims of introducing greater productive efficiency were, therefore, two-fold: firstly, to reduce the burden on the taxpayer and, secondly, to improve quality of service.

Equally important, however, was the electoral imperative to generate the perception of radical change to a publicly condemned system. Although the basic structure of the purchaser/provider split was widely introduced in the UK to cover services such as the contracting-out of catering and cleaning services, the care of the elderly, housing, and even public broadcasting, the two most conceptually interesting and relevant case studies are in the application to education and health. These will be analysed and then

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<sup>29</sup> J. Le Grand, ‘Quasi-Markets and Social Policy’, in *The Economic Journal*, 101 (1991), p. 1257.

<sup>30</sup> C. Propper, ‘Quasi-Markets, Contracts and Quality in Health and Social Care: The US Experience’, in J. Le Grand and W. Bartlett (eds), *Quasi-Markets and Social Policy*, (London: MacMillan: 1993), p. 35.

<sup>31</sup> *Ibid.*

<sup>32</sup> W. Bartlett and J. Le Grand, ‘The Theory of Quasi-Markets’, in J. Le Grand and W. Bartlett (eds), *Quasi-Markets and Social Policy*, (London: MacMillan: 1993), p. 15.

<sup>33</sup> Le Grand (1991), p. 1262.

applied to assess the prospects for the application of an inter-state quasi-market in asylum provision.

### *Education*

The Education Reform Act of 1988 introduced quasi-markets to both the demand and supply-side of the education system, attempting to increase the range of parental choice in schooling, while encouraging efficiency through competition for pupils. Both of these changes were to be achieved through the creation of a system in which low-cost and high-quality provision is financially rewarded through linking a school's budget to the number of pupils it can attract, while allowing greater parental choice in the school their child would attend.<sup>34</sup>

The Act contained a number of features intended to realise this end. Firstly, it created a formula for the allocation of funding from the state, represented by the local education authority (LEA), to the school. This formula was based upon a payment being triggered for each pupil attending the school. With increased parental choice, through the creation of "open enrolment", this facilitated the reward of schools perceived to be of highest quality. Secondly, it created a devolved management system for the running of schools, which gave them greater autonomy, even allowing schools to opt-out of paying a 15 per cent levy for collective local authority services.

This was intended to create an incentive for schools to manage their budgets efficiently in a way that would minimize costs.<sup>35</sup> Meanwhile, an overarching system of regulation was maintained. While a degree of flexibility was given to schools and parents, the Government's National Curriculum enabled common educational standards to be met in each of the schools. A complex inspectorate system was established whereby all schools would be inspected over a four-year cycle,<sup>36</sup> with a series of checks and balances to validate, monitor and analyse compliance with basic standards, whilst also providing the criteria for assessment.<sup>37</sup>

### *Health*

The National Health Service and Community Care Act of 1990, likewise, introduced a marked purchaser/provider split into the provision of health and community care. In order to introduce market contestability to health care, the roles of purchaser and provider were set-out in a series of contracts between different public bodies. The purchasers acting on behalf of the state were devolved to a regional level through the District Health Authority (DHA), which became the primary producer, alongside large GP budget holders. On the side of the provider many NHS hospitals were

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<sup>34</sup> W. Bartlett, 'Quasi-Markets and Educational Reforms', in J. Le Grand and W. Bartlett (eds), *Quasi-Markets and Social Policy*, (London: MacMillan: 1993), pp. 125-6.

<sup>35</sup> H. Glennerster, 'Quasi- Markets for Education?' in *The Economic Journal*, 101 (1991), p. 1268; Bartlett, 'Quasi-Markets and Educational Reforms', pp.125-153; R. Glatter and P. Woods, 'The Impact of Competition and Choice on Parents and Schools', in W. Bartlett, C. Propper, D. Wilson and J. Le Grand (eds), *Quasi-Markets in the Welfare State*, (Bristol: SAUS: 1994), pp. 56-76.

<sup>36</sup> OFSTED was created to fulfil this function.

<sup>37</sup> L. Challis, P. Day, R. Klein and E. Scrivens, 'Managing Quasi-Markets: Institutions of Regulation', in W. Bartlett, C. Propper, D. Wilson and J. Le Grand (eds), *Quasi-Markets in the Welfare State*, (Bristol: SAUS: 1994), pp. 16-19.

granted Trust status giving them the authority to manage their own budgets and practices allowing them, alongside private providers, to offer a portfolio of services to sell to the purchasers.<sup>38</sup>

As with education, the central aim of the health reforms was to increase efficiency through creating incentives to meet certain standards of quality at the least possible cost. Firstly, it was hoped that local purchaser choice, through establishing a network of contracts would allow patients to receive a more specialised and appropriate service through being directed to the most pertinent providers. Secondly, it was hoped that through the creation of choice and competition, a form of “survival of the fittest” would be created, whereby inefficient providers would be driven from the market place. As with education, there were of course regulatory standards imposed. For example, a maximum of 6 per cent return of assets was imposed and restrictions were placed on levels of junior doctor staffing in the NHS Trusts.<sup>39</sup>

### *Extra-territorial processing*

Although there are obvious differences between the application of quasi-markets to domestic UK social policy and, in the case of extra-territorial processing, to the international asylum policy regime, there are also conceptual similarities. “Processing-in-the-region” represents a form of division between purchaser and provider in the allocation of services to asylum-seekers, involving what Ferlie calls a “negotiative contract”.<sup>40</sup> It allows, at its most simple, one state to pay another to provide basic asylum services on its behalf, subject to a contractual relationship.

Whether the services provided are purely use of geographical territory, legal and social costs of processing the claim, or even the provision of Convention of Humanitarian Status within that state, the principle remains the same. Likewise, the basic principle is unaltered when applied to a group of states (such as the EU) purchasing services from another state or group of states. Similarly, whether the means of payment is financial or non-financial, for example through diplomatic negotiation, the principle of contractual exchange remains the same. Extra-territorial processing is simply a form of quasi-market approach applied internationally, rather than domestically.

While the different forms of extra-territorial processing are almost infinite, its basic principles can be elaborated through comparison with the provisions of the Education Reform Act and the National Health Service and Community Care Act. The major difference is that while the domestic reforms incorporated changes on both the demand and supply-side, the proposals for extra-territorial processing are, as yet, a purely supply-side initiative.

As Le Grand explains, on the supply-side, quasi-markets are intended to introduce productive efficiency through allowing the purchaser to choose amongst the competing and most productive providers. Meanwhile, on the demand-side, both education and, to a lesser degree, health reforms, incorporated a means of revealing

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<sup>38</sup> A. Maynard, ‘Developing the Health Care Market’, *The Economic Journal*, 101 (1991), p. 1272.

<sup>39</sup> *Ibid*, p. 1281.

<sup>40</sup> E. Ferlie, ‘The Evolution of Quasi-Markets in the NHS: Early Evidence’, in W. Bartlett, C. Propper, D. Wilson and J. Le Grand (eds), *Quasi-Markets in the Welfare State*, (Bristol: SAUS: 1994), p. 219.

and evaluating consumer preference by allowing the parent (on behalf of the child) or patient a greater degree of choice, increasing their perceived utility (i.e. raising the quality of the service). In education this was achieved through open-enrolment and in health, to a lesser degree, through efforts to enable the patient to make informed decisions in consultation with their GP.<sup>41</sup>

Work has been done on what might be termed the ‘demand-side’ of the asylum regime to investigate “asylum choice”,<sup>42</sup> and there might well be the possibility of integrating a degree of claimant preference through, for example, the various dialogical and participatory approaches that have been examined.<sup>43</sup> At the moment, however, the UK proposals remain supply-side focused, catering for the preferences of the purchasing and providing states, rather than the object of the exchange.

Indeed, the UK’s interpretation of “Convention Plus” deliberately and purposefully sacrifices the demand-side gains implicit to the *status quo ante* for gains on the supply-side. For the accepted premise underlying the desire of the education and health reforms to expand consumer (parent and patient) choice was that quality of service could be measured by revealed preference (i.e. the number of consumers choosing to consume the services of one provider over another). Although the work of Robinson and Segrott, and Thielemann challenges purely instrumentalist approaches to asylum decision-making, they do acknowledge that asylum-seekers hold a degree of choice in the *status quo* and also base their choice on non-financial utility maximising criteria such as historical, reputational, linguistic correlation, and diaspora links.<sup>44</sup>

Indeed, one of the attractive aspects of extra-territorial processing for states that perceive themselves as over-burdened is the extrication of the demand-side since, by denuding asylum-seekers of this right to choose their destination, states perceive themselves as creating a deterrent to supposedly “bogus refugees” that have consistently been alleged to base their destination decision on purely instrumental grounds.<sup>45</sup>

Where the application of quasi-markets to education and health moved towards increased consumer choice and therefore increased quality (assessed by revealed preference) on the demand-side, “processing-in-the-region” moves away from choice and therefore, by definition, quality of service from the perspective of the asylum-seeker. Instead, it focuses on procuring productive efficiency gains on the supply-side. Consequently, it is on the supply-side that one must focus to look for potential gains to the efficiency of the global refugee regime structure. This first requires a concept of efficiency that can be applied to asylum provision.

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<sup>41</sup> Le Grand, ‘Quasi-Markets and Social Policy’, p. 1260.

<sup>42</sup> V. Robinson and J. Segrott, *Understanding the Decision-Making of Asylum-Seekers*, Home Office Research Study No. 243, (London: Home Office: 2002).for a qualitative approach; E. Thielemann, ‘Does Policy Matter? On Governments’ Attempts to Control Unwanted Migration’, *LSE European Institute Working Paper 2003-01*, for a quantitative approach.

<sup>43</sup> B. Chimni, Reforming the International Refugee Regime: A Dialogic Model, *Journal of Refugee Studies*, 14:2 (2001), pp. 151-168; UNHCR’s Global Consultations have also involved consultations with refugees through, for example, the Refugee Parliament held in Paris in June 2001 and workshops held in Geneva and Rouen, [www.unhcr.org](http://www.unhcr.org)

<sup>44</sup> Robinson and Segrott, *Understanding the Decision-Making of Asylum-Seekers*; E. Thielemann, ‘Does Policy Matter?’, pp. 19-24.

<sup>45</sup> Explained in Thielemann, ‘Does Policy Matter?’, pp. 6-7.

## 'Efficiency' in asylum provision

In defining a concept of efficiency in asylum provision there are two important types of efficiency: allocative efficiency and productive efficiency. The former relates to the way in which resources are distributed between competing uses, while the latter refers to the relationship between input and output for a given allocation – in other words, how costs can be minimised for a given quality and quantity of output.

### *Allocative efficiency*

Allocative efficiency is of great relevance to refugee protection and concerns, for example, the allocation of resources between asylum-provision, in-country protection (e.g. to IDPs prior to flight), humanitarian relief, and development aid as a means of best providing refugee protection. The much cited statistic comparing the budget of \$710m (in 2002) with which UNHCR provides protection for 20m people, compared with the estimated \$10bn spent on 500,000 asylum applicants in 15 countries in the same year<sup>46</sup> implies that the global refugee protection regime is far from allocatively efficient.

In advocating a more proactive and preventative approach to protection, Barnett<sup>47</sup>, for example, is looking at ways to improve allocative efficiency. Although it might, controversially, be argued that the deterrence effect of “processing-in-the-region” could indirectly facilitate allocative efficiency by freeing resources for alternative uses, it is with productive efficiency that extra-territorial processing is primarily concerned since it relates to the use of resources within the category of asylum-provision.

### *Productive efficiency*

If, then, productive efficiency is defined as the least cost for a given output, it requires an applicable definition of both “given output” and “cost”. In asylum, the “given output” being provided at minimum cost can be identified, broadly, as refugee protection. More specifically, in the context of “processing-in-the-region”, it is taken to be a benchmark minimum standard to be met in compliance with the “purchasing” state’s obligations under international refugee law. This specifically entails *inter alia* ensuring that the claimant is accorded the right to seek asylum, that their claim be processed and that refugee status be accorded if they are found to have a “well-founded fear” of “persecution”. It also involves safeguarding against *refoulement* and providing for their human security during the assessment of the claim.

### *Economic cost*

From a productive efficiency perspective it is, therefore, a case of providing these minimum standards at the lowest possible cost. Increasingly, however, the “cost” of asylum provision is not simply a financial question. Authors such as Jandl, Liebaut

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<sup>46</sup> *The Economist*, ‘Special Report on Asylum’, 15/3/03, p. 35

<sup>47</sup> L. Barnett, ‘Global Governance and the Evolution of the International Refugee Regime’, *UNHCR Working Paper*, No. 54, pp. 10-14.

and the recent IGC report<sup>48</sup> have tried to categorise the costs of asylum in terms of legal processing costs and social security costs. For example, Jandl suggests that these fluctuate greatly; claiming that in 1994 the average state costs per person per year (US\$) for the asylum system, for both processing costs and care and maintenance, were \$16,596 in Denmark, \$10,299 in Sweden and \$4622 in Austria.<sup>49</sup> The true net costs of asylum provision, however, include many complex non-instrumental and intangible social and political factors.

In terms of less direct costs, it is perception that is all important. Writing in 1999, Westin considered, for example, that the growing number of asylum-seekers in Europe in the 1990s created ‘a shift of the public debate towards exclusion and intolerance’ since ‘in view of current unemployment rates and stress upon national economies, recovering countries are increasingly experiencing refugee resettlement as a burden’.<sup>50</sup>

However, this growing perception of asylum-seekers as a burden is part of a long-run trend towards increasing public intolerance rather than being simply due to the specific economic circumstances of the time that Westin was writing. Since the mid-1990s asylum recognition rates (as a percentage of total applicants) have been declining and internal and external deterrence measures have proliferated, implying that states are perceiving asylum-seekers as an ever greater and less tolerable cost.<sup>51</sup>

### *Social cost*

The way in which the perception and representation of asylum-seekers enters popular discourse has contributed to a popular belief that asylum-seekers are “bogus”, “scroungers” and should be excluded.<sup>52</sup> In the UK, for example, asylum applications have continued to increase in the 1990s from 26,210 in 1990 to 71,180 in 1999, a total of 374,140 during the decade.<sup>53</sup> Front-page tabloid headlines such as ‘Lunatic Asylum’<sup>54</sup>, ‘Asylum: Britain Is A Soft Touch’<sup>55</sup> and ‘Asylum: We Can’t Cope’<sup>56</sup> have been both a barometer and catalyst of public opinion in the UK.

As Tiechmann explains, across Europe ‘elements of the mainstream mass media have been culpable in generating misinformation in regard to the asylum issue and in a number of instances “cheerleading” some of the more negative attitudes and actions

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<sup>48</sup> Jandl, *Structure and Social Costs of the Asylum Systems in 7 European Countries*; Liebaut, *Legal and Social Conditions for Asylum Seekers and Refugees in Western European Countries*; The Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC) estimated “asylum cost” in terms of the financial cost to the taxpayer.

<sup>49</sup> Jandl *Structure and Social Costs of the Asylum Systems in 7 European Countries*, pp. 12-22.

<sup>50</sup> C. Westin, ‘Regional Analysis of Refugee Movements’, in A. Ager (ed), *Refugees*, (London: Cassell: 1999), p. 37.

<sup>51</sup> Joly, *Refugees in Europe: The Hostile New Agenda*, pp. 13-15.

<sup>52</sup> E.g. In January, The Sun’s daily Asylum Madness campaign had 400,000 readers sign up to its anti-asylum petition. Meanwhile, The Mail on Sunday’s YouGov poll found 72 per cent of voters now want all asylum seekers turned away. *The Guardian*, ‘Poison Pens of Racism’, 31/1/03, [www.guardian.co.uk](http://www.guardian.co.uk)

<sup>53</sup> UNHCR, Statistical Overview, [www.unhcr.org](http://www.unhcr.org)

<sup>54</sup> *Sun*, 14/2/2001

<sup>55</sup> *Daily Mail*, 1/2/2001

<sup>56</sup> *Daily Express*, 26/8/2001

against asylum-seekers'.<sup>57</sup> Meanwhile, a growing political and social "backlash" has emerged. In the UK this has been illustrated by, for example, the recent successes of the British National Party (BNP) in Burnley and violence perpetrated against asylum seekers on the Sighthill Estate in Glasgow and race riots in Oldham and Blackburn.

Whether or not politicians *should* pander to this kind of popular backlash is a normative and ethical question that has had been the subject of immense debate. Gibney suggests that it is a valid ethical concern since politics itself ultimately determines the direction of the state, and the potential actions and motives of actors within the state must be considered fully in a 'non-ideal' world.<sup>58</sup> Carens, too, concedes that 'if no concessions are made to the exclusionists they may make things worse'.<sup>59</sup> Weiner, however, categorically opposes dictation by public opinion, claiming 'if the proposed policies are morally unjust, they should not be adopted, no matter how strong public sentiment may be, even in a democracy'.<sup>60</sup>

Goodin distinguishes between 'excuse' and 'justification' in a 'second-best world'. He accepts that 'there is no moral obligation if it is not possible', but argues that the claim of 'political impossibility' implies unacceptable costs rather than impossibility.<sup>61</sup> Consequently, ethical evaluation must not shirk seeking more ethically desirable policies.

UNHCR suggest that negative public sentiment may be alterable and reconstructable: 'the so-called asylum crisis in the industrialised states is to a large extent rooted in ignorance and fear' and it is only in the popular imagination that they 'take jobs, commit crimes, depress wages, spread AIDS, and smuggle arms and drugs'.<sup>62</sup> If education and political leadership can reconstruct inter-subjective social norms to bring them into line with a *more* "ideal" ethical approach then the "backlash" argument has less validity.<sup>63</sup>

### *Political cost*

Empirically, however, de Wenden says that the growing emergence of restrictive asylum policies *is* inextricably linked with public opinion and politician *do* respond to popular backlash.<sup>64</sup> It is in the context of this wider political and media discourse that the median voter defines the perceived cost to the state. The most significant form this takes is in the cost to political capital. Asylum has increasingly become a major political and electoral issue, upon which many governments have opportunistically capitalised or strategically moved to the right to avoid losing ground to the far right's

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<sup>57</sup> T. Wright gives a good account of the construction of negative images of refugees by the media, 'Collateral Coverage: Media Images of Afghan refugees During the 2001 Emergency', *UNHCR Working Paper No. 62*.

<sup>58</sup> Gibney, 'Liberal Democratic States and Responsibilities to Refugees', p. 177.

<sup>59</sup> J. Carens, 'Migration and Morality: A Liberal Egalitarian Perspective', in R. Goodin and B. Barry (eds), *Free Movement*, (Pennsylvania: Penn State: 1992), p. 30.

<sup>60</sup> M. Weiner, *The Global Migration Crisis: Challenges To The State and To Human Rights*, (New York: Harper Collins: 1995), p. 197.

<sup>61</sup> R. Goodin, 'Commentary: The Political Realism of Free Movement', in R. Goodin and B. Barry (eds), *Free Movement*, (Pennsylvania: Penn State: 1992), pp. 249-254.

<sup>62</sup> UNHCR, *The State of the World's Refugees*, (Oxford: Oxford: 1997), p. 214.

<sup>63</sup> See, for example, G. Noll, *Negotiating Asylum*, (The Hague: Nijhoff: 2000)

<sup>64</sup> C. De Wenden, *Réfugiés et Demandeurs d'Asile*, (Paris: La Documentation Française: 1998), p. 21.

challenge. The transformation of Danish asylum policy since the election of the centre-right Fogh Rasmussen coalition in 2002, the opportunism of John Howard's use of asylum as a political issue, the emergence of far-right anti-immigration campaigners across the EU, for example, all point to the increasing perceived marginal cost of asylum, generated by the nexus between popular opinion, the media and political discourse. The image of asylum-seekers has also been damaged since 9/11 with a growing fear of outsiders and perceived link between terror and asylum.<sup>65</sup>

It is therefore clear that in both discourse and policy formation the marginal cost of an additional asylum-seeker is perceived as not only the financial cost of processing the claim, but also the political and social costs of the *presence* of an asylum-seeker and all of the corresponding symbolic and mythological baggage held within the electoral imaginary.

#### *State expression of sub-state perceived cost*

Noll argues that a society's overall perception of the "cost" of asylum is the product of a wider social and political discourse, in which attitudes towards asylum-seekers are deliberately constructed through a multiplicity of sub-state actors, such as 'citizens, denizens, experts and political parties'.<sup>66</sup> His approach is insightful as it goes beyond "black-boxing" the decisions of states in negotiating inter-state burden-sharing.

However, the approach is not inconsistent with a state-centric theory of burden-sharing theory. Ultimately, while the decision is largely determined at the domestic level, it is expressed at the inter-state level. This is not to say that the translation from societal discourse to political decision will be a perfect process. Public choice theory in economics, for example, demonstrates how popular opinion can translate into voting patterns or, more subtly, political influence, and so exert influence on government decision. It focuses in particular on the distortions that mean that public choice will not simply be an aggregation of domestic preferences, due to factors such as bureaucratic practices, electoral procedures and power relations.<sup>67</sup>

Yet, although the relationship may be imperfect, there will inevitably be a direct correlation between the society's discursive portrayal and perception of the costs of asylum and the state's Justice and Home Affairs Policy, both domestically and internationally. Policy is therefore likely to be the expression of marginal perceived cost.

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<sup>65</sup> See, for example, the Special Edition of *Forced Migration Review* on the impact of 9/11 on asylum legislation, 'September 11<sup>th</sup>: Has Anything Changed?', Issue 13, June 2002. Meanwhile, a backlash against asylum-seekers has arisen in the UK following a number of high-profile cases alleging links between asylum-seekers and a group of Algerian terrorist in North London, and a former Taliban fighter granted status.

<sup>66</sup> G. Noll, 'A Theory of Burden Sharing in the Asylum Field', Paper Given at the UACES Workshop on EU Burden-Sharing at LSE, April 26 2002 [forthcoming in *Journal of Refugee Studies*, 16:3 (2003)], p. 3.

<sup>67</sup> D. Mueller, *Public Choice II*, (Cambridge: Cambridge: 1997).



### *Differences in net marginal perceived cost*

The nearer a society gets to a popular perception of “political unsustainability”, the less easy it will be to reconstruct public sentiment and avert the “backlash” argument being a legitimate proxy for the sustainability or otherwise of the asylum system. While some states such as Denmark and the UK appear to be very close to this point and have a very high marginal perceived cost of asylum, other states, such as the Netherlands and Sweden, continue to maintain generous, tolerant and cosmopolitan attitudes towards asylum-seekers. In the absence of a widespread and negative political and media backlash against asylum, the economic, political and social costs admitting an additional asylum-seeker are relatively lower.

The burden-sharing literature characterises states as inculcating different levels of norms of solidarity<sup>68</sup> and having different interests, such as impure altruism and excludable prestige benefits<sup>69</sup>, in offering asylum, arguing that this explains the different and changing willingness of states to provide protection. For example, the Nordic states and the Netherlands have a history of bearing disproportionately high relative asylum burdens while states such as the UK, France and Italy have engaged in more overt burden-shifting behaviour. Such differences can be taken to represent differences in the net marginal perceived cost of providing asylum.

Quantitatively measuring the level of net marginal perceived cost would be extremely difficult as it is based on the complex range of factors and inter-subjective processes described above and would therefore rely on selecting a range of proxy measures for the economic, political and social costs of asylum in a state at a given time. For our purposes, however, measurement is unimportant. From a conceptual perspective, preference revelation would occur within an extra-territorial processing framework.

In operationalizing a system of special agreements, the “purchasing” state would be obliged to reveal their “willingness to pay” (WTP) *not* to deal with the given asylum-seeker domestically, while the “providing” (RPA or TPC) state would be obliged to reveal their “willingness to receive” (WTR) compensation in development aid or diplomatic exchange, in return for providing the service.<sup>70</sup> Assuming no asymmetric power relations existed between the “purchasing” and the “providing” state, and if enough purchasers and providers entered into a web of agreements, a form of market could be created in which this price would be set by an asylum market clearing process that would allocate asylum claimants to where the net marginal perceived cost of processing the claim was lowest in relation to the valuation of the financial compensation received in development aid. The market incentives inherent in such a system would induce participation by allowing each state to maximise its own perceived interests.

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<sup>68</sup> E. Thielemann, ‘Between Interests and Norms: Explaining Burden-Sharing in the European Union’, Paper prepared for the UACES Workshop on *European Burden-Sharing and Forced Migration*, 12 January 2002 and forthcoming in *Journal of Refugee Studies*, 16:3 (2003).

<sup>69</sup> A. Betts, ‘Public Goods Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory’, forthcoming in *Journal of Refugee Studies*, 16:3 (2003).

<sup>70</sup> WTP and WTR are common tools of so-called “contingent valuation” in economics. They are used as a way of expressing valuation or price in the absence of a market mechanism. For example, D. Pearce uses these concepts to evaluate compensation claims in development-induced displacement, ‘Methodological Issues in the Economic Analysis of Resettlement Options’, in M. Cernea (ed) *The Economics of Involuntary Resettlement*, (Washington D.C.: World Bank: 1999), pp. 50-79.

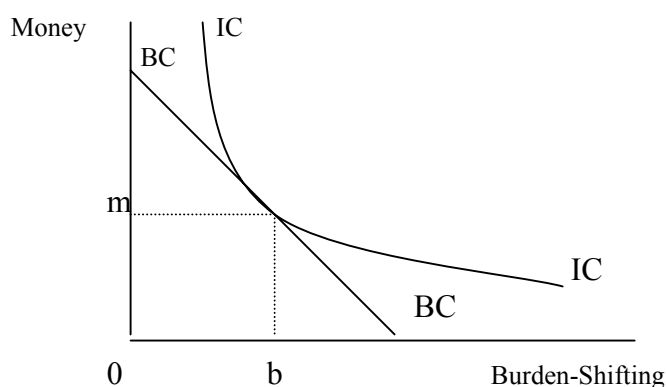
### Maximising productive efficiency

In applying consumer choice theory from microeconomics<sup>71</sup>, the actors are states rather than consumers and we can begin with a simple 2-state, 2-good case. The two states are a “provider” state (a prospective RPA/TPC state) and a “purchaser” state (a state such as the UK that perceives itself to be “over-burdened” by asylum-seekers). The two objects of choice are, put simply, to process asylum claims domestically or to process asylum claims abroad. These 2-goods, which apply to both states, can be represented by “money” and “burden-shifting”, respectively.

In the case of the “provider”, “money” is acquired from the compensation or development aid that it will receive; in the case of the “purchaser” it implies the money that it will save by dealing with processing domestically rather than paying another state. In both cases “burden-shifting” represents the good accruing to the state from passing responsibility for processing a claim on to another state, rather than having to deal with it domestically.

Subject to a budget constraint, BC, (which might, for instance, represent the overall economic and political capital available for the asylum regime within each state), each state will have an indifference map, IC, demarcating its preference relationship between these two objects of choice. The curve’s convex slope is based on the assumption that the marginal utility derived from the consumption of each additional unit declines relative to the other. This can be thought to be the case in asylum policy, given that the marginal perceived cost of an additional asylum seeker increases as overall intake increases<sup>72</sup>, implying that the state’s preference for a marginal unit of “burden-shifting” will decline with consumption.

Figure 1: *Indifference Curve for a given state’s preference relationship between “money” and “burden-shifting”.*



Based on the assumption that both money and burden-sharing are perceived as goods that increase the utility of the consuming state, a given state will maximise its perceived welfare by operating as far to the top-right of the diagram as it is able, subject to its budget constraint. The indifference curve delineates all of those points

<sup>71</sup> See, for example, W. Nicholson, *Microeconomic Theory*, (London: Dryden: 1998), pp. 67-208; S. Estrin and D. Laidler, *Introduction to Microeconomics*, (London: Harvester Wheatsheaf: 1995), pp. 5-124.

<sup>72</sup> Vink and Meijerink, ‘Asylum Applications and Recognition Rates in EU Member States 1982-2001, for instance find that as overall application rates have increased in individual EU states, so recognition rates have declined.

at which the state will be indifferent in trading-off “money” for “burden-shifting”. In this instance, given its budget constraint it will, acting independently, prefer to trade-off money for burden-shifting up until point *mb*. The gradient of the IC represents the marginal rate of substitution (MRS) between the two goods. In other words, it is the degree to which each state is willing to trade “money” for “burden-shifting” in terms of its own valuation. Crucially, where this relationship is different between different states, there will be a basis for trade.

Conventionally in microeconomics, a state’s overall production and exchange relationship depends not only on its preferences but also its ability to produce. This is normally represented by its marginal rate of technical substitution (MRTS); in other words, by the ease<sup>73</sup> with which a state can substitute production of one good for the other.

However, in the case of asylum, preference (i.e. MRS) and ability (i.e. MRTS) can be argued to be the same thing given that the “cost” of “producing” asylum domestically is largely based on perception. Preference and ability will be entirely symbiotic in the relationship between “money” and “burden-shifting”. The preference for “burden-shifting” will itself be representative of the net marginal perceived cost of offering asylum. Meanwhile, the preference for “money” will be representative of a state’s income (GNP/capita) (– i.e. the state’s ability to “produce” “money”).

A given state’s valuation (in terms of both preference and ability) of the two goods can be considered to be determined by the relative scarcity of each in the given state. A poor state with a low historical stock and flow of asylum-seekers, is likely to value an additional unit on “money” in development aid more highly than the ability to shift the burden of an additional asylum-seeker. In contrast, a wealthy state that perceives itself to have an excessive asylum burden (and therefore a higher net marginal perceived cost) is relatively more likely to value a unit of “burden-shifting” than an additional unit of “money”. It is this difference that will bring both exchange and productive efficiency.

The two states will exchange “money” for “burden-shifting” until they are operating at the point along their indifference curves at which the MRS between the two goods is equal in both states. This reallocation of both asylum-claimants and money will have two obvious theoretical consequences. Firstly, it will mean that asylum claims are dealt with where they are “cheapest” in terms of their marginal perceived cost per claimant. Given that the revelation of preference will in practice incorporate all of the political, social and economic costs entailed in the discourse that led to the state’s public choice, this will be likely to result in the reallocation of asylum-seekers from where they are most tolerated or even desired.

Secondly, it will mean that “money” is allocated to where it is most valued due to its scarcity. The application of a quasi-market system in asylum processing might, therefore, be a new means by which developing states can acquire a legitimate form of export revenue. By offering a good for which they have a relatively abundant supply (i.e. the political and social ability to process claims), they may be able to improve the welfare of their own citizens. This, in turn, might create greater tolerance for asylum-

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<sup>73</sup> Conventionally measured in terms of the factor inputs (labour and capital) required to produce an additional unit.

seekers if they were perceived as a benefit due to the linked revenue that they brought to the country.

The great danger, however, would be if these two consequence clashed, such that the desire of poor states for money outweighed its, nonetheless, high marginal perceived cost of offering asylum. In underdeveloped states desperate for income this might result in asylum-seekers being transferred to an environment in which they were even less tolerated, but were simply abused as a form of export commodity.

A second danger with the two-state bilateral case is that asymmetric power relations between the rich “purchaser” state and poor “provider” state would lead to disincentives to complete preference revelation, allowing the more powerful state to influence the terms of trade on which “money” was exchanged for asylum provision. In practice, the state with the greatest diplomatic power would be likely to coerce the poorer “provider” state to accept a lower rate. This could create many of the distortion associated with hegemony in international relations<sup>74</sup> and with monopoly in economics<sup>75</sup>.

Extending the two-state model to an  $n$ -state multilateral scenario, however, might help to overcome this asymmetric relationship by ensuring that the terms of trade were established with a lower degree of imperfect competition. By having a number of competing “provider” and “purchaser” states, both the monopoly and monopsony<sup>76</sup> scenario might be avoided so that competition would bring about full preference revelation and the determination of a global “market rate” for the terms of trade in asylum provision.

This might create an inter-state partial equilibrium model for asylum-provision, the relationship between demand for and supply of “asylum provision” services determining its price. If this could be achieved, the market would always clear, with asylum-applicants simply being reallocated to whichever state could offer to process claims, in accordance with international law, at the lowest rate.

This would have two further consequences. Firstly, it would provide incentives for producer efficiency. “Providing” states would, therefore, have an in-built market incentive to offer processing services in accordance with international law at the most efficient rate possible, for example, creating incentives to process claims swiftly (assuming, of course, that such a function were devolved to the state). In the broader sense it would provide incentives for the state governments to reduce not only financial cost but also perceived marginal cost. Where currently, governments have few incentives to challenge media and public discourse, the additional government

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<sup>74</sup> Arguments about the form and role of hegemonic power abound in international relations. R. Keohane, *After Hegemony*, (Princeton, N.J., Princeton: 1984); D. Calleo, *Beyond American Hegemony*, (New York: Columbia: 1987); R. Keohane and J. Nye, *Power and Interdependence*, (New York: Harper Collins: 1989); D. Snidal, ‘The Limits of Hegemonic Stability’, *International Organization*, Vol. 39 (1985), pp. 579-614; R. Cox, ‘Towards a post-Hegemonic Conceptualization of World Order’, in E. Czempiel and J. Rosenau (eds), *Governance Without Government*, (Cambridge: Cambridge: 1992); S. Strange, ‘The Persistent Myth of Lost Hegemony’, *International Organization*, Vol. 41(4) (1987).

<sup>75</sup> A. Harberger, ‘Monopoly and Resource allocation’, in *American Economic Review*, 44 (1954), pp. 77-87; R. Posner, ‘The Social Costs of Monopoly and Regulation’, *Journal of Political Economy*, 83 (1975), pp. 807-827.

<sup>76</sup> A monopsony implies a single purchaser, where monopoly implies a single provider.

revenue accrued by “provider” states might provide such an incentive to redirect some of the resources into education and public information campaigns, for example. Globally, more efficient production would reduce the net cost of the global asylum regime, increasing its capacity and so making the existing regime (with its currently threatened international benchmarks) more sustainable.

Secondly, the market incentives provided to both “purchaser” and “provider” state to engage in trade in order to maximise the utility that accrues *directly* to the state (either in “burden-shifting” or “money” respectively) would contribute to overcoming the disincentives to preference revelation inherent to the *status quo*. The central problem identified in the existing burden-sharing literature is that of collective action failure.<sup>77</sup>

In spite of collective benefits, the absence of incentives for *individual* state contribution to the global refugee regime, when a state acts independently in a decentralised system, was argued to result in Prisoner’s Dilemma and under-provision. The introduction of a quasi-market mechanism would remove this problem by providing financial incentives for private provision of what was previously assumed to be an international public good.

### Scope and limitations

So far this article has largely focused on the theory of how introducing quasi-markets might be *supposed* to work and has ignored many of the conceptual and practical difficulties that lie in applying such a system to asylum provision. To assess the likelihood that the supposed theoretical gains would be realised in practice, we can return to the domestic social policy precedents described earlier.

In the UK experience of introducing quasi-markets to health and education, the most positive analysis does indeed describe the benefits in productive efficiency outlined above. Levacic, for example, argues that in education efficiency increased by allowing selection between a number of schools providing at different average unit cost.<sup>78</sup> To a lesser degree, the reforms in health have been argued to have also resulted in some increased competition.<sup>79</sup>

However, in both cases, the reduction in marginal costs have been argued to have been extremely difficult to evaluate and have been considered to be outweighed by a plethora of additional negative consequences that ultimately led to widespread condemnation of the quasi-market approach. In his analysis of the reforms in both sectors, Barr outlines several problems that may be broadly categorised as 1) *quality and monitoring*, 2) *coordination*, 3) *bargaining power*, and 4) *selectivity*.<sup>80</sup> Each of these difficulties can be looked at to assess the extent to which similar problems might arise in the application of inter-state quasi-markets to asylum provision. Finally, an

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<sup>77</sup> E.g. Suhrke, ‘Burden-Sharing During Refugee Emergencies’, p. 396.

<sup>78</sup> R. Levacic, ‘Evaluating the Performance of Quasi-Markets in Education’, in W. Bartlett, C. Propper, D. Wilson and J. Le Grand (eds), *Quasi-Markets in the Welfare State*, (Bristol: SAUS: 1994), pp. 35-55.

<sup>79</sup> C. Propper, ‘Expenditure on Health Care in the UK: a Review of the Issues’, *CMPO Working Paper No. 01/030*, (2001).

<sup>80</sup> Barr, *The Economics of the Welfare State*, pp. 314-315 and pp. 349-51.

additional and overarching difficulty inherent to the approach will be briefly discussed: its positivist epistemology.

### *Quality and monitoring*

Barr argues that in the case of health, in particular, quality is likely to have suffered as a result of making providers responsible for their cost decisions.<sup>81</sup> By basing competition largely on a provider's ability to reduce their average costs through productive efficiency, the incentives for higher quality of production may be compromised. Ensuring that quality does not decline is a case of defining measurable standards of what exactly constitutes quality, and creating enforceable mechanisms for monitoring and accountability. The UK asylum approach to quality differs from that of health and education.

While the domestic UK reforms were intended to *raise* standards and explicitly not put ceilings on them, extra-territorial processing sets a minimum benchmark standard for quality in terms of compliance with international treaty obligations. In that sense, measuring quality is easier than for health and education, for which elaborate criteria and proxy measures are required. However, it is also worth questioning whether or not asylum provision is about more than just providing *minimum* standards. Abandoning the promotion of standards beyond those minima is likely to reduce the quality of service enjoyed by asylum-seekers. As was explained earlier, this is, to some extent, *the point* for deterrence reasons.

Whether or not one believes that asylum-seekers have the right to enjoy more than basic protection and the right to have their claims processed is a debatable question. For example, should asylum-seekers have the right not to be transferred until their claim has been assessed? To what extent should they be allowed to choose their destination country? These are *de facto* rights that many asylum-seekers currently enjoy, but which are not guaranteed by international law. The question is whether this loss equates to a loss in quality and whether this matters? Clearly, it does for the asylum-seeker, but for many states it actually increases quality through the supposed deterrence and streamlining effect.

To ensure that even the minimum international norms are complied with would rely on an effective monitoring mechanism. In the case of both health and education this was implemented through clearly specified contracts between “purchaser” and “provider”. Similarly rigorous contracts would be required in the case of asylum, with assessment and monitoring to ensure that full compliance with international treaty obligations was maintained. The creation of accountability would be particularly problematic since the 1951 Convention is non-binding and application of UNHCR's existing monitoring process relies upon dialogue and persuasion inside and outside of forums such as ExCom. The “purchasing” state would need to be vested with an unambiguous legal responsibility to ensure that the “providing” state upheld the necessary international standards.

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<sup>81</sup> Ibid, p. 315.

### *Coordination*

Barr notes that in both health and education, the division of purchaser from provider and the corollary separation of management structure undermined the effectiveness of coordination, such that GP fundholders, Trusts and DHAs, for example, often had inadequate awareness of the actions of the other. By simultaneously impoverishing the communication links between the different actors within the sector, whilst also giving each actor diverging aims and incentives, problems such as backlogs, waiting lists and bureaucratic error became more commonplace.

Such domestic coordination problems are likely to be exacerbated on an international level, at which sovereignty and diplomacy will introduce even greater complexity in ensuring stable and effective coordination. If transaction costs were considered to be a problem at the domestic level, they will certainly be even greater at the international level, due to the need to physically transport claimants across long distances. Many of the current practical difficulties associated with deportation will also doubtless apply, further raising transaction costs.<sup>82</sup>

### *Bargaining power*

In the case of domestic quasi-markets, asymmetric power, primarily in terms of information, was considered to be a problem. In education parents were unable to make fully informed choices about school; in health imperfect consumer information led to the GP fundholders maximising their own efficiency while marginalizing the input of the patient. While the different allocation mechanisms in asylum (whereby asylum-seekers would be excluded from decision-making) removes such information problems, the relative political and economic status of the “purchaser” and “provider” states is likely to create a different form of asymmetric power relation.

Just as Barr identifies that many local schools held *de facto* supply-side monopolies due to their dominance of a given catchment area, so the absence of competition, or choice, between different purchasers or providers in the asylum system might create a similar structure. For example, if, as proposed, the EU were able to collectively bargain with external non-EU states rather than compete amongst themselves for “providers”, this would place them in an extremely strong bargaining position in which they would collectively be able to force down the “market rate” for provision, to the detriment of the providing state(s).

### *Selectivity*

In terms of selectivity, the education reforms, in particular, were accused of leading to “cream-skimming”, whereby placing incentives on schools to maximise their performance in turn led to the perverse incentive to select only the “best” pupils. Paton also explains how, in health, GP fundholders had incentives to select and treat only those patient of low risk.<sup>83</sup> An analogous situation might arise within the asylum

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<sup>82</sup> G. Noll, ‘Rejected Asylum Seekers: the problem of Return’, *UNHCR Working Paper No. 4*, (UNHCR: 1999).

<sup>83</sup> C. Paton, ‘Planning and Markets in the NHS’, in W. Bartlett, C. Propper, D. Wilson and J. Le Grand (eds), *Quasi-Markets in the Welfare State*, (Bristol: SAUS: 1994), pp. 225-243.

system if, for example, “provider” states were allowed to select certain types of asylum-seeker, based on ethnic composition, country of origin, age or sex. On the one-hand, this might allow states to specialise in taking asylum-seekers of a particular origin, cutting both financial costs (e.g. for interpreters and education) and social costs (e.g. integration). On the other hand, basing selection on often arbitrary categorisations of identity might be a dangerous precedent that could lead to the marginalisation and exclusion of certain groups of refugees.

### *Positivism*

Aside from these practical problems, an additional epistemological problem with the entire approach needs to be mentioned: namely, positivism. The entire extra-territorial approach to asylum, as well as the application of microeconomic analysis adopted by this article, relies on an unproblematic acceptance of many aspects of the *status quo*.

For example, the very concept of assuming that asylum-seekers universally represent a “cost” or “burden” rather than a potential “benefit”, ignores the possibility that the extant *perceived* costs might be reconstructed within the developed “purchasing” states.<sup>84</sup> While it is true that UNHCR and asylum policy must operate within the political and social realities, it must also chart a delicate balance between facilitating the sustainability of the existing regime faced with its present problems and the risk of legitimating xenophobia, intolerance and objectification of the asylum-seeker.

### **Conclusion**

This article has applied the insights of the separation of purchaser from provider in the UK’s domestic approach to quasi-markets to that implied in the system of special agreements proposed by the UK Government’s interpretation of “Convention Plus”. The intention of the article was neither to categorically condone nor condemn the prospects of extra-territorial processing, but rather to explore some of the implications of the proposals from a perspective often neglected in the analysis of forced migration – that of economics.

Similarly to domestic quasi-markets, the application of an inter-state purchaser/provider split to the global asylum regime promises productive efficiency gains. It would do so through allowing asylum claims to be processed where the net marginal perceived cost was lowest; firstly, raising the net capacity and sustainability of the existing system and, secondly, creating incentives for the provision of asylum that overcome collective action failure associated with the burden-sharing debate, and, thirdly, creating a new source of development revenue for “providing” states. Taken further, it might also allow “asylum specialisation” by states, allowing them to deal with the claims of groups that are more easily processed or integrated, from an ethnic or linguistic perspective.

However, linked with these potential gains in efficiency, many of the practical difficulties of the quasi-market approach are also likely to apply to extra-territorial processing. Not only do high transaction costs and asymmetric bargaining power

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<sup>84</sup> Betts, ‘Public Goods Theory and the Provision of Refugee Protection’.



threaten the theoretical gains in efficiency, but the debate also raises fundamental questions over the definitions of “cost”, “quality” and, therefore, “efficiency” in the global asylum regime.

This article has attempted to answer this challenge by defining a concept of net marginal perceived cost incorporating the overall representation of the economic, social and political costs of taking-in another asylum-seeker, as expressed by that society’s public choice. Extra-territorial processing facilitates shifting this perceived burden, associated with the *presence* of the asylum-seeker, through legitimating physical transfer. The great difficulty with such a framework is that any approach to the refugee regime that takes the *realpolitik* of the *status quo* as its starting point must tread a delicate path between innovating to deal with genuine concerns and avoiding the legitimization of state exclusion.

While “processing-in-the-region” aims to maintain the existing legal framework in accordance with “Convention Plus”, the status of many *de facto* rights currently enjoyed by asylum-seekers would be undermined. To the states involved in supporting the UK initiative this is part of the attraction since they regard the provision of services over and above “the basics” as a source of abuse. If it is believed that “processing-in-the-region” can be applied in such a way that addresses, rather than exacerbates, public and political concerns then a new and more rigorous monitoring system would consequently need to be evolved, with UNHCR at its heart, to ensure that the minimum benchmark standards of international law were upheld.