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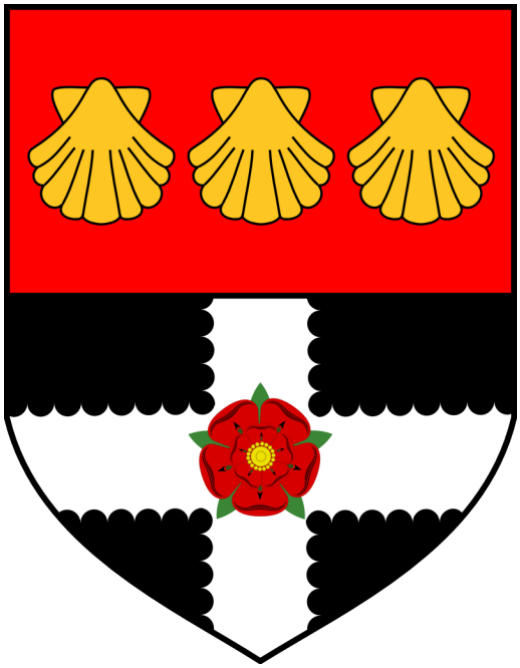

States without Borders: Freedom of Movement in a Non-Cosmopolitan Key

PhD by Published Works

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Abstract

This dissertation is a compilation of five published articles that together aim to develop an account of immigration from a statist perspective. It shares with other statist accounts the emphasis on the state as the primary site of justice, but unlike them, it argues that nothing in this picture justifies its right to exclude. The first part of the dissertation refutes two prominent cosmopolitan arguments in support of open borders. Against the global justice argument, I show that open borders as an instrument of global justice are at odds with the values underlying international freedom of movement. Against the immigration enforcement argument, I argue that the problematic nature of border controls does not provide so much a reason for open borders as a reason for immigration reform. The second part of the dissertation develops a new approach to immigration called inclusive statism. First, I make an indirect argument for open borders by showing that the same reasons that justify restrictions on mobility across borders also justify restrictions on mobility within borders. Second, I provide a direct argument for open borders; I argue that even if the grounds of freedom of movement are or should not be global in scope, freedom of movement must be. The last article develops a general framework for thinking about immigration justice from a statist perspective. By taking seriously the role of the state qua site of justice, this dissertation provides an alternative, more conciliatory, defense of open borders.

Keywords: immigration; statism; freedom of movement; global justice; open borders; right to exclude.

Declaration of authorship: I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.

Contextual chapter

1. The political philosophy of migration

The political philosophy of migration deals with the normative aspects of immigration policy, interrogating itself about the principles of justice that should govern the "movement and settlement of people across state borders" (Fine 2013, 255). In other words, it "ask[s] about the institutions and policies we should adopt in dealing with immigration" (Miller 2016b, 17). It covers a wide range of issues, from the limits on state discretion in the design of its admission and integration policies to the rights (and duties) of migrants including refugees, family reunification, temporary foreign workers, and unauthorized aliens.[1] However, the most important issue is perhaps the so-called "open borders" debate (Wilcox 2009), which pits advocates of the right to immigrate against defenders of the right to exclude (Song 2018). By the right to immigrate, I refer to the moral right of individuals to move to and settle in a state of which they are not a member (Oberman 2016, 34). By the right to exclude, on the other hand, I mean the authority (or liberty [Lægaard 2010]) that states claim to regulate foreigners' access to and residence in their territory (Fine 2013, 255).

Broadly speaking, we can identify three competing approaches to immigration justice: inclusive cosmopolitanism, exclusive cosmopolitanism, and exclusive statism.[2] "*Inclusive cosmopolitan* approaches hold that the moral equality of citizens and foreigners requires states to open their borders by eliminating all or most restrictions on immigration" and naturalization (Higgins 2013, 60 [emphasis added]). Insofar as the country of birth is irrelevant from a moral point of view, citizenship, which is legally bound up with the country of birth, should not delimit the applicability of principles of justice or else determine people's life prospects (Moellendorf 2002; Tan 2004; Caney 2005). Immigration restrictions, in conjunction with birthright citizenship laws, prevent

[1] For an overview of these debates, see Hosein (2019) and Brock (2021).

[2] I focus on immigration justice in particular and not on philosophical approaches to immigration in general because the aim of this dissertation is to develop an alternative approach to cosmopolitanism, which is first and foremost an account of *justice*. Therefore, the above classification does not encompass all arguments in the open borders debate, but only those arguments that appeal to considerations of justice or justice-related concerns. I lack the space to discuss nationalist and communitarian arguments. Even though they are accounts of justice as well, they are not statist properly speaking, because states feature only contingently in them. Whereas for statists states are the appropriate site of justice, for nationalists nations are the appropriate site of justice, states being the political organization that many (though not all) nations happen to adopt—but the two do not necessarily coincide.

individuals in poor countries from accessing opportunities in more prosperous ones (Shachar 2009). *Exclusive cosmopolitans* share the underlying normative premises regarding the arbitrariness of birthright citizenship and the global scope of justice, but argue that freedom of movement is not the best means to achieve cosmopolitan ends (Brock 2009, chap. 8; Higgins 2013). To the contrary, they believe that open borders would exacerbate global inequalities and even lead to some injustices like brain drain (Brock and Blake 2015). *Exclusive statists*, for their part, claim that the state is the primary site of justice. Even if all persons have equal moral worth, principles of justice are sensitive to the institutional context and/or political relationship in which people stand (Miller 1998; Blake 2001; Sangiovanni 2007). Accordingly, it is possible to acknowledge the equal moral worth of persons, and yet insist that this moral equality will have different implications for justice in different institutional contexts. Freedom of movement is a political right that stems from the need to justify political authority specifically to those individuals who face such authority (Blake 2005, 235). Hence, it makes no sense to speak of a human right to immigrate (Yong 2017).

This dissertation defends a fourth approach: *inclusive statism*. Like exclusive statists, I believe that states are the primary site of justice; but unlike them, I argue that nothing in this picture justifies their right to exclude. The dissertation is divided into two parts. The first part refutes two prominent cosmopolitan arguments for (fairly) open borders, one based on global justice and the other on the problematic nature of border controls. My aim is not to reject inclusive cosmopolitanism altogether, but rather to provide an alternative, more conciliatory, defense of open borders. To this end, the second part of the dissertation spells out the inclusive statist approach. First, it makes an apagogical or reductio argument for open borders. Second, it argues that freedom of movement is global in scope, even if principles of justice are not. Finally, it proposes three principles of justice for immigration policy. Before discussing the prevailing approaches to immigration justice in more detail, I would like to motivate my account of statism and explain how it differs from cosmopolitanism on matters of global justice.

2. Global justice: statism vs cosmopolitanism

I understand statism (or internationalism) as an answer to the question of what moral equality requires at the global level. In essence, it holds that principles of justice are not global in scope—as cosmopolitans contend—, but, as its name suggests, should be restricted to the state level. To be clear, statists do not deny that everyone has equal moral

worth, or else believe that some people matter more than others—that much is shared with cosmopolitans. Rather, they argue that different institutional contexts will have different implications for justice. In so doing, they implicitly accept the current division of the world into sovereign nation-states. This is not because of a status-quo bias, but because they take the existing institutional order as the starting point of their philosophical inquiry. In this sense, statism is both institutionally conservative and practice-dependent: "it accepts the political institutions of sovereign states to be such as they currently are in the world, and asks not what institutions ought to exist but what our institutions might do to be justifiable to all" (Blake 2001, 264). To this end, it formulates principles of justice that serve as standards against which to assess and, if necessary, correct the working of institutions.

However, in working out principles of justice, statists do not start from scratch, abstracting away from the background institutions that structure social relations. They look instead at the point and purpose of the institutions that the conception of justice is meant to apply to, and then specify the role that the proposed principles of justice should play within those institutions. In other words, "the content, scope, and justification of a conception of justice is worked out in the light of both its intended role within existing institutions and the interpretation of the point and purpose of those institutions" (Sangiovanni 2008, 150). Because the purpose of justice in the international context, as interpreted against its background institutional rules, is not to justify relations among citizens understood as free and equal persons of the same political community, but rather to promote fair and peaceful relations among different independent states, the principles of justice "appropriate for the international order will have a correspondingly different content, scope, and justification" (2008, 152).

It might be helpful to clarify what is meant by principles, site, scope, and grounds of justice, and how statists and cosmopolitans understand each of these concepts, as this will allow us to distinguish the two positions on global justice. *Principles* of justice are those principles that govern the allocation of the benefits and burdens of social cooperation. The *site* of justice refers to the phenomena or objects (e.g., individual actions, social practices, institutional rules, etc.) that are properly regulated according to principles of justice (Abizadeh 2007, 323). The *scope* of justice refers to the agents (usually persons) that have claims and duties of justice (ib.). And, finally, the *grounds* of justice refer to the

conditions for principles of justice to arise in the first place.[3] These four concepts tend to converge with the *basic structure* of society, that is, the network of relations and system of rules that make up the institutional background against which individuals engage in social cooperation. Although it is possible to conceive of principles of justice as regulating things other than the basic structure of society (for example, the effects of unchosen circumstances on people's life prospects), the basic structure is usually considered the primary subject of justice because its institutions distribute the main benefits and burdens of social cooperation and have a pervasive impact on most aspects of an individual's life, including his life prospects, from the start (Rawls 1971, 7). In fact, if the unequal distribution of resources by arbitrary factors beyond one's control and how people fare as a result are a matter of justice, it is because this distribution is to a great extent the result of the working of social, political, and economic institutions that structure people's lives, that is to say, the basic structure (Tan 2012).

For *statists*, the basic structure of society is made up of the social, political, and economic institutions constitutive of the *state*. Accordingly, they regard the state as the appropriate site of justice, to which principles of justice properly apply. The scope of justice is given by the individuals who cooperate with one another to uphold the basic structure of society (Freeman 2006; Sangiovanni 2007; Altman and Wellman 2009) and/or who share liability to the coercive network of state institutions (Blake 2001; Nagel 2005; Risse 2006). Although by no means the only grounds of justice, it is the facts of social cooperation and state coercion that usually trigger demands of justice. Finally, principles of justice are concerned with the fair distribution of the benefits and burdens of social cooperation and with the justification of state coercion. In this way, they serve both a regulatory and a justificatory role: they govern the basic structure of society by distributing the benefits and burdens of social cooperation among those who are subject to its rules in terms that they could not reasonably reject.

For *cosmopolitans*, principles of justice are global in scope. Broadly speaking, there are two strands of cosmopolitanism, each of which corresponds to a different way of accounting for the global scope of justice (Sangiovanni 2007, 5). *Non-relational* cosmopolitans believe that humanity is a sufficient condition for principles of justice to

[3] There is a fifth concept, pertaining to the content of (principles of) justice, which is defined by the *metric*, *currency*, and *basis* of distribution (Banai 2013, 47-48). I make no use of these concepts here, in part because I believe that it is up to each society to democratically decide the content of justice as long as it respects the moral equality of all persons.

arise, and their role is to mitigate the effects of unchosen circumstances on people's life chances (e.g., Tan 2004; Caney 2005; Fabre 2005). Principles of justice derive their global applicability directly from the equal moral worth of all individuals. On this understanding, immigration restrictions violate the moral equality of persons by distinguishing among them on morally arbitrary grounds (Cole 2012). *Relational* cosmopolitans reject the idea that humanity is a sufficient condition for principles of justice to arise. Rather, they argue, it is the fact that the international order constitutes a global basic structure that triggers the demands of justice (e.g., Pogge 1989; Beitz 1999; Moellendorf 2002). In this case, principles of justice are meant to regulate the terms of international cooperation. Open borders would contribute to a fair distribution of the benefits and burdens of international cooperation in two ways: on the one hand, they would allow people to access opportunities that might not otherwise be available in their own country (Carens 2013); and, on the other hand, they would disincentivize the spatial clustering of negative externalities in poor countries (Ball-Blakely 2021). I discuss cosmopolitan arguments for open borders in greater detail in the next section.

The position one adopts in the debate on global justice tends to influence one's position in the open borders debate. "Those who think that all persons everywhere are entitled to treatment as political equals tend to be advocates for open borders; if the community of people to whom rights are distributed includes *everyone*, then restrictions on immigration are inherently unfair" (Blake 2008, 964). By appealing to our shared humanity and the moral equality of all persons, cosmopolitans endorse open borders as a way of countering the unequal effects of the country of birth and of the international order on people's life chances. Statists, by contrast, believe that citizenship, even if arbitrary in the way it gets assigned at birth, is still morally relevant in that it triggers subjection to a common system of laws that regulate the terms of social cooperation. "Since internationalists [or statists] reject a global scheme of equal protection for basic rights, global equality of opportunity, and global economic egalitarianism, they are not bound by their background commitments to accept the free migration view" (Yong 2016, 819–20). The right to freedom of movement "is a specific implication of moral equality which applies only within the context of shared liability to the state" rather than something people are owed merely by virtue of their personhood (Blake 2005, 229). Given the gulf that separates statists and cosmopolitans on questions of justice, it is no surprise that they reach radically opposite conclusions on the open borders debate.

As I said before, my aim in this dissertation is not to argue against cosmopolitanism, but rather to develop an alternative, more conciliatory, approach to open borders. Given that most people reject cosmopolitanism as a theory of justice, arguing for open borders on cosmopolitan grounds is likely to be a futile attempt. Peter Meilander (2001), for example, complains that Carens employs a very particular conception of liberalism when arguing for open borders, namely a cosmopolitan one. According to Carens (1987, 256), "we can take it as a basic presupposition that we should treat all human beings, not just members of our own society, as free and equal moral persons." Similarly, Cole (2000) takes liberalism to be premised on the equality of all human beings. "With its universalist commitment to the moral equality of humanity, liberal theory cannot coherently justify these practices of exclusion, which constitute 'outsiders' on grounds any recognizable liberal theory would condemn as arbitrary" (2000, 2). The problem, of course, is that those who do not share this cosmopolitan conception of liberalism will be unpersuaded by their arguments.

The same can be said about other prominent defenses of open borders. Take Oberman's (2016) argument that the human right to immigrate is grounded in the personal and political interest in accessing the full range of existing life options. A statist would respond, first, that global justice only requires access to an *adequate* range of options (Miller 2007, 206-207; 2014, 366);[4] and second, that human rights are properly held against, and thus their scope should be restricted to, the state which is primarily responsible for their protection. As Risse (2012, 27) puts it, "[f]or me to have freedom of conscience […] is for me to be able to practice my religion where I live, not for my religion to be accepted elsewhere, nor does it mean for me to be able to travel anywhere my religion may require me to go." Finally, consider Huemer's (2010) and Hidalgo's (2019) argument that immigration restrictions are prima facie wrong because they prevent

[4] One might argue that it is also possible for a cosmopolitan to believe that global justice only requires access to an adequate range of options (e.g., Brock 2009; cf. Caney 2001, 115-116). If justice requires that everyone have access to an adequate range of options, where everyone means everyone in the world, then the scope of justice is indeed global. This corresponds roughly with what David Miller (2007) calls "weak" cosmopolitanism. However, I believe that cosmopolitanism is not only about the scope of principles of justice; it also entails a substantive (i.e., egalitarian) commitment to the content of these principles. Otherwise, we run the risk of conflating cosmopolitanism with universalism. Whereas all cosmopolitans are universalists, not all universalists are cosmopolitans. For example, utilitarians are universalists because they believe that it is the total amount of happiness or wellbeing of humanity, not just citizens', which ought to be maximized, and that everyone's happiness or wellbeing adds up equally to that amount; but to the extent that the principle of utility leads to deeply inegalitarian results, we would not consider utilitarianism a cosmopolitan ethic. In short, for cosmopolitans, principles of justice are global in scope *and* egalitarian in character, whereas for statists, principles of justice are egalitarian in character *but* domestic in scope.

mutually beneficial exchanges between consenting adults. Unless one assumes that citizenship is irrelevant from a moral point of view, as cosmopolitans do, it is difficult to see how the fact that one of the parties to the exchange is a foreigner elicits no considerations of justice besides those that already apply at the domestic level. Another option is, of course, to deny that states may interfere with individual freedoms altogether, such that mutually beneficial exchanges between consenting adults are impervious not only to considerations of global justice, but also to considerations of domestic justice. In this way, the argument avoids relying on controversial cosmopolitan premises, but only to rely on more controversial, i.e. libertarian, ones (cf. Freiman and Hidalgo 2022). In conclusion, if we want to reach a more widespread agreement on immigration, we cannot do so by appealing to cosmopolitan, let alone libertarian, premises.[5]

3. Three approaches to immigration justice

a. Inclusive cosmopolitanism

Inclusive cosmopolitanism is the paradigmatic stance on open borders. According to Pogge (2002, 169), cosmopolitanism is characterized by its methodological *individualism* (the person is the ultimate unit of moral concern), *universality* (every living person bears this status equally), and *generality* (this status has implications for everyone else). If individuals are the ultimate unit of moral concern and deserve to be treated as moral equals by others, it follows that states should not make distinctions among individuals based on morally arbitrary facts. To the extent that citizenship is assigned arbitrarily at birth, it should not serve as the basis for unequal treatment in the distribution of resources and entitlements. The immigration policy advocated by inclusivists is thus one of open borders: "borders should be (fairly) open to foreigners, and settlement on the territory of a liberal democracy should lead quickly and smoothly to full citizenship" (Ottonelli and Torresi 2012, 205). There are at least two ways to make this case. The first appeals to the (net) positive effects of free immigration on global distributive justice. The second draws on the arbitrariness of state borders and the brute (bad) luck of being born in one country

[5] For some attempts to refute statist arguments for the right to exclude without appealing to cosmopolitan premises by means of a *reductio ad absurdum*, see Hidalgo (2014), Freiman (2015), Brezger and Cassee (2016), and Weltman (2021). However, I believe that none of them succeeds for the simple reason that citizens have a human right to occupancy (Stilz 2013) as well as not to be stripped of their citizenship (Lenard 2018). By contrast, my reductio argument for open borders does not entail the violation of a human right other than the one at stake, namely freedom of movement.

rather than another. In both cases, what drives the cosmopolitan proposal for open borders is their potential to counteract the influence of citizenship on people's life chances.

The first argument has been made on instrumentalist grounds. The logical reasoning is this: (P1) Global justice requires that everyone in the world have access to the means necessary to lead an autonomous life. (P2) The world in its current state is unjust: millions of people lack access to the means necessary to lead autonomous lives. (P3) Borders (re)produce this injustice, as they prevent access to the means necessary to lead an autonomous life. (P4) A world with open borders would allow these people to access the means necessary to lead autonomous lives. (C) Therefore, global justice requires open borders.[6] It might be objected that open borders are not the best (let alone the only) way in which rich states can discharge their duties of global distributive justice.[7] However, to the extent that rich countries are unwilling to do their fair share to alleviate global poverty and reduce inequalities, migrants cannot be kept waiting for assistance to come (Carens 1992, 35; Bader 1997)—lest they perish in the meantime! In this sense, open borders may be a second-best solution to global injustice, but they are necessary in the here and now (Wilcox 2014, 131).

The second argument runs along luck egalitarian lines. The idea is that people should not be disadvantaged for morally arbitrary factors beyond their control. If birthright citizenship (either by *ius soli* or *ius sanguinis*) is a morally arbitrary fact—in the sense that no one deserves to be born where they were born—for which nobody should be disadvantaged, then people should have the right to migrate to other countries to offset this brute (bad) luck (Carens 2013, Velasco 2016; Loewe 2018; Holtug 2020). This argument shares with the previous one the premise that the country of birth should not determine a person's life chances. In this sense, its intuitive appeal rests on the highly unequal distribution of wealth across the world, where the country of birth is by far the most important predictor of a person's life chances (Milanovic 2016). However, the present argument can vindicate open borders even in a more just world where no such stark differences exist between countries in terms of life prospects. For if, as we have seen, individuals ought not to be treated differently by institutions on the basis of morally arbitrary facts, then states cannot differentiate among foreigners and citizens, at least

[6] This formulation is taken from Niño Arnaiz (2024b).

[7] Other options include undertaking structural reforms in the international political and economic institutions, signing fairer trade agreements with developing countries, establishing a global redistributive tax, sending aid directly to the affected countries, and so on.

when it comes to the distribution of and regulation of access to what Rawls (1971) calls primary goods, for example, rights and liberties, positions of power, opportunities for the development of capabilities, economic resources, and the social bases of self-respect, all of which are necessary for individuals to lead autonomous lives. Yet, this is precisely what is at stake with the exclusion of immigrants: they are being prevented from accessing publicly available opportunities in other countries for a morally arbitrary reason that escapes their control, namely the country of birth and/or citizenship.

There is yet another influential set of arguments that, although not strictly about global justice, have a broadly cosmopolitan outlook. These are the so-called "indirect" arguments for open borders. I call them indirect because they appeal to the negative externalities of border controls rather than to the interests and values that freedom of movement protects. Such externalities can be cashed out in terms of wrongful discrimination (Mendoza 2014; Fine 2016), vulnerability to domination (Sager 2017; Costa 2021), illegitimate coercion (Abizadeh 2008), (neo)colonial injustice (Schmidt 2023), sheer violence (Jones 2016), and human suffering, among others. However, the spirit of the argument is basically the same: immigration policies are by their very nature discriminatory, coercive, dominating, violent, colonialist, etc., making it almost impossible for states to exercise the right to exclude in a way that respects the human rights of migrants. Given that border enforcement is at odds with human rights, the only acceptable option is to open borders.

I say that these arguments have a broadly cosmopolitan outlook because they appeal to the rights of migrants, in particular to their rights not to be discriminated against or subjected to differential treatment. Unless we presuppose, with cosmopolitans, that citizens and migrants have equal rights, it is difficult to see how discriminating against the latter on the basis of their origin or subjecting them to differential treatment by, say, requiring that they possess particular skills or earn a certain amount of money is problematic. For the statist, "a state is not equally responsible for ensuring that those outside the country are treated as free and equal to those who are already members" (Wellman and Cole 2011, 147). Thus, it is not enough to say that two individuals are being treated differently; it must also be the case that the discriminating agent has a duty to treat both individuals equally regardless of their citizenship (Blake 2002, 283).

b. Exclusive cosmopolitanism

Exclusive cosmopolitans share the aforementioned cosmopolitan premises (i.e., the moral value of individuals, the universality of this status, and the obligation of others to respect it), but argue that they do not necessarily entail open borders. Their disagreement with inclusive cosmopolitans lies not so much at the level of substantive principles as in the likely effects of open borders on global justice. They point out, first, that it is not the least advantaged who tend to migrate, but rather those who possess the resources, abilities, and connections necessary to do so (Pogge 1997, 14; Song 2019, 89). As a consequence, developing countries are deprived of many educated, resourceful, talented, young, and motivated people, whose contributions to society are most needed (Higgins 2013, 67). This exodus, when it occurs at a sufficiently large scale, poses a serious threat to an already fragile institutional and economic order. In such cases, some authors suggest, it may be permissible to impose temporary restrictions on exit or make it conditional on the repayment of the debt that emigrants have incurred towards their compatriots—for example, through a tax on their earnings abroad or a period of compulsory service in deprived areas (Brock and Blake 2015; Ferracioli 2015; Stilz 2016; cf. Tesón 2008; Sager 2014; Mendoza 2015a). Even if they send remittances back home, it is not clear that the beneficiaries belong to the most vulnerable layers of society, given that migrants themselves tend to come from more privileged households (Higgins 2013, 69-70; cf. Oberman 2015).

Second, exclusive cosmopolitans worry that migrants are especially prone to suffering discrimination and exploitation in their host countries due to their vulnerability (Higgins 2013, 65-66). This worry has been raised by Patti Tamara Lenard (2022) in the context of temporary labor migration, but I believe that her point generalizes to other cases irrespective of the legal status and category of migrants. In this vein, Reed-Sandoval (2016a) has reported that many Latina/o migrants, despite being legally present in and even citizens of the United States, suffer from discrimination due to their perceived undocumented status. This is the consequence not only of racial prejudice and demeaning beliefs about Latina/os in general, but also of their subordinate position in a segmented labor market which tends to confine them to lower-skilled, precarious, and poorly remunerated jobs (see also Lim 2023). This situation might certainly be improved by granting migrants more extensive rights such as permanent residency (Lenard and Straehle 2011), but as the case of the "socially undocumented" illustrates, this is not always enough. It is in this context that the proposal for denying admission to migrants

for their own benefit gains some (although, I would hasten to add, flimsy) plausibility (Higgins 2008, 534).

Third, Wilcox (2007; see also Woodward 1992, 61-62) has raised an important objection to open borders at the level of principle. She writes that:

> the idea that there is a basic human right to immigrate is at least *prima facie* inconsistent with the liberal egalitarian intuition that priority in admissions ought to be given to those prospective immigrants who are poorest or most in need. If every person has a fundamental right to immigrate to the country of her choosing, then admissions policies that assign priority to the neediest prospective immigrants would essentially prioritize the satisfaction of the needy persons over those of non-needy persons. Such differential treatment is incompatible with the very nature of a human right, which requires the equal treatment of all persons who wish to exercise their rights.

Suppose that two groups of people, one poor and the other rich, want to exercise their freedom of assembly in the only available spot. Why should the poor have priority over the rich? Human freedom rights are by their very nature insensitive to need; they attach as much to the rich as they do to the poor.[8] This seems to contradict the egalitarian logic of the cosmopolitan argument for open borders. One could instead conceive of the right to immigrate as a means to provide for one's needs, such that those who are most in need should have priority in admission over those who are not. But this "remedial" view of the right to immigrate does not amount to a principled argument for open borders. "It is instead an argument for special admission claims" (Bauböck 2009, 5). If the right to immigrate is grounded in need, only those who do not currently have access to an adequate range of options to meet their basic needs may make use of this right (Miller 2016b, 45).

Fourth, by adopting a laissez-faire approach to immigration, affluent countries would be failing to act on their duties of global justice (Stilz 2022, 993). As Seglow (2005, 327-328) writes:

> [W]e do not usually devolve sole responsibility for fulfilling principles of social justice to agents undirected by political authorities. Open borders *permit* people to move.

[8] What about other human rights such as the right to health and adequate housing? It seems permissible to prioritize the very ill and the homeless over the healthy and the propertied for the provision of health and housing, respectively. But this is because they are not similarly situated with respect to the object of the right—in this case, health and housing. By contrast, if there were a human right to immigrate, the rich and the poor would be similarly situated with respect to the object of this right. If they are not similarly situated today, it is precisely because there is no human right to immigrate.

> However, a state, seeking to realise equality of opportunity within its own borders, will use legal and policy levers to direct citizens in certain ways […]. Opening borders would certainly further some people's opportunities—those able to migrate and their relatives—but not many others whose interests nonetheless come within the ambit of a global principle.

Unlike free movement, regulated migration makes it possible to adjudicate the claims of the different parties (e.g., country of origin, employers, migrants, citizens...) in a fair way instead of relying on the "invisible hand" of the free market driven by the uncoordinated choices of self-interested agents to produce just outcomes (Bauböck and Ruhs 2022, 539-540).

Finally, Peter Higgins (2013) has argued that a just immigration policy should not avoidably harm disadvantaged social groups (whether domestic or foreign). According to him, "an immigration policy harms a disadvantaged social group *avoidably* if there is at least one alternative to that policy that (1) harms that group less, and (2) does not harm a more disadvantaged social group" (Higgins 2009, 159). One could go a step further and claim that open borders should not harm other significantly disadvantaged social groups *while* making relatively advantaged groups (whether domestic or foreign) no proportionately worse off. Otherwise, the former could rightly complain that the burdens of open borders are not being fairly distributed among the population when the very reason for adopting an open-borders policy is the pursuit of justice. To be clear, I do not mean to endorse these conditions as the appropriate principles of global (or, for that matter, domestic) justice. My point is only that the immigration policy most conducive to a cosmopolitan conception of global justice (whatever that is) is unlikely to be one of open borders.

c. Exclusive statism

If inclusive cosmopolitanism is the paradigmatic stance on open borders, exclusive statism is the bulwark of the right to exclude.[9] Statists share with cosmopolitans the commitment to the moral equality of all persons, but they argue that it does not follow that the scope of justice is global. As Blake (2013a, 11) writes:

[9] To be fair, communitarians and liberal nationalists such as Walzer (1983), Tamir (1993) and Miller (1995) were in this business some time before statists appeared on the scene. I discuss their arguments in more detail in one of the articles of the dissertation (Niño Arnaiz 2024d).

> liberal egalitarianism does not entail that all persons are entitled to be given the same package of rights and obligations by all states. Indeed, a globalized concept of equal concern and respect *demands* that we differentiate between the rights of domestic citizens and the rights of foreigners. This is not because we care more about domestic citizens than about foreigners; it is, rather, because the very idea of equal treatment demands that persons differently situated as regards the coercive power of the state receive different packages of justificatory rights against the state.

The above passage captures well the statist stance on global justice. In essence, statists contend that different institutional contexts will have different implications for justice. Thus, if states have a right to exclude, it is not because states are permitted to treat citizens preferentially and to discount the claims of foreigners. Rather, it is because states bear a special responsibility for those over whom they claim authority. The basic idea is that there is something ethically significant about membership in a state that entitles states to exclude foreigners. Of course, this is precisely what this dissertation seeks to refute. But my goal in this section is to describe exclusive statism as cogently as possible. There are several morally salient features one could pick out in order to justify states' right to exclude, each of which suggests a different reason why membership in the state matters. The most important ones for the purposes of this dissertation are jurisdictional authority, collective ownership, freedom of association, and democratic governance.

The *jurisdictional* theory of immigration begins with the idea of the state as a set of institutions that effectively rule over all individuals who fall within its territorial jurisdiction (Blake 2013b). The next step is to find normative support for the existence of states. If there is any possible justification for the existence of states, Blake argues, that is the protection of human rights. However, this does not mean that all states must take care of every person's rights at the same time. In a world divided into different sovereign states that claim exclusive authority over a given territory, each state is responsible for protecting the rights of all and only those people who fall within its jurisdiction; and only when one of them fails in its task do others have the obligation to step in to protect those people's rights—for example, in the case of refugees. However, when a person's rights are already adequately protected by her own state, she has no right to unilaterally impose on others the obligation to protect her rights. This is because, as a general rule, we have the right to refuse unwanted obligations when these come from people whose rights are already adequately protected by the morally responsible agent—in this case, the state of citizenship and/or residence. Hence, the recipient state has the right, grounded in the right

of its citizens to avoid unwanted obligations, to exclude prospective immigrants who wish to enter its jurisdiction, provided that the latter's rights are already adequately protected by their own states.

The second argument is known as the *associative ownership* view. According to Ryan Pevnick (2011, 11), "the citizenry constitutes an association extending through time that comes to have a claim over state institutions as a result of the efforts—from physical labor and tax payments to obeying the law—that make such institutions possible". He analogizes state institutions to a family farm:

> Like the family farm, the construction of state institutions is a historical project that extends across generations and into which individuals are born. Just as the value of a farm very largely comes from the improvements made on it, so too the value of membership in a state is very largely a result of the labor and investment of the community (Pevnick 2011, 38).

By jointly constructing state institutions and contributing the resources necessary for their continuing existence, the citizenry acquires an ownership claim that gives them some discretion in making future decisions over how those resources will be used, including with whom they will be shared (Pevnick 2011, 44). "For each member, citizenship […] entails a share of 'ownership' and governance of that polity's communal and pooled resources. As such, citizens stand in a special relation to each other and to the collective that they govern" (Shachar 2007, 383). The value of a territory, and the reasons for wanting to move there, are closely connected to the assets that, as a result of its members' joint labor, the state has accrued. "[B]ecause those goods only exist through the coordinated efforts of the citizenry, the political community has a legitimate claim to controlling the shape of access to them" (2011, 60). In short, the morally relevant feature that justifies the state's right to exclude in this case is the collective ownership of state institutions by those members who have contributed to their value.

Third is the argument from *freedom of association*. This argument has been made by Wellman in three simple steps: "(1) legitimate states are entitled to political self-determination, (2) freedom of association is an integral component of self-determination, and (3) freedom of association entitles one to *not* associate with others" (Wellman and Cole 2011, 13). According to the author, states are in important respects like clubs, especially when it comes to their freedom of association. Just as members of a club have a right to decide who (if anyone) they will associate with, so the citizens of a state have

the right to decide whom (if anyone) to admit. This right derives from the value of collective self-determination. He argues that both individuals and legitimate states occupy a morally privileged position of dominion over their self-regarding affairs that entitles them to make a wide range of decisions about different aspects of their individual and collective life. One of these aspects is the composition of the collective itself. Citizens of a state have a legitimate interest in controlling membership, so the argument goes, because the admission of new members inevitably affects the decisions that will be made in the future—at stake is the "self" in self-determination. In conclusion, the morally salient feature of states that justifies their right to exclude is citizens' right to collective self-determination, in particular their freedom of association.

The last argument is similarly grounded in the value of self-determination. But, unlike collective self-determination, which requires that members of the state have some say in the collective decision-making process, *democratic self-determination* requires that members have an *equal* say in the making of the laws to which they are subject (Song 2019, 67). "In democratic societies, members of the people have an equal right to participate in collective-decision making. It is the people themselves who must deliberate and make judgments that authorize policymaking about immigration" (2019, 69). "When would-be immigrants enter or remain in a country without authorization, they sidestep the political process by which members of the political community can define who the collective is. This contravenes the right of collective self-determination" (2019, 66). On this account, the right to exclude derives from the right of the demos to rule itself, which presumably includes the right to decide the composition of the demos (cf. Lægaard 2013; van der Vossen 2015). Membership in a state is morally significant because it secures the basic conditions of democracy and provides the resources necessary for people to engage in collective decision-making on equal terms (Song 2012). Without the right to control access to membership, citizens would lose an important lever to steer the direction of the state.

4. Contextualization and summary of the articles

Since this is a PhD by published work, it is important to contextualize each of the articles that comprise the dissertation, and explain how they, together, make a coherent contribution to the discipline. As we have seen, the political philosophy of migration has been dominated by three competing approaches: inclusive cosmopolitanism, exclusive cosmopolitanism, and exclusive statism. Inclusive cosmopolitans argue that citizenship

is morally arbitrary, and so should not determine a person's life chances. Open borders would mitigate the inequalities in life prospects that result from the lottery of birth by allowing people to access opportunities in other countries. Exclusive cosmopolitans agree that citizenship is irrelevant from a moral point of view, but believe that open borders would have suboptimal (and sometimes even negative) effects on global justice, so states have good reason to control their borders. Finally, exclusive statists claim that states are the appropriate site of justice and that there is something ethically significant about citizenship (whether jurisdictional authority, associative ownership, freedom of association, or collective self-determination) that entitles states to control their borders.

This dissertation aims to develop an alternative approach, namely inclusive statism. On this account, states are the appropriate site of justice as well, but there is nothing inherent in the functions or nature of states qua sites of justice that justifies their right to exclude. The first two articles pave the way by challenging some prominent cosmopolitan defenses of open borders. Even though there are other cosmopolitan arguments for open borders that might succeed, the controversial nature of their premises urges us to look elsewhere to establish a broader basis for agreement. The second part of the dissertation, comprised of three more articles, lays out the inclusive statist framework. My main goal in this part is to show that statism does not license states' right to exclude. If what I say here is correct, there will be no need to rely on controversial cosmopolitan premises to defend open borders.

The first article, entitled "Should we open borders? Yes, but not in the name of global justice" (Niño Arnaiz 2022), was written in response to the widespread belief among cosmopolitans that rich states have a duty of justice to open their borders so that the global poor can improve their lot. As Carens (1987, 252) famously wrote, "[c]itizenship in Western liberal democracies is the modern equivalent of feudal privilege—an inherited status that greatly enhances one's life chances. Like feudal birthright privileges, restrictive citizenship is hard to justify when one thinks about it closely." In the current world, living standards vary greatly across countries, such that it makes a huge difference to be born in a prosperous, stable, and liberal democratic country as opposed to a poverty-stricken, conflict-ridden, authoritarian country. State borders work in at least two ways: on the one hand, they serve to hoard opportunities in some countries while limiting them in others; on the other, they prevent citizens of poor countries from gaining access to opportunities available in rich ones (Cavallero 2006, 98). Therefore, the argument goes,

rich states must choose between opening their borders and redistributing their wealth (Velasco 2016, 321-322). So long as rich countries do not comply with their duties of global justice, they cannot close their borders (Bader 1997, 30).

In response, I argue that open borders as an instrument of global distributive justice are at odds with the values underlying freedom of movement across borders. My argument is not only that global justice does not require open borders, but also that advocating open borders in the name of global justice makes a mockery of the idea of open borders, which is that people should be free to move to and settle in other countries without other limits than those currently imposed on internal freedom of movement (Carens 1987, 251; Sager 2020, 14). Global justice entails the ordering of needs, the assignment of priorities, and the preference and subordination of some claims over others. This might sometimes lead to the establishment of conditions and restrictions on mobility, as when the free movement of people leads to a suboptimal allocation of resources from the standpoint of justice, or at least when the resulting inequalities do not redound to the benefit of the globally worst-off. If one considers freedom of movement as a basic freedom essential to autonomy and human flourishing, as cosmopolitans often do, it ought not to be sacrificed for the sake of greater distributive justice (Ypi 2008, 304). Otherwise, we run the risk not only of discounting freedom of movement, but also of releasing rich states from their responsibilities once they have somehow discharged their duties of global distributive justice. To the extent that cosmopolitans rely on global justice, their vindication of open borders fails.

The second article, entitled "The ethics of immigration enforcement: How far may states go?" (Niño Arnaiz 2024c), was written in response to an argument first made by Mendoza (2015b), and then developed by Sager (2017), among others, who claim that it is plainly not possible to exercise the right to exclude in a permissible way. The facts on the ground show that immigration enforcement is incompatible with respecting the human rights of migrants. Immigration controls rely on a wide array of enforcement methods ranging from militarized fences and surveillance technologies to long-term detention and illegal pushbacks. In an effort to avoid public scrutiny and shirk responsibility for human rights, borders have been moved thousands of kilometers away to so-called "buffer" (and even source) countries that stop migrants before they arrive at their destination so that they cannot claim asylum there (Shachar 2019). Moreover, sovereign powers are delegated to private airline companies that must perform, under threat of penalty, the ungrateful task

of keeping migrants who lack a valid visa at bay. As a result, many of them are left with no choice but to take the most dangerous routes, sometimes at the cost of their lives. The stakes are therefore very high.

Borders also follow migrants within the state. The ever-present threat of deportation, together with the formal barriers to employment and to accessing basic public services, put unauthorized migrants in a very precarious situation; unable to exercise their already meager rights, they are extremely vulnerable to exploitation and abuse. The costs of immigration control accrue not only to migrants, but also to citizens. As Kukathas (2021, 44) notes, "[t]he more closely outsiders are to be controlled", "the more substantially will insiders have to be monitored" and constrained in what they can and cannot do in their interaction with outsiders. Last but not least, immigration policies are said to reproduce past colonial injustices and to discriminate on racial and other problematic grounds (Fine 2016, 151; Aitchison 2023, 608-610). Although facially neutral, they usually serve as a proxy for excluding people who lack desirable assets, belong to the dispreferred race or religion, or are merely perceived as unfit for membership. For all these reasons, the argument concludes, a just immigration policy "without open borders is a mirage" (Sager 2020, 52). To be sure, these authors do not deny that states have a right to exclude in *principle*; they argue that enforcement renders it illegitimate in *practice* (Sager 2017). The problem lies not so much at the level of abstract principles and ideal theory as in the application of those principles to the real non-ideal world (Reed-Sandoval 2016b).

The problem with this argument is that it sets the bar of legitimacy so high that states would not be able to enforce many uncontroversial laws in ways that we deem perfectly legitimate today. Consider tax law. States resort to highly intrusive measures for the collection of taxes: they require banks to disclose financial information of their customers without judicial warrant; they carry out prospective investigations of individual citizens; they impose strict limits on cash payments, etc. And in case of discrepancy with the Tax Agency, the burden of proof lies with taxpayers. Yet, we consider all these measures acceptable, or at least necessary, for the purposes of tax collection. In this article I argue, by way of analogy, that if states are allowed to go to great lengths in the enforcement of tax law, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law. And just as they are able to enforce tax law without violating the rights of taxpayers, there is no reason why they should not be able to enforce immigration law without violating the rights of immigrants. To be clear, I do not argue

that states have a blank check to enforce immigration law. My argument is only that enforcement does not necessarily render exclusion illegitimate.

One could object that the enforcement of tax law is nowhere near as severe as the enforcement of immigration law, and that states are much more accountable in the enforcement of tax law than in the enforcement of immigration law. But that is because there are a number of substantive legal and procedural safeguards in place in the former which are conspicuously absent in the latter. My argument is precisely that with the adequate procedural safeguards (i.e., similar to those which already exist in the case of tax law), states should have the right to exclude some unwanted immigrants without violating their basic human rights. To the extent that the challenge to the right to exclude lies in how states exercise this right, the problematic nature of border controls does not provide so much a reason for open borders as a reason for immigration reform. Even if the above arguments for open borders fail, there might be other cosmopolitan arguments capable of vindicating open borders. However, their premises are likely to be rejected by statists. For this reason, if we want to garner wider support for open borders, I suggest that we turn our attention to statism. The second part of the dissertation goes on to show why statism does not justify states' right to exclude.

The third article, entitled "The principle of coherence between internal and external migration: an apagogical argument for open borders?" (Niño Arnaiz 2024d) makes, as the subtitle itself suggests, an apagogical (or reductio) argument for open borders. This argument is distinct from the so-called cantilever argument, in that it does not assert that "[e]very reason why one might want to move within a state may also be a reason for moving between states" (Carens 2013, 239). By extending the rationale for freedom of movement across borders, the cantilever argument basically denies that states make a normative difference. But this is precisely what statists claim. For the latter, the right to internal freedom of movement is grounded not in generic human interests, but rather "in a concern to protect citizens against abuses of government power" (Song 2019, 101). The "right to [internal] free movement serves as a significant check on state domination of minorities, helping to safeguard their other human rights" (Miller 2016b, 55-56). Therefore, if we want to build a broader consensus for open borders, we cannot do so by appealing to the cosmopolitan idea that international freedom of movement is freedom of movement writ large.

My argument engages with statists who believe that citizens have a right to exclude unwanted immigrants but at the same time take it for granted that citizens have a right to move to and settle in other parts of the country. It does so by showing that the most common arguments for a state's right to exclude have counterintuitive implications for internal migration. Every legitimate interest a state might have in controlling mobility abroad also counts for controlling mobility at home. If we take seriously the right to avoid unwanted obligations, collective ownership, freedom of association, and democratic self-determination, it follows that sub-national constituencies (or, as I will argue, states acting on their behalf) may exclude citizens from other parts of the country in order to avoid incurring unwanted obligations, sharing collective property, associating, or exercising democratic self-determination with them. Therefore, unless we are ready to grant that states have a right to control internal mobility, we must reject that states have a right to control immigration, for the interests at stake are in both cases the same. Those statists who believe that there is a right to internal freedom of movement must, on pain of consistency, reject that states have a right to control immigration.

The fourth article, entitled "Cooperation, Democracy, and Coercion: On the Grounds and Scope of Freedom of Movement" (Niño Arnaiz 2024a), makes a direct argument for open borders on statist grounds. The debate on immigration is mirrored in the broader debate on global justice, with its characteristic divide between statists and cosmopolitans. "Since internationalists [or statists] reject a global scheme of equal protection for basic rights, global equality of opportunity, and global economic egalitarianism, they are not bound by their background commitments to accept the free migration view" (Yong 2016, 819–20). My aim in this article is to challenge this widespread assumption and bridge the gap between statism and cosmopolitanism. To this end, I discuss three prominent statist arguments for the right to exclude: the cooperation argument, the democratic argument, and the coercion argument. There are two ways to make these arguments. One holds that freedom of movement is part of the scheme of basic liberties that justice requires. However, the argument goes, given that the state is the primary site of justice, freedom of movement is restricted to the state level. The other argument holds that freedom of movement is grounded in cooperation, democracy, and/or coercion. To the extent that social cooperation is most intense among the citizens of a state, there is no global democracy or anything like it, and coercion by international institutions is by no means

comparable to that exerted by states, freedom of movement need not extend at the global level.

In this article I argue that even if the grounds of justice and freedom of movement are or should not be global in scope, freedom of movement must be. First, no matter how isolated countries are, there will always be issues at the global level whose solution requires cooperation, and people must be able to move in order to cooperate. Moreover, open borders would create a powerful incentive for global institutional reform, as affluent states would no longer be able to ignore the problems that drive people away from their countries. Second, the very reason why democracy should not be global in scope is what explains why people should be able to move freely across borders; namely, that people can only consent to political rule if they have a right to exit, and the right to exit necessarily entails a corresponding right to enter, at least when it comes to securing the consent of the governed. Third, even if state coercion requires a special type of justification, freedom of movement does not stem from the need to justify state coercion, but rather gives rise to it. It is precisely because in the state of nature people would have an unlimited freedom of movement that the state needs to regulate its exercise. In all three cases, the scope of freedom of movement is global.

The previous two articles have argued for international freedom of movement on statist grounds. However, the question of open borders does not exhaust the political philosophy of migration. Although by no means all-encompassing, the last article, entitled "Global justice, individual autonomy, and migration policy" (Niño Arnaiz 2024b), provides a general framework for thinking about the different questions that immigration raises from a statist perspective. To this end, it proposes three principles of justice in migration policy. First, rich states have the primary obligation to assist the global poor in their home countries, and only a secondary duty to host those who cannot be assisted where they live. Second, the employment of coercion must be proportional to the objective pursued, such that only in situations of imminent, direct, and serious risk are immigration restrictions justified. Third, whenever it is necessary to limit access, this limitation should be partial and temporary. In the meantime, states must procure alternative transit routes and try to restore freedom of movement as soon as possible. These principles (assistance, self-restraint, and restitution, respectively) try to reconcile the statist ideal of global justice, according to which equality is a concern only at the domestic level, with open borders based on the value of autonomy. The basic idea is that deciding where to live is an

essential component of autonomy, and this includes both the decision to stay and the decision to migrate (Oberman 2011).[10] For this reason, citizens of rich states, as the main beneficiaries of the extant international order, should first try to secure decent living conditions in the countries of origin, so that poor people are not forced to leave their homes to get what they are entitled to by justice. So much for the first principle. However, given the importance of autonomy for the statist conception of justice, states should not thwart the life projects of those people who, in the exercise of their autonomy, decide to move to another country in pursuit of their conception of the good, when there is no comparable interest at stake in favor of exclusion. This is ensured by the second and third principles.

5. Conclusion and implications

I would like to conclude this introductory chapter by summarizing the main conclusions of the dissertation and pointing out the implications of my account. The first two articles have challenged two prominent cosmopolitan arguments for open borders. On the one hand, global justice does not require open borders, and it may even be at odds with them. On the other, the problematic nature of border controls does not so much provide a reason for open borders as a reason for immigration reform. Therefore, cosmopolitans cannot derive open borders by appealing to the arguments of global justice and the evils of immigration enforcement. Of course, it might well be that other cosmopolitan arguments for open borders succeed. But their premises will probably be contested by statists. It is for this reason that I have sought to defend open borders on statist grounds. To this end, I have accepted that states are the appropriate site of justice and that moral equality has distinct implications in different institutional contexts. Despite these premises, however, I have concluded, first, that statists must, on pain of consistency, reject the right to exclude, or else accept that states may restrict internal mobility as well; and second, that there is nothing inherent in the functions or nature of states qua site of justice that justifies

[10] It has been pressed against me that if one is a citizen of a wealthy liberal democracy, the right to migrate to other countries might not be strictly necessary to protect her autonomy. However, (current) state borders are usually a poor guide for drawing the contours of freedom of movement. For one thing, there is such a huge difference among countries in terms of their size and degree of development that it is hard to believe that they serve as a benchmark for adequate options. Moreover, this would have counterintuitive implications. If one believes that Belgians do not have a right to international freedom of movement because Belgium already offers an adequate range of options, then one could not blame the United States for restricting internal freedom of movement, since it currently offers a more than adequate range of options (Carens 2013, 243-244; Oberman 2016, 39).

their right to exclude. Lastly, I have developed three principles of justice that should inform liberal states' migration policies.

What are the implications of the inclusive statist account for immigration? In the remainder of this section, I will briefly explain how one can derive open borders from statist premises, as well as the reasons that could justify restricting immigration. The first thing to note is that for statists, although the state is the primary site of justice, the ultimate source of value is to be found in individuals themselves. Each person bears an equal moral status that accords her basic human rights and entitles her to the preconditions of these rights. If people are to be able to exercise their human rights, they need to have access to an adequate range of options. More stringent duties of justice might arise as a result of people's special relationships, but all that global justice requires is that no one falls below a minimum threshold, both in terms of human rights and material resources. Statism as a theory of global justice is not committed to equality of opportunity at the global level or to an equal package of political and civil rights for everyone. What people are entitled to as a matter of justice by virtue of their humanity are the preconditions for a decent human life.

However, that everyone is owed decent treatment as a human being does not mean that everyone is owed the same treatment. From the fact that everyone has equal moral worth, it does not follow that everyone is entitled to the same things. Moral equality does not necessarily entail equal rights. Moral equality gives rise to equal entitlements in the context of subjection to a common authority. Those coerced by the state have rights that go beyond those everyone bears by virtue of their humanity. Citizenship gives rise to special duties of justice in addition to humanitarian ones. In particular, citizens are entitled to the preconditions for citizenship. This entails at the very least equal political and civil rights, as well as economic and social rights.[11] These additional rights stem from the need to justify state authority to those who are subjected to it. For coercion to be justified, it needs to be exercised in a way compatible with individual autonomy. State coercion impinges on individual autonomy, but at the same time it is a necessary condition for individuals to lead autonomous lives (Blake 2001). The point of justice is precisely to

[11] The latter, however, are to be determined by citizens themselves (Valentini 2011). Some countries might decide to create a robust welfare state, whereas others might prefer a more competitive market economy. In this sense, statism allows for a wider scope for collective self-determination than cosmopolitanism. People should be free to devise their political institutions according to their own values and preferences, provided, of course, that those institutions protect the autonomy of citizens.

make individual autonomy compatible with state coercion. It is this concern for state coercion and its effects on individual autonomy which explains why foreigners and citizens, despite their equal moral worth, are not necessarily entitled to equal treatment by the state. Moral equality gives rise to demands of distributive justice only when individuals share the institutions of the state, given the need to justify state coercion.

Statists believe that claims and duties of distributive justice arise from the shared subjection to and joint participation in the institutions of the state. By submitting to a common political authority that regulates the terms of interaction and defines the scope and content of rights, citizens come to have claims and duties of distributive justice against each other. In the absence of the state (or its functional equivalent), there are no claims and duties of distributive justice, but only duties of *humanitarian* justice. It is only within the purview of the state that talk about distributive justice makes sense. How does this relate to immigration? Even though prospective immigrants are not subjected to the whole array of a state's laws, they still have their autonomy infringed by the state when the latter exerts coercion over them through its border regime. This needs to be justified; otherwise, it is sheer coercion. What form should that justification take? Some have argued that border coercion needs to be actually justified to foreigners by granting them rights of democratic participation in the decisions of other states that pertain to their immigration laws (Abizadeh 2008). However, this proposal rests on an implausible understanding of democracy. The point of democracy is not to justify state coercion, but to allow people to exercise coercion in a way compatible with everyone else's autonomy *once* its exercise is justified.[12] We do not normally say that A is authorized to exercise coercion over B because A has granted B rights of democratic participation. What needs to be determined first is whether A has indeed a right to exercise coercion over B. And this democracy will not tell us.

For state coercion to be justified, it needs to be shown that it is necessary for the protection of individual autonomy. In the case of citizens, this is usually done by appealing to justice: state coercion is instrumental for the provision of justice, which is in turn necessary for citizens to lead autonomous lives. But in the case of would-be migrants, whose autonomy

[12] When I coerce you unilaterally, it is me who is defining the scope and content of your rights, and I am subjecting you to my own will. This is incompatible with individual autonomy. By contrast, if we submit to a common authority that reflects our collective will—in other words, if the authority is democratic—, the scope and content of our rights are determined omnilaterally, and no one is subjecting the other to her own will.

the state is not primarily responsible for protecting, it is enough that the state shows *respect* for their autonomy. This is done by providing reasons that they could not reasonably reject. Accordingly, if it wants to respect migrants' autonomy, the state needs to appeal to a justification that the excluded could not reasonably reject without having their status qua autonomous agents denied. The only justification that a state can give for the exercise of border coercion which is compatible with respecting the autonomy of migrants is one that links their exclusion with the state's structural features or inherent functions, in particular those having to do with the provision of justice. Recall that state coercion impinges on, but at the same time is a necessary condition for, individual autonomy. Therefore, when the state uses coercion against someone, it needs to show that this is necessary for people to lead autonomous lives. Given that border coercion is not necessary for migrants to lead autonomous lives, a reason that they could not reasonably reject would be one that links their exclusion with the state's provision of justice, which is necessary for citizens to lead autonomous lives. Reasons that do not speak to the requisite functions of the state qua site of justice could be reasonably rejected by migrants. In conclusion, a state cannot exclude unwanted immigrants when they do not pose a threat to its ability to deliver justice at home. I can think of three potential objections to the inclusive statist account.

First, if, as statists claim, global justice only requires access to an adequate range of options, what is wrong with being denied access to countries beyond those that provide an adequate range of options? In response, note that justice is not merely about the number of options available; it has more to do with the *reasons* why options otherwise open to people are coercively constrained. Just because someone has access to an adequate range of options, coercion against her is not necessarily warranted. State coercion must be exercised in terms that those subject to it could not reasonably reject. In the case of immigration restrictions, states must show that coercion serves the purpose of justice or their legitimate functions. It is therefore perfectly possible to hold states as the appropriate site of justice, and at the same time argue that immigration restrictions need to be justified in terms that both citizens *and* immigrants could not reasonably reject. As long as states can continue to perform their requisite functions and realize justice within their borders, the inflow of new members who may subsequently make claims of justice against them does not pose a challenge to the statist conception of justice, and therefore the exclusion of immigrants is not justified in terms that they could not reasonably reject.

The second objection takes issue with the stipulation that immigration restrictions must be justified to immigrants in order to be legitimate. By making this claim, am I not introducing a cosmopolitan premise surreptitiously? When it comes to foreigners, all that global justice requires according to statism is respect for their human rights. To say that states must show foreigners equal consideration is to assume that they stand in the same relation as citizens with respect to the state. But this is precisely what statists deny. It is true that foreigners do not stand in the same relation with the state, and therefore are not entitled to equal treatment and consideration of their claims. However, this does not mean that they are not owed respect for their autonomy. To say that foreigners may be coercively excluded without justification is to assume precisely what is at stake. In order to determine whether states may legitimately use coercion against migrants, we need to know whether this is necessary for citizens to lead autonomous lives. To that end, I suggested that we look at the core functions or inherent features of the state, and see whether immigration undermines any of these. If it does not, states cannot legitimately use coercion to exclude foreigners. Unlike the foreigner who demands a share in the benefits from social cooperation of another state without shouldering its respective burdens, immigrants are usually willing to take part in the scheme of social cooperation of their host country and will be pervasively subject to the coercive web of laws. Therefore, their admission will not undermine the core functions or inherent features of the state *qua* site of justice.

The last objection holds that open borders are not feasible under a statist conception of global justice. Only under a cosmopolitan conception of global justice would the free movement of people be compatible with the ends of justice. In the absence of authoritative supranational institutions that secure global background justice, states by themselves cannot make up for the distorting effects of immigration on global justice in the same way that they are able to do with respect to the effects of freedom of movement on domestic justice (Miller 2016a, 24). I agree with this empirical premise. But I do not think that freedom of movement should be conceived in terms of justice. It is one thing to say that freedom of movement may have a negative effect on justice; it is quite another to say that freedom of movement should be contingent on the realization of justice. In fact, as we have seen, open borders as an instrument of global distributive justice are at odds with the values underlying freedom of movement across borders. At any rate, for statists, the role of international institutions is not to promote global justice, but to secure the

preconditions of justice *within* states by, among other things, ensuring that no state falls below a threshold of material resources, that every state can be self-determining, and that the human rights of everyone are reasonably fulfilled (Miller 2007; Brock 2009). These three things are, I submit, what a statist conception of global justice concerned with the protection of individual autonomy requires at the global level—to answer the question raised at the beginning of the article about the implications of moral equality at the global level. First, one needs to have access to an adequate range of options to be an autonomous agent. Second, the right to collective self-determination allows individuals to jointly exercise their autonomy. And third, political institutions that violate human rights fall short of respecting the moral status of persons qua autonomous agents.

In short, open borders flow from a statist conception of justice that sees the protection of individual autonomy as the main function of the state. Principles of justice regulate the working of institutions that provide the background conditions against which individuals can relate as autonomous agents. To the extent that immigration does not threaten the ability of states to perform their requisite functions and to deliver justice, they have no *justice*-based reason to close their borders. In this way, statism provides a pro tanto reason for open borders. However, my argument for open borders does not exhaust the moral landscape. All it claims is that as far as justice is concerned, states should not close their borders if immigration does not threaten their ability to protect citizens' autonomy. There might be countervailing reasons against open borders independent of justice, and there might also be values other than justice at stake which justify exclusion. The former are reasons for exclusion that do not appeal to considerations of justice, whereas the latter refer to lesser-evil justifications that could render a particular instance of exclusion legitimate. Let me take each in turn.

Regarding the former, whatever reasons there could be for excluding migrants as a matter of right, they would still need to be compatible with the autonomy of migrants. It is true that respecting the autonomy of migrants is not as demanding as protecting the autonomy of citizens. However, the requirement that states respect the autonomy of migrants is more demanding than it might initially appear. For one, it enjoins states to give reasons for exclusion that immigrants could not reasonably reject without having their status qua autonomous agents denied. This restricts considerably the sort of reasons that states can give. For example, exclusion on grounds of religion and ethnic background could be reasonably rejected by migrants because it offends against their status qua autonomous

agents. It conveys the message that those who belong to the dispreferred race or religion lack a capacity for justice, and downplays their conception of the good. They are not, as it were, self-authenticating sources of valid claims. The same goes, I think, for economic, professional, and linguistic selection criteria. The state is not an intimate association or a private company which might legitimately select among prospective members based on its conception of the good or for the sake of maximizing benefits. The purpose of the state is to provide a framework of justice against which citizens can autonomously pursue their own conceptions of the good. To impose a particular conception of the good on matters of immigration, as in any other public policy area, is incompatible with the idea of the state as a site of justice.

Nevertheless, exclusion might be justified in special circumstances. For example, in cases of imminent threats to national security or public health such as a terrorist attack or a global pandemic, values other than justice will recommend that we restrict immigration. But this is different from saying that states have a right to exclude. If states had a right to exclude, they would be able to exercise this right irrespective of the reasons for exclusion. The fact that states have a right to exclude would itself be a sufficient reason for exclusion; it would be a sort of trump card. On my account, by contrast, the reasons for exclusion need to be weighed against the reasons for immigration. Whether exclusion is justified in a particular instance will ultimately depend on the weight assigned to each reason. However, there is no magic formula for that. There is room for (democratic) debate as to what weight each consideration should carry. But to the extent that autonomy is a very important value, and the main function of the state is to protect individual autonomy, we should expect it to carry considerable weight. Just as we do not sacrifice individual autonomy for the sake of minimal gains in justice or security at home, we should not restrict immigration when it does not pose a threat to the state's ability to perform its requisite functions, foremost among which are the provision of justice and the preservation of public order.

One might worry that my inclusive statist account does not directly confront nationalists, and that cosmopolitanism offers a more straightforward defense of the right to immigrate. What is gained by drawing on statists premises if cosmopolitan ones could do a better job at both? In response, let me clarify two things. As for the first claim, it is important to note that my main contenders in this debate are not nationalists, but cosmopolitans. Unlike nationalists, statists and cosmopolitans do not appeal to any cultural elements or identity

markers. As a consequence, arguments to the effect that mass immigration will change the composition and public culture of a country do not speak against inclusive statism any more than they speak against cosmopolitanism, or vice versa. Inclusive statism needs to be assessed against inclusive cosmopolitanism in how each fares with respect to exclusive statism. On this score, I believe that inclusive statism fares better than inclusive cosmopolitanism. Whereas inclusive statists rely on the features of or functions inherent to the state in order to challenge its right to exclude, inclusive cosmopolitans draw on the inherent moral worth of individuals and the value of equality at the global level to do so. By taking seriously the premises on which exclusive statism rests, the inclusive statist account offers an internal critique of the right to exclude.

Second, and most importantly, the aim of this dissertation was not to defend the right to immigrate, but open borders, and in so doing reject the state's right to exclude. "Open borders can be achieved for one state by its opening of its own borders, even if others do not open theirs" (Southwood and Goodin 2021, 984 fn 6). By contrast, the only way for a human right to immigrate to take hold is for all (or most) states to open their borders. It makes no sense to say that there is a human right to immigrate to Colombia, say, if the rest of the countries in the world continue guarding their borders jealously. On the other hand, from the fact that states have no right to exclude it does not follow that there is a human right to immigrate (Tiedemann 2024). My claim is only that states should not coercively exclude immigrants unless there are good reasons for doing so. However, what is a good reason for a state may not be a good reason for another. For example, we cannot expect a country with an underdeveloped infrastructure and a struggling economy to open its borders, let alone demand that it do so. When a country is unable to protect the autonomy of its own citizens, there might be a justice-based justification for exclusion. In this sense, the inclusive statist account I have developed is sensitive to the particular situation of each state and more accommodative of its particularities than standard (cosmopolitan) defenses of open borders, which tend to advocate a human right to immigrate across the board. My account does not require that states give up their authority over immigration entirely. Nor does it stipulate when exclusion is all-things-considered warranted. All it requires is that states respect the autonomy of migrants. As long as this is the case, the excluded immigrants could not reasonably object to their exclusion.

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Should we open borders? Yes, but not in the name of global justice

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ABSTRACT

Some proponents of global justice question that opening borders is an effective strategy to alleviate global poverty and reduce inequalities between countries. This article goes a step further and asks whether an open borders policy is compatible with the objectives of global distributive justice. The latter, it will be argued, entails the ordering of needs, the assignment of priorities and the preference or subordination of some interests over others. In other words, global justice requires the establishment of conditions and restrictions on mobility. On the contrary, open borders claim an unrestricted and unconditional (not unqualified) freedom of movement, limited only by public health considerations, serious threats to national security or democratic institutions, but not by an aspiration for maximizing global redistributive utility. The main point is that not only would freedom of movement be instrumentalized, losing its presumptive moral force, but ultimately open borders as a remedy of global justice are an oxymoron. The article concludes with an alternative defence of freedom of international movement.

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Introduction

The argument for open borders as a remedy of global justice is often based on the following premises: (1) The world in its current state is unjust, millions of people lack access to the basic resources for a decent life; (2) borders (re)produce this injustice, as they spatially delimit opportunities and prevent people from moving where these are found; (3) a world with open borders would alleviate this situation by allowing people to migrate to the countries that offer the most opportunities.

The first of these premises seems difficult to rebut. As Thomas Nagel (2005, 113) says, '[t]his may be the least controversial claim one could make in political theory.' The fight against poverty is one of the biggest challenges of humanity. The idea of open borders is suggested by some theorists of global justice as a remedy to poverty (Carens

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2013; Velasco 2016a, 2016b). The solution lies, we are told, in lifting restrictions on immigration and allowing free movement across borders. But to reach this conclusion we have to assume the second premise, namely, that the border regime is the source of the problems, and additionally, that poverty is at the root of international migration. Indeed, it is often argued that in a just world immigration would no longer be an issue (e.g. Rawls 1999, 9; Shachar 2009, 5).

The second premise is more questionable though. Poverty and inequalities precede borders, which – at least as we know them today – are a relatively recent invention dating back three centuries and a half to the Peace of Westphalia (Graziano 2018). Nor does the international regime devised by Western powers seem to be the only – not even the main – cause of the poverty of developing countries (Acemoglu and Robinson 2012). In fact, one does not need to cross state borders to encounter enormous inequalities in income and wealth. The national rich do not need borders, it suffices with the private property regime and the coercive apparatus of the state to 'protect' themselves. If anything, borders are just a small (but integral) part of that coercive apparatus designed to exclude the poor from the other side.[1] In this sense, rather than the origin, borders are the material expression of a profoundly unequal world, a sort of topography or spatial embodiment of inequality. If borders were the actual cause of global poverty and inequality, then it would make sense to call for their abolition. But to the extent that they are just one face of the problem, it does not seem that the solution lies in their opening, and much less in their removal. In fact, most cosmopolitan thinkers are extremely cautious when conceiving their ideal world, making it clear that they do not advocate for a world *without borders*, but for a world *with open borders* (Bauböck 2009; Carens 2013; Velasco 2016a, 2016b). In defending their permanence as jurisdictional demarcations, they implicitly recognize that borders are not the problem. The problem consists, above all, in the political, economic, and legal framework that perpetuates an unequal distribution of wealth.

Therefore, if borders are only a tiny part of that framework, it is unclear why their opening would be an effective, let alone definitive, solution to the problems that global justice confronts.[2] At best, a world with open borders would be a world with greater mobility, one from which only some could benefit; usually the people best situated in their countries of origin, who are not the most in need (Brock 2009). Consequently, it is difficult to see how this could help the poorest people who lack the minimum resources and skills to migrate (Pogge 2006) – hence the third premise is also controversial. Add to all this the problems of coordination and conflicts that would arise in the allocation of costs and benefits, not to mention the fact that many states would refuse outright to open their borders (as is already the case with the accommodation of refugees). The most we can look forward to for the moment is a world with partially open regional borders. However, even in that optimistic scenario, internal opening would most likely

[1]Yet passports are far more effective than barbed wire fences and huge walls in controlling movement and preventing unwanted immigrants from coming (Sager 2020).

[2]If anything, it could be objected that this dilemma between open borders and global distributive justice is not such, and that the solution consists in acting on all fronts: addressing the structural factors and reforming the perverse economic incentives that hinder the possibilities of developing countries; a more ambitious global redistributive scheme, so that people are not forced to leave their home countries; challenging the securitarian and xenophobic discourse that links immigration to crime; and last but not least, lifting restrictions on international mobility by opening borders. But, as we will see in section 2.3, this strategy also fails.

come hand in hand with the closure of external borders (as in the European Union); or else new borders would spring within cities and neighbourhoods in the form of 'a thousand petty fortresses' (Walzer 1983, 38). But even those countries that democratically decided to open their borders, it remains to be seen how long it would take voters to punish their governments at the polls. Not because of selfishness or xenophobia, but only because the opportunity costs would be too high for those few well-intentioned countries.

Even so, leaving aside all the problems that could arise from the application of this measure, the argument itself is not very sound. If the idea of open borders starts from the empirically demonstrated premise that citizens in western democratic countries are for the most part reluctant to increasing immigration, it does not seem very likely that governments would risk opening borders with their citizenry against (Hidalgo 2019). Some propose open borders as a driving force for change, a mere way of challenging the 'complacency' of citizens in rich western democracies (Carens 2013, 296). But to have borders open we would first need to open people's minds, not the other way around. With all that, the arguments put forward in this article do not depend on the greater or lesser effectiveness of the policy nor on its possible effects.[3] Instead, we will try to show why open borders as an instrument of global justice are at odds with freedom of movement.

Open borders and global justice: two incompatible principles

But what do open borders mean? The first thing to note is that borders are never entirely open or closed, it is rather a matter of degree. Borders can be more or less open in a variety of ways depending on the recipient. According to Chandran Kukathas (2021), openness can be conceptualized along three dimensions: entry, participation, and membership. The easier it is to enter a country, participate in its affairs, and acquire formal citizenship, the more open the border is, and vice versa. Nonetheless, this should not lead us to believe that open borders are just *more open* borders, 'rather, it entails that people can move freely across state lines and settle abroad regardless of their citizenship' (Sager 2020, 14). In this line, Lea Ypi (2008) considers that any obstacle (physical or otherwise) to movement is in effect a restriction. It is very important to note, however, that open borders do not entail an unqualified right to move. As will become clear later, there are occasions when freedom of movement might be rightly curtailed, such as in the event of a pandemic or a terrorist attack. In this way, open borders should be understood as a prima facie unrestricted right to move across and settle in a different jurisdiction.

Freedom of movement: means or end?

The appeal to global justice as the rationale for open borders instrumentalizes the latter for the advance of the first, whereby freedom of movement is no longer an end worthy

[3]Song (2019, ch. 5) has contested the premises (1) that global distributive justice requires global equality of opportunity and (2) that global distributive justice requires open borders. However, her case rests on empirical assumptions about the effects of open borders on global redistribution, and as such, it is subject to counterfactual considerations.

of respect and becomes a sort of remedy to an imperfect world (Bauböck 2009). This reasoning entails the risk of not only discounting freedom of movement, but also releasing those states that are already doing their 'fair' share (whatever that might be) from the rest of their responsibilities, such as abstaining from harmfully coercing peaceful immigrants (Huemer 2010).

Open borders as an imperative of global justice pose a second challenge: if they are conceived as a means in the fight against inequality and global poverty, freedom of movement no longer has significant value,[4] becoming a mere instrument of public policy subordinated to the achievement of a political objective (and thus susceptible of being sacrificed where circumstances demand). Therefore, in the event of a global redistributive policy, even if freedom of movement would retain its intrinsic value, it would certainly lose its presumptive value. It would no longer be the default position nor a prima facie right, and so only under the 'right' circumstances would it be allowed. Were we to apply this at the domestic level, the consequences for freedom of movement would be devastating, since it could arguably be curtailed for reasons of collective welfare. This has two further implications that should not be overlooked.

The first is that, if the common good or the general interest so requires, freedom of movement may be suspended (Loewe 2017). The general interest is an abstract principle that can be interpreted in a number of ways and is therefore subject to political manipulation and bargaining. It often goes far beyond an imminent danger to national security or a serious threat to public health – both cases in which internal and external freedom of movement could reasonably be (temporarily) suspended. As a result, those in power could abuse their discretion, making a partial interpretation of the general interest as an excuse to limit freedom of movement.

There is a second concern: if the objectives of distributive justice are fulfilled at some point, would states be entitled to close their borders? In fact, it is not necessary to imagine such a far-fetched scenario to raise the same question: could an individual state unilaterally close its borders if it considered that it had already contributed enough via the transfer of income[5]? In other words, can a state pay to close its borders? After having condemned so vehemently the happenstance of borders (Velasco 2016a) and their critical impact on people's lives (Kymlicka 2001), it is striking to suggest that the opening of borders is a simple currency with which to pay our obligations of justice.[6]

To sum up, under this instrumental conception, open borders are nothing but a strategy to achieve a political goal – the reduction of poverty and global inequality –, subject to electoral purposes and vulnerable to political manipulation. Moreover, once

[4]In a previous version, I claimed that a global redistributive scheme strips freedom of movement of its intrinsic value. But as the editors of the journal accurately pointed, it is rather a matter of weighting the different normative ideals at stake and deciding which should take priority in which situation. For example, traffic rules and private property rights do not negate the significance of freedom of movement, but they simply assert that there is an overriding interest that outweighs it. And just as the right to internal mobility can be overridden without denying its intrinsic value, so too can international movement. I would like to thank the editors for pressing me to address this point.

[5]For example, Wellman (2016, 94) defends that '[l]egitimate states may in some circumstances (i.e. if they have already done a sufficient amount to address the problems of those vulnerable to failed and rogue states) permissibly exclude even the most desperate foreigners.'

[6]In this line, Velasco (2016b, 65) says that '[i]t is not obligatory to open borders, but rejecting this option has its price.' That price can be paid in different currencies: 'if they eliminate the trade barriers towards the poorest countries, if they modify the existing international economic institutions, and/or if they intervene through some kind of redistributive tax in a more just share in the planet's resources' (Velasco 2016b, 62).

our distributive obligations have been realized (wherever the threshold may lie), freedom of movement would lose its raison d'être, becoming something superfluous and therefore dispensable. After all, if the reason to open our borders is the concern for the global poor, what prevents us from closing them once justice has been done? In the end, we might jump at similar conclusions to those who defend the right to exclude.[7]

Priority, conditionality, and restrictions

When we talk about open borders, we do not merely imply the relaxation of immigration controls, but an unrestricted freedom of movement between countries. In turn, lifting all restrictions does not only entail the absence of direct coercion on the subjects, but also the absence of all conditionality on the right to move (Ypi 2008). Note, however, that this is not exactly what the advocates of global justice suggest. In addition to the state not interfering with the attempt of individuals to cross the border, they demand that they be granted the full panoply of rights enjoyed by citizens, including access to social welfare programmes (Carens 2013). In other words, what is being demanded here is not just *freedom* of movement (understood as a negative duty of non-interference), but a *right* to immigrate (with the corresponding positive duties of assistance by the state).[8]

The idea of open borders seems deeply at odds with the principles of global distributive justice. The opening of borders is nothing but the removal of barriers to free transit, so that individuals can freely decide which country to live and work in, and with whom to cooperate and associate voluntarily. Distributive justice, by contrast, requires the intervention of the state (or other type of public authority) to 'fairly' allocate the benefits and burdens of social cooperation, usually through the exaction of taxes and the coactive transfer of resources from the richest to the poorest segments of the population. But how might distributive justice look like in the context of migration?

Let us begin with the countries of origin. Governments in developing countries could adduce reasons of justice to justify restrictions on the emigration of their qualified or wealthy citizens.[9] Such a policy could take the form of a ban on the emigration of highly qualified professionals most needed in their countries of origin (e.g. doctors, engineers, scientists, to mention just a few); or in a less draconian version, an obligation to work in the country for a certain amount of time or to pay a tax before departure. As for the receiving countries, let us imagine that a government committed to global justice decided to preferentially admit refugees and necessitous migrants , whilst at the same time setting a limit on the so-called 'economic' immigration. This policy would involve the poorest migrants taking precedence over the rich ones, and once the state's obligations of distributive justice had been discharged, the closing of borders to the latter.

[7]For example, David Miller (2016a) and Michael Blake (2020) defend the right to migrate only of those people whose basic rights are not adequately protected in their countries of origin or residence; whereas if they have their vital needs satisfied, they lose that right. Put it simply, some claim that rich states have a moral duty to let the poor in, whereas the others conclude that these states are only morally entitled to exclude the rich.

[8]This is not to deny that new residents are granted full citizenship rights (quite the contrary, the principle of equal treatment requires so), but rather to point out the implications that this would have for the receiving countries.

[9]In this sense, Ann Stilz (2016, 77) has argued that 'the choices of talented individuals can permissibly be limited for the sake of improving the welfare of the least well-off.'

However, a human right to migrate must be understood as the right of every human being, irrespective of their talents, resources or any other circumstances, to travel and establish their residence in any country. And, as such, 'it attaches as much to the rich Canadian wishing to settle in Germany as it does to the desperate Somali trying to cross the border into Kenya' (Miller 2016a, 49). We can now clearly see how these remedial policies come into conflict with the very idea of freedom of movement. In all these cases, the state would be favouring one type of immigration over another, or to put it bluntly, it would be restricting the freedom of movement of the relatively better-off for the benefit of the least advantaged.[10]

One could plausibly respond that both kinds of migration (qualified and unqualified, rich and poor) are in fact compatible, since qualified migrants contribute to the economy of the receiving country, thus compensating for an eventual cost imposed by less qualified migrants. Thus, all things considered, domestic distributive justice would go unaffected. This makes some sense, but as we have already said, insofar as migration is subject to terms and conditions, it is not free.

From the moment that borders are placed at the service of redistribution, the honourable cause of global justice perverts the very idea of open borders, since it legitimizes the promotion of one type of immigration (that of the relative poor) and the limiting of another (that of the relative rich). As a result, freedom of movement and open borders become empty signifiers. By this we do not pretend to suggest that such policies are necessarily unjust, but rather that the idea of open borders is not compatible with that of global distributive justice. In fact, global justice could under certain circumstances justify the imposition of severe restrictions on mobility and even the obligation to remain in one's country.

If justice is concerned with the needs of the disadvantaged, just as it would not be morally wrong to prevent a rich person from entering a soup kitchen or to deny her the minimum subsistence income, to what extent would a government act badly if it forbade her entry into the country? Distributive justice, by its very nature, requires us to put needs in order of priority, and to give some (the most pressing) preference over others (the least pressing).

To this end, it might be helpful to distinguish between *interests* and *rights*. Just as my interest in a particular thing does not always give rise to a right to that thing, many of the claims of potential immigrants, however strong and legitimate, are not always adequately captured by the language of justice. And if what takes us to open our borders are the claims of justice, when there is no such claim, we are under no corresponding obligation to open them. According to Blake (2020) and Miller (2016b), what justice requires is access to a sufficient range of options.[11] In this sense, a state could not be accused of injustice for prohibiting the entry of persons whose only motivation was the maximization of their options, provided that they were already adequately covered in their country of origin. Similarly, it would not be unfair to deny

[10]'The cosmopolitan egalitarian who defends a remedial view of free movement will in this case promote a migration policy that gives priority to the globally worst-off and therefore presupposes a regime of state control and selection' (Bauböck 2009, 5). Even Carens (1987, 260–261) admits that there are special circumstances in which 'priority should be given to those seeking to migrate because they have been denied basic liberties over those seeking to migrate simply for economic opportunities.'

[11]They do recognize, however, that a large part of the world's population does not have access to that minimum number of suitable options.

entry to a person whose claims could be adequately addressed where she was currently living (Wellman and Cole 2011).

One might criticize this conception of justice for being too narrow. But no conception of justice, not even the most ambitious one, could plausibly demand an unrestricted freedom of movement, nor does it include the right to choose one's country of preference (Blake 2020). One can have access to a sufficient range of means to develop an autonomous life without having free rein to move all over the globe, so it is difficult to derive the principle of freedom of movement from the requirements of global justice. If freedom of movement is to be defended, it cannot be done by appeal to global justice. In conclusion, the remedial or instrumental argument fails at justifying unrestricted migratory rights for everyone, especially for those who already have access to an adequate set of opportunities. What is more, as we will argue in the next section, global justice may run counter to the very idea of open borders.

Two contradictory concepts

The proposal of open borders as a remedy of justice stands in an unsolvable contradiction with the idea of open borders understood as an unrestricted right to freedom of movement between countries. This is because the obligations of justice are not unlimited, as enshrined in the Latin legal principle *ultra posse nemo obligatur* (no one is obliged beyond what she is able to do). Under normal circumstances, an act of justice should not place the duty-bearer (that whose interests and freedom are reduced) in a comparatively worse situation than that of the rights-holder (that who is benefited by the act).[12] If we apply this maxim to distributive justice, the obligations of the rich towards the poor should not exceed the point of absolute equality among the parties,[13] unless that inequality was the result of a relation of exploitation or past grievances.

This is not to defend radical egalitarianism, but to notice how any demand for justice (distributive or otherwise) has its limits. Therefore, if we try to reduce poverty and/or inequality by opening borders, considering that there are limits to redistributive duties, borders cannot be always open. If distributive obligations (X) from A to B are discharged in the form of open borders (Y), then borders need not remain open after a certain point in redistribution has been reached ($X \geq Y$). At issue here is the stringency of distributive obligations, but on no account can they be unlimited. Several objections can be levelled against this approach:

1. The first objection is that open borders do not significantly alter the final distribution of goods, or else produce the desired effects in terms of redistribution, and so it would not be necessary to restrict freedom of movement for the sake of justice. In its more modest version, if open borders do not make a significant change in the final allocation of resources, then what is the point in keeping them open? The ideal scenario would be that the free flow of individuals by itself (without the intervention of the state) produced fair results over which no adjustment was necessary. But notice that this implies acknowledging the redundancy of justice, and it is most certainly not what

[12]This is a logical implication of the utilitarian principle of equal consideration of interests or Rawl's first principle of justice that all citizens have an equal right to basic liberties.

[13]Carens (1987, 262), however, thinks that this scenario still 'would not justify restrictions on immigration because of the priority of liberty.'

defenders of global distributive justice hold. In fact, they are usually quite sceptical of nation states and the free will of individuals assigning resources fairly. They advocate instead for the establishment of supranational democratic institutions with jurisdiction over a number of areas, including (but not necessarily restricted to) migration and distributive justice.

2. The second objection, somewhat more plausible, is that immigration benefits both sending and receiving countries, so that it is not a zero-sum game in terms of redistribution. But if it were indeed mutually beneficial, then the inequality between these countries would not be significantly diminished. And this is tantamount to asserting that inequality is a chronic disease with which we must learn to live. Alternatively, one could say that inequality is not a matter of global justice, but that what it really matters is the eradication of absolute poverty (*sufficientarianism*). But notice that this is not what most cosmopolitan accounts of distributive justice aim for. In fact, Thomas Nagel (2005) has argued that '[j]ustice as ordinarily understood requires more than mere humanitarian assistance to those in desperate need, and injustice can exist without anyone being on the verge of starvation.' Even if the concern were only with rising global living standards up to a subsistence level, justice would not require an indiscriminate policy of open borders, but a targeted admissions policy (Song 2019).

3. A more realistic account is that free immigration contributes to improving the situation of sending countries without critically undermining the welfare institutions of the countries of destination.[14] In this case, free immigration would have net positive redistributive effects on developing countries (transferring resources from the rich to the poor countries), and so open borders and global justice would appear to be compatible. If so, a reasonable degree of equality between sending and receiving countries could be achieved. But notice that in this situation immigration would no longer be required as a matter of justice, since everyone would have access to an equal range of opportunities in their respective countries.

An alternative and more promising reply is that only then would freedom of movement really make sense as a *principle* rather than as a mere *strategy*, so there would 'be no more reason to constrain free movement across borders' (Bauböck 2009, 4). But even in this ideal scenario immigration would keep altering the balance of wealth among countries, so that full equality could never be achieved. And as long as global justice cares about inequality, open borders would act as a mere counterweight to an imbalance that would never end. So, after all, freedom of movement as an ideal would be a mirage, an unreachable horizon.

4. Of course, one can respond that along with open borders, additional reforms must be undertaken in the world economic system. In this regard, the last objection that can be raised is that open borders are one among many other policies of global justice, and that freedom of movement must come hand in hand with a series of measures such as income transfer, restorative justice, and the like (Loewe 2017). But this brings us back to the starting point. If open borders (even as part of a package of global redistributive policies) are supposedly a condition of possibility of global justice, insofar as there is a

[14]Or inversely, that unrestricted emigration primarily benefits rich western societies, whilst depriving developing countries of their most qualified professionals that are so desperately needed in their places of origin. But since the so called 'brain drain' problem would rather speak in favour of more restrictive policies, let us assume for the sake of argument that immigration benefits sending countries the most, which are usually developing countries.

basic contradiction between the two, open borders are no longer a condition of possibility but a condition of *im*possibility for global justice. Let us elaborate on this idea. If global distributive justice depends not only on open borders, but also on complementary measures such as, say, income transfers and fair-trade agreements, among others, there are two possibilities:

(a) That the various measures were mere aggregates, such that the absence of one would not thwart global distributive justice. In this case, global justice could be plausibly (although imperfectly) achieved. However, if they were mere aggregates, one could also do so without opening borders. Ultimately, open borders as an instrument of global justice are dispensable, and so their closing would not amount to an injustice.
(b) That the various measures were jointly indispensable, such that one's absence would make global justice impossible to attain. But remember that global distributive justice does not require borders to be permanently open, because there is a limit to redistributive duties. But then, if we take borders out of the equation, global justice becomes unattainable.

To sum up, global justice does not only conflict with open borders as an ideal to strive for, but it is at odds with the very same principle of freedom of movement, either because it involves prioritization, conditionality and the subsequent establishment of restrictions, or simply because it does not require indefinitely open borders.

In defence of free movement

Despite the relevance of the ideal of global justice, I believe that debates on human mobility should not be run in isolation, but with a certain autonomy from the said principle. And, except for extreme cases of grinding poverty, under no circumstances should freedom of movement be subordinated to global justice.[15] As Lea Ypi (2008, 394) has said, 'if restrictions on individual freedom of movement are endorsed, they are not endorsed because we are favouring a collectivist perspective aiming to increase the aggregate welfare (whatever that might mean) of either the sending or the receiving society.'

If we consider freedom of movement as a basic freedom essential to human autonomy and flourishing, it should not be sacrificed for the sake of greater distributive justice, however legitimate it may be. Otherwise, we run the risk not only of devaluing freedom of movement, but of 'releasing' states from their responsibilities once they have somehow discharged their distributive duties. The implications of this right become clearer when we compare it to other human rights such as freedom of expression, conscience or association. If we consider freedom of movement (both internal and external) as a fundamental right, once the threshold of subsistence has been met, no one should force a healthcare provider to remain in her country of origin, nor should a state

[15]'Are emigration decisions simply outside justice's domain?' asks Stilz (2016, 69). Surprising though it may seem, yes. If fundamental freedoms responded to criteria of global justice, libertarian parties might have to be outlawed and climate change deniers censored. Additionally, governments have less invasive policy instruments at their disposal to avert the undesired effects of free movement, so mobility restrictions should always be the last resort.

prohibit the entry of foreign labour to 'protect' its citizens from external competition. This section presents a deontic case for free human mobility, advocating for the institution of a widespread right to both internal and external freedom of movement.[16] Note that we are talking about a right to freedom of movement, not about a right to immigration. This has two important implications.

The first refers to the distinction between positive and negative obligations (Blake 2020). It is not about encouraging immigration or imposing duties of assistance towards potential migrants (*positive* obligations), but about states not coercively interfering with people's attempts at crossing borders (*negative* obligations) either by physically blocking their passage or putting a prohibitive price on visas. After all, freedom of religion does not command states to build houses of worship; freedom of association does not include the right to free land for my golf club; nor does freedom of expression compel anyone to finance the publication of my book. By the same token, freedom of movement between countries does not entail the public provision of the means to migrate (for example, through the subsidy of plane tickets) or an immediate entitlement to social benefits in the country of destination. Freedom of movement 'is basically a negative liberty that puts political authorities under an obligation of non-interference with individuals exercising their right to free movement' (Bauböck 2009, 10).

The second implication concerns citizenship rights. Just as mere presence in a territory does not automatically lead to the acquisition of social rights, neither does it enable the newcomer to participate in the political decision-making process. In short, freedom of movement, at least as it is understood here, gives rise only to the right to cross borders and establish residence in another country. However, this could lead to first- and second-class citizens: people who enjoy full rights while others are deprived of basic social and political rights. As this might be a problematic scenario incompatible with liberal principles, especially that of equality before the law, it would be morally unacceptable to grant some people rights that are systematically denied to others.

In fact, some authors oppose free immigration for fear that domestic social justice would be undermined by a massive influx of migrants, as they would have to be granted full rights, including social and political rights (Miller 2016a). This should make us wonder whether the fundamental problem lies in these scenarios – that of a free immigration but unequal in rights, or that of a restricted immigration but with the same rights – or, on the contrary and as we argue here, in our conception of domestic distributive justice. As Chandran Kukathas (2014, 385) puts it, '[i]f the price of social justice is exclusion of the worst-off from the lands that offer the greatest opportunity, this may be a mark against the ideal of social justice.' In this vein, it may be worth recalling Milton Friedman's words that one can have freedom of movement or a welfare state, but not both.[17]

Like all rights, freedom of movement would not be absolute or unconditional, but it should rather be understood as a prima facie right (Huemer 2010) whose violation would require the existence of a direct and imminent risk to national security, public health, fundamental rights and freedoms, or democratic self-determination. Thus, an eventual reduction in the wage of some workers or concerns for the loss of the alleged

[16]For a critical review, see Hosein (2013) and Miller (2016b).

[17]Friedman was thinking about the consequences, in his opinion negative, that the so called 'pull effect' would have on the public coffers. But morally speaking, there might be an actual tension between freedom of movement and the welfare state.

cultural 'homogeneity' would be out of the question (Kukathas 2021). The most important thing is that the risk is direct and imminent[18] direct because there must be no other way to avoid it, so that the last resort to tackle it is the temporary and subsidiary[19] suspension of freedom of movement; and imminent because it cannot be based on bad omens, unfounded suspicions nor questionable empirical premises.

In fact, all these clauses are already explicitly or tacitly acknowledged when it comes to internal mobility. For example, mobility within a country could be legitimately restricted in the event of a pandemic or a terrorist attack, just as access to a popular national park could be limited if there was a significant risk of environmental degradation. In other cases, restrictions on international mobility would not be justified, and they would constitute an illegitimate impingement on individual freedom (Loewe 2020).

Conclusions

Throughout the article, we have tried to show the contradiction between the principles underlying the ideal of open borders and the requirements of global justice. The argument has been structured in three parts:

(1) Distributive justice instrumentalizes freedom of movement, losing its presumptive moral force to become a remedy for global poverty. As a policy instrument, open borders are contingent on the fate of global justice. Consequently:

   (a) If open borders are detrimental to global justice, then borders ought to be closed.
   (b) If open borders are partially effective, freedom of movement as an end is unattainable.
   (c) If global justice is achieved, freedom of movement becomes superfluous.

(2) The goal of reducing global poverty and inequality forces us to prioritize some claims of justice over others, with the result that the interests of some potential migrants may be revoked by the more pressing needs of others. This can lead to the rejection of some migrants – presumably the more qualified and relatively better-off. In the end, open borders understood as unrestricted freedom of movement are incompatible with the requirements of global distributive justice.
(3) What is more, open borders as a remedy of justice[20] are an oxymoron. To the extent that we aim at reducing global poverty and/or inequality through an open borders policy, and given that there are limits to the obligations of justice (redistributive or otherwise), borders can never be fully open.

[18]This discussion draws on Oberman (2016).:
[19]Subsidiary because alternative ways must be sought after to restore the free transit of people, and temporary because it cannot serve as a pretext to de facto annul freedom of movement indefinitely.
[20]This argument is based on the following two premises:
a) Distributive justice implies the transfer of items from those who possess more to those who possess less of a specific resource.
b) Resources are finite and often scarce, and so there is a limit to distributive obligations. In the context of fair enrichment, redistribution cannot place the giver in a position worse to that of the taker.

Freedom of movement, taken seriously, cannot be subordinated to the contingencies of a global redistributive scheme which, as legitimate and as laudable its objectives as they may be, is still primarily a political goal. On the contrary, freedom of movement should be understood as an unrestricted prima facie right whose repeal requires weighty competing considerations. Such compelling justifications may comprise, as stated above, public health reasons, imminent threats to national security or a serious risk of undermining democratic institutions; but they do not include, under any circumstances, an interest in maximizing the aggregate social welfare or utility. As we have insisted throughout the article, freedom of movement is too important to be subject to such instrumentalizing interests. The proposal of open borders as a policy at the service of global justice fails to appreciate the implications of such a measure and the significance of freedom of movement, seeing that it is ready to sacrifice the latter for the sake of an allegedly superior collective interest.

This article does not intend to conclude that freedom of movement between countries is unfeasible, let alone undesirable, but to ask whether opening borders is the best way to achieve the goals of global justice. If our aim is to raise the standards of living of the poorest people on the planet, it seems more sensible to go down the path of global redistributive policies and call for more ambitious reforms in the world economic and political institutions. Moreover, it would not be ethical to sacrifice the fight against poverty for the sake of a greater freedom of movement that, as we have already said, would only be within the reach of a few privileged people. If the enjoyment of this right comes at the price of the segmentation of mobility and the exclusion of the most disadvantaged, then the price is too high. Global justice is too urgent a challenge to fall on deaf ears. We are thus faced with the difficult task of reconciling the duties of global justice with an unrestricted right to move across borders.

In conclusion, and as a reason for optimism, we should note that there is already a realm in which freedom of movement is not considered to be in tension with distributive justice. At the regional level, free mobility is often seen as mutually beneficial in both economic and social terms. Such rapprochement often begins by the signing of trade agreements with the intention of promoting the free movement of goods, capital, and sometimes labour. And although they do not come without controversy, they do strengthen ties between countries insofar as they share common goals and they have a sense of mutual responsibility. Eventually, such agreements may lay the foundations for the creation of political bodies and legal institutions with redistributive powers, as in the case of the European Union. Current dynamics seem to point in this direction, which is good news for global justice activists and proponents of freedom of movement alike. We will have to keep a critical eye on how the events unfold, since these alliances can effectively advance freedom of movement and justice within some regions, but they can also lead to an ever-stricter control of their external borders, as it is happening in Fortress Europe.

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The ethics of immigration enforcement: How far may states go?

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Abstract

The ethics of immigration has largely remained on the abstract level, prescribing ideal principles for non-ideal circumstances. One striking example of this tendency is found in the ethics of immigration enforcement. Many authors contend that even though immigration restrictions are legitimate in principle, enforcement renders them illegitimate in practice. In this article I argue, in response to this claim, that if one supports immigration restrictions, one should also support immigration enforcement, even if it entails the use of physical force. Not enforcing immigration restrictions is unjust to law-abiding migrants, undermines the rule of law, and amounts to virtually open borders. In order to illustrate the case, I will draw upon the enforcement of tax law. My argument is that if states are allowed to go to great lengths in the enforcement of tax law, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law. This analogy will provide us with the moral baseline with which to judge the permissibility of immigration enforcement. The proposal takes the rights of migrants seriously, only the right to immigrate is not one. The article also anticipates some potential objections and responds to them.

Keywords

Border control, ethics of immigration, immigration enforcement, immigration restrictions, open borders, right to exclude

Introduction

The ethics of immigration has largely remained on the abstract level, prescribing ideal principles for non-ideal circumstances. One striking example of this tendency is found in the ethics of immigration enforcement. Political philosophers have focused on questions

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of admission and exclusion, questions of who may be let in and who may be kept out. But whether states have a right to exclude does not settle the question of whether and, if so, how they may permissibly enforce it (Mendoza, 2015b). This is a neglected topic in the ethics of immigration, especially by advocates of the right to exclude, who tend to remain silent on the question of enforcement.[1] How far may states go in their attempt to restrict immigration?

In order to answer this question, I will draw an analogy with tax law. In broad terms, the argument is that if states are allowed to go to great lengths in the enforcement of tax law, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law. And just as they are able to do the former without violating the rights of taxpayers, there is no reason why they should not be able to do the latter without violating the rights of immigrants. The article will proceed as follows. The first section considers the implications of not enforcing immigration restrictions. The second section draws an analogy with tax law and shows how far states are willing to go in their attempt to enforce this law. With that in mind, the third section argues what steps states may permissibly take in the enforcement of immigration law. The fourth section anticipates some potential objections and tries to respond to them. The fifth section closes with some concluding remarks.

Unenforced immigration restrictions

Immigration restrictions are, on the face of it, problematic because they constitute a prima facie rights violation (Huemer, 2010), as they prevent individuals from freely associating with one another (Hidalgo, 2019) and accessing the full range of existing life options (Oberman, 2016). This does not mean that immigration restrictions are always wrong, but they require a compelling justification. Critics of the right to exclude contend that immigration restrictions are coercive (Abizadeh, 2008; Huemer, 2010), violent (Jones, 2016; Sager, 2020, chap. 4), and discriminatory (Fine, 2016; Mendoza, 2014), so they can hardly (if ever) be justified (Carens, 2013; Hidalgo, 2019; Oberman, 2016). Advocates of the right to exclude think that immigration restrictions can be justified under certain conditions, but they still impose significant constraints on how states can enforce them. First and foremost, they "cannot use force to exclude outsiders from entry when those outsiders are coming from countries that are insufficiently attentive to basic human rights" (Blake, 2013: 125–126). Second, they cannot discriminate against people on the basis of their race, gender, origin, sexual orientation, religion, political beliefs, and so on (Miller, 2016: 103–104). Third, they must treat immigrants with equal respect, granting them full citizenship rights after a certain period of residence (Walzer, 1983: 61–62; Wellman and Cole, 2011: 140–142; Miller, 2016: 7). However, when it comes to the steps that states may permissibly take to exclude potential immigrants, they do not specify what these are.

Interestingly enough, critics have taken up the slack, setting out a series of conditions that must be met in order for the enforcement of immigration restrictions to be permissible. Although they do not dismiss the possibility that these conditions are met, and some even allow that immigration restrictions are justified in principle, it should come as no surprise that all of them conclude that these conditions are not met under current

circumstances and so immigration restrictions are not justified in practice. For instance, according to Mendoza (2014: 80), "anti-discriminatory commitments cannot coexist with a state's presumptive right to control immigration, at least not if we take enforcement into consideration." Fine (2016: 141) concedes that "some form of right to exclude is defensible in principle, under the correct conditions, but these arguments in support of a right to exclude are not applicable in the here and now, in the world as we know it, in circumstances far from ideal." In the same vein, Schmid (2022: 965) argues that "[e]ven if they [states] are permitted to make sweeping rules of exclusion, this does not entail that they are permitted to enforce such rules." Finally, Sager (2017: 48) concludes that:

> even if there are reasons at the *level of principle* that states' claims to regulate migration outweigh the competing claims of many people to migrate, *practical difficulties* in avoiding dominating migrants in the process of enforcing migration controls make them unjust. The result is that the nature of immigration administration and enforcement commits us to much more open borders even *if there are in principle good normative reasons for allowing states to restrict immigration*.

In this article I will argue, in response to these claims, that if one supports immigration restrictions, one should also support immigration enforcement, even if it entails the use of physical force. Not enforcing immigration restrictions or doing so inconsistently (1) is unfair to law-abiding migrants, (2) undermines the rule of law, and (3) amounts to virtually open borders. But before addressing these concerns, it is important to make clear what I am not saying. First of all, I do not mean to suggest that immigration restrictions are just, but I am taking it for granted for the sake of argument. This is because I am not concerned about the implications of not *having* immigration restrictions, but about the implications of not *enforcing* immigration restrictions once they have been democratically enacted and are presumed to be just. Maybe imprisoning people is not just either, but this does not detract from the fact that not enforcing criminal convictions has major practical and ethical implications. Second, I do not take a stand on the presumptive duty of immigrants and citizens to obey the law.[2] My focus is on states rather than individuals.

The first concern with not enforcing immigration restrictions is that it is unfair to law-abiding migrants. Again, my claim is not that people who enter without authorization are acting "unfairly" because they are engaging in a sort of "queue-jumping" (Miller, 2016: 117, 126), since it is obvious that there is no such queue. As Huemer (2019: 46) notes, "[i]t is not the illegal immigrants who are preventing other would-be immigrants from migrating; it is the state that is preventing would-be immigrants from migrating." Rather, my claim is that the government offends law-abiding migrants by not upholding a law that it requires them to comply with. To illustrate this point, suppose that two people, who do not know each other, want to go to the concert of their favorite group, but only one of them has bothered to buy the ticket in advance. The other, for her part, intends to sneak in, but she gets caught. Let us assume that she did not buy the ticket, not because she did not want to, but because they were already sold out, so she would have had to wait several years for the next concert. At the end of the day, many unauthorized migrants would rather apply for a visa, but their chances of getting one within a reasonable time

are very low, if any. Let us further assume that attending this concert is her biggest dream, tantamount to what it might mean for another person to move abroad. That being said, how would the person who paid for her ticket feel if the security guard decided to let the other in for free?

I believe that she would be reasonably annoyed by the security guard's decision. Her reaction would not be the product of envy, but of a lack of consistency in the application of rules. I believe that law-abiding migrants might feel exactly the same about the state not enforcing immigration laws uniformly all else being equal.[3] They are being asked to comply with a law that is not equally applied to all. In fact, it could be argued that the state acts unfairly not only toward actual migrants, but also toward would-be immigrants (Joshi, 2018). There are a lot of people who would rather migrate but do not do so out of respect for the state's immigration laws, and many more who attempted to migrate through official channels before but were denied entry because they did not meet all the visa requirements. Suppose that you are stopped at a sobriety checkpoint and you test positive for alcohol. How would you feel if you get a ticket, but the driver before you, who has also tested positive, does not? These examples capture the injustice involved in an inconsistent application of the law. The injustice in question does not arise from the willingness to favor or disfavor any particular group of migrants—assuming, as we are, that the state does not engage in any form of wrongful discrimination[4]—, but from the contempt it shows for the law.

This brings us to the second concern, namely, that it undermines the rule of law. Even though there is no generally agreed definition, from a purely formal point of view the rule of law requires—at the very least—*generality* of the law, legal *certainty*, and *equality* before the law (Lautenbach, 2013). This means that, irrespective of its content, the law must be applied evenly to everyone who falls within its scope; it must be public, predictable, and non-retroactive, allowing its subjects to regulate their conduct accordingly; and it must afford all persons equal protection without discriminating on arbitrary grounds. In the case of immigration enforcement, the rule of law would require a high degree of predictability in the conduct of immigration officials and border guards, along with certain consistency in the application of norms, so that immigrants knew exactly what to expect and could act wittingly. This would, in turn, require a considerable reduction in the discretion of immigration enforcement agencies so as to prevent discrimination in the exercise of their powers. These seemingly uncontroversial pillars of the rule of law are eroded by an inconsistent application of immigration law. First and foremost, the principle of generality, in that the law is applied to some migrants, but not to others. Secondly, this selective application of the law all too often gives room to discrimination, thereby violating the equality of immigrants (vis-à-vis other immigrants) before the law. Thirdly, prospective immigrants are deprived of the legal certainty necessary to plan their lives.

Some authors argue that states must come to terms with unauthorized migration because they tacitly consented to it by failing to enforce immigration restrictions. The state's inability to prevent unauthorized migration must not be taken as a sign of acquiescence, though. What matters is that "it takes *reasonable* steps to prevent unauthorized entry and stay" (Joshi, 2018: 178, emphasis added). However, when immigration restrictions are deliberately ignored, the state can be said to be de facto authorizing

unauthorized migration. Lack of enforcement conveys the message that immigrants are welcome, and that irregular entry is a regular form of entry. This amounts to virtually open borders. Accordingly, if a state is not willing to enforce immigration restrictions, it should do away with them altogether and open its borders.

Tax and immigration law: An analogy

Taxes and borders are two of the most important instances of the exercise of political power. Although their origin goes back to antiquity, having to do with the financing of war and the protection of territories, respectively, their development to the present stage is largely due to the increasing capacities and needs of modern bureaucracies. From the nineteenth century onward, fiscal pressure increased significantly following the expansion of the state, but also thanks to population censuses, progress in statistics and data recording, and more precise controls carried out by tax officials (Anceau and Bordron, 2023: 22–23). Similarly, it was only by World War I that Western countries "had developed the full technical and bureaucratic capacities to control their borders and regulate a growing share of activities and events taking place in their territories" (Sassen, 1999: 5).

Immigration and tax law are similar in two important respects. First, both are considered a moral obligation by some and an unjust act of coercion by others, although they may not always coincide. Accordingly, their breach will be seen as an impermissible act of free riding or, conversely, as a permissible form of personal disobedience and non-compliance. For staunch anarcho-capitalists, taxes are a form of theft, and so not paying them is morally justified. For convinced egalitarians, taxes are a means of redistribution, and so tax avoidance is considered a selfish act of "free riding." For recalcitrant nationalists, immigration restrictions are necessary for preserving culture, and some see migrants as "free riders" who live off the rest of the population. For strong cosmopolitans, immigration restrictions are an unjustified form of coercion that violates the moral equality of all persons, and migrants are thereby deemed to be within their right to resist them. Second, both target citizens and non-citizens alike. Although taxes are mainly borne by citizens and permanent residents, irregular migrants and visitors too contribute to public funds through indirect taxes. Similarly, although immigration laws are primarily aimed at migrants, citizens must also abide by these laws at the risk of penalties for non-compliance.

Yet immigration and tax law are different in two important respects. First, whereas non-compliance with tax law may harm the poor, non-compliance with immigration law is thought to benefit them. Tax avoidance undercuts state resources that could otherwise have been devoted to the provision of public services and the funding of social welfare programs for those who need them the most. In contrast, evading immigration controls does, on the face of it, benefit irregular migrants, who are usually among the poorest segments of the global population. Second, whereas citizens have to some extent chosen their fiscal regime, immigrants have no say in the border regimes of other countries. In light of these differences, my argument will not bear on people fleeing persecution and destitution in their home countries, but it does hold for people who, despite having their human rights adequately protected where they live, move to another country in search of a better life. While non-compliance with immigration law may be said to benefit the

latter, otherwise they would not attempt to do it, the refusal of their visa does not entail as great a (risk of) harm as to the former and so does not require so strong a justification as a democratic one (Miller, 2010: 115).

One might challenge the relevance of this distinction between forced and unforced migration to the legitimacy of immigration enforcement. According to democratic theory, any exercise of political power must be justified to everyone subject to it. This includes borders, which "are among the most important instances of the exercise of political power" over members *and* non-members (Abizadeh, 2008: 46). Consequently, foreigners are owed a democratic justification, no matter how well protected their human rights are in their home countries. I will discuss the democratic legitimacy objection in greater detail later, but for the moment let us note that not every institutional arrangement or political decision requires a *procedural* democratic justification to be legitimate. Some arrangements or decisions can be justified in reference to a democratic *principle* that is itself ultimately addressed to everyone subject to them in a way that they could not reasonably reject. This is acknowledged by Abizadeh (2008: 48, emphasis added) himself when he suggests that "a closed border entry policy could be democratically legitimate only if its justification is addressed to both members and nonmembers *or* is addressed to members whose unilateral right to control entry policy itself receives a justification addressed to all." How can the right to unilaterally control one's borders be justified to all in a way that they could not reasonably reject?

In a world of states that claim exclusive jurisdiction over a given territory and take primary responsibility for the human rights of their citizens, the right to exclude can be best justified in reference to the principle of non-interference with the exercise of their right to self-determination. As long as states adequately protect the human rights of their citizens, they have a right to self-determination (Brock, 2020), which presumably includes the determination of the "self" (Wellman and Cole, 2011: 41). Such a principle could not be reasonably rejected by anyone whose human rights are adequately protected by their own state, since it is by virtue of this principle that their state is able to do so. By contrast, if a person's human rights are not adequately protected by their own state, other states cannot appeal to the principle of non-interference with the exercise of their right to self-determination in order to exclude them, for no one can reasonably be expected to accept a principle that makes them vulnerable to human rights abuses. This principle allows us to make sense of the distinct normative force of the claims raised by forced and unforced migrants. More importantly, it is a principle that the latter, but not the former, could not reasonably reject.

Coming back to the analogy, why is taxation relevant to the debate over immigration restrictions? I think it shows the latitude states have in the enforcement of just laws. Recall that I am taking for granted that immigration restrictions (and, for that matter, taxation) are just in principle. Advocates of the right to exclude already accept that, but they are hesitant when it comes to the justice of immigration restrictions in practice. At the same time, advocates of the right to exclude are for their most part egalitarians, that is, they believe that we have an obligation to pay taxes for the sake of redistribution, and that the state should prosecute tax avoidance. In other words, they accept the justice of tax law both in principle and in practice. As I said before, the point of this article is to show that if one accepts the right to exclude in principle, one should also accept the right

to exclude in practice. If the analogy between tax and immigration law is sound, and they accept the enforcement of tax law, advocates of the right to exclude should come to terms with the enforcement of immigration law, even if it entails the use of physical force against migrants. In the remainder of this section, I will consider how far liberal democratic countries are willing (and presumably allowed) to go in their attempt to collect taxes.[5]

To begin with, there is no firewall between the different government branches and public administrations when it comes to tax enforcement; in fact, they cooperate closely with each other to detect tax fraud (Trecet, 2015). Tax authorities may carry out random (and even covert) labor inspections and investigate citizens without judicial authorization (Ghamlouche, 2022). States also resort to third parties for the enforcement of tax law. For example, they require banks to disclose financial information of their customers, they provide a website where people can anonymously report tax offenses, and some go as far as publishing a list of defaulters for public scorn. Lastly, governments are implementing ever more intrusive measures with the aim of detecting anomalous banking transactions and expenses that do not match the taxpayer's stated income. Some of these measures include restrictions on cash payments, the use of big data to find out people who fake their residence abroad in order to eschew their tax duties, and the creation of a central record that compiles all the invoices issued by businesses. This is not to mention all the effort and time it usually takes to file a tax return.

So far, we have only considered the costs of compliance with tax law. But what happens when someone refuses to pay taxes? Let us say they do not submit a tax return. The first measure usually consists in a fine. If they ignore the fine, they will be subject to an embargo. If they resist the embargo, the police will enforce it. And if they confront the police, they will be liable to physical force, followed by a conviction for obstruction of justice and resistance to authority. In other words, the enforcement of tax law entails the use of gradual coercion, from the imposition of small fines to the employment of physical force and, in the worst case-scenario, imprisonment. But when someone commits tax fraud, they are directly prosecuted if the defrauded amount exceeds a certain limit. By contrast, there are a number of substantive legal and procedural safeguards. For instance, fiscal offenses expire after a few years, taxpayers have access to judicial review, and they can appeal the decision in court. Every action has to be duly motivated, so there is barely any room for arbitrariness and discrimination in the application of norms.

This section has argued that tax and immigration law are similar in important respects, yet different in others. In order for my argument to hold, they need not be exactly the same. What matters for present purposes is the extent to which states are allowed to go in the enforcement of just laws, and whether they are able to do so without violating the rights of individuals. As the case of tax law illustrates, states are not only allowed to go to great lengths in the enforcement of just laws, but they are able to do so without violating the rights of individuals. The upshot is that if states are allowed to go to great lengths in the enforcement of tax law while respecting the rights of taxpayers, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law while respecting the rights of migrants. However, despite tax and immigration law being similar in important respects, their offenses are treated rather differently. Irregular migrants are arbitrarily detained, discriminated on racial grounds, denied basic

procedural rights, and subjected to disproportionate border controls. In this context, I believe that the analogy with tax law can serve not only as evidence of the legitimacy of the right to exclude in practice, but also as a yardstick against which to judge the permissibility of immigration enforcement practices.

Enforcing immigration restrictions

We are now ready to delve into the question of how far states may go in the enforcement of immigration restrictions. This discussion will draw on the previous one on the enforcement of tax law. It is important to note that the following prescriptions do not necessarily reflect my personal views on immigration,[6] but the extent to which, in my opinion, states are allowed to go in the enforcement of what they take to be a just law. If it turns out that immigration restrictions are unjust, there will be no reason to discuss the limits to their enforcement, since states ought as a matter of justice to refrain from restricting immigration altogether save for exceptional circumstances. As I said before, the article is aimed at those who accept the right to exclude in theory, but think it is unfeasible in practice. My argument is that immigration enforcement does not render immigration restrictions illegitimate, just as tax enforcement does not render taxation illegitimate, so long as states comply with the following prescriptions.

First and foremost, states cannot exclude people who are fleeing persecution, war, natural disasters, extreme poverty, or any other human-rights threatening situation in their home countries. I have already discussed how the differences between tax and immigration law make exclusion in such cases untenable. This is relatively uncontroversial among advocates of the right to exclude, who submit that there is "a *remedial responsibility* on the part of other states to step in when the refugee's home state is unable or unwilling to secure her basic rights" (Song, 2019: 115). This might take the form of humanitarian assistance or intervention in the country of origin (Wellman and Cole, 2011: 120–123), but more often than not asylum is the only realistic option. Therefore, states are forbidden from returning people to a country where they are likely to suffer human rights abuses (Blake, 2020: 104–106; Miller, 2016: 78).

Secondly, even in those cases where states have a right to exclude potential immigrants because their human rights are not at stake, the same procedural safeguards and legal guarantees as in the enforcement of tax law should apply. Just as tax offenders cannot be prosecuted sine die, irregular immigrants can only be deported within a reasonable period of time. This means that there should be a statute of limitations for immigration-related offenses, after which point irregular immigrants become eligible for permanent residency. And just as tax offenders have a right to counsel and judicial review, irregular immigrants should be entitled to a fair and public hearing, with the possibility of appealing the decision (Lenard, 2015: 475–476). In other words, they cannot be subjected to expedited removal.[7] Even if their human rights are not at stake, it does not mean that they cannot make a compelling case to remain. There are countervailing considerations that might outweigh the initial breach of immigration law. For example, if their lives or that of their relatives and close friends would be seriously affected by their removal, or when they have made outstanding contributions to the host society that make up for the putative wrong of unauthorized entry.

There are a number of less coercive, yet more effective, ways to secure compliance with immigration law, so deportation should always be the last resort. As we saw in the discussion of tax enforcement, states typically begin with small fines, followed by the freezing of assets and other incremental sanctions designed to make tax avoiders comply with the law. Should all these strategies fail, states may permissibly deport unauthorized migrants within a reasonable period of time. If actual citizens and permanent residents are subject to coercive measures when they fail to comply with tax law, I see no reason why aspiring citizens and temporary residents should not be subject to equally coercive measures when they fail to comply with immigration law. However, I am not sure that my interlocutors will agree with me. They might object that immigration controls tend to target racial minorities and affect vulnerable people the most (Mendoza, 2014, 2015b; Sager, 2017). This is a serious concern that will be addressed in the following section. For the moment, let us note that if these people do not face persecution or destitution in their home countries, their removal will not put their human rights at risk.

My argument so far is in line with conventional accounts in the ethics of immigration enforcement. It is at this point when it departs from these accounts. Most authors are wary of immigration controls because they pose a danger to the freedom of migrants and citizens alike. As Kukathas (2021: 158–159) warns:

> it [is] difficult to account fully for the economic costs of controlling immigration, since these encompass—along with the expenses incurred by governments in policing national borders—the costs borne by governments in the regulation and monitoring of all aspects of civil society, from business enterprises to public service providers (including education, transport, and healthcare, to name a few examples) to private institutions (such as universities, seminaries, and charities). On top of this must be added the costs borne by the regulated and monitored firms, institutions, and organizations which have not only to comply with regulations but also to demonstrate that they have endeavoured to do so. (The opportunity costs of compliance might be high, but the risks of compliance failure can be higher still.)

These are exactly the same strategies that liberal democratic countries routinely resort to in the enforcement of tax law. Yet most people—and, for that matter, philosophers—take them to be justified (or at least necessary) to ensure compliance. On what grounds can we justify that the state monitors, overregulates, coerces, and imprisons citizens as well as immigrants for the purpose of collecting taxes but not for the purpose of controlling immigration? Again, if actual citizens and permanent residents are liable to these intrusive measures to ensure compliance with tax law, I see no reason why aspiring citizens and temporary residents should not be liable to the same intrusive measures to ensure compliance with immigration law. If the analogy I have drawn between tax and immigration law enforcement is correct, it would not be possible to accept the former and resist the latter. Consequently, if one supports the right to exclude *in principle*, one should also support the right to exclude *in practice*.

Does this make all the strategies described above permissible? Yes, with a few exceptions. I will not endorse what I consider to be the most controversial steps that states routinely take to ensure that citizens pay their taxes. For instance, the publication of a list with the names of irregular migrants for public scorn is out of the question. I will also

dismiss immigration enforcement practices that run counter to fundamental rights and freedoms or impose excessive costs of compliance on private agents (both citizens and non-citizens), such as the reliance on racial stereotypes as predictors of citizenship status and the requirement that third parties disclose private information of a "suspect" without judicial authorization. But the rest of the strategies are, by analogy, permissible.

On the one hand, the authorities can cooperate with each other for the purpose of immigration enforcement, so there is no need to build a blanket firewall of the sort advocated by Carens (2013: 132–135). One might worry that this will discourage irregular immigrants from going to the doctor, taking their children to school, and reporting crimes out of fear that their irregular status might be found out and they will be subsequently deported (Lister, 2020: 5–6). I am happy to grant an exception in these cases, but only insofar as it is necessary to protect their human rights to health, education, and security. This means that non-emergency healthcare, non-compulsory education, and non-criminal offenses are excluded from the firewall. On the other hand, authorities can require third parties to comply with immigration regulations and sanction those who fail to do so. For instance, universities might inquire into the citizenship status of their students, employers and landlords may be fined for hiring or renting an apartment to unauthorized migrants, and banks can be required to disclose financial information of their customers prior judicial approval. Finally, governments may resort to surveillance technologies, big data, and centralized computer records to keep track of visitors and find out people residing in the country without authorization.

My proposal resembles to some extent the "hostile environment" policy implemented by the Government of the United Kingdom from 2012. The stated aim of this policy was "to deter people without permission from entering the UK and to encourage those already [t]here to leave voluntarily" (Home Affairs Committee, 2018: 20), and included measures such as prosecuting landlords for renting their property to unauthorized migrants, requiring the National Health Service and schools to disclose confidential information of their patients and students, and preventing unauthorized migrants from obtaining a driver's license and opening a bank account, among others (Global Justice Now, 2018). According to its critics, "it seems unlikely there was any significant macro level impact on net migration or migrant behaviour generally." The result was instead the creation of "an illegal underclass of foreign, mainly ethnic minority workers and families who are highly vulnerable to exploitation and who have no access to the social and welfare safety net" (Yeo, 2018). There are a number of problematic aspects to this policy that my proposal would not endorse, such as the removal of long-term unauthorized residents, deportation to unsafe countries, racial profiling, data-sharing of victims and witnesses of crimes, access to confidential information and searches without judicial warrant, disclosure of citizenship status of underage students and patients, non-suspensive appeals, and so on. However, my proposal does endorse other controversial measures such as the creation of a dataset, the enlistment of citizens and private companies, the denial of non-essential services to unauthorized migrants, and the cooperation among government agencies.

I acknowledge this is a somewhat radical departure from most prominent accounts in the ethics of immigration enforcement, one that even those who support immigration restrictions are likely to find problematic. In order to contextualize the most controversial aspects of this proposal, it might be helpful to present an overall

picture of my argument so far. I began the article by pointing out the implications of not enforcing immigration restrictions for law-abiding migrants, the rule of law, and the right to exclude. This places states under a prima facie obligation to enforce the immigration laws they have democratically enacted. I argued that immigration and tax law are similar in many but not all respects. These differences rule out the possibility of returning refugees and necessitous migrants, but they allow for the exclusion of people whose human rights are not at stake. If states go to great lengths in the enforcement of tax law, and we accept that, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law.

However, just as there are a series of legal and procedural safeguards in the enforcement of tax law, states must respect due process and rule of law standards in the enforcement of immigration law. These include the principle of non-refoulement, the right against arbitrary detention, a statute of limitations, the right to judicial review, and the right to appeal, among others. Additionally, states must facilitate access to legal residence after a few years and refrain from deporting irregular immigrants with strong ties in the host country and those whose life would be severely disrupted. This is in line with social membership (Carens, 2013: chap. 8), rule of law (Ellermann, 2014; Song and Bloemraad, 2022), and autonomy (Hosein, 2014) accounts of regularization. On the other side of the coin, irregular immigrants may be deported within the first years of residence,[8] provided their rights are duly respected in the process and there are no less intrusive means to achieve the goal of exclusion. This entitles states to resort to gradual coercion, including the use of physical force, to ensure compliance with immigration law. In short, this proposal takes the rights of immigrants seriously, only the right to immigrate is not one. I would now like to anticipate some potential objections to my proposal and see whether it holds up all things considered.

Objections

The first objection is that the analogy between tax and immigration law is not apt, because they are different in nature, the interests protected by each are not comparable, and they do not have the same legitimacy.[9] Let us consider each of these claims in turn. First, if immigration and tax law are different in nature, it must be in a legal sense, because from a moral point of view both immigration- and tax-related offenses are *mala prohibita*, that is, "[t]hey are wrong only because the state has chosen to forbid them" (Huemer, 2019: 35). It may be argued, though, that immigration law imposes a *negative* obligation on foreigners not to enter without authorization, whereas tax law imposes a *positive* obligation on citizens to pay taxes. Moreover, immigration offenses are usually considered administrative offenses and are thus liable to administrative penalties, whereas tax offenses are usually considered criminal offenses and are thus liable to criminal penalties. However, this depends on the gravity of the infringement. To give just one example, tax avoidance in Spain qualifies as a crime if the defrauded amount exceeds 120,000 euros, but minor avoidances are only subject to a fine. Conversely, irregular immigration constitutes a crime in some countries. For instance, recidivism in unauthorized entry is considered a criminal offense in the United States.

This shows that the judgment of immigration and tax offenses as a minor or serious offense does not necessarily reflect the threshold of legitimate law-breaking, but rather prevailing social values and contingent political interests in persecuting certain conducts more harshly than others. As for the difference between positive and negative obligations, I just do not see how this is relevant to my argument, since it is with the enforcement of allegedly just laws by the state that I am concerned with, not with the duties individuals are bound by. In fact, it could be argued that we have stronger moral duties to respect negative obligations than to fulfill positive obligations, so there might actually be a stronger duty of compliance with immigration law. This reinforces rather than undermines my claim that states must enforce what they take to be just immigration restrictions. But it is not true that immigration and tax law impose different kind of obligations on people. For one thing, immigration law also imposes positive obligations on landlords, schools, hospitals, and other institutions to inquire into the citizenship status of their tenants, students, patients, and so on.

The second claim is that the interests protected by immigration law are not comparable to those protected by tax law. It is often said that if it were not for taxation, the welfare state would not exist, and so no one would take care of the poor, the elderly, and the severely disabled. By contrast, if there were no immigration restrictions or they were loosely enforced, millions of poor people would be able to move to the countries that offer the greatest opportunities, thus directing their labor to where it is most productive. This would arguably not only benefit the host countries and the migrants themselves, but also their home countries due to the spillover effects of migration in the form of remittances, human capital development, transmission of knowledge, and the building of transnational networks, among others. In short, whereas taxes promote social justice, immigration restrictions hinder it.

What matters for the purposes of my argument is not whether immigration restrictions protect important interests, but whether their enforcement is ultimately justified. The legitimacy of the right to exclude as a deontological right does not depend on its being exercised to protect or promote a higher-order value or an overriding goal, but on its being justified on independent moral grounds. As long as the value or goal at stake is not blatantly unjust and the right to exclude is exercised in a way that respects the human rights of migrants, enforcement should not render all immigration restrictions illegitimate. The first condition is relatively uncontroversial among advocates of the right to exclude,[10] since they believe that "legitimate political states occupy a privileged position of moral dominion over immigration" (Wellman and Cole, 2011: 4). The second condition is more controversial than the first, but if what I have said so far is correct, immigration enforcement is not necessarily at odds with the human rights of migrants. In conclusion, even if the interests protected by immigration law are not as weighty as those protected by tax law, one should not jump to the conclusion that states are not allowed to enforce immigration restrictions.

Third, maybe the crucial difference lies not in the weight of the interests each of them protects, but in whether what the state sets out to do in each case is ultimately justified. In the case of tax law, the state coactively draws resources from its citizens, but it is them who ultimately decide how the costs and benefits of social cooperation are to be distributed. In the case of immigration law, the state coactively excludes foreigners from this

scheme of social cooperation, but gives them no say in such decision. According to democratic theory, in order to exercise political power legitimately, the state should give a say to everyone subject to it. This explains why tax law wields legitimate authority over citizens, but immigration law does not wield legitimate authority over foreigners.

This is a very powerful objection against the legitimacy of border controls, but it is beyond the scope of my argument, for my goal here is not to determine whether border controls are legitimate in principle, but whether enforcement renders them illegitimate in practice. Surely, if border controls were illegitimate in principle, they would be illegitimate in practice, but the question here is whether they are illegitimate in practice despite being *ex hypothesi* legitimate in principle. The democratic legitimacy argument poses a challenge not only to the enforcement of borders, but also to their very constitution. Therefore, if one accepts the unbounded demos thesis, one cannot assert the legitimacy of immigration restrictions even in principle, at least not without a democratic justification.

There is a more promising way of pressing this objection: if foreigners are excluded from the benefits of compliance with the immigration laws of other states, why should they be expected to comply? Citizens usually benefit from compliance with tax law, so it seems reasonable to expect them to comply. In contrast, foreigners are expected to comply with a law that is aimed specifically at excluding them from the very benefits of compliance with the law (Huemer, 2019: 42). This difference is emphasized by Miller (2023: 848, n. 19):

> The analogy between immigration law and tax law is complicated by the fact that most taxpayers have not only natural duties of justice but also fair play obligations to comply with tax law: they are among the beneficiaries of a reasonably just practice that also imposes burdens. There is no parallel to this in the case of most prospective immigrants, since they are likely to be refused entry.

Accordingly, it would be unreasonable to demand their compliance. In response, note that my argument is not that foreigners are duty-bound to comply with the immigration laws of other states, but rather that states are allowed to enforce these laws against them. States do not actually expect foreigners to abide by their immigration laws, nor do they hold them liable for their breach; they enforce such laws against them, tout court. If no compliance is demanded of foreigners and they are not liable to punishment for their failure to comply, I do not see why states should give them a say in a law that they are not bound by.[11]

This is confirmed by the fact that states do not *punish* irregular migrants for their unauthorized entry, but enforce their duty of reparation (or the duty to *restore* the status quo ante) against them through deportation.[12] This is no more a punishment, as painful as it might be, than making burglars return the stolen property and repair the damage they have caused to its legitimate owners. Unless they receive a penalty (e.g. a fine or jail sentence), they cannot be said to have been punished for the burglary; they are merely having their duty of reparation enforced against them. The same holds true for irregular migrants: unless they receive a penalty, they cannot be said to have been punished for their unauthorized entry; they are merely having their duty of reparation enforced against

them. And unless someone is punished for their *deliberate* unlawful actions, they cannot be said to be held liable for such actions.

It is very important to distinguish deliberate from unintended actions, on the one hand, and negligent from innocent omissions, on the other, for the purpose of determining whether liability gives rise to a penalty in addition to the duty of reparation or to a duty of reparation without penalty. Only when the unlawful action is deliberate or the result of a negligent omission does the agent's putative liability involve punishment. Conversely, if the action is the result of an innocent omission or the agent is not acting on their own volition such that their actions can be said to be deliberate, they cannot be held liable to punishment for their innocent omission or unintended action, but the state can nevertheless enforce the duty to restore the status quo ante against them or their legal guardian(s). There is still another possibility: that the agent is not expected to comply with the law because they fall outside its subjective scope of application.[13] Once again, they cannot be held liable to punishment for their unlawful actions, but the state can nevertheless enforce the duty to restore the status quo ante against them.

To sum up, when there is no penalty attached to an unlawful action, but only a duty of reparation, this can mean two things: (1) that it is not the result of a negligent omission, but of an innocent omission, or (2) that the agent is not liable for their actions. And an agent is not liable for their unlawful actions either (a) because they do not act on their own volition such that their actions can be said to be deliberate or (b) because no compliance with the law is demanded of them insofar as they fall outside its subjective scope of application. Irregular migrants, at least the adult, are definitely able to act on their own volition, and their entering a country without authorization is not the result of an innocent omission. There is only one option left, namely, that no compliance with the law is demanded of foreigners by the state because they fall outside its subjective scope of application. This explains why irregular migrants, despite having committed an unlawful action, are not liable to a penalty, but only to a duty of reparation or a duty to restore the status quo ante. And the only way to restore the status quo ante is through their deportation.[14]

The second objection is that immigration controls are systematically biased against racial minorities and other historically discriminated groups. Racist prejudices continue to inform admission and surveillance practices, making it almost impossible to insulate immigration enforcement from racial discrimination (Aitchison, 2023: 608–610; Fine, 2016; Sager, 2020: 58–59). For this reason, even if immigration restrictions may be justified in principle, they are unjustified in practice. One could respond that, in voluntarily subjecting themselves to the authority of the state, they consented to this treatment (Oberman, 2017: 101–102); and that as long as they have the option of returning to their country of origin, where their rights were adequately protected, the host country is under no obligation to extend them full citizenship rights (Sandelind, 2015: 499). But the most convincing response comes from Mendoza (2015a) himself, who—remember—argued that enforcement renders immigration restrictions illegitimate. According to him:

> opening borders will not put an end to larger and more ubiquitous structures of oppression such as patriarchal and racist social structures [. . .] Justice, in a general sense, requires that structures

> of patriarchy and racism be addressed, but there is a limit to what immigration policies can do to bring about these changes (Mendoza, 2015a: 179–180).

Irregular immigrants may be granted *legal* status and nonetheless suffer wrongful *social* discrimination due to their perceived undocumented status (Reed-Sandoval, 2016). There seems to be something inextricable about this problem that immigration laws cannot account for, let alone solve. If political institutions such as borders are presumably the product of social practices and beliefs, eliminating the former will do little to eliminate the latter. To suggest the opposite would commit us to the absurd conclusion that since there were no clear territorial boundaries or formal immigration restrictions in the past, our forebears were less averse to foreigners and immigrants were not discriminated against. Political change without social change is unlikely to make any significant change, especially if it is perceived as an imposition from above. For this reason, even if we abolished immigration controls, discrimination would still probably reproduce itself on a smaller scale and in other realms of life, such as the local level and more informal relationships.

Moreover, it is not sufficient reason to abolish a law the fact that it has some undesirable side effects. Even when the negative outcomes of a law outweigh its expected benefits, and there are less harmful alternatives at hand, we should not jump to the conclusion that the law in question is unjust. Think about the following case: it is sometimes reported that minimum wage laws and other labor regulations slow down economic growth and hinder job creation. Does it mean that we should abolish them? Not necessarily. Public policymaking does not boil down to maximizing aggregate welfare, achieving economic efficiency, or promoting distributive justice. Rather, it is a matter of adjudicating on competing interests according to relevant criteria. Provided these criteria are not deliberately unjust, the existence of undesirable side effects does not call the whole legitimacy of a law into question. Similarly, discrimination in immigration enforcement does not necessarily render immigration restrictions illegitimate. At most, it gives us a compelling reason to reform immigration law.

Some object that it is plainly not possible to enforce immigration restrictions in a way that respects the human rights of migrants. Therefore, any attempt to reform immigration enforcement practices is doomed to failure. This is due to the way the border regime operates and the inherent vulnerability of migrants. Immigration enforcement is a rather complex matter that involves a number of private and public actors across different jurisdictions, well before and after migrants have set foot in the territory (Shachar, 2020). This enables discretion, diverts responsibilities, and hinders democratic control, exposing migrants to abuses along the way. Opening borders, the objection concludes, is the only way to break these powerful dynamics and eliminate the perverse incentives that are built into the system. Sager (2017: 45) makes this case forcefully:

> the obstacles to overcoming domination for immigration agencies are significantly greater than what we encounter in many other areas. In particular, strategies used to mitigate domination fail because of the inherent vulnerability of immigration populations and the dispersion, externalization, and privatization of migration enforcement. The only plausible way to avoid

> bureaucratic discretion and dominating migrants is to reduce the power of the state and of private actors to enforce border controls and to significantly open borders.

If Sager (2014) is right, one of the things that makes immigration enforcement particularly troubling is the vulnerability of migrants that stems from their lack of political rights. However, this is neither a necessary nor sufficient condition to suffer or avoid bureaucratic domination, respectively. On the one hand, most migrants from the Global North (and some from the Global South) can travel with relative ease, and their chances of suffering abuses and exploitation in the destination countries are few and far between. Their lack of political rights does not seem to render them especially vulnerable to bureaucratic domination. On the other hand, many migrants from former colonies, despite having visa-free access to and an easy naturalization process in the "mother" country, live in miserable conditions and are victims of all kinds of abuses. Putting their vulnerability down to immigration enforcement and suggesting that opening borders will put an end to it is a form of reductionism that obscures the manifold interrelated social, political, and economic factors at play both in countries of origin and destination.

Another reason why, according to Sager, immigration enforcement is bound to impinge on the human rights of migrants is administrative discretion, which often leads to bureaucratic domination. But administrative discretion and bureaucratic domination are not unique to immigration enforcement. As Max Weber noted, they are defining features of the contemporary public administration (Fry and Raadschelders, 2023: chap. 1). See, in this regard, the following statement by a former director of the Spanish Tax Agency:

> in Spain, as in any state that respects the rule of law, the individual is protected by the principle of legality, which obliges the Administration to respect the laws and other provisions in its actions. But when inequality is reflected, contained, and enshrined in the norms themselves, with a set of exorbitant administrative powers, as it happens in tax law, the guarantee that the principle of legality provides to the individual is significantly compromised. This is so because the state uses and abuses what administrative law experts call the *self-attribution of powers*, flooding the legislation with powers or prerogatives in its favor. Sometimes, it is even the case that, once a power has been established in a statutory provision, its subsequent regulatory development expands the power to truly unprecedented limits. As a result, we Spaniards find ourselves in a situation of great inferiority to the tax authority (Ruiz-Jarabo, 2022: 190).

Yet, we do not conclude that enforcement renders taxation illegitimate. If states have considerable discretion in the enforcement of tax law despite the risk of bureaucratic domination, there is no reason why they should not have similar discretion in the enforcement of immigration law. If administrative discretion leads to problematic outcomes, as it often does, states should institute a system of checks and balances that prevents the concentration of power and holds enforcement authorities accountable for their actions. In the end, if immigration enforcement renders migrants vulnerable to human rights abuses, it is not because of purely external constrains over which we have no control, but above all because of our lack of political will. And when it comes to willingness, constituents are as a matter of fact less willing to support open borders than immigration reform. So, if we can open borders, then a fortiori we can reform immigration enforcement practices.[15]

Conclusion

The ethics of immigration must come to terms with the principles that should guide the admission policies of states in a non-ideal world like ours. It is not enough to say that states have a right to exclude immigrants in theory, we must say something about *how* they can enforce it in practice. This is why the ethics of immigration enforcement is an important part of the ethics of immigration. This is all the more so in a world where immigrants are systematically discriminated, structurally exploited, routinely searched, arbitrarily detained, illegally deported, and (in)directly killed. We cannot simply dismiss these facts as unfortunate incidental deviations from the ideal world, for they are deeply entrenched in the practice of most (if not all) contemporary states. This is not to say that all instances of exclusion are irredeemably unjust, leaving states with no choice but to open their borders. Instead, my point is that states must carefully devise the means to be employed in the enforcement of immigration restrictions.

Contrary to what many authors contend, enforcement does not render *all* immigration restrictions illegitimate. The case of tax law discussed above provides a benchmark for the range of steps that states may permissibly take in the enforcement of immigration restrictions. Provided the analogy I have drawn between tax and immigration law is sound, if states are allowed to go to great lengths in the enforcement of the former, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of the latter. And just as enforcement does not render taxation illegitimate, neither should it render immigration restrictions illegitimate. With the adequate procedural safeguards in place, states should have the right to exclude some unwanted immigrants without violating their basic human rights.[16] I do acknowledge, however, that the majority of states fall short of complying with the legitimacy standards set out in this article. In this sense, rather than as a reason for complacency, my proposal should be read as a push for reform.

Does not this disprove my argument that it is possible to enforce immigration restrictions without violating the human rights of migrants? I think this conflates the normative and the descriptive claims of my argument. The normative claim is that states must enforce immigration restrictions in a way that respects the human rights of migrants. The descriptive claim is that states already enforce other laws without violating the human rights of citizens (and migrants). Critics also make a normative and a descriptive claim. Their normative claim is that the violation of human rights in immigration enforcement renders immigration restrictions illegitimate in practice. Their descriptive claim is that the violation of human rights in immigration enforcement is inevitable. The normative claims are in both cases the same, for if states must enforce immigration restrictions in a way that respects the human rights of migrants, then surely the violation of human rights in immigration enforcement renders immigration restrictions illegitimate in practice. What is at stake, then, is whether immigration enforcement *inevitably* renders immigration restrictions illegitimate in practice because they are bound to violate the human rights of migrants, or immigration enforcement practices *can* be reformed in accordance with the prescriptions outlined above so that they are more respectful of the human rights of migrants. If it turns out that the latter is impossible, there may be a good reason to embrace the former. But we still have a long way to go before we reach that conclusion.

This article has dealt with the question of whether and, if so, how states may permissibly enforce immigration restrictions. My answer to this question is affirmative in the first part, qualified by the second, conditional on the third, and contingent on the fourth: (1) states have a right to enforce immigration restrictions (2) so long as they establish adequate procedural safeguards and there are no less intrusive means to achieve the goal of exclusion, (3) if and only if they have a right to exclude, and (4) provided that they are allowed to go to great lengths in the enforcement of tax law. My interlocutors already grant parts 3 and 4, but they are usually reluctant to accept part 1 because of their skepticism about the feasibility of part 2. I have sought to substantiate part 2 by way of analogy with tax law, so that they have no choice but to accept part 1. Of course, the analogy could be wrong, but the onus is on critics now to show why. On the contrary, if the analogy is right and they support the right to exclude in principle, then they should also support the right to exclude in practice, even if it entails the use of physical force.

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Notes

1. As Miller (2016: 73) says, "the question is whether the act of exclusion itself, as opposed to the means used to enforce it, is coercive." Similarly, Wellman (Wellman and Cole, 2011: 46) makes it clear that, "in defending a legitimate state's right to exclude potential immigrants, I am offering no opinion on the separate question as to how countries might best exercise this right."
2. For opposing views in this debate, see Hidalgo (2019), Huemer (2019), and Aitchison (2023), on one side, and Yong (2018) and Miller (2023), on the other.
3. What if the other person was in need? The present example is only meant for people whose human rights are adequately protected. The case of refugees is discussed below.
4. To be sure, states do engage in several forms of wrongful discrimination against migrants, but this adds insult to injury rather than absolve them from their actions.
5. I have taken Spain as an example for the discussion of tax enforcement in the belief that its practices do not differ substantially from those of the rest of liberal democracies.
6. I have developed these views elsewhere (Niño Arnaiz, 2022).
7. One might worry that this will overburden the administration of justice. This is a legitimate concern, but just as states can condone a fine, they could revoke a deportation order if they were worried about the accumulation of administrative files (Song and Bloemraad, 2022: 500).
8. Carens (2013: 151) himself concedes this point: "My argument that time matters cuts in both directions. If there is a threshold of time after which it is wrong to expel settled irregular migrants, then there is also some period of time before this threshold is crossed."
9. Another potential objection is that immigration law cannot be judged by the yardstick of tax law because the former invades autonomy to a greater extent than the latter. I agree that different degrees of political power require different legitimacy standards, but I disagree that this is necessarily the case. In fact, the very point of this article is that immigration law should be subject to the same legitimacy standards as tax law.
10. According to Yong (2017: 475; 2018: 475), as long as immigration laws are not egregiously unjust, are guided by public reason, and serve to promote the general interest, they wield

legitimate authority. In this vein, the containment of the national population size, the reduction of poverty at home, the protection of the local environment, and the preservation of the public culture are often cited as legitimate reasons for restricting immigration (Miller, 2016: 64–68).

11. Nagel (2005: 129–130) makes the same argument: "Immigration policies are simply enforced against the nationals of other states; the laws are not imposed in their name, nor are they asked to accept and uphold those laws. Since no acceptance is demanded of them, no [democratic] justification is required."
12. Is the bar from ever returning to a country a form of punishment? On my account, only proscription of actions people have a prior moral right to constitutes punishment. Therefore, to the extent that foreigners have no prior moral right to immigrate, they cannot be said to have been punished if they are deemed ineligible for return. However, there are some enforcement practices that do constitute punishment. For example, detaining irregular migrants for indefinite periods of time in prison-like centers can hardly be considered a legitimate attempt to restore the status quo ante.
13. Abizadeh (2022) has recently defended a "logically narrow-scope interpretation" of legal requirements in order to distinguish the jurisdictionally circumscribed scope of domestic laws from the universal scope of so-called border laws. According to him, "[t]hose to whom a legal requirement applies fulfill the requirement by doing as it requires, and violate it by not doing as it requires; but those to whom it does not apply, so long as it does not apply to them, can neither fulfill it (because it requires nothing of them) nor violate it (because, not requiring anything of them, there is nothing they could do to violate it)" (Abizadeh, 2022: 608). While he argues that there is a legal requirement not to enter a territory without the state's authorization that applies to everyone, I deny that there is such a requirement. For one thing, on the narrow interpretation of domestic laws that he favors, "the legal requirement does not apply to them [people outside the state's territory], and there is consequently no obligation imposed on, or threat of sanction directed towards, them" (Abizadeh, 2022: 607). As we have seen, there is no sanction attached to unauthorized entry. Consequently, foreigners cannot be said to be liable to border laws either.
14. This does not make it any less problematic when there are less draconian options available. To say that deportation is the only way to restore the status quo ante is not to say that there are no other (albeit less conducive to the status quo ante) ways to make up for the putative wrong of unauthorized entry that might be preferable to deportation.
15. The only times that opening borders may be more feasible than immigration reform is when states lack effective capacity to control their borders, or else they believe that the benefits from opening borders will outweigh its costs. The former is illustrated by the porous and irregular boundaries of pre-modern states, whereas the latter is illustrated by the institution of free movement within the Schengen Area. By contrast, when states are more or less able to exclude potential immigrants and doing so is in their interest, the best we can hope for is that they will reform their immigration policies so as to make them more compatible with the respect for the human rights of migrants. This last point is illustrated by the immigration policies of European member states: soft on the inside, hard on the outside. On the one hand, it is in their interest to open their internal borders, but not their external borders; and, on the other hand, they have the capacity to control the latter quite effectively. However, due to the pressure of public opinion and out of a certain (albeit insufficient) sense of commitment to the human rights treaties they have signed, the external immigration policies of European members states are not as hard as one would otherwise expect them to be.
16. As Arcos Ramírez (2021: 23) has argued: "what generates domination in most cases is not the content of immigration restrictions, but the excessive discretion that stems from the flawed

drafting and the irregularity in the application of the development regulations that articulate it. It is the latter that enables that the exercise of coercion is given effect not through public and impersonal norms, but by personal decisions. [. . .] With the introduction of laws bestowed with greater linguistic rationality, the elimination of some technical loopholes that hinder the proper implementation of some general norms, along with a more accurate implementation of their prescriptions, the room for discretion that allows for arbitrariness and domination would be narrowed down."

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The principle of coherence between internal and external migration: an apagogical argument for open borders?

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ABSTRACT

There is a broad consensus on the legitimacy of states to control immigration. However, this belief has recently been questioned, among other reasons, due to the contradiction with current practices in emigration and internal mobility. The principle of symmetry states that any restriction on immigration should also apply to emigration; or that, to the contrary, if there is a right to emigrate, there should be a corresponding right to immigrate. The principle of coherence posits that every reason one might have for moving within a country also counts for moving between countries. This article proposes to extend the coherence principle from external to internal migration, arguing that the same reasons that justify restrictions on mobility across borders justify restrictions on mobility within borders too. Therefore, either freedom of movement is a fundamental right or the right of the political community to control mobility prevails. The interests at stake are in both cases the same, so asymmetry is not warranted. This leads us to an apagogical argument for open borders.

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Introduction

Emigration is a human right, while immigration is not. Similarly, freedom of movement within a country is a human right, while freedom of movement between countries is not. This is, in other words, what article 13 of the Universal Declaration of Human Rights (UDHR) says – and, more importantly, does not say: '1. Everyone has the right to freedom of movement and residence within the borders of each state. 2. Everyone has the right to leave any country, including his own, and to return to his country.'[1]

This asymmetry is rarely questioned in mainstream political discourse, as it is often taken for granted that every state, in the exercise of its sovereignty, has the right to control its own borders and restrict immigration. The same democracies that go to great lengths to prevent the arrival of unwanted immigrants are the first to criticize developing countries for trying to prevent the departure of highly skilled citizens. Some authors brand this position as conceptually and morally incoherent. On the one hand,

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[1]The International Covenant on Civil and Political Rights (ICCPR) of 1966 merely ratifies the above.

the right to emigrate becomes an empty signifier without the corresponding obligation on the part of other states to allow immigration. On the other hand, the same considerations that take us to recognize freedom of movement at the national level are valid at the international level. The solution, we are told, lies in extending current rights to emigration and freedom of movement within the country so as to include a symmetrical right to immigration and freedom of movement across countries.

This is known as the 'principle of symmetry' in migration and the 'principle of coherence' with existing mobility rights, respectively. The first calls for the symmetry between emigration and immigration, whereas the second demands coherence between internal and external mobility rights. The arguments, called symmetry and cantilever, consist in extrapolating an already recognized right to another that is not yet recognized based on the similarities between the two and the logical implications that follow from recognizing the former as a right. In particular, the right to national freedom of movement is used to ground a right to international freedom of movement, in just the same way as the right to emigration is used to ground a right to immigration.

But what would happen if we applied the principle of coherence to extend restrictions from the global to the domestic sphere? The article explores this possibility and argues that every reason one might have for controlling mobility abroad can be put forward for controlling mobility at home. This is what I will refer to as the principle of coherence between internal and external migration. This does not entail that states can constrain movement within their borders as they see fit. But if constraints on freedom of national movement are not justified, then constraints on freedom of international movement should not be justified either.

The article will proceed as follows. The second section describes the cantilever and symmetry arguments. The third section sets out the principle of coherence between internal and external migration. The fourth section explores the implications of this principle for the right to exclude, for which the main arguments against freedom of international movement are applied at the national level. The fifth section makes an apagogical (or reductio ad absurdum) argument for open borders. The last section contains the conclusion.

The cantilever and symmetry arguments

According to Miller (2016a), there are three different strategies for grounding a human right to immigrate: the direct, the instrumental, and the cantilever argument. The first argues that the right in question serves basic human interests, most importantly, unimpeded bodily locomotion. The second is an argument for the human right to immigrate as a necessary condition for the exercise of other valuable human rights which are themselves directly grounded, such as freedom of association, occupation, expression, conscience, and so on. The third, and most important to this case, is known as the cantilever argument.

The strategy of the last argument is a bit different from the rest: instead of developing a justification for the purported right, it draws on an already consolidated principle or a widely acknowledged right and argues that the former is a logical extension or corollary of the latter. The underlying idea is that if A and B share certain relevant characteristics and A is a right, then B should be a prima facie right. In this way, it tries to convey the logical, not axiological, arbitrariness that entails recognizing A (internal freedom of movement or the right to emigrate) as a human right but not

B (international freedom of movement or the right to immigrate) (Arcos Ramírez 2020, 291). According to Cole (2006, 1), '[m]oral consistency requires that we treat two or more cases in the same way unless there is some feature that makes a relevant difference. To go against this basic moral rule is to enter a world of arbitrariness.' This way of reasoning, known in philosophy as cantilever, is not so different from that of the child (B) who, after seeing that her sibling (A) has a candy (original right), asks her parents to buy her one (derivative right). The advantage of the cantilever argument is that it shifts the burden of proof to the ones opposing the right, who will be required to show that both cases are not comparable if they intend to justify an unequal treatment, or they will have to deny the existence of the original right altogether if they want to refute its logical implication (Carens 2013, 334, fn. 19).

In this case, freedom of international movement or the right to immigrate can be derived from two primary rights: internal freedom of movement (art. 13.1 UDHR) and the right to emigrate (art. 13.2 UDHR), respectively. Carens (2013, 239, emphasis added) resorts to the first in his defence of open borders:

> If it is so important for people to have the right to move freely within a state, isn't it equally important for them to have the right to move across state borders? Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one's native state and many in another; one might wish to pursue cultural opportunities that are only available in another land. The radical disjuncture that treats freedom of movement within the state as a human right while granting states discretionary control over freedom of movement across state borders makes no moral sense. We should *extend the existing human right of [internal] free movement*. We should recognize the freedom to migrate, to travel, and to reside wherever one chooses, as a human right.

Other authors proceed in the second way, departing from the human right to emigrate to arrive at a symmetrical right to immigrate. For example, Cole (2000, 46) regards liberal asymmetry – whereby the state can restrict immigration, but not emigration – 'not merely [as] ethically, but also conceptually, incoherent.' In the same vein, Dummett (1992, 173) states that '[l]ogically, it is an absurdity to assert a right of emigration without a complementary right of immigration unless there exist in fact (as in the mid-nineteenth century) a number of states which permit free entry.' In a world where every habitable land belongs to one state or another, crossing a border to leave one state means entering the territory of another. Hence, the very act of emigration brings with it that of immigration. To deny this, the argument goes, would be a legal nonsense, because when a right is granted the obligation not to prevent its exercise is also acquired (Velasco 2016, 205).

The latter strategy has come to be known as the symmetry argument, and it is usually treated as a distinct argument. The symmetry argument is characterized by some not as a cantilever but as an instrumental argument, in the sense that the right to immigrate is a necessary means to realize the human right to emigrate. Although it is certainly true that people need to be able to enter another country in order to exit their own, they need not have a human right to immigrate in order to exercise their human right to emigrate.[2] As Miller (2016a, 15, emphasis added) aptly notes, '[t]he right to leave one's

[2]This claim rests on an understanding of the human right to immigrate as 'the right to migrate to *any* state, not just to one or a few states' (Miller 2016a, 14).

present country of residence can be satisfied so long as there is at least *one* other place that one is not prevented from entering.' My reason for subsuming the symmetry argument under the cantilever argument is that they follow the same logic: they 'avoid delving into the grounds on which the right is claimed, and instead focus on the alleged absurdity of recognizing A as a right without at the same time recognizing B' (Miller 2016a, 16). Just as proponents of the cantilever argument do not attempt to establish the moral foundations of the right to internal freedom of movement, proponents of the symmetry argument do not say that the right to enter protects the same *concrete* interests as the right to exit; they merely contend that it is absurd to recognize the latter as a human right all the while preventing the former.

It is very important to distinguish abstract or hypothetical from concrete interests for the purposes of distinguishing the cantilever from the direct argument. By way of example, let us suppose that the right to internal freedom of movement serves only to protect the interest people have in roaming free. This is a concrete interest, albeit quite a vague one. If one were to defend the right to freedom of international movement on the grounds that it protects the same interests as the right to internal freedom of movement, this would no longer be a cantilever argument, but a direct one. Why? Because it would be implicitly acknowledging that the right in question serves basic human interests, namely, the interest in roaming free. Consequently, it would no longer be a logical argument, but an axiological one. This is why the cantilever argument 'remains a distinct strategy provided «arbitrariness» is not cashed out in terms of the [concrete] same grounds applying in both domains, in which case it reduces to the direct strategy' (Miller 2016a, 16).

This is why Carens, despite considering the interests at stake in national and international mobility to be the same, does not specify what these concrete interests are. He 'mention[s] specific reasons why people might want to move only as hypothetical examples' (Carens 2013, 239). This allows him to defend freedom of international movement without delving into the concrete grounds on which the right is claimed, thus avoiding making a direct argument for open borders. To sum up, whereas in the cantilever argument the interests protected by the original right can take any abstract form so long as they take the same form in the derivative right, in the direct argument the interests protected by the original and derivative rights always take a specified (not necessarily specific) form.

Which strategy does the symmetry argument employ? As we have seen, it cannot be an instrumental strategy, at least not if the argument is to ground a human right to immigrate as opposed to a mere safe-conduct or admission letter into a single random country. Nor is it a direct strategy, since it explicitly avoids delving into the concrete grounds on which the right to immigrate is claimed. One could attempt to extend the rationale for the right to emigrate to the right to immigrate on the grounds that they both protect the same interests. However, it will not do to say that the right to immigrate protects the same abstract or hypothetical interests as the right to emigrate, for otherwise it would collapse into a cantilever argument. For it to be a direct argument, there needs to be a concrete interest that the right to emigrate protects that applies to the right to immigrate as well. In this vein, one could argue that both rights protect 'the interest people have in being free to access the full range of existing life options' (Oberman 2016, 35). The problem is that advocating any such interest will

inevitably commit us to an axiological argument, which is precisely what we are trying to avoid. In conclusion, the symmetry argument is best characterized as a cantilever argument, not because it seeks to draw a parallel between the abstract or hypothetical interests protected by the original right (i.e., the right to emigrate) and those protected by the derivative right (i.e., the right to immigrate), but because it deliberately seeks to avoid delving into the concrete grounds on which any of these rights are claimed, insisting instead on the logical absurdity of recognizing the right to emigrate without at the same time recognizing the right to immigrate.

In any case, my argument does not depend on the merits or demerits of the cantilever and symmetry arguments. It is enough that the state's interests in controlling mobility abroad and at home are tantamount. The aim of this article is precisely to show that every interest a state might have in controlling mobility abroad also counts for controlling mobility at home. Therefore, if one accepts the state's right to exclude outsiders, one must also accept the state's right to exclude insiders. By contrast, if one rejects the states' right to exclude insiders, one must also reject the states' right to exclude outsiders. As I will argue, this leads us to an apagogical (or reductio ad absurdum) argument for open borders. The advantage of this argument is that it does not presuppose any particular conception of global justice or require that people's interests in moving to other countries are the same as their interests in moving within their own country. In this sense, it appeals to even those who believe that states have a right to exclude immigrants but take it for granted that citizens have a right to move to and settle in other parts of the country.

The principle of coherence between internal and external migration

So far, the principle of coherence has been used for the purpose of substantiating a human right to immigrate. But this same strategy could be used in the opposite direction. Thus, instead of deriving the right to immigrate from the right to emigrate (*modus ponens*), one could extend the application of restrictions on immigration to emigration (*modus tollens*).[3] By the same token, instead of deriving freedom of international movement from freedom of national movement (*modus ponens*), one could extend the application of restrictions from the international to the national level (*modus tollens*), so that internal mobility was governed by the same rules as external mobility. In this section I will conceive of this last possibility in theoretical terms and see what the practical implications are in the next.

To do this, I will draw on the 'principle of symmetry' of Goodin (1992) and Cole (2000), as well as on the 'general principle of justice in migration' of Ypi (2008).[4] The former establishes a presumption in favour of symmetry in the treatment of transborder mobility: whatever the principles regulating it, they must be applied consistently in both directions (emigration and immigration) and to any kind of object (persons, goods, and capital). According to this principle, unless there are good reasons against it (e.g., in the case of explosives, drugs, black money, or terrorists), a government should not set limits on the recruitment of foreign labour while attracting the investment of foreign capital,

[3]Ypi (2008, 415–416) briefly considers the idea of a 'closed borders utopia', but she does not endorse it.
[4]In doing so, I do not mean to endorse these authors' views. I discuss their principles for illustrative purposes only.

nor should it prevent the entry of immigrants if it does not do the same with the departure of emigrants. Accordingly, 'if it can be shown that the state *does* have the right to control immigration, it must follow that it also has the right to control emigration: the two stand and fall together' (Cole 2000, 46). The latter argues that 'if restrictions on freedom of movement could ever be justified, such restrictions ought to take equal account of justice in immigration *and* justice in emigration.' In other words, 'if R provides a valid reason for restricting incoming freedom of movement, R also provides a valid reason for restricting outgoing freedom of movement' (Ypi 2008, 391).

In this article, I propose to extend the principle of coherence from the international to the national arena, that is, from external to internal migration. The principle of coherence between external and internal migration states the following: if restrictions on migration between countries are justified, restrictions on migration within countries are justified as well. In other words, if R is good enough reason to control external mobility, R is good enough reason to control internal mobility. As we will see, the interests at stake are in both cases the same, so there is no reason to treat them differently. Before proceeding with the implications, let me spell out three caveats.

First, this is not an absolute principle, but it must rather be understood as a presumption. There may be occasions when asymmetry is indeed warranted, in the sense that internal freedom of movement is permitted but external freedom of movement is not, or vice versa. For example, the withdrawal of the passport from a defendant who poses a significant flight risk constitutes a legitimate case of asymmetry in mobility rights, so that she can move freely around the country, but she is prevented from leaving. Additionally, a government may *ex hypothesi* limit the number of refugees,[5] but it must not limit the internal mobility of those refugees it has already admitted while allowing its citizens to roam free. These are two situations in which a state could control traffic at the border, but not inside. Conversely, the declaration of a disaster or protected natural area may lead to the suspension of the right to move in that area, but it should not affect entry and exit from the country. Lastly, traffic rules and private property rights are another example of restrictions on freedom of movement that apply only at the national level, insofar as they are subject to different state jurisdictions.

Second, this article does not take sides in the underlying debate about whether states should open their borders.[6] As we have seen, there are good reasons in favour of the right to migrate, just as there are strong arguments for the right to exclude (see the next section). My aim is other, namely, to demonstrate that the most common arguments intended to justify restrictions on mobility across borders also apply to mobility within borders. This is not a blank check for governments to regulate mobility as they see fit, though. Any curtailment of the right to freedom of movement must respect the principles of equal treatment and non-discrimination. For instance, if a state refuses entry to members of a particular religion or ethnic group, this does not entitle it to control the internal mobility of citizens who follow that religion or belong to the same ethnic group. Quite the opposite: any discrimination in mobility rights on arbitrary grounds, whether internal or external, is inadmissible.

[5]Provided that there was an equitable distribution of refugees among countries and the country had already done its fair share. I say *ex hypothesi* because it is not clear whether such a country would then be exempt from its second- or *n*-order duties of justice towards unprotected refugees (see Owen 2016, 285–288).

[6]This issue has been addressed in Niño Arnaiz (2022).

Third, the principle of symmetry pertains only to the central government (and, at most, to those constituencies with a high level of autonomy). This means that a neighbourhood, a municipality, or a province could not, on the basis of this principle, preclude the settlement of new residents. Although most of the arguments considered in this article account for the subnational units' right to exclude as well (Maring 2019), there are two reasons for limiting this right to the national level. The first is to prevent the state from breaking into pieces and freedom of movement being reduced to rubble. If social cohesion is to be maintained, subnational levels of government must give up their right to exclude (unless they already enjoy a high level of autonomy, in which case their social cohesion might be said to depend on their ability to exclude outsiders). The second and most important reason is that freedom of movement is essential to meet our basic needs, such that we must be able to exercise it within a sufficiently large area in order to have access to an adequate range of options.

Whether actual states provide an adequate range of options remains a contested issue. There is such a huge difference in the size and degree of development of countries that it is hard to believe that they serve as a benchmark for adequate options. Whatever constitutes an adequate range of options, the fact remains that if subnational levels of government of a sufficiently (but not redundantly) large and developed country retain the power to unilaterally exclude citizens from other parts of the country, these people will be left with a less than adequate range of options, thus rendering their scope of freedom of movement insufficient to meet their basic human needs. Let us say that Belgium is a sufficiently (but not redundantly) large and developed country. Were Flanders to prevent access to the citizens of Brussels, these would be left with a less than adequate range of options. Restrictions on internal freedom of movement would be all the more problematic in the case of insufficiently large and developed countries, whose citizens already lack an adequate range of options. In contrast, to the extent that the United States constitutes a redundantly large and developed country, Texans may be banned from entering California without their being left with a less than adequate range of options. In short, my argument is conditional on citizens having access to an adequate range of options. This explains why most subnational levels of government as well as small and underdeveloped countries do not have a right to curtail internal mobility.[7]

Implications for the right to exclude

Internal and external migration tend to be treated separately in the literature on mobility justice, such that the first is rarely questioned and goes pretty much unnoticed, whereas the second is perceived as highly problematic, making the object of heated political and philosophical debates. The national-international mobility divide is especially troubling from a normative point of view, since both give rise to the same sort of

[7]One might worry that this condition limits the scope of my argument to a few countries. However, this depends on what one takes an adequate range of options to be. The larger and more developed countries need to be in order to count as offering an adequate range of options, the smaller the number of countries that may restrict *internal* freedom of movement. The problem with a demanding threshold of adequacy is that the number of countries that may restrict *external* freedom of movement will be many times as small, since more people will be coming from countries that do not offer an adequate range of options. Thus, to the extent that countries cannot exclude people who lack an adequate range of options, this objection is self-defeating.

questions (Sager 2018, 60). This will become clear when we look at the effects of internal freedom of movement on those interests that prohibitions on international freedom of movement are meant to protect.

The aim of this section is not to defend the states' right to control their borders, but to explore the implications of this purported right for internal mobility. The central thesis is that the interests are in both cases the same, so that the reasons for restricting migration between countries also account for restricting migration within countries. To do this, I will survey the most frequent arguments in support of the right to exclude and see if they are applicable to the domestic context. On the one hand, there are concerns about (1) the preservation of national culture and identity, (2) domestic social justice, and (3) national security and public health. On the other hand, there are appeals to (4) freedom of association, (5) democratic self-government, (6) the right to avoid unwanted obligations, and (7) the relevance of state coercion. The first three arguments point to the potentially negative consequences of free movement, whereas the last four rest on deontic grounds.

The preservation of national culture and identity

The first argument for the state's right to exclude claims that people have a legitimate interest in maintaining their 'cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches backward historically' (Miller 2014, 370). Immigrants bring with them new values, customs, and beliefs that have the potential of transforming – some would say eroding – the public culture of the nation. Thus, if it is to retain a certain degree of control over the course of events, including how the culture evolves over time, a national community needs to retain a certain degree of control over its borders.

To begin with, one may question why it is the *state* that has the right to exclude if we are concerned about *national* cultures (Higgins 2013, 34–35). A more consistent application of this argument would require that states devolve their power over admissions to national communities. Even so, one might still wonder why national cultures are the only ones worthy of protection. Many municipalities and subcultures have a distinct identity whose residents or members have a special interest in preserving. Does this entitle them to exclude anyone who does not share that particular identity? To this, it may be objected that only national cultures are robust enough to qualify for protection.[8] This requires, as Cole (2000, 90) and Pevnick (2011, 141) note, a 'thick' understanding of national culture, constituted not only by a shared commitment to democratic principles, but also by the engagement in certain cultural practices (and perhaps also by the belonging to the same ethnic group). The problem with this account is that not every member of a nation meets such demanding criteria. For example, Romanies in Europe constitute a separate ethnic group with their own cultural practices. This would entail that cultural and ethnic minorities (or, for that

[8]In this regard, Miller (1995, 27) mentions five characteristics that serve to distinguish national identity from other forms of identity: it is '(1) constituted by shared belief and mutual commitment, (2) extended in history, (3) active in character, (4) connected to a particular territory, and (5) marked off from other communities by its distinct public culture.'

matter, any citizen who does not abide by democratic principles) might be prevented from entering or required to leave the national territory.

Setting these difficulties aside, there is a more fundamental challenge to this argument. It seems to assume (1) that cultural changes are only exogenous and (2) that people have a right to avert cultural changes.[9] The first assumption is clearly false. For example, the exodus from the countryside to the city over the past century brought about profound changes in the economic, political, and social structure of Spain, to the point of altering the linguistic composition of the Basque Country and Catalonia. Could the local authorities of the time have forbidden internal displacement to protect cultural minorities and preserve the rural livelihood? Judging by the second assumption, it seems so. The following passage from Tamir (1993, 151) is highly illustrative in this regard:

> Ensuring the ability of all nations to implement their right to national self-determination would then lead to a world in which traditional nation-states wither away, surrendering their power to make economic, strategic, and ecological decisions to regional organizations and their power to structure cultural policies to local national communities.

Given that immigration usually affects 'their power to structure cultural policies', local national communities should have the right to control their borders. One might reply that strategic decisions such as this should fall on regional organizations, but this leaves the core of my argument intact. What matters is not who makes the decision, but that the decision be made. If the cultural continuity of a nation were in jeopardy due to a large influx of culturally dissimilar immigrants, the regional organization would then be entitled to act. This applies to both internal and external migration: to the extent that the prospective migrants pose a threat to the cultural continuity of the nation, they may be denied admission. In fact, there is every reason to think that in a world like the one envisioned by Tamir, where national communities took centre stage, cultural differences would be likely to intensify, and so would internal barriers to free movement.

We do not need to evoke tall tales. Big cities are experiencing major disruptions today. They have become attraction poles for many nationals, immigrants, and tourists. Some of their former residents have been expelled to the outskirts as a result of housing shortages, high rental prices, and touristification. Others have seen their neighbourhoods turned into a 'melting pot'. Added to this is the problem of depopulation in rural areas. If internal freedom of movement is presumably driving these changes, the argument goes, it may be necessary to curtail it in order to avoid such undesirable outcomes.

Domestic social justice

The second argument takes various forms, but all of them point to the negative impact of immigration on the most disadvantaged compatriots.[10] Here I will focus on two

[9] If the assumption was instead that people have a right to avert exogenous cultural changes *only*, we would be left wondering whether it is possible to do so without isolating oneself completely from the outside world, including international trade and foreign media.

[10] To justify the priority of compatriots, some appeal to the relevance of state coercion (Blake 2001), others appeal to the ethical character of national communities (Miller 1995), and yet others take it for granted without further explanation (Borjas 1995).

major concerns: the effects on the welfare state and the labour market. According to the first, a country with generous social welfare benefits would attract a large number of immigrants, which could jeopardize the viability of the system itself (Borjas 1995, chap. 6). The second hypothesis holds that foreign labour competes with domestic labour and devalues wages. This harms less qualified workers and benefits employers and better-off citizens the most (Cafaro 2015, chap. 4). The underlying worry in both cases is that open borders would undermine domestic social justice (Macedo 2018).

Even though the empirical evidence is inconclusive,[11] let us assume that the hypothesis turns out to be true, and that freedom of movement is regressive in redistributive terms. Note, however, that the same can be said about internal mobility. Large cities tend to concentrate greater opportunities and attract high-skilled workers from the rural and less industrialized parts of the country. Most countries are not immune to this trend. For example, the so-called 'empty' Spain is losing population along with public and private investment, thus exacerbating interterritorial inequalities. In this sense, internal mobility can have just as negative consequences for social justice as external mobility. What is more, according to Borjas (1995, 115–118), the so-called 'welfare magnet' effect does not play a determining role in the decision to migrate, but it does bear on the choice of residence *within* the country, resulting in the geographical clustering of immigrants in those regions that offer greater benefits. Therefore, rather than prohibiting their entry into the country altogether, it would make more sense to prevent their settlement in certain parts of the country.

National security and public health

The third argument is perhaps the least controversial when it comes to limiting freedom of international movement. Even the staunchest advocates of this right tend to acknowledge that, should it compromise other fundamental rights and freedoms, its restriction would be justified (Carens 1992, 25; Hidalgo 2019, 57; Oberman 2016, 33). States claim to promote the general interest of their citizens, which includes protecting national security and safeguarding public health. However, the distinctive feature of this kind of threats, as the COVID-19 pandemic has shown, is that they span across borders. Any border control is rendered useless if it does not come with additional constraints on internal mobility.

The same goes for terrorist attacks. Even a zero-immigration policy would be of dubious effectiveness in its prevention, since many terrorists are nationals, naturalized citizens or permanent residents of the country, become radicalized after their arrival, come with a non-immigrant visa, or enter clandestinely (Bergen and Sterman 2021). In a recent survey article, Helbling and Meierrieks (2022, 992) find 'little evidence that stricter migration policies actually result in less terrorism. Rather, certain policies that alienate the migrant population appear to incite terrorism.' 'In the end, if we really want to deflate terrorism's impact we will need particularly to control ourselves' (Mueller 2006, 143).

[11] As Kukathas (2021, 132) observes, '[e]vidence pointing to losses endured by immigrant-welcoming societies suggests, at worst, modest losses overall, while evidence pointing to gains suggests only modest gains.'

Freedom of association

The fourth argument has been developed most notably by Christopher H. Wellman in three simple steps: '(1) legitimate states are entitled to political self-determination, (2) freedom of association is an integral component of self-determination, and (3) freedom of association entitles one to *not* associate with others' (Wellman and Cole 2011, 13). From these premises he concludes that states have the right to exclude (or not to associate with) outsiders. Let us assume that both the premises and the conclusion are correct. The question remains whether only states have a right to self-determination and therefore to control immigration, and whether this right applies inside as well (van der Vossen 2015, 277). The author himself provides the answer to this question. In a previous work, he claims that any group large enough to adequately perform the requisite functions of a state has the right to self-determination and secession (Wellman 1995).

In this case, it would not be the national government, but subnational governments which, in the exercise of their right to self-determination, could restrict immigration from other parts of the country.[12] This detail does not alter in the least the main thesis of the article, namely, that any consideration that allows limiting external mobility also allows limiting internal mobility. The holder of the right changes, but the content of the right does not. In a more recent work, Wellman (2016) directly addresses the implications of his argument for internal mobility and concedes that it can be curtailed without violating human rights so long as people have access to an adequate range of opportunities within that area. As he puts it:

> if my human rights would not be violated by my inability to migrate east of the Mississippi after the East seceded from the West, then why would my human rights be violated by my inability to move east of the Mississippi within the current context?. (Wellman 2016, 90)

Democratic self-government

The fifth argument has been advanced in different versions, but it can be subsumed under the concept of democratic self-government. Unlike freedom of association, the right to control immigration derives in this case from the right of the demos to govern itself, for the decision of whom to admit into the territory and citizenship is part and parcel of the process of self-determination (Song 2019, 69). To the extent that the incorporation of new members produces changes in the composition of the body politic and affects the decisions that will be made in the future, communities should be able to design their own immigration policies if they want to retain a certain degree of control over their future course (Miller 2016b, 62–63). Recalling Walzer's (1983, 62) famous words:

> Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life.

[12]Pevnick (2011, 62) makes the same point: 'the associative argument does allow California, and even Los Angeles, to block movement – but only at the cost of secession.'

This argument faces several problems. For one, it is not at all clear who the holder of the right is, as there are multiple criteria to delimit the demos. Ultimately, they all rest on the exclusion of some group of people, something difficult to justify considering that the demos is unbounded in principle (Abizadeh 2008). According to democratic theory, any instance of coercion by political power should be justified to all those people over whom it is exercised. A paradigmatic case is that of the border regime, which subjects members and non-members of the political community alike to the coercive power of the state. Accordingly, any limitation on freedom of movement should be justified to the subjected parties, whether citizens or foreigners. This includes internal mobility, which could be rightly suspended as long as democratic procedures are respected.

The only way to circumvent this obstacle is by appealing to the importance of freedom of movement for the functioning of democracy. Citizens must be able to move freely around the country in order to interact with compatriots, learn about each other's problems, and share their experiences. This fosters solidarity and empathy among different people and raises awareness about the common good. But above all, freedom of movement stems from the need to treat everyone equally and to establish checks and balances in order to forestall potential abuses by the government such as spatial segregation and the discrimination of minorities. According to Hosein (2013, 34, emphasis added), 'the values of democracy and political equality both support freedom of *intranational* movement. These values do not seem to demand similarly extensive freedom of *international* movement.' This is where he gets it wrong, though, given that these same values could be put forward to justify internal restrictions on movement. There is an important disanalogy between restrictions on freedom of international and freedom of intranational movement that calls into question the very idea that the values of democracy and political equality actually demand freedom of movement at the domestic level, but not at the international level. As Lenard (2015, 4) points out, when internal freedom of movement is restricted,

> 1) citizens have access to the environments in which these restrictions are agreed, and 2) these restrictions, within a democratic state, are subject to a commitment to equality which ensures that wherever restrictions on movement are implemented, doing so does not violate the fundamental [political] equality that underpins liberal democratic practice. These standards do not apply in the international environment.

As long as citizens have a right of democratic participation in the political process that determines the content of internal mobility constraints, their inability to move to other parts of the country need not entail wrongful discrimination or else render them vulnerable to abuse. Suffice it to say, these constraints must be uniformly applied rather than aimed at particular groups, and there must be adequate procedural safeguards in place to forestall potential abuses. If restrictions on freedom of movement are to be justified, they must be used to promote the general interest or to pursue a permissible public policy goal. But this is nothing new. Just as states cannot discriminate against potential immigrants on spurious grounds when they control mobility abroad, neither should they discriminate against actual citizens when they control mobility at home. In fact, the former is much more likely a risk than the latter, and yet we do not thereby conclude that states lack the right to exclude immigrants. Consequently, if democratic states

have the right to restrict freedom of international movement despite the actual risk of discrimination against immigrants, then a fortiori they can have the right to restrict freedom of intranational movement despite the marginal risk of discrimination against citizens.

The right to avoid unwanted obligations

Blake (2013) has made a somewhat different argument in favour of the state's right to exclude immigrants, based on the right of its citizens to be free from unwanted obligations. Immigrants impose new obligations on citizens without their consent, including that of protecting their human rights, something that citizens can in principle refuse.[13] According to his 'jurisdictional theory of immigration', states are the only ones that can exercise this right, because the subnational levels of government lack effective authority over the territory and its population. In the case of federal countries and some supranational organizations, the reason is different, having to do with the shared project of creating a single political union, which requires that the federated or member states waive their right to exclude (Blake 2020, 81). This same concern has led us to limit the power of subnational governments over admission, but this does not rule out the possibility that the federal government itself wields that power on their behalf. As long as consistency in the application of measures is respected, the restriction of internal mobility by the latter need not be 'anathema to the project of creating a single political community' (Blake 2013, 123). As I said before, even if the holder changes, the right remains the same.

Furthermore, people constantly incur unconsented obligations, and their freedom is equally affected no matter these come from within or outside the border. In this article, Blake does not explicitly address the moral difference between the obligations imposed on us by our compatriots and those imposed on us by foreigners such that the former are more demanding and bind us to a greater extent than the latter. By calling for a justification on the part of foreigners for their decision to immigrate, but not for a justification on the part of nationals for their decision to stay in the country, Blake implicitly assumes that the obligations one has with respect to those who are born in one's own country are morally different from the obligations one has with respect to immigrants (Kates and Pevnick 2014, 190). But this difference is precisely what his theory was meant to explain.

The relevance of state coercion

The only relevant difference between them that could justify this partiality towards compatriots is that they participate in the collectively upheld and coercively imposed system of laws embodied by the state (Blake 2001; Nagel 2005). Foreigners, for their part, are under the jurisdiction of their own state, and are only tangentially affected by others. This fact, known as the relevance of state coercion, is what presumably explains the different treatment in each case. Freedom of movement is supposed to be part of the

[13]Of course, there may be situations where the rights of immigrants prevail over the rights of citizens, especially when the former's human rights are not adequately protected in their country of origin (Blake 2013, 125–126).

bundle of rights that states owe to their citizens as a justification for the authority they exercise over them, a justification that is not equally owed to foreigners (Blake 2005, 235). As a result, 'even if the interests underlying both freedoms [internal and external freedom of movement] are symmetrical, the duties that citizens of a receiving state owe to each other and the duties that they owe to noncitizens are asymmetrical' (Yong 2017, 470). As Blake (2008, 967–968) puts it:

> each case of coercion will give rise to different forms of justification, which in turn will give rise to distinct moral rights and duties. Not all coercion, after all, looks quite like the ongoing and pervasive power of a political state over its citizens. […] When individuals face the shared web of coercion constitutive of a modern political state, they acquire distinct duties to one another in virtue of this fact […] As such, it would be a mistake to regard their [non-members'] mobility rights as being in any way comparable to those of current members.[14]

For example, Spanish citizens are not allowed to vote in the French presidential elections, but nothing in this picture undermines their moral equality *vis-à-vis* their French neighbours. This is because different institutional contexts give rise to different sets of rights and duties. But are mobility rights part of the bundle of rights exclusive to citizens? To see why this is not the case, suppose that you live in a residential complex with a swimming pool and a tennis court that only residents have access to. The exclusion of outsiders from these facilities does not, on the face of it, undermine their moral equality. But suppose now that some outsider wants to buy or rent a house there. Would the community be entitled to exclude her? Unless she were given a good reason – and Blake's does not seem to be one[15]—, this exclusion would undermine her moral equality. Similarly, the fact that I am not a French citizen may explain why I cannot vote in the French presidential elections at the moment, but it does not explain why I cannot enter France and become a French citizen in the future.

More importantly, the fact that those who belong to the state deserve special consideration for the coercion they are subject to does not settle the matter of why state membership is morally significant in the first place. In this sense, rather than a justification, it offers a descriptive account of state coercion which ultimately fails to demonstrate why membership is a morally relevant criterion that justifies the preferential treatment of citizens. Therefore, any restriction on mobility (internal or external) should apply to all persons regardless of their nationality. In this case a fortiori, because the degree of border coercion is the same (or greater) over foreigners as it is over citizens.

In short, the most frequently cited arguments in favour of the right of states to control their borders are not exclusive to mobility abroad and can therefore be used as a rationale for controlling mobility at home. The considerations are in both cases the same, so there is no reason to treat them differently. Ergo, rephrasing Cole (2000, 46), if it can be shown that the state *has* the right to control external migration, it follows that it also has the right to control internal migration, 'the two stand and fall together.'

[14]The order of the last two sentences has been reversed.

[15]Blake would probably tell her that, since she is not subject to the rules of the community and she does not pay community fees, she has no right to become a member. This argument, as Abizadeh (2016, 113–114) notes, is question-begging: if whether of not one is subject to the coercive power of the state depends on whether or not one has been admitted, then the fact that one is not subject to the coercive power of the state because she has not yet been admitted cannot be cited as a *justification* for denying her admission.

An apagogical argument for open borders?

Throughout the article I have tried to show that every reason that justifies the limitation of freedom of movement at the international level justifies the limitation of freedom of movement at the national level, since the same considerations apply. Migration is therefore either a fundamental right at all levels, or the interest of the community in controlling it prevails. What cannot be consistently upheld in any case is the right of a state to control external migration while at the same time refraining itself from exercising the slightest control over internal migration when the interests at stake are the same. Does this mean that there is a right to immigrate to other countries?

In order to answer this question, it may be helpful to take a closer look at the logical reasoning that has formed the backbone of my argument. Instead of assuming the right to internal freedom of movement to then affirm the existence of a right to external freedom of movement, I have assumed the absence of a right to external freedom of movement to deny the existence of a right to internal freedom of movement. The premise is in both cases the same: if there is a right to internal freedom of movement, there is a right to external freedom of movement. The only difference is that while in the first case the antecedent is assumed in order to affirm the consequent (*modus ponens*), in the second case the consequent is questioned in order to deny the antecedent (*modus tollens*). In fact, the so-called cantilever argument is nothing more than a *modus ponens*, according to which if P implies Q, and if P is true, then Q is also true, where P means that there is a right to internal freedom of movement and Q means that there is a right to external freedom of movement. In formal language: $P \rightarrow Q, P \vdash Q$. In natural language: (1) if there is a right to internal freedom of movement, there is a right to external freedom of movement; (2) there is a right to internal freedom of movement; (3) therefore, there is a right to external freedom of movement. For my argument, I have used a *modus tollens*, according to which if P implies Q, and Q is not true, then P is not true. In formal language: $P \rightarrow Q, \neg Q \vdash \neg P$. In natural language: (1) if there is a right to internal freedom of movement, there is a right to external freedom of movement; (2) there is no right to external freedom of movement; (3) therefore, there is no right to internal freedom of movement.

Hereupon it is possible to build an apagogical (or reductio ad absurdum) argument for open borders. The objective of this type of argument is to demonstrate that, if proposing a certain hypothesis entails denying a previously assumed thesis (contrast premise), to avoid a logically impossible synthesis (i.e., that the contrast premise is true and false at the same time), such hypothesis must necessarily be rejected in favour of its alternative (Rodríguez-Toubes 2012, 93). My argument rests on two premises: on the one hand, that it is not justified to prohibit internal freedom of movement and, on the other, that if it is justified to prohibit external freedom of movement, then it is justified to prohibit internal freedom of movement. By affirming that it is justified to prohibit external freedom of movement (hypothesis) we are denying, by *modus tollens*, that it is not justified to prohibit internal freedom of movement (contrast premise), given that if it is justified to prohibit external freedom of movement, then it is justified to prohibit internal freedom of movement (second premise). Therefore, to avoid conceding that it is justified to prohibit internal freedom of movement (contradiction), we must reject that it is justified to prohibit external freedom of movement (hypothesis), which leads us to the conclusion, by means of a reductio ad absurdum, that it is not justified to prohibit external freedom of movement. Laid out schematically:

(1) It is not justified to prohibit a person from moving freely within the territory of the state in which she resides (contrast premise).
(2) If it is justified to prohibit a person from moving freely between states, then it is justified to prohibit a person from moving freely within the territory of the state in which she resides (second premise).
(3) It is justified to prohibit a person from moving freely between states (hypothesis to be refuted).
(4) It is justified to prohibit a person from moving freely within the territory of the state in which she resides (this statement is deduced from 2 and 3 by *modus tollens*).
(5) It is and it is not justified to prohibit a person from moving freely within the territory of the state in which she resides (this contradictory statement follows from 1 and 4).
(6) It is not justified to prohibit a person from moving freely between states (this conclusion follows from statements 3-5 by reductio ad absurdum).

Stated in the formal language of propositional logic, based on the following propositions:

* p = It is justified to prohibit a person from moving freely within the territory of the state in which she resides.
* q = It is justified to prohibit a person from moving freely between states.

1. $\neg p$	Contrast premise
2. $p \rightarrow q$	Second premise
3. q	Hypothesis
4. p	MT (2, 3)
5. $p \wedge \neg p$	I$\wedge$ (1, 4)
$\neg q$	I$\neg$ (3–5) (Reductio ad absurdum)

In conclusion, according to the principle of coherence between internal and external mobility, if restrictions on external mobility are justified, so are restrictions on internal mobility. Therefore, anyone who intends to justify the former must be ready to accept the latter (e.g., Barry 1992, 284; Wellman 2016, 89–90). But, if it is not justified to prohibit a person from moving freely within the territory of the state, then it is not justified to prohibit that person from moving freely between states either. It is, in this respect, an apagogical argument for open borders, whose strength depends on whether or not the contrast premise is accepted, namely, that there is a right to internal freedom of movement.[16]

[16]Another possibility would be to reject the second premise altogether, arguing that the limitations on freedom of movement are due to different reasons in each case. But if the principle of coherence between internal and external migration holds true, this would not be possible.

Conclusion

Political philosophy has long taken for granted the right of states to control immigration, as well as their obligation to permit emigration and freedom of movement within borders. Only recently has this asymmetry been called into question. The present article contributes to this debate by proposing a new approach to address the gap between internal and external mobility rights. Instead of deriving freedom of international movement from the widely accepted right to freedom of national movement (*modus ponens*), it has explored the possibility of extending restrictions on mobility from the international to the national realm (*modus tollens*). The principle of coherence between internal and external migration states that if restrictions on migration between countries are justified, restrictions on migration within countries are justified as well.

To see why, it has surveyed the most frequent arguments in support of the right to exclude outsiders, demonstrating that they also support the right to exclude insiders, for the interests at stake are in both cases the same. Absent a strong justification to the contrary, states cannot coherently restrict mobility abroad while refusing to restrict mobility at home, or vice versa. Finally, it has made an apagogical (or reductio ad absurdum) argument for open borders. If claiming that it is justified to prohibit external freedom of movement will lead us to deny that it is not justified to prohibit internal freedom of movement, one must either conclude that it is not justified to prohibit external freedom of movement or assume that it is justified to prohibit internal freedom of movement.

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COOPERATION, DEMOCRACY, AND COERCION: ON THE GROUNDS AND SCOPE OF FREEDOM OF MOVEMENT

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Abstract

It is often believed that domestic principles of justice cannot ground freedom of international movement. Some argue that since principles of justice are not global in scope, justice does not require freedom of movement at the global level. This is problematic, for it confuses the grounds with the scope of justice. Given that the scope of justice is potentially global, freedom of movement must also be global in scope. Others have argued that the grounds of freedom of movement themselves are restricted in scope. If cooperation, democracy, and coercion are what presumably ground the right to freedom of movement, to the extent that they are not global in scope, freedom of movement need not be global in scope either. In this article, I argue that even if the grounds of freedom of movement are or should not be global in scope, freedom of movement must be.

Keywords: freedom of movement; justice; migration; open borders; statism.

1. Introduction

Debates about the scope of justice have been spearheaded by cosmopolitans and statists. 'According to *globalists* [or *cosmopolitans*], equality as a demand of justice has global scope. *Internationalists* [or *statists*], by contrast, believe that equality as a demand of justice applies only among members of a state' (Sangiovanni 2007, 6). The disagreement between the two comes down to the implications of moral equality at the global level: whereas statists believe that justice is sensitive to the political relationships and/or institutional context in which individuals stand, cosmopolitans either deny that such relationships or context matter morally (*non-relational* cosmopolitans) or else contend that they are also present in the international realm (*relational* cosmopolitans). This quarrel between statists and cosmopolitans has direct implications for immigration.

As Yong (2016, 819–20) suggests, '[s]ince internationalists reject a global scheme of equal protection for basic rights, global equality of opportunity, and global economic egalitarianism, they are not bound by their background commitments to accept the free migration view'. To the extent that the grounds of justice are not global in scope, it might be argued, justice does not require freedom of movement at the global level.

In this article, I want to challenge this widespread assumption. In the first part, I will argue that even if the grounds of justice are restricted to the state level, freedom of movement is not. In other words, I will grant the statist view on the grounds of justice but attack its supposedly restrictive implications for the scope of freedom of movement. In the second part, I will argue that even if the grounds of freedom of movement themselves are restricted to the state level, freedom of movement is not. For that purpose, I have selected what I take to be the strongest arguments in support of the state's right to exclude: the cooperation-, democracy-, and coercion-based arguments. Each argument adopts one of these principles as the ground of justice and freedom of movement. For example, the cooperation-based argument holds that justice and freedom of movement are grounded in, and hence its scope is determined by, cooperation; and so on, *mutatis mutandis*, with the other arguments.

I believe that these arguments are the strongest because they do not assume any controversial premises such as the ethical significance of nationality, which could be regarded as morally arbitrary by many liberals; and they are able to justify the existence of more stringent, usually egalitarian, principles of justice at the state level without neglecting the duties of justice at the international level. These considerations rule out, on the one hand, nationalist and communitarian defenses of the right to exclude (Meilander 2001; Miller 2016; Walzer 1983) and, on the other hand, some cosmopolitan arguments against a human right to immigrate (Brock 2009; Higgins 2013). In other words, I will focus on so-called 'statist' accounts of the right to exclude. Unlike nationalists, statists do not appeal to any cultural elements or identity markers, but rely on the features of or functions inherent to the state in order to justify the right to exclude. In contrast, most cosmopolitans reject that states have a right to exclude. The aim of this article is to show that one can derive freedom of international movement even from statist premises.

For present purposes, then, I assume what I take to be the strongest statist position on global justice, according to which justice 'applies only to a form of organization that claims political legitimacy and the right to impose decisions by force [namely, the state], and not to a voluntary association or contract among independent parties concerned to advance their commons interests' such as international bodies and treaties (Nagel 2005, 140). This rules out, for instance, the global institutional order as a site of justice, insofar as it relies for enforcement on the willingness of sovereign states. The political conception of justice does not deny the existence of a secondary duty to promote just institutions for societies that do not have them. But until there is a supranational agency that rules over the whole world and has the power to compel everyone, including sovereign nation-states, global justice cannot be done (2005, 121). I acknowledge that selecting modern states as the appropriate site of justice 'arbitrarily favors the status quo' (Beitz 1983, 595, cited in Abizadeh 2007, 336 and Tan 2004, 59), because it is a purely contingent historical fact that the world is organized as it is. But recall that I am working under statist assumptions on the grounds of justice and freedom of movement in order to challenge the allegedly restricted scope of freedom of movement.

2. The Grounds of Justice

It is often believed that domestic principles of justice cannot ground freedom of international movement. This belief rests on a confusion between the grounds and the scope of justice. A ground of justice is a *condition* for principles of justice to arise. On the other hand, the scope of justice refers to the *range of persons* who have claims and duties of justice. Suppose that two people, A and B, stand in a given relationship and/or share the same institutional context. This relationship and/or institutional context is in turn mediated or governed by political institutions, usually states. For statists, the ground of justice is given by this relationship and/or institutional context, whereas the scope of justice is given by certain features common to A and B, namely humanity. For non-relational cosmopolitans, by contrast, the ground and the scope of justice are the same – i.e., humanity – irrespective of the relationship between A and B and no matter whether they share an institutional context or not. As far as political institutions are concerned, whereas cosmopolitans conceive them as means for the realization of independently derived principles of justice (e.g., equality of opportunities, sufficient resources,

capabilities…), statist derive principles of justice from the principles that (ought to[1]) regulate such institutions. Accordingly, the principles of justice will vary from one institution to another. It is true that all political institutions must respect the moral equality of persons, but because each political institution will (and should democratically) determine what respect for moral equality entails in a different way (e.g., equality of opportunities, sufficient resources, capabilities…), they will be governed by different principles of justice. This allows statists to account for the global scope of justice without claiming that the grounds of justice are global in scope.

The argument that (P1) X grounds justice and that (P2) X is restricted to the state does not *ipso facto* entail that (C) the scope of justice is restricted to the state. This is because some demands of justice extend to every human being by virtue of their common humanity;[2] in other words, the scope of justice is potentially global, even if the grounds of justice are not. What does this mean? It means that people have certain claims and duties of justice to or against each other that are independent of the institutional context in which they find themselves and the relations in which they stand. At the end of the day, if duties of justice arose only out of a duty of compliance with the principles of justice that regulate existing political institutions, it would be hard to explain why people have duties of justice absent the relevant political institutions. At the very least, then, people must have a residual or natural duty to (help) establish minimally just institutions in addition to their primary duty of compliance with the principles of justice that regulate the political institutions of their own society (Rawls 1971, 293–94).[3] The former duty is mute about the content of the principles of justice of those institutions, such that they need

[1] I say 'ought to' because I want to avoid what Andrea Sangiovanni (2008) calls 'cultural conventionalism', according to which the justice of an institutional system derives from the cultural practices that sustain it. I concur with him that 'the content, scope, and justification of a conception of justice is worked out in the light of both its intended role within existing institutions and the interpretation of the point and purpose of those institutions' (2008, 150).

[2] I say 'some' because I am assuming that the demands of justice at the state level are more stringent than the demands of justice at the global level. If freedom of international movement results from internationalist or statist premises, then a fortiori it does from globalist or cosmopolitan premises (see Holtug 2020).

[3] Strictly speaking, natural duties are not duties of justice, but moral duties. This is because they cannot be enforced, as there is no such thing as a natural (i.e., pre-political) political institution. In my view, political institutions are the only site of justice; the very point of principles of justice is to regulate the functioning of political institutions, or more specifically, the way they distribute the benefits and burdens of social cooperation. Nevertheless, I believe that the scope of justice is potentially global, inasmuch as principles of justice have human beings as their ultimate concern.

not be, say, egalitarian, unless one already assumes that egalitarianism is a pre-institutional duty of justice, something that statists themselves deny.

Likewise, the content of the principles of justice need not be globally homogeneous. My claim is that the *scope* of justice is global, not that *principles* of justice are global in scope. It is one thing to say that justice is global in scope (i.e., that justice encompasses the whole humanity), yet it is another to say that justice is or should be articulated through institutions regulated according to the same principles that are global in scope. Principles of justice do not apply to persons, but to institutions.[4] Thus, for principles of justice to be global in scope, the whole world should be ruled by the same set of political institutions regulated according to the same principles of justice, or at least by separate but similarly structured political institutions regulated according to roughly the same principles of justice (something akin to a world government or a confederation of internally just and relatively homogeneous republics, respectively). To the extent that different political institutions regulated according to different principles of justice rule over different groups of people, principles of justice are not global in scope, but they are restricted to the particular political institutions (in this case, individual states) that rule over different groups of people (in this case, the citizens of each state).

An example might help. Imagine that society A has managed to establish relatively effective political institutions that provide basic public goods and protect the rights and freedoms of their citizens. In contrast, society B is a failed state: its political institutions are not able to provide basic public goods nor to protect the rights and freedoms of their own citizens. Citizens of A have, by virtue of their participation in their country's political institutions, primary duties of justice towards each other that arise from the very same principles that regulate those institutions. Citizens of B, on the other hand, despite being engaged in social cooperation, have thus far not been able to establish effective political institutions, and so they have no primary duties of justice towards each other. The only duty of justice that they have at this moment is residual, namely the duty to establish

[4] According to Rawls (1971, 6), 'the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation'. In this sense, '[t]he principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances' (1971, 47).

minimally just political institutions.[5] In this context, it could be said that the demands of justice (in this case, the claims and duties people have by virtue of their common humanity) with respect to society B apply equally to citizens of A and B: they both have a residual duty to (help) establish minimally just political institutions in society B. Once this is achieved, however, citizens of B will have the more stringent primary duties of justice toward each other than they currently have by virtue of their participation in B's political institutions.

So far, I have only argued that justice is potentially global in scope, meaning that everyone is bound to each other in certain ways by virtue of their common humanity. This entails at the very least that people have residual duties of justice to (help others) establish and maintain minimally just political institutions, which in turn must respect and protect basic rights, including freedom of movement. Of course, it could also be that minimally just political institutions need only respect and protect the rights of *citizens*, and so in this way the scope of freedom of movement should be restricted to the state (Blake 2005). The more fundamental challenge lies in showing that freedom of movement is global in scope *despite* principles of justice applying to the basic structure of society, i.e., the main institutions of the state. If principles of justice are not global in scope, and freedom of movement is grounded in principles of justice (as part of the scheme of basic liberties), then freedom of movement will not be global in scope either. If we want to conclude that freedom of movement is global in scope despite being grounded in principles of justice restricted to the state level, we will need to show that there is nothing in the grounds of justice that precludes the extension of freedom of movement at the global level. In this article, I discuss the most plausible grounds of justice: cooperation, democracy, and coercion.

There are three different senses in which cooperation, democracy, and coercion (X) might be said to ground justice: in the first sense, X is a *precondition* of justice; in the second, X is a *constitutive aspect* of justice; in the third, X is *instrumental* to justice.[6] Each of the grounds of justice takes on a different meaning of ground: cooperation is a precondition

[5] If duties of justice were restricted to the duty of compliance with principles of justice regulating political institutions, we could not explain why citizens of B have any duties of justice at all, since they do not yet share any political institution regulated by principles of justice.
[6] I draw here on Abizadeh's (2007, 324) useful discussion of the three ways in which justice may be said to 'require' a basic structure.

of justice, coercion is instrumental to justice, and democracy is constitutive of justice. To put it succinctly: *principles of justice arise out of a cooperative enterprise due to the need of its participants to establish fair terms of social cooperation through coercive means and according to democratic principles and procedures*. Broadly speaking, the argument against freedom of international movement is as follows:

1. Cooperation/democracy/coercion is a ground of justice.
2. Justice requires freedom of movement.
3. Cooperation/democracy/coercion is restricted to the state level.
4. Therefore, freedom of movement is restricted to the state level.

Let us discuss one argument at a time, each of which is based on a different ground of justice, which in turn corresponds to a different conception of 'ground'. The first argument is that cooperation grounds justice. According to Andrea Sangiovanni (2007, 4):

> equality as a demand of justice is a requirement of reciprocity in the mutual provision of a central class of collective goods, namely those goods necessary for developing and acting on a plan of life. Because states (except in cases of occupied or failed states) provide these goods rather than the global order, we have special obligations of egalitarian justice to fellow citizens and residents, who together sustain the state, that we do not have with respect to noncitizens and nonresidents.

Citizens contribute, through their collective efforts (from taxes and political participation to mere compliance with the law), to the creation and maintenance of a set of institutions (i.e., the state) that provide us with basic public goods and 'free us from the need to protect ourselves continuously from physical attack, guarantee access to a legally regulated market, and establish and stabilize a system of property rights and entitlements' (Sangiovanni 2007, 20). Without others' contributions, 'we would lack the individual capabilities to function as citizens, producers, and biological beings' (2007, 21). Accordingly, every citizen is due a fair share for her contribution to the joint social product. While the cooperation- or reciprocity-based argument does not in principle preclude the extension of principles of justice to the global level or deny the existence of increasing levels of interdependence among countries, until there is a global order in place

with the regulative, productive, and protective capacities of the state, there will be no such need.

It seems to me that the most plausible conception of 'ground' in this case is 'to be a precondition of'.[7] In order for justice to arise, there needs to be a group of people working together to produce a set of goods and services to the distribution of which principles of justice (ought to) apply. In a hypothetical fully autarchic world, 'because there are no social and political institutions regulating the distribution and production of basic collective goods between […] peoples, there is also no basis for redistribution. In the absence of such interaction', there is no 'demand for distributive egalitarianism' (Sangiovanni 2007, 27). If people did not cooperate with each other, there would be no just or unjust distribution of goods and services, not only because there would probably be no goods and services to distribute to begin with, but also because justice, it may be argued, is relational, i.e., it arises among participants in a scheme of social cooperation.[8]

It is in this context that we should understand the verb 'preclude': reciprocity precludes the extension of principles of justice to foreigners because they do not participate in the production of goods and services that are to be distributed among participants of the scheme of social cooperation that the state constitutes. Distribution to foreigners would be inappropriate insofar as undeserved. There are at least two problems with this argument. The first is that foreigners do participate in the global supply chain. In an increasingly globalized world, countries not only depend on each other for the provision of goods and services, but national markets are so interconnected that economic shocks in one country are immediately felt across borders. The second and more important to this case is that foreigners are deliberately excluded from the state, and hence from contributing to the scheme of social cooperation, even if many would rather participate in it should they ever have the chance. To be undeserved, then, foreigners would have to be free riders who benefit from the goods and services produced by citizens yet did not

[7] Cooperation is not instrumental to justice, in light of the fact that cooperation can occur, however imperfectly, without principles of justice regulating its terms. And cooperation is not constitutive of justice because there is no principle of justice that calls for human cooperation simpliciter.

[8] To reiterate, I believe that even if two groups of people are isolated from, and therefore do not cooperate with each other, they nonetheless have residual duties of justice towards one other. My claim here is only that principles of justice regulate the fair terms of social cooperation, such that if there is no cooperation taking place between these groups, there is no need for principles of justice to apply.

contribute to their production. To the extent that this is not the case, the argument from cooperation fails.[9]

The second argument is that democracy grounds justice, in the sense of being a constitutive aspect of it.[10] Following Christiano (2006, 83), I submit that 'a society is just when it is structured [in such a way as] to advance the interests of its members equally'. It follows from this that justice cannot exist in an autocratic regime, where laws and policies are imposed by rulers against (or, at least, irrespective of) their subjects' will, and thus without taking their interests into equal consideration. In the face of the pervasive facts of diversity of interests, cognitive bias, fallibility, and reasonable disagreement as to what justice requires, 'the only principle for collective decision making that can guarantee that each can see that he is treated as an equal […] is the principle that each person ought to have an equal say in the process of collective decision making' (2006, 87). The principle of equality thus holds that those who have roughly equal stakes in collective decisions should have an equal say in their making. This is usually the case of modern democratic states, whose members inhabit a 'common world', meaning that all or nearly all their fundamental interests are roughly equally at stake in the decisions made by the state. By contrast, citizens of different countries do not have roughly equal stakes in the decisions made by international institutions. Consequently, it would be unfair to give everyone in the world an equal say, for some might reasonably complain that 'their interests are being given less than equal consideration on the grounds that others are given an equal say in matters that affect their interests more deeply than the interests of the others' (2006, 102).

I will take the argument at face value. What could 'preclude' mean in this case? If democracy precludes the extension of principles of justice to foreigners, it must be because foreigners do not participate in the political process that determines the content of laws and policies that only citizens are required to obey. To the extent that foreigners

[9] Sangiovanni (2007, 37) himself suggests that his reciprocity-based argument may be compatible with 'a prima facie claim in favor of open borders'.

[10] Democracy may be instrumental to justice, but I am unsure that democracy in and of itself invariably yields just outcomes, otherwise there would be no need for a political constitution that placed some matters out of the reach of democracy. Democracy is also not a precondition of justice, but the other way round. There can be no equal rights of democratic participation without a background of just institutions. By contrast, there can be, at least in theory, a more or less just regime even if it is not fully democratic. Needless to say, for it to be fully just, it needs to be fully democratic. This is why democracy is a constitutive aspect of justice.

are not subject to the political institutions of other states, it might be said that their exclusion from those states (and hence from the scope of principles of justice that regulate those institutions) is warranted. However, this ignores the fact that foreigners are subject to the border laws and immigration policies of other states and that they are usually required to comply with them under threat of penalty (Abizadeh 2008). More importantly, to say that foreigners may be permissibly excluded because they are not subject to the laws and policies of other states is question-begging. It begs the question because foreigners are by definition not subject to the laws and policies of other states. Therefore, in order to justify the exclusion of foreigners from the domain of democracy, it is not enough to say that they are not subject to the laws of a state, for they are not subject to its laws precisely because they are excluded from the domain of democracy. As Abizadeh (2016, 113–14) points out, if whether or not one is subject to the coercive power of the state depends on whether or not one has been admitted, then the fact that one is not subject to the coercive power of the state because she has not yet been admitted cannot be cited as a *justification* for denying her admission. Hence, the argument from democracy also fails.[11]

The third argument was that coercion grounds justice. Blake (2001) has convincingly argued that citizenship gives rise to a special concern for those who share liability to the coercive web of legal and political institutions constitutive of the state. This coercion is both a prima facie violation of the liberal principle of autonomy and necessary to establish a pattern of settled expectations without which autonomy is denied. Since we cannot eliminate state coercion, Blake suggests, it must be justifiable to everyone subject to it, especially to those who fare worse, which requires us to show that no other principle could make them any better off. This justification takes the form of egalitarian distributive justice.[12] To the extent that '[t]here is no ongoing coercion of the sort observed in the

[11] In a later article on immigration, Christiano (2008) seems to endorse open borders, subject only to the proviso that the arrival of new immigrants does not undermine the proper functioning of democratic institutions, which he deems necessary to the achievement of cosmopolitan justice. In his opinion, no new principles of justice arise in the context of the state. The state is just an instrument for realizing cosmopolitan principles of justice that exist irrespective of the institutional context.

[12] In Blake's (2001, 283) words: 'We have to give all individuals within the web of coercion, including those who do most poorly, reasons to consent to the principles grounding their situation by giving them reasons they could not reasonably reject – a process that will result in the material egalitarianism of the form expressed in the difference principle, since justifying our coercive scheme to those least favored by it will require that we demonstrate that no alternative principle could have made them any better off.' However, it is not clear that all instances of coercion are problematic, but rather only those that infringe on the autonomy of individuals. And if the ultimate aim of coercion is to protect autonomy, then either the

domestic arena in the international legal arena', there is no need to extend egalitarian principles of justice to the international realm (Blake 2001, 280).

There is more than one possible interpretation of 'ground' in this case, but I believe that the most plausible one is that coercion is instrumental to justice.[13] It is instrumental because absent state coercion, individuals would be unlikely to comply with the requirements of justice, nor would a fair distribution of the costs and benefits of social cooperation obtain. And if the latter were indeed possible, political institutions would be superfluous, for it would entail that the free will of individuals is sufficient to bring about a just distribution of goods.[14] So, when we say that coercion precludes the extension of principles of justice to foreigners, we could mean either that foreigners are legally exempt from coercion or that they cannot actually be coerced. The second interpretation would only be plausible if foreigners lacked the requisite capacities for autonomy. But since this is rarely the case, let us focus on the first interpretation. To say that foreigners are legally exempt from coercion thus means that other states must not subject them to coercion. To do otherwise would violate their right not to be coerced without justification. What form should that justification take? According to some, state coercion is only justified if those subject to it are given a right of democratic participation (Abizadeh 2008). According to others, state coercion is justified against a background of justice (Blake 2001). Be that as it may, the fact remains that foreigners are being coerced without justification, since they are excluded both from the democratic process and from the scope of justice. On the one hand, they are not given a right of democratic participation in the laws of other states despite being subject to some of them. On the other hand, they are excluded from the range of people who have claims and duties of justice despite being pervasively subject to border coercion. In fact, borders are one among the many instances of coercion at the

protection of autonomy is enough to justify coercion, or it needs to be explained why distributive equality is also necessary (Ronzoni 2022, 746).

[13] Coercion is not constitutive of justice, in the sense that being coercive is not part of what it means for an institution to be just. Sheer coercion is neither a precondition of justice, but rather an obstacle to it. I cannot see how a tyrannical regime might be a precondition of justice. To say that state coercion must be justified to all those subject to it via justice is not to say that absent state coercion justice ought not to exist. We should strive to achieve justice whether we share the relevant political institutions already or not, to which end state coercion (that is to say, political institutions) is instrumental.

[14] In Rawls's (1971, 249) words, 'a society in which all can achieve their complete good, or in which there are no conflicting demands and the wants of all fit together without coercion into a harmonious plan of activity, is a society in a certain sense beyond justice. It has eliminated the occasions when the appeal to the principles of right and justice is necessary.'

international level (Goodin 2016), yet principles of justice do not apply internationally. Therefore, the argument from coercion also fails.

In conclusion, to the extent that the scope (as opposed to the grounds) of justice is potentially global and justice requires freedom of movement, freedom of movement must also be global in scope. But there is a second, more promising, way to restrict the scope of freedom of movement. It consists in showing that the grounds of freedom of movement are not global in scope, but only hold at the state level. If cooperation, democracy, and coercion are what presumably ground the right to freedom of movement, and they are not global in scope, then freedom of movement need not be global in scope either. It is to this argument that I turn in the next section.

3. The Grounds of Freedom of Movement

There have been many attempts to restrict the scope of freedom of movement to the state. Just like justice, freedom of movement might be said to be grounded in cooperation, democracy, and coercion. First of all, freedom of movement is instrumental to cooperation: if people could not move around the country, they would not be able to engage in socially productive activities, and as a consequence cooperation would be severely impaired. Second, freedom of movement is a constitutive aspect of democracy: citizens must have equal rights of democratic participation, and participation is rendered meaningless in the absence of robust social rights and political freedoms, among them freedom of movement. Third, freedom of movement is a justification of state coercion: in order for state coercion to be justified, the state needs to protect the rights and freedoms of those subject to it, which presumably includes the right to internal freedom of movement. Given that social cooperation is most intense among citizens of a country, there is no global democracy or anything like it, and coercion by international institutions is by no means comparable to that exerted by states, the argument concludes, freedom of movement need not extend at the global level.

A straightforward response is that cooperation, democracy, and coercion are or could potentially be global in scope. There are increasing levels of global interdependence and intense trade relations among countries (Cohen and Sabel 2006), as well as a rich network of human rights treaties and obligations that states voluntarily assume, most notably in

relation to refugees and asylum seekers. Moreover, even if international institutions are far from democratic, there are global social movements and political activist networks that span across borders. Finally, state coercion is but one form of coercion among many, and focusing exclusively on it ignores the profound impact that these other forms of coercion have on the lives of foreigners, especially those from the Global South (Valentini 2011). What is more important, the fact that cooperation, democracy, and coercion are most intense at the state level does not mean that we should not strive to achieve greater levels of global cooperation, democracy, and (lawful) coercion (Valentini 2014). If there is no global basic structure, justice may require that we create one (Tan 2004, 59 fn. 30, 169–70; Velasco 2010, 360–61). However, these are controversial empirical and normative questions over which philosophers tend to disagree (e.g., Miller 2010a; Song 2012). The contribution of this article lies precisely in demonstrating that *even if* the grounds of freedom of movement are or should not be global in scope, freedom of movement must be.

Let us begin with the cooperation argument. Despite its intuitive appeal, few authors have sought to ground internal freedom of movement in social cooperation. What they have argued instead is that citizens are entitled to exclude foreigners from the fruits of their cooperative labor. Most prominently, Ryan Pevnick (2011, 44) asserts that 'by jointly constructing state institutions and contributing the resources necessary for their continuing feasibility, the citizenry gains an ownership claim that affords them at least some discretion in making future decisions about how those resources will be used'. Presumably, that discretion includes the right to decide with whom those resources will be shared. According to his associative ownership argument, citizens form an ongoing association that extends over time. Through their collective efforts (which range from physical labor and the payment of taxes to compliance with the law), citizens create and uphold the institutions of the state, thereby acquiring an entitlement to their benefits. 'Like the family farm, the construction of state institutions is a historical project that extends across generations'; and just as the value of a farm largely derives from the improvements made on it, so is the value of membership in a state to a large extent the result of the joint labor of its members (2011, 38). Consequently, citizens of a state have a prima facie right to exclude foreigners from its territory.

What matters for our purposes is that freedom of movement is instrumental to social cooperation. If people could not move around the country, they would not be able to engage in the sort of cooperative enterprises that lead to the production of social goods and the maintenance of the political institutions on which the production of these goods depends. By contrast, international institutions do not provide their members with the social goods necessary for autonomous functioning nor constitute the background against which individuals can engage in cooperation on fair terms (Sangiovanni 2007; see also Hosein 2013, 29–30). A degree of freedom of movement may be necessary for cooperation at the global level, but, so the argument goes, international institutions lack the capacity, authority, and accountability to fulfill the tasks of promoting individual autonomy and protecting people's basic rights and freedoms. This does not mean that a world government capable of regulating cooperation across borders may not arise in the future, but for the moment it is territorial states that are responsible for (and relatively successful at) securing fair terms of cooperation.

It is true that the current institutional order, characterized by the partition of the world into sovereign states with mutually exclusive jurisdiction over a territory, is the backdrop against which most human cooperation takes place; and that international institutions such as the World Trade Organization (WTO), the International Monetary Fund (IMF), and the World Bank, which provide a regulatory framework for cross-border economic activities, are but the creation of states. However, this does not by itself show that freedom of movement must be restricted to them. On the contrary, the more interconnected countries become, the more intertwined people's interests will be, and their dependency on each other will thereby increase. This will sometimes require them to be able to move to other parts of the world, as when structural adjustment plans, foreign business incursions, or free trade agreements cause deep transformations in the economy of a country and disrupt the livelihood of many people, thus expelling them from their homes in order to make a living (Sassen 2014).

A free-market liberal might retort that this is a regrettable but inevitable byproduct of globalization. As Lomasky and Tesón (2015, 162) put it, 'the loss of a job as a result of foreign competition is not an unjust harm because it is a purely *competitive* harm.' But just as people in the Global South are not entitled to preserve their traditional ways of living, neither are people in the Global North entitled to coercively exclude foreigners

from engaging with willing parties in mutually beneficial exchanges (Lomasky and Tesón 2015).

> This might mean that some people will lose business, and they will be worse of as a result (at least in the short term). But all this shows is that they were, in effect, enjoying an economic rent from closed borders – their income was artificially inflated compared to what the market otherwise would have supported. They enjoyed artificially high incomes at the expense of the poor (van der Vossen and Brennan 2018, 34).

Another potential worry is why the solution to this problem consists in opening borders rather than exporting aid to compensate those who have lost their jobs and home as a result of outside interference. As Kieran Oberman (2011) has argued, using immigration policy as an anti-poverty measure violates the human right to stay. Given the importance of this right, 'states are required to search for ways to address desperate poverty *in situ*, so that desperately poor people can fulfill their basic needs within their home countries' (Oberman 2015, 247). However, we should not conflate the human right to stay with the right to the underlying social, economic, cultural, environmental, and other conditions that make a place suitable for living. We need to separate the wrong of displacement from the wrong of having one's needs unmet (Ottonelli 2020, 106–7). Otherwise, we cannot account for the *specific* wrong experienced by those who are expelled from a place that is unsuitable for living (as when authorities demolish shanty towns because they are deemed unsanitary). If we understand the right to stay as the right not to be displaced from one's home or not to be forcefully relocated, as I believe we should, then it is perfectly possible to defend the human right to stay without claiming that those who are somehow forced to leave their homes as a result of the transformations brought about by globalization have a right to the conditions that would enable them to make a decent living in their home countries. For if they have such a right, it is not because of their right to stay.

Even in a fully autarchic world, there would always be issues of global concern whose solution requires international cooperation.[15] Think, for instance, of greenhouse gas

[15] Should this cooperation be among individuals, states, international institutions, or all of them? This question is relevant, for if it is only states (through their representatives) that should cooperate, it is not clear why individuals ought to be able to move across borders. In my view, international freedom of movement is part of the solution to the global problems that stem from the lack of coordination between states not so much because this right will allow individuals to cooperate more effectively across borders as

emissions, rising sea levels, global warming, the extraction of natural resources, nuclear disasters, cyber-crime, and infectious diseases, among others. These are problems whose effects span across borders and that no single country can manage to control on its own. Add to this the number of problems that plague today's increasingly globalized world (e.g., human trafficking, international terrorism, global poverty, regional wars, resource scarcity…), and it will be clear that cooperation among countries is all the more necessary. Closed borders contribute to this idea of self-sufficiency and control, when the truth is that we are more dependent on each other than ever before (Brown 2010). If only we realized that we share a single world, we would be more willing to take care of it.

To be sure, this does not yet establish that borders should be open, but only that concerted action must be taken at the global level. What role could freedom of movement play in this task? As Ball-Blakely (2021) has argued, freedom of movement would be a powerful tool for eliminating some of the most perverse incentives built into the global system. The current border regime allows rich and powerful countries to insulate themselves from the negative externalities of their actions. By contrast, if they 'experienced the spillover effects of production – or their foreign policy – they might work to prevent them from occurring' (2021, 76). In this sense, open borders might alter the incentive structure of the international order by forcing rich countries to internalize the costs of their own actions as well as the balance of power among countries by giving poor countries more leverage in global decisions.[16]

In addition to that, freedom of international movement would enhance the autonomy of the most disadvantaged and guarantee fairer terms of cooperation. Remember that the argument against freedom of international movement was that international institutions do not (yet) provide the social goods necessary for autonomy nor an institutional background against which individuals can engage in cooperation on fair terms. But this is partly because they do not enjoy freedom of international movement. Were individuals

because its absence dissuades states from taking effective concerted action against these problems (see the discussion below).

[16] Miller (2014, 371) has suggested that open borders would provide poor countries no incentive to control their population, since they could just 'export their surplus', and hence to limit resource consumption. However, we should not lose sight of the fact that it is high-income countries which are mainly responsible for climate change, whereas low-income countries suffer its consequences the most. In this sense, citing climate change as a justification for denying admission to the poor is morally akin to citing increased competition in the labor market for preventing the incorporation of women: in both cases, the privileged group has no right to maintain exclusive access to its benefits, since they are obtained at the expense of the excluded group.

allowed to move to other parts of the world, they would be able to access a wider range of options. By contrast, when people are trapped in countries that offer very little opportunities, their autonomy is severely impaired, and they are often forced to accept substandard working conditions. Likewise, when people are denied the freedom to move, they are usually prevented from enjoying a fair share of the benefits of social cooperation. This is especially true in a global economy where capital and labor (and, among the latter, high- and low-skilled workers) enjoy unequal mobility rights. As a result, 'citizens of low-income countries suffer a considerable power disadvantage in their relationships with TNCs [transnational corporations] and high-income countries' (Ball-Blakely 2021, 73). 'With TNCs able to leave in pursuit of cheaper production [while workers are unable to move in pursuit of better working conditions], workers have lost a powerful bargaining chip, diminishing already meager labor protection' (2021, 76). In the same vein,

> [a]ffluent, skilled, and white migrants face relatively relaxed borders, with many countries positively competing for them. However, citizens of low-income countries – particularly poor people of color – find either all-but impenetrable borders or admission only through restrictive (and exploitative) temporary worker programs or illicit entry. This asymmetry in mobility exacerbates an independent asymmetry in power (Ball-Blakely 2021, 67).

The cooperation-based argument for internal freedom of movement may be strengthened by an appeal to relational equality. Unlike luck egalitarians, relational egalitarians hold that inequality is problematic only when it *disadvantages* people, because it leads to the oppression, domination, exclusion, and/or stigmatization of some (groups of) individuals by others as a result of entrenched power asymmetries or due to the lack of rights (Anderson 2010). The issue is not with inequality per se, but with certain kinds of inequalities that originate among people who stand in an unequal relationship, namely those which express contempt for or reflect the inferiority of people who are regarded as moral unequals (Lippert-Rasmussen 2018). This problem is evident in the case of internal restrictions on freedom of movement.

Consider South Africa under Apartheid. During this period, black South Africans were subjected to severe restrictions on their freedom of movement and residence and were required to carry travel documents with them. These documents, called 'passes', specified

which areas they were allowed to enter or reside in, asking for special permits to travel beyond these areas. The so-called 'pass' laws were part of the broader system of racial segregation that divided the country along racial lines and treated black people as racially inferior and thus as morally unequal. By contrast, 'it is permissible for [globally] vulnerable groups to favor the admission of their own group members since such differential selection may not amount to treating or regarding cognate groups as inferior but rather as helping to secure the conditions of their own equality' (Akhtar 2022, 330).

One might argue that unequal relationships are only objectionable in the context of the state, as this is the context where individuals more closely interact and are most pervasively affected by others. Along these lines, Wellman (2008, 123) has written:

> given that the moral importance of any particular inequality is a function of the relationship in which the goods are distributed, the lack of a robust relationship between the constituents of a wealthy state and the citizens of a poorer country implies that this admittedly lamentable inequality does not generate sufficient moral reasons to obligate the wealthy state to open its borders, even if nothing but luck explains why those living outside of the territorial borders have dramatically worse prospects of living a rewarding life.

It is doubtful that 'nothing but luck' explains the radically unequal prospects that people face across countries. Be that as it may, to say that only unequal social and political relationships are objectionable does not mean that only inequalities among people who relate to each other in a given society or polity are objectionable. Relational inequality does not reduce to face-to-face interactions, but often involves social groups and collective agents such as states. What matters is that such relationships take place against an unjust structural background. In this sense, border regimes are the product of an unjust international order marred by enormous wealth and power disparities among countries. Consequently, when rich countries exclude immigrants coming from worse-off ones, they are wielding an unequal power over them (Sharp 2022). Finally, the lack of robust social relationships can result from wrongful exclusion. The point of South African Apartheid was precisely to prevent the interaction of blacks and whites. Similarly, the exclusion of immigrants is usually motivated by the reluctance to interact with them.

Second is the argument from democracy. Sarah Song (2017) has developed one of the most sophisticated versions of it. Her argument is based on the following three intuitive premises: (1) the demos has the right to self-determination; (2) the right to self-determination includes a right over membership; and (3) the demos should be bounded by the state. Control over membership is essential to collective self-determination, since the admission of new members produces changes in the composition of the demos, and thereby in the decisions that will be subsequently made. Hence, the state, as the trustee of the demos, has a right grounded in self-determination to decide on the admission of new members. As she puts it:

> The right to control immigration derives from the right of the demos to rule itself. The aspiration in democratic societies is that all members have an equal right to participate in shaping collective life. Deciding whom to admit into the territory and into political membership is a critical part of the task of defining who the collective is (Song 2019, 69).

For this reason, '[w]hen would-be immigrants enter or remain in a country without authorization, they sidestep the political process by which members of the political community can define who the collective is. This contravenes the right of collective self-determination itself' (Song 2019, 66). In this case, the right to freedom of movement derives from the need to treat all citizens equally and respect their autonomy, something that is not necessary at the global level, where there is no supranational authority which needs to ensure the equality of all people and promote their autonomy in the same way. Hosein (2013, 34) captures this idea nicely:

> [T]he values of democracy and political equality both support freedom of intranational movement. These values do not seem to demand similarly extensive freedom of international movement […]. In the absence of a world government there is no shared political institution whose decision making everyone on Earth must participate in together. Similarly, in the absence of a world government there is no institution that is required to favor equally every individual on Earth.

One could argue, following Oberman (2016, 36), that in a world where so many problems are global and the effects of the decisions taken in one country are felt across borders, it is crucial for democracy that citizens from all countries are allowed to interact with each other so that they can discuss and deliberate on these issues. It is only by interacting with

people from other countries that citizens can get to know the problems afflicting them and the effects that local decisions might have on distant others. It is in this way that people can come up with new ideas, common solutions, and effective policies to global challenges such as climate change, international conflict, transnational crime, and money laundering, to name just a few. But in order to do that, people need to be able to move and get together. Barriers to international movement hinder political mobilization, fuel parochialism, and shut out other awareness. This argument relates to the one made before about the importance of international mobility for cooperation. However, there is a more fundamental challenge to the democratic argument for immigration restrictions that does not hinge either on the importance of freedom of international movement to democratic politics or on the desirability of a world state.

On the one hand, and in response to the concern about the importance of freedom of international movement to democracy, one could simply note that a right to immigrate is not necessary for people from different countries to come together and deliberate on global issues. First, information and communication technologies have developed to such an extent that people do not need to be physically present in the same place to hold meetings and discuss global issues. If families do not break apart despite their members being thousands of kilometers away, if true friendships and romantic relationships are forged online, if people can work and study from home, and if successful businesses are managed from the headquarters of a foreign country, I do not see why distance should be an insurmountable obstacle to global democracy. Second, there are already international fora where representatives of all countries regularly meet and reach important agreements, so there is no need for everyone to have a right to enter all countries in the world. Surely these fora are not as democratic and authoritative as one might wish, but there is little freedom of international movement can do in this regard. Third, even if the only way to overcome this democratic deficit was that people were able to move to other countries, a right to visit would suffice. They do not need to stay for a long time, let alone migrate, in order to engage in global democratic politics.

On the other hand, and in response to the concern about the desirability of a world state, one of the strengths of the democratic argument against freedom of international movement is precisely that it does not require democracy at the global level. Song (2012) has given three reasons as to why the demos should be bounded by the state. First,

'the modern state is the primary instrument for securing the substantive rights and freedom constitutive of democracy' (2012, 58). Without the state, individuals would disagree about their rights, and even if they agreed, they would be insecure in the enjoyment of these rights, for anyone could violate them with impunity. The state acts like a third-party arbiter in the settlement of disputes, and it has the ability to coercively enforce common rules. For this reason, the state is necessary to preserve individuals' rights. Second, the state is not only an instrument for securing peoples' rights, but it has also become the locus of solidarity and trust, which are two key ingredients of democracy.

> Trust is more likely among citizens who come together within a stable infrastructure of state institutions […] than among individuals who are constantly banding and disbanding in episodic demoi. To the degree that individuals integrate their trust networks into political institutions, the greater the stake people have in the successful functioning of those institutions (Song 2012, 59).

Finally, the state provides the requisite degree of closure and stability for democratic accountability. If different demoi were constantly forming and dispersing according to the interests affected and/or the people coerced by the decision at stake, it would be very difficult for people to hold representatives accountable and 'for representatives to know on whose behalf they are acting' (Song 2012, 59). As to why not a global demos bounded by a world state, it is often argued that the moral costs would be too high. I am thinking here not so much in the eventuality of an almighty leviathan degenerating into a global tyranny as about the fact that a world government must necessarily curb every attempt at secession (individual and collective alike) if it is to remain truly global. In the absence of an exit option, a global state would be bound to suppress those dissenting voices who did not want to submit to it.[17] This is not good news for liberals, who tend to regard the consent (either actual or hypothetical) of the governed as a condition of legitimacy of political authority. Even granting that the demos is unbounded in principle, the chances of everyone consenting (either actually or hypothetically) to a global political authority are few and far between.

[17] For a defense of the right of exit as a remedial right against oppressive social and political relationships in a world of states, see Sharp (2023). I believe that his argument is applicable to a world state (cf. Sharp 2023, 393 fn. 76). For a discussion of the right of exit in a world state, see DuFord (2017).

This takes us to the main challenge to the democratic argument against open borders. The democratic objection to the world government was that such a government would violate the right of exit of its members, and so it would fall short of legitimacy. The underlying idea is that legitimacy depends on the consent of the governed, and the consent of the governed can only be obtained if they have an alternative to consenting. If I force you to marry me, even if you would otherwise consent to marrying me, your consent is beside the point, for you have no alternative but to marry me. Similarly, if people had no alternative to a world government, their consent would not be genuine. It is not the fact that they would be automatically assigned to the world state that would render their consent void – after all, we are assigned to a myriad associations at birth without our consent – , but the fact that they would have no right of exit. Should anyone no longer want to belong to the world state, she would be compelled to stay, since there can be no alternative to a world state that wants to live up to its name. In other words, people cannot consent to a political authority if they lack a right of exit from it.

Membership in contemporary states is assigned at birth. In this sense, citizenship in a state is compulsory. However, this does not mean that one cannot consent to membership in a state. Consent is possible provided that there is at least a right of exit.[18] The problem is that in a world of states, the only possibility to exit one state is to enter another. But in a world with tightly regulated borders, this is simply not possible. Unless there is a right to *enter* another state, one cannot exit one's own, and therefore cannot consent to membership in it. Some have argued that as long as there is at least *one* state willing to admit the exiting members of other states, their right of exit is guaranteed, and so there is no need for freedom of international movement (Miller 2014, 366–67). This is logically

[18] To be clear, I do not contend that the right of exit is sufficient for the consent of the governed. For example, it may well be that consent requires that people have a right to secede and form their own associations. I remain agnostic about the requisite conditions of consent. My argument is only that consent is necessary for the legitimacy of political authority, and that the right of exit is a necessary (although not necessarily sufficient) condition of consent. For those who deny that the consent of the governed is a condition of political legitimacy, this argument against the world government will have little purchase. However, the aim of this argument is not to argue against the world government per se, but to show that the consent argument against the world government cannot justify restrictions on international freedom of movement. Thus, those democratic theorists who reject the consent argument must find a principled way to object to the world state which does not rule out international freedom of movement or else explain how restrictions on international freedom of movement can coexist with the values of democracy and political equality under a world state.

correct, but it is beside the point, since it is the consent of the governed that we are concerned with, not their right of exit per se. In this sense,

> if P's choice of residence in the states that do exist is constrained, his or her residence in any particular state which he or she is free to enter or exit can only signify a limited consent to the legitimacy of that state. For the consent argument to work at all, it might be suggested, I must have a free choice of residence, and this means complete freedom of international movement (Cole 2000, 54–55).

Imagine that I force you to marry me, but I give you the possibility of marrying someone else, such that you have two options: you can either marry me or the other person. It is true that you can now exit our marriage. However, you can only exit our otherwise consented marriage by marrying someone you have not consented to. Therefore, it makes no difference to consent whether you decide to stay with me or marry the other person, for you have not genuinely consented to any. For your consent to be genuine, you must be able to marry anyone of your choice (that consents to marrying you in turn) as well as to remain single.

It is true that marriage is not fully equivalent to membership in a state, since states are not voluntary associations. But rather than undermining my argument, this difference explains why states cannot exclude prospective members, whereas voluntary associations can. The role of the right to exclude is to protect freedom of association, but not any kind of association will do. For an association to be protected by the right to exclude, its members need to be *free* to associate with each other. Thus, if an association is not free, the right to exclude is pointless, because there is no freedom of association to protect in the first place. Surely, the right to exclude is not enough to protect freedom of association: people need to be as free (not) to associate with current members as they are (not) to associate with prospective members. In this sense, the right of exit is an essential part of freedom of association: if the right to exclude preserves the freedom of association of current members with respect to outsiders, the right of exit preservers the freedom of association of current members with respect to insiders. In the case of compulsory associations, however, the right of exit and the right to exclude are incompatible: for one to have a right to exit a compulsory association, she needs to have a right to enter another, which in turn rules out the latter's right to exclude her. In short, whereas members of

voluntary associations have a right to exclude and exit, members of compulsory associations have a right to enter and exit.

This has to do with the fact that one can be single, but one cannot be stateless. To the extent that people do not have an unconditional right to enter an association, membership in that association cannot be compulsory. By contrast, when membership in an association is compulsory, people need to have an unconditional right to enter any such association. I take the current state order to be a contingent but normatively relevant feature of our world. As Cole (Wellman and Cole 2011, 204) reminds us, statelessness is a very dangerous situation to be in. And precisely because statelessness is very dangerous, state membership is compulsory. Yet, the fact that membership in a state is not voluntary does not mean that one cannot consent to it. Whereas members of voluntary associations need to have a right to exclude and exit in order to consent to their membership (otherwise they would be forced to associate with unwanted others), members of compulsory associations need to have a right of exit and enter.

To sum up, even if the right to exit a state does not necessarily amount to a right to enter the state of one's choice, one cannot consent to any state unless one has the right to enter other states. On the one hand, becoming stateless is very dangerous. This makes membership in at least one state compulsory, and explains why people are assigned to at least one state at birth and are not allowed to renounce their citizenship unless they acquire a new one. On the other hand, the fact that one has the option to enter *one* other state does not mean that by staying in one's current state one is consenting to it, just as the fact that one has the option to leave one's partner on the condition that she marry an unchosen other does not mean that by staying in her current marriage she is consenting to it. To consent to membership in a state, one needs to be able to move to any other existing state, just as to consent to a marriage one needs to be able to marry any other existing consenting partner.[19]

The last argument is the coercion argument. This argument shares the structure of the argument from the previous section. Recall that according to Blake, state coercion

[19] The only difference is that whereas one can be single, one cannot be stateless. However, one can be single precisely because one cannot be stateless. As Sangiovanni (2007, 12) notes, 'the only reason that secondary associations within states are considered voluntary is precisely the existence of the background system of entitlements and protections provided by the state'.

impinges on, but at the same time is a necessary condition for, individual autonomy. So, to the extent that state coercion cannot be eliminated, it must be justified to those over whom it is exerted. The next step consists in showing that freedom of movement is part of the justification of state coercion. Just like egalitarian justice, 'mobility rights and political rights might be understood as resulting from the need to justify political authority to specifically those individuals who face such authority' (Blake 2005, 235). To wield legitimate authority, Blake contends, the state must offer 'some guarantees specifically to those being governed. These guarantees, however, do not apply to those who are not subject to the authority of the state' (2005, 229). Thus, 'it would be a mistake to regard their mobility rights as being in any way comparable to those of current members' (Blake 2008, 968). Different circumstances give rise to different rights, without it being a deviation from the liberal principle of impartiality or a violation of the moral equality of persons (Blake 2001). Freedom of movement is, for all intents and purposes, a civil right akin to the right to vote, not a human right like freedom of religion (Blake 2020, 42).

The argument also needs to establish that foreigners are not subject to state coercion, or at least not to the same extent as citizens. But since this is a controversial empirical premise that depends in part on how coercion is understood, I will not pursue this line of critique. So let us grant that coercion at the state level is different from that found at the international level and that foreigners are not owed a democratic justification for the immigration laws of other states (Miller 2010b). This is not because I agree with these two claims, but because I hope that if, despite granting them, we are able to conclude that freedom of movement is global in scope, we will have reached a significant conclusion.

The coercion argument holds that freedom of movement is a justification of state coercion. I believe, on the contrary, that freedom of movement is not a justification, but a reason for state coercion. In other words, freedom of movement does not stem from the need to justify state coercion, but rather *gives rise* to it. The reason is that individuals in the state of nature would have an unlimited freedom of movement, as there would be no authority regulating its exercise. This would presumably give rise to diverging interpretations as to what the proper scope of freedom of movement is, as well as controversies over whose rights should prevail in which case. Consequently, individuals in the state of nature would have every reason to submit to a political authority that limits

the scope of freedom of movement so as to render it compatible with the equal rights of others.

Blake suggests that freedom of movement is a civil right, and as such its scope is determined by the state responsible for protecting it. While he is certainly correct about its political nature, I believe that freedom of movement is also a moral right, grounded in humans' innate right to freedom, whose existence is independent of its actual recognition by the state. 'Even if the boundaries of the right [to freedom of movement] can only be rightfully defined by the state (*qua* omnilateral will), the fact that a particular state does not recognize this right does not mean that the right does not exist' (Valentini 2012, 587). Moreover, immigration restrictions might be justified in a civil condition inasmuch as an unfettered right to freedom of movement is likely to clash with the rights of citizens, but this falls far short of justifying the sort of restrictions we find today. At the end of the day, as Locke (1980, 72) noted, no one in the state of nature would agree to give another 'an absolute arbitrary power over their persons and estates', for this would be 'to put themselves into a worse condition than the state of Nature'. The role of the political authority – and the reason for abandoning the state of nature – is to protect the rights of individuals from outside interference, not to interfere with the rights of individuals.

4. Conclusions

In this article I have challenged the widespread belief that domestic principles of justice cannot ground international freedom of movement. The first argument claimed that to the extent that the grounds of justice (namely cooperation, democracy, and coercion) are not global in scope, justice does not require freedom of movement at the global level. In response, I have posited that even if the grounds of justice are not global in scope, the scope of justice is indeed global, in the sense that the demands of justice extend to every human being by virtue of their common humanity. Accordingly, people have certain claims and duties of justice to or against each other that are independent of the institutional context in which they find themselves. These include, but are not necessarily limited to, the establishment and maintenance of minimally just political institutions, which presumably must respect and protect internal freedom of movement. Thus, insofar as freedom of movement is part of what minimally just political institutions must respect

and protect, and given that justice requires the establishment of minimally just institutions, justice requires freedom of movement.

One could concede that justice requires internal freedom of movement, but still deny that justice requires international freedom of movement. This might be because principles of justice (with freedom of movement among the basic liberties protected by such principles) apply to the basic structure of society, and there is no global basic structure. In response, I have showed that there is nothing in the grounds of justice that precludes the extension of freedom of movement at the global level. As far as cooperation is concerned, foreigners are not free riders who benefit from the goods and services produced by citizens; rather, they are people who are forcibly excluded from the scheme of cooperation to which they wish to contribute. As for democracy, the unilateral exclusion of immigrants violates a basic democratic tenet according to which those who are subject to the political authority of the state are owed a democratic justification. Foreigners are (at the very least) subject to the immigration regulations of other states but have no say over them, so their coercive exclusion is illegitimate from a democratic standpoint. Finally, border coercion is a prima facie violation of the liberal principle of autonomy, so it must either be justified by including foreigners in the scope of justice or else eliminated altogether (Blake 2011, 557), thus allowing complete freedom of international movement.

The second argument sought to restrict the scope of freedom of movement by showing that this right is grounded in the values of cooperation, democracy, and coercion, which are themselves restricted to the state level. Given that social cooperation is most intense within the state, there is no global democracy, and states are not coercive of foreigners in the same way as they are of citizens, freedom of movement need not be global in scope. I have tried to rebut each of these claims while accepting both the normative and the empirical premises underlying them. First, no matter how isolated countries are, there will always be issues at the global level whose solution requires cooperation, and people must be able to move in order to effectively cooperate and exercise their autonomy. Second, the very reason why democracy should not be global in scope is what explains why people have a right to freedom of movement; namely, that people can only consent to democratic authority if they have a right to exit, and the right to exit necessarily entails a corresponding right to enter, at least when it comes to securing the consent of the governed. Third, even if state coercion requires a special type of justification, freedom of

movement does not stem from the need to justify state coercion, but rather gives rise to it. It is precisely because people in the state of nature would have an unlimited freedom of movement that the state needs to regulate its exercise. In all three cases, the scope of freedom of movement is global.

What does all this lead us to? Does it imply that statists should abandon their commitment to restrictions on international freedom of movement altogether? If what I have said here is correct, there is no inherent feature or legitimate function of states that justifies the right to exclude. The values that ground internal freedom of movement (namely cooperation, democracy, and coercion) also ground international freedom of movement. So states must, on pain of consistency, refrain from restricting immigration (Niño Arnaiz 2024). Of course, this does not mean that under no circumstances ought states to restrict immigration. Just as democracy might sometimes justify restrictions on internal freedom of movement (for example, when it risks undermining the autonomy of minority groups), so are restrictions on international freedom of movement justified to protect national self-determination and the rights of citizens.

I have taken for granted that the state is the appropriate site for the regulation of mobility. But is this any longer the case? Migrating involves multiple dimensions of life that have very little to do with state-sponsored patterns of cooperation, democracy, and coercion. The image of the state as the exclusive or primary site of justice and the provider of basic goods flies in the face of the experience of many migrants whose very existence puts into question the adequacy of a model that sees international mobility through the exclusive lens of the state (Sager 2016). Even if in this article I have worked within such a model (in order to debunk it), it might be helpful to think beyond it. An alternative model could be that of the 'autonomy of migration', which brings the agency of migrants to the fore and analyzes how they relate to the state and impact the latter's policies (Castillo Ramírez 2023). This 'migrant-centred point of view' is adopted by Ottonelli and Torresi (2022) in their treatment of temporary labor migration. According to these authors:

> Migrants' agency, in our analysis, is a condition for the possibility of migrants' having life plans and a fundamental reason why such life plans must receive adequate consideration and support by the institutions of the receiving countries. Responding to the fact that migrants have plans, indeed, is important because it means treating them as

purposeful agents, as individuals capable of setting up their own goals and building their life course, rather than mere passive objects (Ottonelli and Torresi 2022, 7–8).

Another such proposal is Alex Sager's (2018) 'critical cosmopolitanism',[20] which sees international migration as one form of mobility among many and deals with different modes of spatial segregation within and beyond state borders. Finally, consider Paulina Ochoa-Espejo's (2020) 'topian' approach, which conceives of borders as instances of cooperation where people (must) perform their place-specific duties irrespective of their national ascription and formal membership in order to sustain local life. The ethics of migration would benefit from a paradigm shift away from the state.

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[20] It is no coincidence that the subtitle of his book is 'The Migrant's-Eye View of the World'.

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GLOBAL JUSTICE, INDIVIDUAL AUTONOMY, AND MIGRATION POLICY

Justicia global, autonomía personal y política migratoria

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Abstract

Even though global justice does not require open borders in principle, it imposes significant constraints on how states can exercise their right to exclude in practice. First, rich states have the primary obligation to assist the poor in their home countries, and only a secondary obligation to host those who cannot be assisted where they live. Second, the employment of coercion must be proportional to the objective pursued, such that only in situations of imminent, direct, and serious risk are immigration restrictions justified. Third, whenever it is necessary to limit access, this limitation should be partial and temporary. States must procure alternative transit routes and restore freedom of movement as soon as possible.

Keywords

Global justice; individual autonomy; immigration policy; right to exclude; right to immigrate; open borders; ethics of migration.

Resumen

Aunque, en principio, la justicia global no requiera de fronteras abiertas, en la práctica impone restricciones significativas a cómo los Estados pueden ejercer su derecho de exclusión. En primer lugar, los Estados ricos tienen la obligación primaria de asistir a las personas pobres en sus países de origen, y solo una obligación

secundaria de acoger a aquellas que no pueden ser asistidas donde viven. En segundo lugar, el empleo de la coacción debe ser proporcional al objetivo perseguido, de manera que solo en situaciones de riesgo inminente, directo y grave están justificadas las restricciones a la inmigración. En tercer lugar, cuando sea necesario limitar el acceso, dicha limitación debe ser parcial y temporal. Los Estados deben procurar vías de tránsito alternativas y restablecer la libertad de circulación lo antes posible.

Palabras clave

Justicia global; autonomía personal; política migratoria; derecho de exclusión; derecho a inmigrar; fronteras abiertas; ética de las migraciones.

CONTENT

I. INTRODUCTION

International migration takes place against the backdrop of nation-states, in the sense that it involves leaving one's country and placing oneself under the jurisdiction of another. Of course, this is a very simple account of a very complex reality, which ignores all the obstacles and difficulties along the way. At best, migrants will have to deal with several bureaucratic procedures and demonstrate that they meet the whole list of requirements (legal, economic, professional, educational, medical, linguistic, and so on) to enter another country. All too often, however, migrants, especially those hailing from the Global South, bump into the closed borders of most states and are victims of all kinds of abuses. Pushbacks, detentions, internments, deportations, forced illegality, labor exploitation, discrimination, and criminalization are part and parcel of the contemporary migration regime. In all these cases, states —of origin, transit, and above all destination— play a determining role, in the sense that their migration policies will determine the fate of migrants[1]. In other words, migrants are "at the mercy of the state" (Blake, 2020a: 195). This is why we cannot avoid asking ourselves about the justice of migration policies.

Attention to this topic by political philosophy is quite recent. The "ethics of migration", as it is commonly known, deals with the general principles of justice in migration. It covers a variety of issues relating to the movement, settlement, and membership of people in other countries, ranging from the limits on state discretion in the design of its admission and integration policies to the rights and duties of migrants, including refugees, family reunification,

[1] "While it is true that it is states that have the ultimate power to admit, other actors can possess a derivative power from the laws that states put in place. By establishing a system of work visas, for instance, states lend private corporations the power to nominate foreigners for admission by making job offers" (Buechel, 2023: 462).

guest workers, and irregular immigration (Hosein, 2019). But the issue that has received the most attention, to the point of neglecting all the others, is the right to exclude. By this I mean the authority that states claim for themselves to control the access to and settlement in their territory and to regulate the participation and integration of foreigners into the political community (Fine, 2013: 255).

Some authors, by appealing to the ideal of global justice (Carens, 2013; Holtug, 2020), relational equality (Sharp, 2022), the value of freedom of movement (Oberman, 2016; Hidalgo, 2019), democratic theory (Abizadeh, 2008), the right against harmful coercion (Huemer, 2010), and the principle of non-domination (Sager, 2017), have advocated a human (or at least a strong) right to immigrate. Others, in contrast, either from a communitarian or nationalist perspective (Walzer, 1983; Meilander, 2001; Miller, 2016b), freedom of association (Wellman, 2008), democratic self-determination (Song, 2017), domestic social justice (Macedo, 2018), collective property rights (Pevnick, 2011), and the right to avoid unwanted obligations (Blake, 2013), have defended the right of states to exclude potential immigrants. But, beyond this overly simplistic debate between open and closed borders (the so-called "open borders debate"), what are the concrete principles that states should respect in the governance of migration? The article tries to answer this question. The second section argues why global justice does not require open borders. The third section proposes three principles of justice in migration policy and analyzes their implications. The fourth section responds to an important objection and answers some questions. The final section contains the conclusion.

Before turning to the discussion, I would like to make two preliminary clarifications on the scope and methodology of this article. As far as the scope is concerned, the principles formulated here have migration policies in mind. They do not refer to the individual action of each person (for example, an employer who decides to hire an unauthorized migrant), but to the collective decision-making process. Borrowing Miller's (2016b: 17) words, "this will be a work of political philosophy rather than of ethics. It will ask about the institutions and policies we should adopt in dealing with immigration rather than trying to tell individual people how they ought to behave".

Regarding the methodology, broadly speaking, there are two ways of arguing in the political philosophy of migration. The first begins with a presumptive right to exclude and asks what the limits of justice on its exercise are. The second proceeds in reverse, taking freedom of international movement as the default position, and providing then for the situations that could justify the suspension of this right. I believe that the first approach is more fruitful when it comes to discussing the justice of migration policies, since a

human right to immigrate would rule out almost every migration policy as unjust[2]. After all, what is the point of asking ourselves about the morality of border controls if we draw from the premise that they should not exist in the first place? The discussion about principles of justice in migration presupposes that the state has a pro tanto right to exclude, however conditional or constrained its exercise might be (Lægaard, 2010: 251). The main goal of this article is to explore the implications of justice for migration policy once we realize that open borders are not among them.

II. WHY GLOBAL JUSTICE DOES NOT REQUIRE OPEN BORDERS

The consequentialist argument for open borders as a requirement of global justice goes something like this:

> P1. Global justice requires that everyone in the world has access to the means necessary to lead an autonomous life.
> P2. The world in its current state is unjust: millions of people lack access to the means necessary to lead an autonomous life.
> P3. Borders (re)produce this injustice, as they prevent access to the means necessary to lead an autonomous life.
> P4. A world with open borders would allow these people to access the means necessary to lead an autonomous life.
> C. Global justice requires open borders.

This is a remedial argument for open borders in a non-ideal world where many people lack access to the means necessary to lead an autonomous life (Bauböck, 2009). As Goodin (1992: 8) says, "if we cannot move enough money to where the needy people are, then we will have to count on moving as many of the needy people as possible to where the money is". As long as and to the extent that rich countries do not comply with the requirements of global justice, they cannot close their borders (Bader, 1997: 30). The ultimate goal may be to set up effective mechanisms of global distributive justice, but in the meantime, we cannot turn a deaf ear to the pleas of the people who flee

[2] This contradiction is evident in *The Ethics of Immigration* by Joseph Carens (2013). It is no coincidence that the author adopts a bipartite structure. In the first part of the book, he assumes the prima facie right of states to control immigration and, through successive clauses, delimits that right. In the second part, however, he forgets the above and endorses open borders.

from poverty- and conflict-ridden societies in search of a better life. Open borders may be a second-best solution to global injustice, but they are necessary in the here and now (Wilcox, 2014: 131).

Even if the premises were true, the conclusion that states are under an obligation of justice to open their borders is unsound for three reasons. First, global distributive duties can be discharged in a currency other than the admission of immigrants[3], so a state that fulfilled its duties in some other way could decide to close its borders unilaterally[4]. In fact, it might be argued that poor people should not be forced to leave their country of origin to receive the assistance they are entitled to by justice (Oberman, 2011). Second, open borders may be contrary to the objectives of global justice, as they could lead to an exodus of the skilled workers from developing to developed countries (Brock, 2009: 191; Higgins, 2013). While this is an empirically contested premise[5], it is still normatively relevant because it shows that open borders are necessary *only* to the extent that they advance the ends of justice. Third, one can have access to an adequate range of options to develop an autonomous life without having free rein to move all over the world (Wellman, 2016: 88). No theory of justice, not even the most ambitious one, claims a right to the full range of existing life options, but only to the most extensive range compatible with the equal right of others. Consequently, if there is no right to access the full range of existing life options, there can be no right to access the full range of existing world countries, at least as a matter of justice. It is enough with *one* country providing effective access to an adequate range of life options. In conclusion, consequentialist arguments for open borders cannot establish a human right to immigrate to every country in all circumstances, but only

[3] Other options would be to undertake structural reforms in the international political and economic institutions, sign fairer trade agreements with developing countries, establish a global redistributive tax, transfer income directly to the affected countries, send humanitarian aid, debt cancellation, and capacity building.

[4] This is clearly not the case of refugees, who require admission into another country (Lister, 2012: 662). Nevertheless, duties towards them are not distributive in the strict sense, but humanitarian (Gibney, 1999).

[5] One might counter that remittances represent an abundant source of revenue for many developing countries, thus compensating for the loss incurred by the departure of their most skilled citizens (Oberman, 2015: 243). However, it is the distributional impact that I am concerned with. In this regard, the primary beneficiaries of remittances are not the poorest segments of the population in sending countries, but the migrants' relatives, who tend to be relatively privileged too (Higgins, 2013: 71). For this reason, open borders would at best yield a justice-independent gain (Seglow, 2006: 236).

a conditional, contingent, and limited right: *conditional* on the state not fulfilling its global redistributive duties, *contingent* upon migration promoting the objectives of global justice, and *limited* to any one country that provides access to adequate options.

The deontic argument draws open borders from the application of the principle of moral equality on a global scale. For cosmopolitan luck egalitarians, the contingencies of birth should not determine a person's life chances, and so no one should be disadvantaged for morally arbitrary facts that escape their control (Shachar, 2009). This premise, which in principle no one disputes[6], has radical implications for immigration. If birthright citizenship is a morally arbitrary fact —in the sense that no one deserves to be born where they were born— for which nobody should be disadvantaged, then people should have the right to migrate to other countries to offset this brute bad luck (Carens, 2013; Holtug, 2020).

However, that citizenship is morally arbitrary does not mean that it is irrelevant from a moral point of view. As Blake (2001) has convincingly argued, citizenship gives rise to a special concern for those who share liability to the coercive web of legal and political institutions constitutive of the state. This coercion is both a prima facie violation of the liberal principle of autonomy and necessary to establish a pattern of settled expectations within which autonomy can develop. To the extent that we cannot eliminate state coercion, it must be justifiable to everyone subject to it, especially to those who fare worse, which requires us to show that no other principle could make them any better off. This justification takes the form of distributive justice. Likewise, "mobility rights" are part of the bundle of rights that states grant only to those subject to their coercive authority as a justification for it (Blake, 2005: 235). However, since there is no similar coercion at the international level, there is no need to extend justice nor freedom of movement beyond borders. In conclusion, we can acknowledge the moral equality of individuals and nonetheless believe that this moral equality has distinct political implications in distinct institutional contexts (Blake, 2008: 965-967).

Finally, it is not only that justice does not require open borders, but it may be at odds with them. Distributive justice aims at an equitable distribution of the costs and benefits of social cooperation. Open borders, understood

[6] Disagreements arise when it comes to interpreting what this moral equality entails. Some consider that nationality is irrelevant, and that we should treat all people equally with the exception, perhaps, of loved ones (*strong cosmopolitans*). For others, some degree of compatriot partiality is permissible and even desirable, in that it enables a moral division of labor *(weak cosmopolitans)* (Miller, 2016b: 22-24).

as an unrestricted right to free movement across the globe, would certainly allow some people to improve their life prospects by moving to other countries with more opportunities, but they are by themselves unlikely to produce a fair outcome in the distribution of goods (Stilz, 2022: 993). For one thing, people do not move in accordance with principles of distributive justice. As Seglow (2005: 327) notes, we are already quite skeptical of the free will of individuals bringing about a fair distribution of the costs and benefits of social cooperation. So, why think that the free movement of individuals will bring about greater distributive justice? Instead, we tend to confer upon political institutions the authority to coerce individuals into complying with their distributive duties. In fact, states routinely impinge on valuable individual freedoms to promote economic equality. Thus, if it is permissible (and sometimes required) to restrict the freedom of individuals for the sake of social justice, it seems only permissible to restrict their freedom of movement for the sake of global justice. This is not what open borders mean, though. In a world with open borders, people would generally be free to move to and settle in another country, "subject only to the sorts of constraints that bind current citizens in their new country" (Carens, 1987: 251), but not bound by an aspiration to maximize aggregate welfare or global redistributive utility (Ypi, 2008: 394).

In short, global justice does not seem to require open borders because (1) there are other ways of ensuring the means necessary to lead an autonomous life than opening borders; (2) justice demands different responses in different contexts, without it being a deviation from the liberal principles of impartiality and moral equality; and (3) the imposition of conditions and restrictions on mobility are justified (and even required) by justice in certain circumstances. Therefore, if we want to defend open borders, we cannot do so by appealing to global justice. This is not to say that states have a right to exclude as they see fit. They must still comply with the following principles of justice in migration policy[7].

III. THREE PRINCIPLES OF JUSTICE IN MIGRATION POLICY

The three principles of justice devised here must be understood sequentially and in parallel to the migration process. The principle of *assistance* acts ex-ante, that is, prior to the departure of the migrant. If migration eventually takes place, the state must respect the principle of *self-restraint* in the

[7] The next section draws on Niño Arnaiz (2023).

enforcement of border controls. Finally, in those cases where it is necessary to limit freedom of movement, and as long as this limitation persists, the principle of *restitution* applies.

1. ASSISTANCE

The principle of assistance imposes the primary obligation upon rich states to fight against global poverty at source. Only when it is not possible to assist poor people in their home countries would their resettlement be justified. The admission of immigrants is therefore a secondary obligation. Rich states have positive duties of justice beyond their borders, but these can —and should— be discharged in situ without the obligation to open them. Moreover, there is no duty to admit potential migrants whose needs are reasonably met where they live[8]. Nevertheless, exclusion is only permitted if:

1. *It does not constitute wrongful discrimination*. It would therefore be impermissible to apply any selection criteria on the basis of arbitrary facts such as national origin, ethnicity, beliefs, gender, sexual orientation, or mere linguistic-cultural affinity.
2. *The autonomy of migrants is respected*. Potential immigrants must be able to develop their life plans, and their needs and legitimate interests must be taken into account.

Regarding the first criterion, states should not make an instrumental use of their presumptive right to exclude in order to maximize their own interests at any cost by, say, promoting the immigration of qualified professionals and the great fortunes to the detriment of the least qualified and worse-off (Ip, 2020). Such a policy may be considered selfish and even immoral, but not necessarily unfair. Justice does not prohibit any instance of discrimination, but only discrimination on arbitrary grounds not related to the right or benefit at stake (Miller, 2016b: 101-102). In this sense, if a country needs more engineers and nurses or wants to attract foreign investors, the use of professional or income criteria for the selection of applicants is not irrelevant[9]. In fact, the attraction of human and financial capital is a common practice in many areas

[8] I do not intend to defend the right to exclude, but rather to point out that open borders are not required as a matter of justice. It is still possible that other principles succeed in grounding a right to immigrate.

[9] A different question is whether this causes deleterious "brain drain", a problem that will be dealt with towards the end.

of domestic policy, either in healthcare policy with the selection of the most qualified doctors, in economic policy with special regulations that benefit large companies, or in fiscal policy with a tax relief for private pension plans. So, while there is room for disagreement about the justice of these policies, there is no reason why immigration should be any different.

One might worry that these sort of policies are regressive, in the sense that they benefit the rich at the expense of the poor. However, it depends on how they are implemented. As I discuss later, the implementation of this proposal would most likely require concerted action by the international community to ensure that everyone has access to the basic means of subsistence[10], and only if it was not possible to assist them in their countries of residence would they be relocated. Their needs would be taken into account, but they would not have the right to choose their preferred country of destination.

This approach has an advantage over the proposal for open borders. Immigration requires a minimum of resources and certain skills, something that not everyone possesses. "The costs of migration, liquidity constraints, limited access to information on conditions abroad and skill-selective immigration policies prevent people living in poverty from moving, especially across borders" (UN DESA, 2020: 136). In the end, those who stand to benefit from it are the most advantaged, those who have the means, contacts, and aptitudes necessary to migrate (Pogge, 1997: 14; Miller, 2014: 368; Song, 2019: 89). The most disadvantaged, for their part, would be trapped in their countries of origin, unable to exercise this right[11]. With the principle of assistance, however, everyone should have their basic needs covered where they live, so that they do not have to move abroad to secure them. Emigrating is a difficult and sometimes distressing process that involves severing social ties

[10] I am adopting an internationalist conception of global justice, under the assumption that states have less stringent, but still significant, distributive duties abroad than at home (Blake, 2001; Nagel, 2005). For one thing, if it can be shown that open borders obtain under these limited conditions, then this is also true for cosmopolitan conceptions of global justice. I am further assuming that states are not causally responsible for the situation of human rights deficit in which many potential migrants find themselves, but that their responsibility is subsidiary, driven by humanitarian concerns. For a discussion of the duty to admit immigrants as a redress for the violation of their human rights or as a form of compensation for unjust past actions, see Wilcox (2007), and James (2022) and Al Hashmi (2023) respectively.

[11] According to Engler *et al.* (2020), countries with a per capita income below $7,000 tend to have lower rates of emigration toward advanced economies. This suggests that people get trapped in poverty when they lack the resources necessary to overcome migration costs.

and leaving behind everything one has built throughout their life. For this reason, should they have an alternative, many migrants would opt to stay in their home countries[12]. In this sense, the principle of assistance responds more adequately to the needs of people who would otherwise be forced to migrate. All too often, migration is a symptom of a deeper problem, whether poverty, inequality, war, natural disaster, or persecution[13]. This is why it is always preferable to go to the root of the problem and, when this is not possible, provide accommodation elsewhere.

In relation to asylum seekers, Wellman (Wellman and Cole, 2011: 123) has argued that it is permissible for states to discharge their duties of assistance without the need to host them, for example, by creating a safe haven at home or through another country. This proposal has been strongly criticized for its allegedly immoral implications. Most worryingly, rich states could pay to keep their borders closed by subcontracting the "services" of third, usually poor and corrupt countries with a questionable human rights record, to take in refugees for them. In light of the recent experiences with offshore asylum processing and the externalization of border controls (Shachar, 2020), it is reasonable to worry that migrants would not be treated fairly. While this is a serious problem, it is not least because western countries allow it to happen. Should they sign resettlement agreements with safe third countries and impose more strict standards of compliance on the subcontracting parties to ensure respect for the human rights of refugees, the outsourcing of asylum or immigrant admission need not be problematic (Sandelind, 2021). Although this practice seems intuitively wrong, it does not differ that much from a son's decision to pay someone else to take care of his elderly father (Miller, 2016: 88-89). In both cases, the morally responsible agent is fulfilling its duty of assistance through another agent. Therefore, even if it does not speak wonders of the state that trades with its obligations of justice, this does not mean that it is acting unjustly. Justice comprises a greater margin of discretion than morality, which is usually more demanding in its content but not always enforceable.

At this point, I would like to make a clarification. I have said that states are not *obliged* to open their borders as a matter of justice, but it does not follow that states are *permitted* to do so. For example, some authors reasonably

[12] Others would still prefer to leave, but I will deal with that later.

[13] By this I do not mean that people would not continue to have many other reasons to migrate in a just world. But migration for more trivial or idiosyncratic reasons would fall outside the realm of justice. This does not mean either that states are allowed to use whatever means they deem necessary to prevent the arrival of migrants (see the principle of self-restraint and the principle of restitution in this respect).

consider that international aid is preferable to immigration as a means for addressing global poverty, but do not rule out that immigration be used as a substitute for international aid (*e.g.*, Blake, 2002: 282; Wellman, 2008: 127; Miller, 2014: 368). Ultimately, they say, it is up to each state to decide the formula that suits them best. Hence, if they are substitutes, nothing seems to preclude that immigration be used as a way to discharge their duties of global justice. But this would contradict the principle of assistance, according to which rich states have the primary obligation to assist the poor in their home countries. As Oberman (2011) argues, the use of immigration as an anti-poverty measure violates the human right to stay, inasmuch as they are left with no reasonable alternative to meet their basic needs.

One might contend that international aid has long proven to be ineffective, whereas immigration confronts rich countries with the harsh reality, holding them accountable for their own failures. As a matter of fact, people seem to care more about the shipwrecked reaching their shores than the distant poor dying of hunger. I agree that we should not turn away the former, but neither should we abandon the latter. Different policies have different targets, and even though migration policy plays an important role in poverty alleviation, it is in and of itself no effective remedy to global injustice. The ultimate goal should be to improve living standards at home, so that no one is forced to leave to make ends meet.

The second criterion excludes, as we will see in the next sections, the possibility of deporting someone who has been residing in the host country for a long time (Carens, 2013: 151; Song, 2016: 244) as well as denying family reunification (Lister, 2010). It would in principle be possible, however, to prevent the entry for more trivial or idiosyncratic reasons (such as cultural affinity, climate preference, or professional aspirations) of those whose rights were adequately protected by their countries of origin[14]. It would also be possible to refuse the extension of a tourist, temporary worker, or student visa. In all these cases, the time of residence is not long enough to develop a strong sense of belonging and rootedness in a place or to commit oneself to a meaningful project the frustration of which would produce an irreparable damage to one's autonomy[15].

[14] Someone could object that this too undermines personal autonomy, in that it limits available options. For the moment, let us note that *justice* does not require the maximization of life options, but an adequate set of them (Miller, 2016a). This does not mean that there can be no strong *moral* reasons against immigration restrictions even when one already has adequate options at home (Hidalgo, 2014: 220).

[15] Carens (2013: 151) acknowledges this very fact: "My argument that time matters cuts in both directions. If there is a threshold of time after which it is wrong to expel

The stay in that country should rather be treated as a means for gaining the skills and acquiring the resources necessary to pursue one's vital plans elsewhere, a short period of time that is to be integrated into their longer life course (Hosein, 2014). Most importantly, these visitors were fully aware of and voluntarily consented to the terms of their visa, knowing that they would have to return home upon expiration. In this case, choice makes a significant moral difference (Hidalgo, 2019: 84). Finally, the state could in principle deport overstayers or any other person who was discovered trying to sneak into the country without authorization. However, this is when the second principle comes in.

2. SELF-RESTRAINT

The previous principle presumed that states enjoy a broad margin of discretion when it comes to controlling their borders and regulating admissions. Along with the right to exclude, I have so far taken the acquiescence of potential immigrants for granted. But what would happen if they did not abide by the law and persisted in their attempt to migrate?[16] In that scenario, curtailing freedom of movement should be the last resort. On the one hand, not all ends license the use of coercion against potential immigrants (*necessity*). For instance, concerns about cultural homogeneity and the labor market are normally not sufficient grounds for restricting immigration. This is either because the end itself is not legitimate or because there are other ways to achieve the same ends that are less intrusive. On the other hand, not all ends that license the use of coercion allow for the same degree of coercion *(proportionality)*. For example, physical force may be warranted to prevent the entry of a potential criminal, but not to deport an unauthorized immigrant who poses no danger to national security. In the first case, this is because the benefits to society of preventing a major crime usually outweigh the costs to a potential criminal of having their mobility rights constrained. In the second case, this is because the costs to a peaceful immigrant of having their mobility rights constrained usually outweigh the benefits to society of preventing their entry.

It is very important to provide for the situations that could lead to the suspension of freedom of international movement, so that the decision is not left to the entire discretion of the government or the official in charge. To this effect, I propose three conditions that must be met for immigration

settled irregular migrants, then there is also some period of time before this threshold is crossed".

[16] This question has been explored at length by Hidalgo (2019), Huemer (2019), and Aitchison (2023). For a contrary view, see Yong (2018) and Miller (2023).

restrictions to be justified: (1) the risk must be *imminent*, so that there is no less intrusive way to avert it; (2) the risk must be *direct*, that is, the causal link between freedom of international movement and the unwanted situation must be straightforward and not the result of multiple independent factors; (3) the risk must be *serious* enough to justify the forfeiture of other fundamental rights and freedoms, such as freedom of movement within the country, freedom of association, or the right of assembly[17]. In short, if the degree of coercion must be proportional to the objective pursued and there are other avenues to achieve it that are less costly, then governments should think twice before excluding immigrants.

For example, if a massive influx of immigrants jeopardized the welfare system, the government could impose a waiting period on newcomers during which they could not benefit from social welfare programs (first condition unmet). Furthermore, if it is not clear whether freedom of international movement is the main cause of the problem or it stems instead from the perverse incentives of the social benefit system and the situation of poverty in the countries of origin, we might have to tackle these other factors first before restricting immigration (second condition unmet). Finally, if the threat is so serious and the collapse of the system seems imminent, then other equally drastic measures, such as imposing limits on cash withdrawals, increasing the tax burden, or cutting back social benefits, may also be required. But this is rarely the case, which suggests that immigration acts as a scapegoat (third condition unmet). Therefore, none of the three conditions are met, at least for the time being. If we look more closely at the most common reasons for restricting immigration, we will find that they cannot justify a broad right to exclude.

A hypothetical scenario in which these three conditions would converge would be the creation of illegal settlements in the sovereign territory of another country by a foreign power (a kind of neocolonialism). Suppose these settlers were establishing parallel forms of political organization that did not recognize the authority of the central government, such that democratic self-determination and the territorial integrity of the nation were being

[17] For Yong (2017: 475), such strict conditions only make sense in the case of a "strong right" to free immigration. But since he denies that there is one, he proposes instead the "effectiveness" condition, according to which it would be enough for there to be "sufficient evidence" to believe that the restriction in question would promote the public interest, a legitimate political objective, or any principle of domestic justice. In this vein, the containment of the national population size, the reduction of poverty at home, the protection of the local environment, or the preservation of the public culture would satisfy the effectiveness condition for the restriction of immigration.

undermined (first condition met). Suppose, further, that these people came mostly from the same country, a foreign power with expansionist ambitions that was using its population to invade other territories. In this case, the causal link between freedom of international movement and invasion would be more than evident (second condition met). Finally, it seems that the gravity of the situation would require the national government not only to bar the entry of new settlers, but also to expel those who were already residing in these settlements and to dissolve them by force, in other words, to violate other fundamental rights (third condition met). In this scenario, the limitation of freedom of international movement would be justified. In any case, freedom of international movement should be the rule and not the exception.

3. RESTITUTION

Self-restraint in the application of coercive measures is a necessary but not sufficient condition for the respect of justice in migration policy. If the risk is so imminent, direct, and serious that the state has no choice but to restrict immigration, such restriction should be temporary and partial: *temporary* because it should not last longer than strictly necessary, restoring traffic as soon as possible; and *partial* because alternative routes must be sought after that allow others to travel without incident. In other words, it cannot serve as an excuse to suspend the right to freedom of movement indefinitely and unconditionally.

Returning to the last example, this means that, if the arrival of new settlers from an occupying force is prohibited, that prohibition should not extend to migrants from other countries or even to citizens from the invading country who are travelling for legitimate reasons[18]. Additionally, those unduly affected by the mobility restrictions have a right to reparation from the state, for instance, by demanding the computation of the time elapsed in order to qualify for permanent residence or by requesting the regularization of their status.

In the example of the welfare state, what other routes could be enabled? By routes I do not mean physical roads or other means of transportation (*e.g.*,

[18] For example, the prohibition on citizens from some Muslim-majority countries from traveling to the United States —the so-called Donald Trump's Muslim ban— was not warranted. Among other reasons, because it was a total ban, meaning that it was aimed at potential terrorists and peaceful visitors alike. In addition, judging by its intentionality, it did not seem to be temporary, but it was introduced on a permanent basis.

by plane or by boat), but solutions that respect as far as possible the spirit of freedom of movement. If the welfare state was under strain by a massive influx of immigrants, instead of preventing their access, the state could, in line with the principle of self-restraint, offer them the following deal: "you can enter the country, but you must give up social benefits in return, and you will be able to remain as long as you are self-sufficient"[19]. Some authors have been critical of this sort of compromise, either because it is a veiled restriction (Blake, 2020b: 394-395) or because it violates the principle of equal treatment (Miller, 2016b). I agree, but I think that it is better than prohibiting their entry outright without offering them an alternative (Huemer, 2010: 443-44). This at least respects their autonomy in decision-making to a greater extent.

In short, the government has the complementary obligation to secure alternative routes that allow freedom of movement and to restore traffic as soon as possible, compensating the people who may be affected by its disruption. This is what I have called restitution. If it wants to comply with this principle, the state must ensure the normal flow of people across its borders; and when the only available option is to restrict immigration, it must do so on a temporary and partial basis. In other words, this cannot serve as an excuse to de facto close borders.

IV. OBJECTIONS, QUESTIONS, AND ANSWERS

At this point, I would like to consider an important objection to this proposal. I started the article by assuming the right of states to control their borders, but I have then affirmed that they have an inexcusable obligation to respect freedom of international movement save for exceptional circumstances. It would seem, then, that I have moved from one strategy to the other, namely, from asserting the presumption of the right to exclude to adopting freedom of international movement as the guiding principle of migration policy.

One possible response to this objection is to note that the two strategies are not necessarily at odds, and that both come, albeit in a different way, to the same conclusion: that freedom of international movement must be weighed against the other interests at stake, such that the degree of openness of a border is a function of the importance assigned to each of them. As

[19] "If the concern is to preserve the integrity of the welfare state, however, the most that could be justified is restricting membership of the welfare system" (Kukathas, 2014: 382).

Hidalgo (2016: 144) suggests, "to determine whether immigration restrictions are permissible, we must balance the moral reasons to permit immigration against the reasons to impose restrictions on immigration to arrive at an all-things-considered judgment about whether any given immigration restrictions are justified". Another possible answer is to argue, following Blake (2020a), that although we are not required by justice to open borders, there are good moral reasons for doing so, especially when the costs of exclusion to the migrant outweigh the benefits to the host society. Where *justice* does not apply, Blake calls for *mercy*. In the case at hand, assistance would be a matter of justice, whereas self-restraint and restitution would be a matter of mercy.

Joseph Carens (2013: 11), for his part, justifies what he calls the method of "shifting presuppositions" not only by mere pragmatism —insofar as the right to exclude is the "conventional view" on immigration—, but as an exercise of democratic deliberation where we adopt presuppositions that we do not share with the aim of reaching an agreement with others. Finally, Mendoza (2015b) points out that it is not enough to say that states have a right to exclude, we need to ask *how* they can enforce it. But when questions of enforcement are factored in, the exclusion of immigrants becomes difficult to justify. On the one hand, states go to great lengths to prevent the arrival of migrants and to expel those who have entered without authorization. On the other hand, racist prejudices continue to inform admission and surveillance practices, making it almost impossible to insulate migration policies from racial discrimination. Consequently, although border controls may be justified *in principle*, enforcement renders them illegitimate *in practice* (Sager, 2017: 48; Fine, 2016: 141).

My answer is much simpler than that. I acknowledge that this contradiction exists, but I think this is what it takes to respect the autonomy of migrants. As I said before, migration can be a heartbreaking process that involves an abrupt disruption of the life one has built in a place. For this reason, many migrants would prefer not to leave that place *if* they had an alternative. The principle of assistance responds to this reality by providing poor people with the means necessary to lead an autonomous life, thus offering them an alternative to migration. However, there are other people who would still choose to migrate; people for whom migration is not a desperate way out of their problems, but a way to realize their goals in life. The principle of self-restraint responds to this other reality by respecting the autonomy of migrants to make vital decisions for themselves. Deciding where to live is an essential component of autonomy, and this includes both the decision to stay and the decision to migrate.

Let us now turn to answering some of the questions that may arise from the implementation of this proposal. What if someone who wishes to migrate

for reasons I have previously called trivial or idiosyncratic has their visa denied in the first place, but nonetheless persists in their attempt? In such cases, the authorities should take their determination as a reliable proof of (or as a proxy for) the intensity of their interests and refrain from using direct physical coercion to prevent their access to and stay in the territory. This does not preclude the imposition of some bureaucratic and legal barriers. For example, a state could exclude newcomers from certain public goods and non-essential services, provided that their basic human rights were not at risk[20]. However, it does rule out the use of force against peaceful migrants (Ip, forthcoming), in compliance with the principle of self-restraint.

Another previous statement was that the authorities could deport immigrants who lack proper authorization to reside in the country. However, this prerogative diminishes with the passage of time, as the legitimate interest of the immigrant to remain in the country increases (Carens, 2013). The reservations are the same as before: (1) the state cannot inflict *physical harm* on them[21], (2) nor can it maintain them in *permanent alienage*. At some point, the irregular migrant acquires full citizenship rights, and so they cannot be deported without having their rights violated and their autonomy severely impaired (Hosein, 2014).

I have not dealt with the question of emigration here. Even though, for obvious reasons, states have less leeway to restrict emigration than immigration, I do not want to conclude without making some remarks on this question. Immigration cannot be conceived separate from emigration, and the principles governing the former must be somewhat consistent with the principles governing the latter[22]. However, so long as there is no supranational institution with competences in migration policy and each country keeps acting in its own interest from a strict national(ist) logic, it will not be possible to ensure coherence between the

[20] Some might worry that this could lead to racial profiling and other forms of discrimination against immigrants. According to Mendoza (2014), when there is a tradeoff between the fundamental rights of immigrants and the enforcement of immigration restrictions, we ought to sacrifice the latter. While I agree with this general rule, I do not think it applies to this case. For one thing, they can always return to their countries of origin, where their human rights are adequately protected (Sandelind, 2015: 499).

[21] How is it possible to deport someone without exerting physical violence over them? The state has one of these two options: either to obtain that person's acquiescence or to offer them something in return.

[22] According to the general principle of justice in migration put forth by Lea Ypi (2008: 391), "if restrictions on freedom of movement could ever be justified, such restrictions ought to take equal account of justice in immigration and justice in emigration".

two. The three principles that I have formulated here fall into place in the framework of an international governance of migration. This is the only way to achieve justice in emigration and immigration.

For example, some authors claim that developing countries are justified in preventing the exodus of their most qualified citizens, either by imposing a period of compulsory service or a tax on emigration (Brock and Blake, 2015; Stilz, 2016)[23]. However, when the international factor is included into the equation, the result changes completely. The developing countries would not have to bear the brunt of "brain drain", since the obligation to meet the basic needs of their poor citizens *(principle of assistance)* would not fall (only) on the better off compatriots, but on the international community as a whole, that is, on all of us. An international migration governance scheme would be much more respectful of the rights of migrants *(principle of self-restraint)*. Finally, the decision to close borders would not be left to the entire discretion of each state, or else the borders of other states would remain open *(principle of restitution)*.

There is one last question, perhaps the most important one. Can this proposal work in the real world, especially if we bear in mind that states have for their most part been reluctant to take any action in the fight against global injustice? To be honest, I have no satisfactory answer to this question. My guess is that principles of justice in migration are more likely to be implemented at the regional level, where the differences in the standards of living among countries are not large. While this is the best we can hope for at the moment, it can lay the foundations of a future international organization for the governance of migration.

V. CONCLUSIONS

Three conclusions can be drawn from this article: (1) Global justice does not require open borders. (2) Global justice requires respect for the autonomy

[23] Ferracioli (2022: 125) goes a step further and argues that "liberal states have a duty to exclude prospective immigrants when (1) it is foreseen (or should be foreseen) that skill-based migration will bring about or exacerbate harm in the form of human rights deficits (when the ratios of professionals to the overall population are such that migration will render vulnerable populations less able to access an adequate level of essential services); and (2) when sender states offer minimally decent jobs that are sufficiently attractive to prospective skilled immigrants so that they can adequately employ their professional skills if they do not emigrate". See Mendoza (2015a: 180-183) for an eloquent response to the "brain drain" argument for immigration restrictions.

of migrants. (3) Respect for the autonomy of migrants requires open borders. There is an obvious contradiction here. One of the conclusions must therefore be rejected, but which? It might be that justice only requires respect for the autonomy of citizens, in line with the political conception of justice I have adopted here. Another possibility is that respect for the autonomy of migrants does not require open borders, as the adequate range objection seems to suggest. Lastly, my argument that global justice does not require open borders could be mistaken. I am afraid I cannot offer a definitive answer to this question, but I hope the three principles outlined above can help us find a way out.

I have initially posited that states have broad discretion in the design of their migration policies. However, this does not imply that they can exercise their discretion at will or that they are free of obligations beyond borders. On the one hand, discrimination on arbitrary grounds is prohibited, and the autonomy of migrants must be respected. On the other hand, rich states have positive duties towards the global poor, which should be discharged by assisting them in their countries of origin *(principle of assistance)*; and, where this is not possible, by granting them admission, or alternatively, by paying another country to do so in their place. This principle is mostly useful for forced migrations (whether for reasons of poverty, political persecution, natural disasters, wars, and the like), but it poses serious problems in the case of people who migrate more or less voluntarily. After all, if we ban access to the latter, would we not be undermining their autonomy too?

This is when the next principle comes in, which requires that the degree of coercion be commensurate to the magnitude of the interest at stake. This does not rule out the application of dissuasive measures such as bureaucratic and economic obstacles (indirect coercion), but it does prevent the use of physical force (direct coercion) to restrict freedom of movement when there are less intrusive means, the relationship between the two facts is not proven, and the gravity of the situation is not such that it justifies —and even requires— the limitation of other fundamental rights and freedoms *(principle of self-restraint)*. Only under these conditions can states restrict immigration. It is very important to provide for the specific situations that could lead to the suspension of freedom of movement so that it does not become a catch-all. But this is not enough. The government should enable alternative routes and restore traffic as soon as possible, so that it does not serve as a pretext for suspending freedom of movement indefinitely and across the board *(principle of restitution)*.

These principles have been conceived with liberal democracies in mind, not only because they are the preferred destination for many migrants, but above all because they reflect the values that these countries claim to uphold: on the one hand, respect for individual freedom and personal autonomy, the

principle of non-discrimination, social justice, and the rule of law; on the other, democratic self-determination, national security, public health, the welfare state, and the legitimate interests of its citizens. These are the values that, with varying success, I have tried to combine. To ensure a balanced assessment of all these aspects, it is not a good idea to leave it to the entire discretion of each state (Hidalgo, 2016). Otherwise, it is not difficult to predict which side the balance will tip to. That is why, I insist once again, it is necessary to strive for a global governance of migration.

In the end, we have moved from a presumptive right to exclude to an actual (albeit weak) right to immigrate. This move is entailed by a commitment to the autonomy of migrants, which is itself a requirement of justice. Rich states can and should assist poor people in their home countries whenever possible, but they cannot hide behind their right to exclude in order to thwart the life plans of many other people who, in the exercise of their autonomy, take their fate into their own hands by moving to another country. Some degree of indirect coercion may be permitted, but with the passage of time irregular immigrants gain the right to remain, and this is also no longer valid. The underlying logic behind these principles is that people should be able to decide where to live and that migrating is a choice, not an obligation. This begins by ensuring decent living conditions in the countries of origin. Otherwise, the right to migrate becomes an empty signifier, for people cannot be said to have the freedom to move if they are forced to move (Oberman, 2011: 258).

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