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Song, Sarah

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Political Theories of Migration

Sarah Song

School of Law and Department of Political Science, University of California, Berkeley,
California 94720, USA; email: ssong@law.berkeley.edu

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Abstract

The topic of migration raises important and challenging normative questions about the legitimacy of state power, the boundaries of political membership, and justice within and across state borders. States exercise power over borders, but what, if anything, justifies this power? Is it morally permissible for liberal democratic states to prevent their citizens from exiting the country and exclude prospective migrants from entering? If liberal democratic states are justified in excluding some and accepting others, how should they decide whom to admit? This review examines how contemporary political theorists and philosophers have answered these questions. First, I examine the conventional view that says states have the right to control immigration; second, I discuss arguments for open borders. The third section examines critique of open borders, and the fourth section considers more recent arguments that have been advanced in favor of the conventional view. I conclude with some suggestions for future research.



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INTRODUCTION

There are 244 million international migrants in the world today, roughly three percent of the world's population. Eight percent are refugees, many of whom reside in countries near their countries of origin (United Nations 2016).¹ Most international migrants have moved to countries with higher levels of development than their countries of origin. The United States is the top migrant destination in the world, with a migrant population of 47 million, 19% of the world's total. Germany and the Russian Federation hosted the second and third largest numbers worldwide (12 million each), followed by Saudi Arabia (10 million). The United Kingdom, United Arab Emirates, Canada, France, Australia, and Spain are also in the top ten.

International migration involves both exit (emigration) and entry (immigration). Public debate in liberal democratic countries has focused mostly on immigration, with the issue often framed in binary terms—you are either for or against it. On one side are those who regard borders as unjust and inefficient. Most migrants want little more than to make better lives for themselves. What moral or political theory could justify preventing people from moving where they want to go? Global egalitarians and libertarians join with immigrants' rights advocates in arguing for generally open borders. On the other side of the debate are proponents of more restrictive immigration policies. Cultural nationalists view immigration as posing a challenge to the national identity they value. Some nationalists define the nation not only in terms of shared values but also in racial, ethnic, and religious terms—in the American case, defining it as a white Anglo-Saxon Protestant nation (Huntington 2005). Some social democrats and other “economic nationalists” favor immigration restrictions for a different reason: protecting domestic workers from the competitive pressures said to be generated by immigration.

The topic of migration raises important and challenging normative questions about the legitimacy of state power, the boundaries of political membership, and justice within and across state borders. If people wish to migrate across borders, why should they be thwarted? States exercise power over borders, but what, if anything, justifies this power? Is it morally permissible for liberal democratic states to prevent their citizens from exiting the country and exclude prospective migrants from entering? If liberal democratic states are justified in excluding some and accepting others, how should they decide whom to admit?

This review examines how contemporary political theorists and philosophers have answered these questions. I focus primarily on Anglo-American work on the subject, although I make some connections to a broader body of scholarship at the end of the article. I begin with a discussion of the conventional view that says states have the right to control immigration and then turn to discuss arguments for open borders. The third section examines critique of open borders. The fourth section considers more recent arguments that have been advanced in favor of the conventional view. I conclude with some suggestions for future research.

THE CONVENTIONAL VIEW

Many people take for granted that states have the right to control migration. After all, states do exercise power over borders, regardless of whether there is any compelling justification for it. Until recently, political theorists and philosophers had mostly been silent on questions about migration and other issues that spill across borders. To take one prominent example, John Rawls

¹The United Nations defines an international migrant as a person living in a country other than his or her country of birth, a category that includes those registered as refugees by the United Nations High Commissioner for Refugees (UNHCR).

(1971, p. 8) developed his theory of justice for a democratic society “conceived for the time being as a closed system isolated from other societies.” Rawls is not alone. Many theorists writing about justice, equality, freedom, and democracy mostly take for granted that their theories apply within the context of the nation-state, to those who are already members.

One notable exception is Michael Walzer (1983). He was one of the first contemporary political theorists to explicitly examine the issue of political membership in debates about distributive justice. Political membership is “conceivably the most important” social good because it has historically determined access to other fundamental goods (Walzer 1983, p. 29). It can only be distributed by taking people in. For Walzer, it is obvious who should decide how to distribute the good of membership: “we who are already members do the choosing” (p. 32). To elaborate the nature of the political community and whether it has the right to control migration and membership, Walzer compares political communities with three more local, more familiar associations: neighborhoods, clubs, and families.

The first analogy is with neighborhoods, which he defines as a random association of people living in close proximity. Because neighborhoods have no formal admissions policies, people are able to move into and out of neighborhoods for reasons of their own, subject only to the constraints of the market. Should countries be like neighborhoods, permitting people to move to whichever one they want? Walzer argues they should not. Political communities have an obligation to provide for the security, welfare, and culture of their members. If they are not able to select among would-be members, “it is likely that neighborhoods will become little states” with “a thousand petty fortresses” (Walzer 1983, p. 39). In a world of open borders, neighborhoods might maintain some “cohesive culture” for a generation or two on a voluntary basis, but over time the cohesion would disappear. Walzer suggests the state’s right to control immigration rests in part on the goal of preserving distinctive cultures:

The distinctiveness of cultures and groups depends upon closure and, without it, cannot be conceived as a stable feature of human life. If this distinctiveness is a value, as most people . . . seem to believe, then closure must be permitted somewhere. At some level of political organization, something like the sovereign state must take shape and claim the authority to make its own admissions policy, to control and sometimes restrain the flow of immigrants. (Walzer 1983, p. 39)

This cultural imperative grounds Walzer’s case for the state’s right to control immigration, but he adds a qualification: The right to restrict entry does not entail a right to restrict exit. Controlling immigration is necessary to defend “the liberty and welfare, the politics and culture of a group of people committed to one another and to their common life,” but controlling emigration involves coercing people who no longer wish to be members (Walzer 1983, p. 39). Except in times of national emergency when everyone has a duty to work for the country’s survival, citizens must be free to exit their country if they wish. The right of exit is one constraint on the state’s right to control migration. This moral asymmetry between immigration and emigration suggests a second analogy.

Countries are like clubs. Clubs have admissions committees and the right to control who can become a member, but they cannot prevent members from leaving. Like members of a club, members of the US Congress establish general qualifications, categories for admission and exclusion, and numerical limits, and admissible individuals are taken in with varying degrees of administrative discretion. Some theorists have made use of this club analogy, with explicit reference to freedom of association, to defend the state’s right to control immigration (Wellman 2008). To say that states, like clubs, have a right to control immigration is not to say anything goes. In debating particular admissions standards and the kind of community members want to create, Walzer

(1983, p. 40) says members can appeal to their “shared understandings.” He does not specify what sorts of constraints there should be on admissions standards; his point is that the distribution of membership in a society is “a matter of political decision” (p. 40). The club analogy, however, misses an important feature of the moral life of contemporary political communities.

This leads to the third and final analogy of families. Unlike members of a club, members of a political community often believe they are morally bound to open the doors of their country to a particular group of outsiders, those recognized as “national or ethnic ‘relatives.’” In this regard, states are like families, “for it is a feature of families that their members are morally connected to people they have not chosen, who live outside the household” (Walzer 1983, p. 41). The implications of this “kinship principle” for immigration policy include giving priority to the relatives of citizens and taking in co-ethnics who are persecuted by other states. As Walzer puts it (p. 42), “Greeks driven from Turkey and Turks from Greece, after the wars and revolutions of the early twentieth century, had to be taken in by the states that bore their collective names. What else are such states for?”

Taking stock of these analogies, Walzer underscores something that is unique about political communities: They possess jurisdiction over a particular territory. Unlike neighborhoods, clubs, and families, states have the right to control the physical location and movement of members and nonmembers in the territory. Yet, like clubs, they have the general right to set their own admissions policy, and like families, they have an obligation to take in those recognized as part of the “national family.” As he puts it,

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. (Walzer 1983, p. 62)

For Walzer, the agent of collective self-determination, the “we” who controls admission into the territory and into political membership, is a culturally distinctive community.

Walzer suggests one more constraint on the right of states to control migration: They are bound by the principle of mutual aid. Positive assistance must be provided to foreigners outside the territory if it is “urgently needed” and the risks or costs of giving it are relatively low. Wealthy countries can usually fulfill this duty by sending aid to poorer countries, but in the case of “persecuted and stateless” people, the duty can be met only by taking them in (Walzer 1983, pp. 33, 45).

In light of this qualification, we can say the conventional view advanced by Walzer is not a case for closed borders. Although the liberal democratic state has a general right to control immigration in accordance with its national priorities, it must open its doors to refugees, family members of current citizens, and forcibly displaced co-ethnics.

OPEN BORDERS

Many scholars reject the conventional view in favor of open borders. They begin from the basic liberal premise of the moral equality of all human beings and interpret liberal principles as requiring a policy of open borders. As Joseph Carens, the leading proponent of open borders, has argued,

Citizenship in Western liberal democracies is the modern equivalent of feudal privilege—an inherited status that greatly enhances one’s life chances. Like feudal birthright privilege, restrictive citizenship is hard to justify when one thinks about it closely. (Carens 1987, p. 252)

Carens's analogy with feudalism is meant to highlight the unfairness implicit in being born a citizen of a wealthy country. Like being born into a wealthy family, citizenship acquired by being born in the territory of, or to parents who are citizens of, wealthy liberal democratic states is a matter of luck. It is, to borrow a phrase from Rawls (1971, p. 72), "so arbitrary from a moral point of view" but so strongly determines our prospects in life.

In his early work, Carens (1987) builds his case for open borders by drawing on utilitarianism, libertarianism, and liberal egalitarianism. Each of these theories shares the assumption of the equal moral worth of all human beings. If we take this premise seriously, we have no basis for distinguishing between citizens and aliens who seek to become citizens, whether the moral standard is maximizing utility, respecting the right to liberty, or ensuring equal basic liberties and some measure of material equality. Carens devotes greatest attention to applying Rawls's liberal egalitarian theory of justice to the issue of immigration. He revises the device of the original position such that parties adopt a global standpoint and select principles of justice that apply to everyone in the world, not just to fellow citizens. From this hypothetical global standpoint, not only would they not know what their social class background or life plans were, they would also not know which country they would be citizens of. As a result, they would choose to add freedom of international movement to the list of basic liberties that all individuals are entitled to. This right of free movement grounds a *pro tanto* duty on the part of liberal democratic states to open their borders.

More recently, scholars have developed additional arguments for open borders. They fall into two main categories. The first appeals to the liberal egalitarian ideals of moral equality and equality of opportunity. The basic claim is that respecting the moral equality of all human beings requires a commitment to global equality of opportunity. In more recent work, Carens moves away from an extension of Rawls toward advancing a more general liberal egalitarian position based on the principle of equality of opportunity. According to Carens (1992, p. 26), equality of opportunity requires that "access to social positions should be determined by an individual's actual talents and capacities, not limited on the basis of arbitrary native characteristics (such as class, race, or sex)." Citizenship is also an arbitrary characteristic, so it follows that citizenship status is not an appropriate basis upon which to distribute access to rights and opportunities. By restricting immigration, states deny equal opportunity to those who are entitled to it. In this regard, immigration restrictions constitute an unjust form of discrimination akin to discrimination on the basis of class, race, and sex. As Moellendorf (2002, p. 49) argues, everyone in the world should have the same opportunity sets: "if equality of opportunity were realized, a child growing up in rural Mozambique would be statistically as likely as the child of a senior executive at a Swiss bank to reach the position of the latter's parent." A number of other theorists view global equality of opportunity as an important element of global justice (see Caney 2001 and Shachar 2009). The implication is that global equality of opportunity requires open borders.

A second set of arguments for open borders rests on the value of freedom. There are several freedom-based arguments. The first contends freedom of movement is a fundamental human right in itself. People have an interest in immigration that is fundamental to their well-being, and this interest is said to be of sufficient weight to ground a duty on others to respect the right to immigrate. Oberman (2016, pp. 35, 40) argues we have a general interest in having access to "the full range of existing life options," which includes both "attachments" (options we have already chosen) and "possibilities" (options we may wish to pursue in the future). To access the full range of life options, people must have the right to immigrate to countries of their choosing.

A second freedom-based argument for open borders proceeds by way of analogy. It says freedom of international movement is a logical extension of rights we already take to be fundamental: the

right of domestic free movement and the right to exit a country. Carens has pressed the consistency claim between domestic and international freedom of movement:

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. (Carens 2013, p. 239)

Carens concludes that liberals should regard freedom of international movement as a basic human right, which grounds a duty on the part of states to open their borders. Another consistency argument is made with regard to exit and entry. The right to exit one's country is widely recognized as a human right. The 1948 Universal Declaration of Human Rights includes "the right to leave any country" in its list of human rights (<http://www.un.org/en/universal-declaration-human-rights>). Cole (2000) argues that the right to exit a country entails the right to enter another. There must be a "symmetry" between exit and entry: "one cannot consistently assert that there is a fundamental human right to emigration but no such right to immigration." Cole argues that the liberal asymmetry position (advanced by Walzer, as discussed above) is "not merely ethically, but also conceptually, incoherent" (Cole 2000, pp. 52–53).

A third freedom-based case for open borders has been made by libertarians. We can find this argument in the opinion pages of the *Wall Street Journal*: "Our greatest heresy is that we believe in people as the great resource of our land . . . so long as we keep our economy free, more people means more growth, the more the merrier" (Gordon Crovitz 2014; see also Bartley 2001). The empirical assumption here is that complete or even partial elimination of migration barriers would bring vast economic gains, especially for migrants and the firms who employ them. The economist Michael Clemens (2011) provides a provocative metaphor: Policies restricting migration are tantamount to leaving "trillion-dollar bills on the sidewalk." In a world without border restrictions, people would move from low-wage to high-wage regions to improve their economic well-being, and huge economic gains would result. Clemens suggests we could see overall gains of 20–60% of global GDP.

The philosophical argument provided by libertarians rests on freedom of contract and exchange. Libertarians regard the state as a voluntary association among consenting property owners. As Steiner (1992, pp. 91–92) has argued, "If I am willing to lease, sell, or give away space to other persons and am under no contractual obligation to refrain from doing so, the state has no authority to establish whether they are insiders or outsiders before permitting me to do so." Steiner suggests that libertarians should strongly oppose legislated restrictions on international migration because such restrictions are taken as defending neither contractual agreements nor property rights. The role of the libertarian state is "strictly confined to the enforcement of individuals' moral rights which consist exclusively of property and contractual rights." Thus, "migration restrictions aimed at protecting the *value* of property rights—let alone broader cultural values—are entirely beyond its rightful authority" (Steiner 1992, p. 91). So long as migrants do not violate the security and property rights of others, the libertarian state should not prevent their migration.

Proponents of open borders acknowledge some qualifications to their case. For example, Carens says if migrants pose a threat to national security, states are justified in excluding them. Another potential qualification would arise if "too many immigrants came within a short period," which might lead to a breakdown in public order in the receiving country and leave everyone worse off in terms of liberty and welfare (Carens 2013, pp. 276–77). However, Carens is quick to add that the national security qualification is contingent and self-limiting: It only justifies the exclusion of specific migrants who can be shown to pose an actual threat. He also doubts that states would ever reach a circumstance in which the public order qualification would kick in. These weak

qualifications do little to constrain the claim that borders should generally be open and people should generally be free to move if they wish.

CRITIQUE OF OPEN BORDERS

Arguments for open borders have been challenged in a variety of ways. I focus on three. The first objection, advanced by Blake (2005), contests the claim that immigration restrictions violate moral equality. Blake agrees with Carens that citizenship, like race and sex, is morally arbitrary, but he maintains that it is morally relevant because it demarcates the boundaries of state coercion. Because state coercion invades a person's autonomy, the liberal state owes some form of justification to those it subjects to coercion. Because foreigners are not subject to state coercion in the same way citizens are, what liberal states owe to foreigners is different from what they owe to citizens. According to Blake, what the liberal state owes to citizens is political equality and the rights associated with political membership, including the right of political participation and the right of domestic freedom of movement.² With regard to foreigners, by contrast, liberal states have duties of humanitarian assistance and perhaps other global obligations, but they do not have a duty to grant them admission to the territory.

Blake's argument assumes that the scope of state coercion falls within the territorial borders of the state. Abizadeh (2008) challenges this assumption, arguing that virtually all foreigners are subject to the coercion of the world's most powerful states. Consider the border control policies of the US government. Everyone in the world is subject to such policies because they face the threat of the American state's coercion if they were to try to enter. Abizadeh argues that any state that takes democratic legitimacy seriously must justify border controls to everyone subject to them. In his view, justification should take the form of equally enfranchising all those subject to coercion in a cosmopolitan scheme of democratic institutions. The crux of Abizadeh's argument rests on two assumptions: that the justification of coercion must take the form of equal enfranchisement of all those subject to coercion regardless of citizenship or residence, and that a state's immigration policy coerces everyone in the world (Miller 2016 disputes both premises).

A second objection rejects the claim that freedom of international movement is a human right. It is undeniable that people must be able to move freely in physical space in order to fulfill their basic interests, but how extensive must the scope of free movement be? Miller argues that our interest in freedom of international movement does not rise to the level of a human right. Human beings have a range of generic interests that they are entitled to pursue, but in deciding on the specific form these interests should take, they must take account of what is feasible. For example, practicing a religion means "finding a faith one can believe in, but also finding a community of believers—a church, mosque, and so forth—that one can actually join given practical constraints on time, money, and distance" (Miller 2016, pp. 51–52). Contra Oberman, Miller (2016, p. 52) argues a person's human rights are fulfilled when they live in a country that provides an "adequate range" of life options, options that are "sufficient" for a "decent human life." In cases where the state cannot or will not provide its citizens with an adequate range of options, as in the case of refugees, international migration may be required, but the obligation to admit migrants in such cases arises from a remedial responsibility to address injustice, not a human right to immigrate. In many cases, respecting people's freedom to move about within their country is sufficient to protect their basic interests.

²Blake (2001) has argued elsewhere that justification of state coercion should take the form of obligations of distributive justice toward those coerced.

A third objection focuses on the libertarian case for open borders. Neo-Lockeans like Steiner conceive of the political community as akin to a voluntary association of homeowners or business associates, but the cottage “community” that Steiner analogizes to the state operates *within* the jurisdiction of the state. Similarly, when an American employer signs a labor contract with a foreign worker, their agreement presupposes the broader context of the political community, including the system of laws that recognizes and enforces their contract and provides the public roads by which the worker travels to his employer (Song 2017). When a foreign worker sets foot on an American employer’s property, he enters a parcel of private property but he also inhabits the territorial space of the political community. The libertarian approach fails to distinguish between the private property rights of individuals and firms and the territorial rights of states.

COLLECTIVE SELF-DETERMINATION, THE TERRITORIAL STATE, AND IMMIGRATION CONTROL

While some theorists have advanced new lines of argument for open borders, others have developed novel arguments for the conventional view. I critically examine three accounts, all of which appeal to the value of collective self-determination but ultimately rest on other values: national identity, property rights, and freedom of association. I identify some shortcomings of these accounts to set the stage for an alternative view.

Miller (2016) offers a liberal nationalist account, which we might view as developing the cultural argument advanced by Walzer (1983) in explicitly nationalist terms. According to Miller, the right of states to control immigration is grounded in the right of nations to be self-determining. Citizens are not merely co-participants in a scheme of social cooperation or subject to the same coercive legal regime; “they also relate to one another as fellow nationals, people who share a broadly similar set of cultural values and a sense of belonging to a particular place” (Miller 2016, p. 26). Members of the nation have an interest in the character and preservation of their national culture. Immigration generates racial and ethnic diversity, which affects the pace of change of the national culture. In his earlier work, Miller says that “immigration need not pose problems, provided only that the immigrants come to share in a common national identity, to which they may contribute their own distinctive ingredients” (Miller 1995, p. 26). However, “immigration might pose a problem” in certain circumstances, for instance, “where the rate of immigration is so high that there is no time for a process of mutual adjustment to occur; consider recent immigration to California, where a large number of immigrants have arrived in a relatively short space of time. In such cases the education system and other such mechanisms of integration may be stretched beyond their capacity” (p. 128). In more recent work, Miller (2016, pp. 64–65) points to studies suggesting the racial and ethnic diversity generated by immigration may reduce social trust and trust in political institutions. These changes in turn may reduce public support for social welfare programs and the deliberative institutions of democracy. Nationalists conclude that if immigration does have this kind of impact, receiving states are justified in restricting immigration for the sake of protecting their national culture.

Miller’s nationalist argument rests on empirical claims that may not be accurate. If high levels of immigration do not have a negative impact on social trust, social welfare provision, or democratic participation, then it is not clear what reason is left for excluding migrants. It may be the goal of preserving a distinctive national identity. One troubling aspect of the nationalist view is that grounding immigration control in the imperative of preserving national identity may open the door to racial and ethnic exclusions. Miller (2014, p. 204) explicitly rejects racial exclusions: “To be told that they [immigrants] belong to the wrong race or sex (or have the wrong color) is insulting, given that these features do not connect to anything of real significance to the society they want

to join.” Yet, what if particular racial and ethnic identities are considered significant to dominant narratives of national identity? Visions of national identity have always been contested, and race and ethnicity have historically played a central role in shaping what it means to be American, British, French, Australian, and so on. Think of the Chinese Exclusion Act, the national origins quota system, the White Australia policy, and the many other immigration and citizenship policies shaped by racial, ethnic, and other ascriptive ideologies (Ngai 2004, Salyer 1995, Smith 1997). Racial and xenophobic sentiments are not relics of the past; they are evident today in the rise of far-right parties in Europe and the white nationalists who helped usher Donald Trump into the White House. Liberal nationalists have sought to set racial and xenophobic elements outside of their concept of national culture, emphasizing the linguistic and cultural elements consistent with liberalism. Yet, the challenge for the liberal nationalist view remains what to do when a nation’s commitment to racial and ethnic visions of national identity overtakes its commitment to liberal principles.

A second recent account of the state’s right to control immigration draws on Lockean property theory. Locke himself began with the theological premise that God gave the earth to humankind in common and argued that individuals come to hold private property rights in particular parcels of land by mixing their labor with and adding value to that land (Locke 1980, ch. 5). Contemporary Lockean have set aside the theological premise and developed the labor theory of value. As Simmons (1992, p. 223) puts it, “those who innocently work to discover, make, or usefully employ some unowned good ought to be allowed to keep it (if in so doing they harm no others). . . it would be wrong for others to take it away.” Pevnick (2011) uses this Lockean intuition to justify the state’s right to control immigration. In virtue of the labor they have contributed, citizens have property rights in their “collective accomplishments” (p. 33). Like owners of a family farm, citizens are “joint owners” of state institutions:

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, p. 38)

The community members’ right of joint ownership includes the right to determine the future course of their institutions and the right to decide who can join the group (Pevnick 2011, p. 44). Pevnick suggests some qualifications on the legitimate claims of joint owners: They cannot exclude outsiders who are in desperate need and children of “disliked minorities” who were born in the territory but have not yet contributed to the public institutions (pp. 12, 66).

Pevnick’s account suffers the same problem as Steiner’s libertarian theory, discussed above, although recall that Steiner draws on Locke to argue for open borders. Both conflate property rights and territorial rights of which the right to control immigration is a part (Song 2017). As the owner of my backyard, I can use and benefit from it and also exclude people from entering, but my ownership claim does not entail the right to determine who can make the rules governing my backyard and all the backyards of my fellow citizens. The latter is a fundamentally jurisdictional right that belongs to states. In addition, although Pevnick acknowledges states are not voluntary associations and emphasizes instead the role of labor in conferring ownership rights upon citizens, consent plays an unacknowledged role in conferring ownership rights. “In the case of illegal immigrants, by entering the country illicitly such individuals took their place in their community without the consent of the citizenry” (Pevnick 2011, p. 164). He acknowledges that unauthorized migrants make contributions through working and paying taxes, but he contends that citizens have no obligation “to pass ownership of their institutions to illegal immigrants” because the

immigrants have “put themselves in this situation without the consent of the citizenry” (p. 165). Immigrants’ labor is insufficient to ground a claim to joint ownership; the consent of citizens is necessary. But we could apply this same consent standard to the citizens whom Pevnick regards as joint owners of public institutions. Very few citizens have become part of the collective of joint owners by way of consent.

A third recent argument for the conventional view, advanced by Wellman (2011), is based on freedom of association. Wellman takes Walzer’s club analogy to its logical conclusion. He starts with the premise that freedom of association is “an integral component of self-determination” (Wellman 2011, pp. 39–40). Freedom of association includes both the right to include and the right to exclude potential associates. Wellman quotes White (1997) on this point: “When a group of people gets together to form an association of some kind (e.g., a religious association, a trade union, a sports club), they will frequently wish to exclude some people from joining their association. What makes it *their* association, serving their purposes, is that they can exercise this ‘right to exclude’” (Wellman 2011, pp. 360–61). Wellman extends the value of freedom of association beyond small-scale associations to the state itself, arguing by way of analogy:

Just as an individual may permissibly choose whom (if anyone) to marry, and a golf club may choose whom (if anyone) to admit as new members, a group of fellow citizens is entitled to determine whom (if anyone) to admit into their country. (Wellman 2011, p. 37)

He acknowledges this presumptive right can be overridden by competing considerations, but he concludes,

even if egalitarians are right that those of us in wealthy societies have stringent duties of global distributive justice, and even if libertarians are correct that individuals have rights both to freedom of movement and to control their private property, legitimate states are entitled to reject all potential immigrants, even those desperately seeking asylum from incompetent or corrupt political regimes that are either unable or unwilling to protect their citizens’ basic moral rights. (Wellman 2008, p. 109)

Among existing defenses of the conventional view, Wellman’s comes closest to offering a defense of closed borders.

The club analogy upon which Wellman’s argument rests does not hold up. States are not voluntary associations; we join one by being born. The nonvoluntary nature of political membership raises the stakes of membership (Song 2017). Exclusion from a particular state can be hugely consequential in a way that exclusion from a golf club typically is not. If one golf club refuses to admit me, I can join another or form my own. If a state refuses to admit me, I can neither form my own nor easily join another. If no golf club will admit me, the consequences are nowhere near as dire as the consequences of being a stateless person. In light of these differences, the burden falls on proponents to elaborate why freedom of association remains so fundamental for states. Wellman says control over rules of admission and membership are significant in part because new members will subsequently have a say in determining the future course of the association. In other words, freedom of association flows from the right of collective self-determination, but Wellman does not develop the connection. Rather than relying on problematic analogies, we need to examine the idea of collective self-determination and its connection to immigration control.

If there is any compelling argument for the state’s right to control immigration, I believe it rests on the right of collective self-determination. The three accounts just examined appeal to the value of collective self-determination, but they go awry in ignoring what is distinctive about political community as a form of association.

Collective self-determination is the moral claim of a collective to rule itself. It is recognized as a fundamental right in UN charters and covenants. Article 1 of the 1966 International Covenant on Civil and Political Rights (<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>) states, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Collective self-determination has an internal and an external dimension. The internal dimension is the idea of popular sovereignty: The people are the ultimate source of political authority, and they must authorize the binding collective decisions that the government makes in their name. The external dimension finds expression in international law: The people have a right to significant independent control over their collective life without the interference of those outside the collective.

If we examine the role of collective self-determination in domestic and international discourse, we can see its distinctive value. Colonized peoples have appealed to the idea of self-determination in mobilizing against colonial governments. Even proponents of humanitarian intervention by one state into another in cases of genocide and other mass atrocities argue that occupiers have an obligation to restore the country to independence after the emergency has passed and a decent political order has been established. The claim of self-determination in these cases, by colonized and occupied peoples, is a claim about who has authority to rule. The claim of self-determination says the legitimacy of political rule depends on authorization by the people. To be legitimate, political institutions must reflect the will of the people governed by those institutions. The people must be authors of those institutions in some meaningful way.

A people can be self-determining through a range of institutional arrangements, democratic and nondemocratic.³ A people has the right to establish democratic institutions but this does not mean that it must do so. Collective self-determination is less demanding than democracy (Cohen 2006). Democracy requires *equal* rights of participation in collective decision making by all those subject to those decisions. By contrast, collective self-determination requires that binding collective decisions result from and be accountable to a political process that represents the diverse interests of those who are subject to the decisions. It can be satisfied by a democratic form of government, but it can also be satisfied by nondemocratic forms of decision making that offer opportunities for the people to hold government officials accountable. Collective self-determination requires at least the following kinds of institutional mechanisms. First, there must be protections for basic rights and liberties, including the right to bodily integrity, subsistence, and freedom of speech and association. Second, there must be institutional mechanisms of accountability, including the right to dissent from and appeal collective decisions. Third, government must provide public rationales for its decisions in terms of a conception of the common good of the society. Collective self-determination can ground the right of democratic and nondemocratic states to control immigration.

Any attempt to justify the state’s right to control immigration based on collective self-determination must meet several challenges (see Fine 2013). First, it must provide a coherent account of the collective who is to be self-determining. Second, it must connect the self-determining collective to a particular territory. Third, it must explain why the state’s interest in controlling immigration outweighs the claims of prospective migrants such that it can be said to have a general right to control immigration. Can these challenges be met?

First, we should regard the collective not as a nation, joint owners of state institutions, or members of a voluntary association, but as “a people” engaged in the shared political project of

³As Rousseau (1987, p. 174) put it, “since a thousand events can change the relationships of a people, not only can different governments be good for different peoples, but also for the same people at different times.” In his view, every legitimate government is republican, but republican government is compatible with nondemocratic forms of government, including monarchy and aristocracy (Book 3, ch. 1; Book 2, ch. 6).

collective self-governance. What are peoples and how are they constituted? The idea is invoked in democratic theory and practice to refer to the agent in whose name political power is exercised. We can identify prominent invocations of peoplehood in political documents around the world. The US Constitution opens with the words “We the People of the United States.” The French Declaration of the Rights of Man and Citizen begins: “The representatives of the French people” (*Les Représentants du Peuple Français*). The 1949 Basic Law of the Federal Republic of Germany presents itself as adopted by the “German people” (*Deutsche Volk*).

Peoplehood is considered synonymous with the more familiar idea of the nation, but we should distinguish them. The idea of peoplehood is more capacious. To be a member of a nation, one must share the national identity. Conceptions of nationhood may also include a component of intention on the part of members of the nation, a “daily plebiscite,” to use Ernest Renan’s phrase [2018 (1882)], but for nationalists, sharing the cultural attributes associated with national identity is essential for membership in the nation. By contrast, what is essential about peoplehood is participation in shared institutions that aim at collective self-governance. Political cooperation, not cultural identity, is what defines peoplehood. Many nations count as peoples, but the category of peoples is broader and includes groups whose members do not necessarily share a cultural identity.

How are peoples individuated or distinguished from one another, if not by cultural markers? The most prominent alternative to the nationalist view is what we might call the statist view, which says the state creates a people by exercising its coercive power over individuals in the territory. On the statist view, the state is prior to and necessary for the creation of a people. By contrast, on the peoplehood view, a people comes into being by participating together in ways that express an aspiration to be authors, not merely subjects, of the rules governing collective life. A people can come about through participating in already established state institutions, and in this regard, a people is not actually prior to the state. But it is the fact of acting together in ways that aspire to self-rule, not the mere fact of subjection to state coercion, which makes a group of individuals a people. One implication is that a group of individuals who have not achieved statehood but who participate in ways that strive for collective self-determination may be considered a people.

The second challenge is to explain the connection between the self-determining collective and its right over a particular territory. The state is unique among types of associations in being a fundamentally territorial entity. The state requires control over a particular territory in order to function as a state. But why is the state entitled to control access to that particular territory? To answer, we need to show that the people who are represented by the state have the right to occupy the territory in question. A state’s claim of territorial rights over a particular territory depends on a prior entitlement to the area it governs. It is not the state but the occupants of the territory who hold these prior entitlements. Only if the individuals residing in a particular place have a rightful claim of occupancy does the state, which represents those individuals, have legitimate jurisdiction over it. This right of occupancy is a preinstitutional claim of those who not unjustly inhabit a place to reside there permanently, to make use of the area for valued practices, and to be immune from expropriation or removal.⁴ What grounds the right of occupancy is the importance of stable residence for the pursuit of our life projects. As Hobbes (1994, I.17.2) argues, a person entering the social contract retains some rights, including “to his own body (for example) the right of defending, whereof he could not transfer; to the use of fire, water, free air, and place to live in, and to all things necessary for life.” The implication here is that the state’s territorial rights derive

⁴Occupancy rights are preinstitutional in the sense that they are moral rights that could exist prior to a legal system or social practice (see Stilz 2013).

ultimately from an individual's right to place. Walzer (1983, p. 43) cites this passage from Hobbes to argue that the state owes its inhabitants "the place where they and their families have lived and made a life. The attachments and expectations they have formed argue against a forced transfer to another country." People have a right to occupy a particular place because stable residence in a particular place is necessary for personal well-being.

The most straightforward case of legitimate occupancy involves a group of people who settle on uninhabited land and reside on it continuously. This scenario is reflected in the familiar narrative of the United States being a "nation of immigrants." But if we look to history, we find not only voluntary migration but also colonialism, conquest, slavery, theft of land, and the mingling of people over time. This complicated history generates more questions than answers about who is entitled to establish jurisdiction in any particular geographic area. For example, much of what is today regarded as US territory was annexed against the will of its original inhabitants, who were either forcibly expelled or forcibly incorporated into the territory. What are the implications for the occupancy claims of those residing on US territory today and for the territorial rights claims of the US government?

These are hard and important questions that I cannot fully pursue here, but briefly, I do not think the legitimate-occupancy condition necessarily unravels the case for the territorial rights of states. Where the agents and victims of the unjust appropriation are still alive and easily identifiable, the agent that was causally responsible for the injustice bears a responsibility to remedy the injustice. What about cases where the perpetrators and victims of the injustice are long gone? White settlers and government officials who expropriated Native American land are causally and morally responsible for the harms caused to Native Americans, but given that none of the original parties who perpetrated or suffered the injustices are still alive, who bears responsibility for remedying the effects of the injustice suffered by Native American descendants?

One approach rests on establishing causal connections between perpetrators and victims, but it runs into the practical difficulties of making such connections in the case of injustices perpetrated long ago. We must also consider current occupants of the land, many of whom arrived after the injustices were perpetrated and have built their lives on the land. In response, some have argued historical injustices should be regarded as having been superseded and the focus instead should be on securing the rights and well-being of current members of the political community (Waldron 1992). Others argue political communities, especially democratic political communities, must acknowledge and respond to past injustices to foster inclusion of those disadvantaged by past injustices; the responsibility to remedy the enduring effects of past injustices is a political responsibility that falls on all members of the political community (Young 2004, 2011). Remedies might take symbolic and material forms, including apologies, return of stolen property, monetary compensation, and legal and constitutional provisions recognizing the self-government rights and land use rights of Native American communities. The exact form of the remedy depends on various factors, including what those harmed by the injustice want and how granting the remedy would affect the state's obligations toward all members of the political community. There are no easy answers, but the difficult questions raised by the legitimate-occupancy condition can be addressed through taking historical injustice seriously.

A third challenge is to explain why the state's interest in controlling immigration outweighs the claims of prospective migrants such that there is a general right to control immigration. There are clearly circumstances in which states are morally required to admit prospective migrants, such as in the case of refugees fleeing violence and persecution. Such cases constitute "obligatory admissions" required by justice (Carens 2013). In cases where states have played a causal role in turning people into refugees, they bear a remedial responsibility to take refugees in to repair the harm they have caused (Souter 2014). Another source of the duty to assist refugees is more universal in scope,

the humanitarian concern that grounds the principle of mutual aid. What distinguishes refugees from other migrants is their pressing need for protection against serious harm. The principle is akin to a duty of rescue in emergencies: When someone faces the threat of death or serious harm, we have a duty to rescue them if we can do so without causing serious injury to ourselves. Refugees are in need of rescue from persecution by their home states or the failure of their home states to protect them from violence by third parties. This duty is rooted in a variety of religious and secular worldviews. Liberal democratic values are one source of support for the humanitarian duty to refugees. When critics of President Trump's travel ban called it un-American, they were referring not only to the religious discrimination implied by the order but also to the proposals of closing the door temporarily to all refugees and halving the number of refugees to be taken in.

What about cases in which prospective migrants are not at risk of serious harm? Various defenders of the conventional view argue that states have a *prima facie* right to restrict the entry of such migrants. The decision to admit them is not morally required; they are what we might call "discretionary admissions" (Blake 2002). There are at least two fundamental interests that underlie the political community's right to control immigration. One is the interest of individuals in being free from unwanted obligations. Membership in a political community is a source of special rights and obligations, and meeting the membership-based obligations imposes burdens on all members to do their part. As Blake argues,

The would-be immigrant who wants to cross into a given jurisdiction acts to impose a set of obligations upon that jurisdiction's current residents. That obligation limits the freedom of those residents by placing them under standing obligations to act in particular ways in defense of that migrant's rights. In response to this, legitimate states may refuse to allow immigrants to come in, because the residents of those states have the right to refuse to become obligated to those would-be immigrants. (Blake 2013, pp. 119–20)

There is another fundamental interest not captured by Blake's account, one that is irreducibly collective. It is the interest in collective self-determination. Collective self-determination enables, through its exercise, a distinctive kind of freedom, what Rousseau calls "moral liberty" and what we can call political freedom: "obedience to the law one has prescribed for oneself" (1987, pp. 150–51). Collective self-determination is a form of political freedom that is only possible through membership in a collective. So, if a tyrant seizes power without the support of the people he seeks to rule, he does not take something away from the individuals *qua* individuals; instead, he takes something from the group as a whole, the right to collective self-determination. If prospective migrants enter without authorization, they sidestep the political process by which members of the political community can define who the collective self is and determine its future course. The power to regulate immigration flows from the right of a people to govern themselves.

The collective self-determination argument for the state's right to control immigration offers a middle ground (Song 2018) in a highly polarized debate. On this view, we have both special obligations by virtue of membership in a political community and global obligations to all human beings. In contrast to restrictive nationalists who argue for closed borders, this moderate position acknowledges the obligation to take in refugees and to provide development assistance to poor countries. In contrast to proponents of open borders, the moderate position maintains that political membership is morally significant, even if its distribution is arbitrary. Political membership grounds special rights and obligations that are more extensive than the obligations we have to all human beings. Although morality requires states to permit migration in an important range of cases, it does not demand open borders or uncontrolled freedom of movement. What is required is a policy of open doors that gives priority to those fleeing persecution and violence as well as

those with family ties to current members. This moderate view also recognizes that insofar as immigration negatively impacts the wages and working conditions of domestic workers, including recently arrived immigrant workers, liberal democratic states may be justified in restricting the flow of migrants.

DIRECTIONS FOR FUTURE RESEARCH

A rich body of normative scholarship on migration has developed over the last 30 years, but there is more work to be done. I conclude by suggesting some directions for future research for political theorists interested in migration.

The first is toward deeper engagement with empirical scholarship on migration. Normative debates about migration rest in part on empirical claims, and if political theorists want their work to offer practical guidance in real-world debates, they must engage with the best empirical scholarship on the subject. For example, if one believes that the economic, cultural, and political impacts of immigration on receiving societies makes a difference to how much and what kinds of immigration there should be, then the work of social scientists on the following questions must be considered. What are the fiscal and labor-market impacts of immigration on receiving societies (Borjas 2014, Card & Peri 2016)? What shapes people's attitudes toward asylum seekers in Europe and elsewhere, and what types of asylum regimes have the most support (Hainmueller et al. 2016, 2017)? What limits and possibilities come into view as a result of engaging with such empirical scholarship?

Second, political theorists should give greater attention to issues of migration beyond North America, Europe, and Oceania. Political theorists have tended to focus on these places because that is where many political theorists live. But migration is a global phenomenon, and political theorists should examine immigration to a broader range of countries, such as Russia and Saudi Arabia, which receive the third and fourth largest numbers of migrants in the world, respectively (United Nations 2016), as well as countries in Asia and Africa. Most of the world's unauthorized migration is to developing countries governed by weak and erratic bureaucracies, such as India and Malaysia. How do understandings of borders and citizenship differ in such contexts (see Sadiq 2008)? In addition, political theorists have only recently begun to give serious attention to emigration from developing countries (Brock & Blake 2015). Emigration raises a host of important normative issues, including whether states are ever justified in preventing citizens from exiting, the role of remittances in the pursuit of global distributive justice, and whether the term "brain drain" accurately captures what happens when skilled citizens depart a country. Enlarging our focus in this way would mean adopting a more global perspective that considers the impact of migration on sending as well as receiving countries.

A third and final area concerns people who have been forcibly displaced from their homes and countries. Even those who defend the right of states to control immigration believe that the obligation to assist refugees serves as an important qualification on the state's right to exclude. Attention has been devoted to distinguishing refugees from voluntary migrants or "economic migrants"; less attention has been given to the fact that the category of forced migrants encompasses far more people than those who meet the UN Convention definition of refugees. Among the 65.3 million forcibly displaced people in the world today, 21.3 million are recognized as refugees, but there are also 40.8 million internally displaced persons and 10 million classified as stateless people (UNHCR 2015). We might regard all forcibly displaced people as "necessitous migrants." What is owed to necessitous migrants who do not meet the legal definition of a refugee? A number of scholars have argued for broadening the legal definition of refugee to include these other groups on the grounds that what matters is the urgency of a person's needs, not the cause

of her dire situation or whether she is outside her country of origin (Shacknove 1985, Gibney 2015). The upshot is that all migrants with urgent needs would be entitled to the same protections that Convention refugees are entitled to. Proponents of this broader refugee definition see it as encompassing people displaced by environmental disasters, such as earthquakes in Haiti, floods in Pakistan, tsunamis in the Philippines and Indonesia, and drought afflicting the horn of Africa. By contrast, other scholars defend the narrower Convention definition of refugees and argue for marshaling other tools and forms of assistance to assist forcibly displaced migrants who do not meet the Convention definition (Price 2009, Lister 2013). There is a notable difference in approach among these two camps. Proponents of the broader definition proceed by first asking “Who is a refugee?” in advance of asking what should be done to assist them, whereas proponents of the narrower definition argue that the two questions must be pursued together. Who is right? To answer, we need to engage in debates not only about which values and principles to pursue but also about what, if anything, is distinctive about refugees, and about the practical advantages and disadvantages of broadening the refugee definition. This requires a more contextual approach that gives greater attention to the relevant domestic and international institutions and laws that have been and might be used to respond to the challenges of forced migration.

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