

The Duty to Allow Harmless Migration

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As Joseph Carens notes, the refusal of admission to a country is a “gateway decision” that has “enormous implications for all the subsequent life choices a person can make.”¹ In Chapter 6, I argued that states have no right to exclude persons whose *fundamental territorial interests* are pervasively threatened. But do states ever have *any* right to exclude? A state’s territorial jurisdiction need not imply exclusion rights. Within the European Union, for example, member states make and enforce law inside their territories, but they have no right to keep EU citizens from moving in or out. Perhaps the whole world should be organized like the EU.²

In this chapter, I focus on migrants whose reasons for settling are unrelated to fundamental territorial interests: migrants not suffering from persecution, persistent violations of their basic human rights (including subsistence rights), environmental devastation, or cultural or political oppression. Instead, the migrants of interest here seek better job opportunities, reunification with their families, association with friends or organizations, education or training, or a more congenial political and cultural environment. I argue that the state has a *conditional* right to exclude migrants of this sort, where their settlement would significantly harm its inhabitants.

A different view argues for a *discretionary* exclusion right: on this view, the state has a moral right to exclude migrants at will, for any reason (or even for no reason). This discretionary right may sometimes be overridden by foreigners’ urgent competing interests—e.g., in the case of refugees—but it allows for the exclusion of many people. Some theorists hold that the discretion to exclude is justified on grounds of collective self-determination. Others hold that it derives from the citizenry’s right to avoid unwanted obligations.

My conditional model instead suggests that a state may exclude would-be migrants only where it can offer a plausible case that their entry would cause harm. Developing this view requires answering two questions: first, what counts as a relevant harm? A restrictive notion of harm would hold that inhabitants are unharmed by migration so long as their basic rights are not impaired. A more expansive notion would hold that people are harmed if their social, cultural, and economic practices are undermined or transformed; or if identification with state institutions is diminished. In-between definitions are also possible. Second, how high is the burden of justification for restricting migration? If there is a human right to immigrate—as some have argued—threatened harms to inhabitants must be extremely grave to justify restricting entry. But if migration is not the subject of a human right, then restrictions might be justifiable in a broader range of scenarios.

¹ Joseph Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), 257.

² Carens, *The Ethics of Immigration*, 271-2.

On the conditional model, states have a standing duty to accept migrants in cases where their entry would not significantly impact locals' legitimate interests. I call this the *duty to allow harmless migration*. Much cross-border movement is harmless, so this standing duty is not trivial. States have duties to allow outsiders to enter for travel; study abroad; business trips; visits to friends, relatives, and associates; and so on. This extends to a duty to permit permanent settlement, so long as the numbers and consequences are manageable. Significant harms generally derive from the dislocations caused by a high *rate* of migration over a short period of time.³

In more complex cases, where there is some threat of harm, the conditional model requires the state to balance the interests of would-be migrants against the costs to its members. These competing interests should be assessed according to the urgency of the objective human needs they serve, not according to the strength of either migrants' or locals' preferences. An important question is whether the claims of would-be migrants and locals must be balanced impartially, or whether government is permitted to attribute greater weight to its own members' claims. If would-be migrants' fundamental territorial interests are satisfied in their home country, then I argue that a government can grant priority to its constituents. This priority is not infinite: in cases where harms to locals are relatively minor, and the benefits to would-be migrants very great, states should accept increased migration.

Before expounding my argument, I clarify its status. The duty to allow harmless migration addresses the *substance* of a morally acceptable immigration policy. It is not an argument about who has the *authority* to decide the policy. Many believe that only a self-governing people has the right to set its own immigration policy, free from external interference. Nothing here challenges this view: I am not suggesting that peoples should be forced—e.g., by a foreign power or international body—to accept harmless migrants. As I noted in Chapters 4 and 5, we should be careful to keep questions of substantive justice distinct from questions of legitimate authority. I grant that citizens have the authority to decide their migration policy, and that if they decide wrongly (i.e., on my view, to exclude harmless migrants), then this is a decision outsiders are obliged to respect.

Still, even if the choice is up to them, citizens must ask themselves: what policy do we have most reason to adopt? In reflecting on this question, they must consider whether there are moral reasons to allow would-be migrants to enter. My argument addresses a citizen who is considering this question. She does not doubt that she and her co-citizens have the authority to decide. She is wondering what they *should* decide. An important task of the political philosopher is to provide her with the theoretical tools to arrive at an answer. I argue that she and her co-citizens should decide to exclude migrants from their territory only where their settlement would significantly harm current inhabitants.

³ Ryan Pevnick, *Immigration and the Constraints of Justice*, (Cambridge: Cambridge University Press, 2011), 145.

This conditional model of exclusion is relatively neglected in the philosophical literature, currently the site of a debate between those who defend the state's discretionary right to exclude and those who defend a human right to immigrate. I begin in Sections 1 and 2 by examining these views. My strategy here is a dialectical one: it is in part by showing the limits of these other arguments that I hope to make space for my conditional model. The most plausible arguments for the state's right to exclude, I conclude, ground only a *conditional* right to exclude in cases where political domination or harm to inhabitants' social, political, and economic practices is likely. Similarly, the most plausible account of the right to immigrate—examined in Section 3—shows that sometimes cross-border movement implicates fundamental personal autonomy interests, and in these cases, migrants have a strong *pro tanto* claim to settle. Yet this tells in favor of a claim to relocate only where these fundamental interests are at stake, not a right to relocate at will. Seeing the limits of these alternatives paves the way to the conditional model sketched in Sections 4 and 5.

1. Collective Self-Determination

Two prominent arguments for the state's discretionary right to exclude, considered here and in Section 2, are:

- (1) the argument from *collective self-determination*, and
- (2) the argument from the *right to avoid unwanted obligations*.⁴

I share with proponents of (1) the view that collective self-determination is an important value. On my *political autonomy account*, self-determination requires correspondence between the shared will of political cooperators and their governing institutions. Cooperators enjoy correspondence when their institutions match their judgments in some way. They live under an institution that they accept, endorse, or believe to be justified or appropriate.

Though no individual's personal priorities can be mirrored in every political decision, I argued in Chapter 4 that there is an important, second-order sense in which individuals' judgments and priorities *are* often reflected in their political institutions. This is so when they are committed to a joint political venture, and to certain values and procedures that structure this venture, and their institutions reflect these shared commitments. Correspondence, I argued, is in the service of individuals' interests in *self-direction*—in establishing social order through their own free agency—and *non-alienation*—in being ruled in a way that reflects their convictions about how society

⁴ Another argument holds that the discretion to exclude is part of citizens' ownership of their political institutions. See Pevnick, *Immigration and the Constraints of Justice*, ch. 2. I set aside this argument because it invokes strong natural property rights, including rights of bequest and inheritance, that I rejected in Chapter 2. I also think ownership theories have counterintuitive implications for citizenship and enfranchisement. If individuals own public institutions because they have contributed to creating them, then it would seem that those who contribute more (i.e., through higher taxes) should have a greater ownership stake, with a proportionally greater right to decide the state's future course. It would also seem that these owners could bequeath their state to whomever they wish, and are not required to enfranchise those born on the territory. Finally, if citizens own the state, then why can't they sell it?

should be arranged. Where the state's use of coercion reflects its subjects' shared will, they can relate in a distinctive fashion to their state and to the constraints it imposes. The state is not a hostile, overwhelming power, but a tool that allows citizens to carry out their own commitments. This gives us reason to favor a system of states over a world state, and to oppose benevolent colonialism and annexation.

Other proponents of collective self-determination, however, have argued that self-determination also tells in favor of a discretionary right to exclude migrants. This argument comes in both a liberal nationalist and a democratic variant. Michael Walzer connects the right to exclude to the preservation of cultural and national identity: he holds that "the distinctiveness of cultures and groups depends upon closure and, without it, cannot be conceived as a stable feature of human life."⁵ Without the right to exclude, Walzer claims

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.⁶

In most situations, Walzer argues, there are no norms for immigrant admissions beyond the shared understandings of the political community, as specified through their democratic processes. As he puts it, "the distribution of membership is not pervasively subject to the constraints of justice. Across a considerable range of the decisions that are made...states are simply free to take in strangers (or not)."⁷

Walzer does acknowledge two limits to a political community's right to shape its own membership. One derives from the external principle of *mutual aid*. States' control over territory subjects them to the demand either to admit necessitous strangers or to cede them land, where this can be done at sufficiently low cost. A second limit comes from the internal principle of *political justice*: "the processes of self-determination through which a democratic state shapes its internal life, must be open, and equally open, to all those men and women who live within its territory, work in the local economy, and are subject to local law."⁸ Resident non-nationals cannot be expelled, and guest workers cannot be brought in without being put on a path to citizenship, since otherwise political power would be used in a tyrannical fashion. But within these limits, "the members of a political community have a collective right to shape the resident population."⁹

David Miller likewise argues that collective self-determination grounds a discretionary right to exclude. He contends that because "immigrants will differ in their beliefs, values, interests and cultural preferences" from native inhabitants in a way that might change a community's political decisions and culture, citizens have a right to limit immigration.¹⁰ Since "the public culture of the country is something people have an

⁵ Walzer, *Spheres of Justice*, (New York: Basic Books, 1983), 39.

⁶ Walzer, *Spheres of Justice*, 62.

⁷ Walzer, *Spheres of Justice*, 61.

⁸ Walzer, *Spheres of Justice*, 60.

⁹ Walzer, *Spheres of Justice*, 52.

¹⁰ David Miller, *Strangers in our Midst*, (Cambridge, MA: Harvard University Press, 2016), 63.

interest in controlling,” citizens have a right to decide whether to admit immigrants and, if so, how many.¹¹ One of Miller’s important assumptions is that a society has a legitimate interest in promoting and protecting its existing national culture, including “recognizing and embracing national symbols, speaking the national language, accepting some version of the ‘national story,’ and acknowledging the preeminent position of certain cultural features, including possibly a particular religion, within the national consciousness.”¹² This public culture is valuable, in part, because it provides the trust and solidarity necessary to sustain a redistributive welfare state.

A more democratic variant of the argument links exclusion to the state’s right to freedom of association. Most people believe that an individual’s claim to personal autonomy grants her an important domain of discretionary choice about the shape of her life, including her choice of associates. When I decide not to marry a suitor, I do not have to offer him a justification for my decision. Christopher Wellman holds that collective self-determination grants states a similar freedom to choose their associates. “Just as an individual has a right to determine whom (if anyone) he or she would like to marry,” Wellman argues that “a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community.”¹³ Like Walzer and Miller, Wellman suggests that control over membership is especially central to self-determination. Because people rightly care about how their political communities evolve, it matters to them who will have a say in controlling the country’s future.¹⁴ Nothing in Wellman’s argument, however, turns on a commitment to cultural homogeneity. On his view, a diverse group is just as entitled to shape its future as a homogeneous one.

Central to all these views is the idea that a group cannot count as self-determining unless it has control over its own membership. As van der Vossen puts it, on this view, “self-determination...includes not only determination by the self *of its actions* but also determination by the self *of the self*.”¹⁵ Call this the *self-creation* thesis.¹⁶ Should we endorse it?

Consider first the liberal nationalist variant, on which self-creation is required to protect a group’s national culture. I granted in Chapter 5 that individuals have an important interest in living within the framework of their language and national culture. But while important, this interest is not sufficient to ground a right to cultural preservation. Instead, the state should strive to provide a neutral framework within which

¹¹ David Miller, “Immigration: the Case for Limits,” in Andrew Cohen and Christopher Wellman (eds.), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell, 2004), 200. See also Miller, *Strangers in our Midst*, 154.

¹² Miller, *Strangers in our Midst*, 8; see also 26-29.

¹³ Wellman, “Immigration and Freedom of Association,” *Ethics* 119, (2008), 116. Wellman concedes that this presumptive right not to associate with immigrants must be assessed against competing considerations—specifically egalitarian and libertarian arguments in favor of free migration—but he argues that it is not outweighed by them.

¹⁴ Wellman, “Immigration and Freedom of Association,” 115.

¹⁵ Bas van der Vossen, “Immigration and Self-Determination,” *Politics, Philosophy and Economics*, 14:3 (2014), 278.

¹⁶ I take this term from van der Vossen.

citizens can pursue their diverse cultural interests. This means that when the state provides valued cultural goods, it should do so evenhandedly, catering to the preferences of different groups on its territory, unless there is some overriding reason to impose (limited) linguistic or cultural requirements to achieve a compelling justice-related purpose (such as securing adequate economic opportunity for citizens, or enabling their democratic participation). Even here, the state should impose these requirements at least cost to citizens' competing cultural interests.

What does the neutralist model imply for immigration policy? We should distinguish two paradigm cases: in the first case, the state is inhabited by a largely culturally homogeneous population (imagine Japan, Iceland, or some indigenous territories). In the second, the state is inhabited by a pluralistic and heterogeneous population, including previous cohorts of immigrants and their descendants, as well as historic national minorities.

In the first case it may be acceptable for the state to use immigration policy to protect the national culture, at least when immigrants' interests in settling are not urgent. Since, *ex hypothesi*, almost all constituents share this culture, the state's institutional framework is not "biased" in the direction of some people's cultural preferences over others, and the state does not send the message that anyone is a second class citizen. In crafting its immigration policies, it seems permissible for this state to consider the costs of the changes that would be required were it to become a culturally heterogeneous state. For example, on the neutralist model, the state would then be required to provide recognition and public support to immigrant languages, to rework state symbols and holidays, to accept changes in the look and character of public space, and so on. These costs ought to be weighed against the benefits to incomers, and might sometimes tell in favor of a restrictive immigration policy.

But matters are different in the (more familiar) second case, where an already pluralistic society limits immigration in order to promote cultural homogeneity. In this context, the promotion of a national culture does not seem like a legitimate state aim. Consider Israel's Law of Return, which grants every Jew a right to immigrate to Israel. Other important groups in Israeli society—including the Israeli Arabs, the Druze, the Bedouin, or more recent immigrants and refugees—are not extended this special status. This immigration policy effectively sends the message that the Israeli state prefers new Jewish members over new members from these minority groups.¹⁷ Absent special justification, such an immigration policy expresses the view that minorities are second-class citizens. As Michael Blake emphasizes, "to restrict immigration for national or ethnic reasons is to make some citizens politically inferior to others."¹⁸ Even if a collectively self-determining *demos* has the authority to set its own migration policy, this is an unjust decision for it to make.

¹⁷ One important justification for Israel's Law of Return is as a warranted *exception* to neutral immigration policies, since Jews are a historically persecuted and vulnerable minority. On this view, redress for past injustice could justify at least temporary deviations from equal treatment. But absent such a justification, such privileging is *prima facie* objectionable.

¹⁸ Michael Blake, "Immigration," in *The Blackwell Companion to Applied Ethics*, ed. Christopher Wellman and R.G. Frey, (Oxford: Blackwell, 2003), 233.

My argument does not entail that in a culturally pluralistic state, citizens have *no* morally legitimate interests in controlling the character of their society, only that such interests should not involve the privileging of one cultural group at the expense of others. Since the democratic argument references citizens' interests in shaping their society's future, it avoids the objection from sectarianism pressed above. But a worry about Wellman's position is that it does little to explain the basis for the state's supposed right to control its membership. In many of the cases to which Wellman appeals—a marriage, the Boy Scouts or the Augusta National Golf Club—group rights to exclude are grounded in *individuals'* rights to freedom of association. As Wellman concedes, however, there are many disanalogies between voluntary associations and the state. First, the state is a territorially-based group into which people are born. This makes it effectively impossible for individuals to choose their political associates, at least so long as they lack the power to disenfranchise and/or deport their fellow citizens. Second, the state is a morally mandatory association: it is necessary to provide the basic goods and protections to pursue a plan of life and unlike a club, we are morally required to participate in it.¹⁹ Finally, a state is not an intimate, face-to-face association, a fact which may have consequences for its right to exclude. In US law, for example, large, anonymous associations face much more significant restrictions on their freedom to control their membership than do smaller associations. Large businesses, universities, and civic organizations may not discriminate on the basis of race or sex.²⁰ Given these disanalogies, it is not obvious that the state's right to control its own membership should be much the same as a golf club's.

In arguing for the state's freedom of association, Wellman relies an *analogy* with the rights of self-determining individuals. He contends that "like autonomous individuals, legitimate political regimes are entitled to...self-determination, one important component of which is freedom of association."²¹ In a liberal society, individuals are thought to be entitled to a range of basic liberties, including free association, that enable them to decide what they value and how to live in light of these values. A self-determining individual is entitled to exercise these liberties with significant discretion. But do self-determining states have analogous rights? I think not. Instead, states' rights must plausibly be *derived* from the interests of their members, especially members' political autonomy interests in being ruled by an institution that reflects their own (morally acceptable) values and priorities. Is a right to exclude migrants necessary to serve these interests?

In some cases, yes. It does seem warranted—on collective self-determination grounds—to exclude migrants who pose a threat of institutional usurpation, for example. To threaten usurpation, (1) migrants must differ sharply from locals in their political values, (2) they must come in numbers large enough to bring about a significant transformation of a society's institutions, and (3) that change must be produced, not through *persuasion* of prior inhabitants, but by coercive imposition. Political autonomy

¹⁹ Philip Cole, in C. Wellman and P. Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude*, (Oxford: Oxford University Press, 2011), p. 6.

²⁰ See *Roberts vs. United States Jaycees*, 468 US 609 (1984). M. Blake, "Immigration, Association, and Self-Determination," *Ethics* (2012).

²¹ Wellman, "Immigration and Freedom of Association," 116.

would be jeopardized by a large influx of theocrats, say, who rejected liberal values and intended to use their majority in the political process to impose blasphemy restrictions.²² Institutional usurpation is analogous to colonial annexation: it destroys a social order that reflects a population's shared commitments and replaces it with one that does not. Such usurpation might occur if newcomers rendered prior inhabitants a permanent minority in their country.

One reason settler colonialism differs from ordinary migration is that settlers characteristically threaten the political autonomy of locals. Settlement projects usually transfer migrants onto a territory with the aim of establishing political control of the area. Consider the ongoing settlement of Israelis in the West Bank, or the Han Chinese in Tibet. To forestall Tibetan and Palestinian self-determination, the Chinese and Israeli governments are supporting the massive influx of their nationals into these areas, subsidizing their relocation. These projects aim to establish a majority large enough to control the local political process. If newcomers are party to a project of political usurpation, it seems permissible to exclude them even where their reasons for entry would otherwise be compelling.

Citizens may also have an interest in protecting their political institutions against changes that fall short of usurpation. Sometimes political concerns are more widely shared within a particular constituency than they are in the world at large. When a group can control migration into their unit, they have a greater ability to ensure that their institutions reflect their (morally acceptable) shared preferences. For example, I believe Norwegians would have a legitimate grievance at being "swamped" by an influx of libertarians who so outnumbered them that they were required to give up their welfare state, even if other features of their institutions were not threatened. It is true that not *every* Norwegian values the welfare state. Still, even those who dissent from this specific decision may value the Norwegians' ability to shape their own policies. Thus, limits on immigration could sometimes be necessary to protect political programs, so long as the process of self-determination that led to these programs is widely valued.

Can migration be resisted, on political autonomy grounds, simply because it changes the demographic composition of society? An influx of migrants might cause some citizens to become alienated from their state because they are unwilling to cooperate with newcomers perceived as different. Someone who values living in a whites-only environment might become disaffected through migration of Hispanic residents to his neighborhood, for example. Many scholars, in this vein, express concern that increased diversity erodes social trust and solidarity.²³ If a political community can reject usurpation or significant institutional transformation, can it also reject unwanted migrants, simply on the grounds that its citizens would rather not have them?

²² I recognize that similar arguments have been invoked to justify keeping Muslims out of Europe, and indeed there is evidence that Muslim immigrants and native Europeans hold differing views on free speech, gender equality, and the place of religion in society. For a summary, see Liav Orgad, *The Cultural Defense of Nations*, (Oxford: Oxford University Press, 2015), 34-38. But there is no imminent risk of a Muslim political takeover.

²³ Robert Putnam, "E Pluribus Unum: Diversity and Community in the Twenty-First Century," *Scandinavian Political Studies* Vol. 30 (2007), 137-174; Paul Collier, *Exodus: Immigration and Multiculturalism in the 21st Century*, (Oxford: Oxford University Press, 2013), ch. 2.

I believe we should discount alienation that derives solely from changes in society's demographic composition, not its institutions. Recall from Chapter 4 that claims to self-determination are *moralized* claims. There is reason to give moral weight to alienation only when that alienation is consistent with recognizing others as autonomous equals. For this reason, I argued that no wrong is done when we deny self-determination to fascists, racists, theocrats, or imperialists, since they reject the fundamental moral requirement from which self-determination's value is derived. On the political autonomy account, people's *actual* preferences about how they wish to be governed do have moral significance. But to merit consideration, those preferences must display respect for others' equal moral worth. Where dissenters clearly fail to acknowledge this requirement, there is no loss in overriding their viewpoints.

For this reason, we should also dismiss the complaints of those who reject cooperation with others simply because they are demographically different. Such prejudicial attitudes express contempt for some categories of people as entitled to less respect and concern.²⁴ Yet alienation has moral weight only where dissenters are committed to respecting others' equal autonomy, on a minimally reasonable interpretation of that value.

So while it is sometimes permissible to exclude people from a political association, the grounds for exclusion cannot rest on a denial of some people's equal moral worth. If a group seeks to exclude in order to establish or protect political institutions that "fit" with their (non-invidious) political priorities, then exclusion is permissible. In Chapter 5, I argued that colonized or indigenous peoples, or permanent internal minorities, may claim political autonomy on these grounds. I have also argued that it can be permissible to exclude would-be annexers, or immigrants who threaten institutional usurpation. Yet exclusion is permissible only where the association's aims are compatible with fundamental moral equality. Where a group's shared commitments are instead rooted in prejudicial attitudes, a desire for imperial domination, or the refusal to do justice to others, they have no moral weight.

This may seem *ad hoc*; but I do not think it is. In many other contexts, it is permissible to exclude people from organizations on some grounds, but not others. An employer can refuse to hire an applicant because she failed a skills test, but not because of her race. A professional board can deny someone a medical license because he lacks appropriate training, but not on the grounds of his sexual orientation. Similarly, a state might exclude a would-be migrant to preserve its citizens' valued political institutions, but not out of animus to her race or nationality. Restrictions on permissible exclusion are common to many areas of our social life.

It might be argued that in the shifting demographics case, alienated individuals do not necessarily hold racist or fascist beliefs: perhaps they simply respond reflexively to increased diversity in their social environment, gradually becoming less willing to support their political institutions. Still, I doubt these attitudes provide a *moral* justification for restricting immigration. People's attitudes are not a brute sociological fact: they are subject to rational control, and where those attitudes are intrinsically

²⁴ Michael Blake, "Immigration and Political Equality," *San Diego Law Review*, 45 (2008), 975.

morally objectionable, we should reshape them.²⁵ For example, public policy may foster increased social interaction in diverse contexts, or institute civic education programs to combat prejudice. At best, then, these attitudes may provide pragmatic reasons to limit immigration if they prove to be unchangeable in the short term. When citizens are reflecting on whether to vote for and support a more open immigration policy, they should not take the fact that this policy might produce greater alienation among their prejudiced fellow-citizens to provide a moral reason to refrain from supporting it.

So far, then, we have an argument for limiting migration, on self-determination grounds, only in cases where immigrants' settlement would (1) threaten institutional usurpation or (2) undermine widely valued political policies or programs. Culturally homogeneous societies may also have an interest in (3) limiting migration to protect a shared national culture. But (3) will not typically apply in pluralistic societies, where such policies would send the message that the state favors certain groups over others.

However, none of (1)-(3) tells in favor of a discretionary right to exclude. Admitting an individual migrant is unlikely to have discernible influence on a group's policies or the character of its political institutions. Most immigrants are in fact eager to embrace prevailing political values and institutions. These considerations provide *prima facie* reason for excluding migrants only where the flow of incomers threatens substantial institutional change. And there may be other ways to prevent that institutional change: for example, one might require migrants to undergo citizenship education, seeking to inculcate a respect for civic values.

Let me consider two objections to the idea that collective self-determination can justify even conditional exclusion to protect political institutions or programs. First, one might object that political autonomy cannot support excluding migrants from settling within the state's *territory*, only their exclusion from *citizenship*.²⁶ The state might control the composition of its citizenry without controlling its territorial boundaries.²⁷ By allowing foreigners to take up long-term residence without the right to naturalize, we could reconcile fully open borders with self-determination.

I agree that outsiders cannot usually be barred from entering a state's territory temporarily. On the conditional model, as I have already emphasized, the state has a standing duty to allow *harmless migration*. But I believe democratic states have an important interest in avoiding the creation of a class of permanent "denizens" within their borders. For this reason, if political autonomy can sometimes justify conditional exclusion from citizenship, I believe it can also justify exclusion from territory. A social ethos characterized by an absence of caste distinctions is a fundamental democratic achievement. A permanent class of "denizens" would undermine this achievement, by undermining the political equality that plays a key role in sustaining it.²⁸ When some

²⁵ Ryan Pevnick, "Social Trust and the Ethics of Immigration Policy," *Journal of Political Philosophy*, 17:2 (2009), 151.

²⁶ See Sarah Fine, "Freedom of Association is Not the Answer," *Ethics*, 120:2 (2010), 338-356.

²⁷ Fine, "Freedom of Association is Not the Answer."

²⁸ Niko Kolodny, "Rule over None II: Social Equality and the Justification of Democracy," *Philosophy and Public Affairs* 42:4 (2014), 287-336; Daniel Viehoff, "Democratic Equality and Political Authority," *Philosophy and Public Affairs*, 42:4 (2014), 337-375.

people are marked out as “rulers,” while others are publicly known to be “ruled,” that power hierarchy will structure their ongoing relations, leading them to regard and treat one another in ways that entrench differences in social status. For this reason, if migrants intend to take up long-term residence within the state, they ought to be placed on a path to citizenship.²⁹

A second objection is that the self-determination argument for exclusion could apply to citizens as well as to immigrants. The political values of a group evolve over time, as a result of internal contestation. Moreover, some citizens, like some would-be immigrants, hold political views that are illiberal or at odds with existing political structures. If a citizenry has a right to shape its membership to preserve shared political values, then might it disenfranchise or deport current citizens who aren’t committed to these values?³⁰ In my view, political autonomy does ground an interest in shaping future citizens’ political attitudes. But this interest is constrained by other principles. This includes respect for preinstitutional occupancy rights, democratic principles, and the requirements of basic justice. As I argued in Chapter 3, if occupancy of a particular place is fundamental to a person’s located life-plans and she has formed these plans without wrongdoing, then she cannot permissibly be removed or deported. Political autonomy must also be compatible with fulfillment of citizens’ basic human rights, and their democratic enfranchisement. Still, current citizens shape “newcomers by birth” through social formation and civic education in ways that they are less able to shape immigrants, and I believe such shaping is permissible. Given their political socialization, it is predictable that most members of the new generation will accept their society’s core political values.

So the argument from collective self-determination to a discretionary right to exclude seems dubious. In pluralistic societies, self-determination can only justify *conditional* limits on migration in cases where support for a country’s political institutions or valued programs or policies is seriously threatened.

2. Harm and Unwanted Obligations

Let me now turn to a different defense of the discretionary right to exclude. Michael Blake derives the state’s right to exclude from a more general right to *avoid unwanted obligations* where there is no particular reason in place to show why *we*, specifically, should be obliged.³¹ His argument begins from the state’s *jurisdictional*

²⁹ For an argument that citizenship should be legally mandatory for long-term immigrants, see Helder de Schutter and Lea Ypi, “Mandatory Citizenship for Immigrants,” *British Journal of Political Science*, 45 (2015), 235-251.

³⁰ See Philip Cole, *Philosophies of Exclusion*, (Edinburgh: Edinburgh University Press, 2000), 142-3; Javier Hidalgo, “Self-determination, immigration restrictions, and the problem of compatriot deportation,” *Journal of International Political Theory*, 10:3 (2014), 261-282 and Jan Brezger and Andreas Cassee, “Debate: Immigrants and Newcomers by Birth: Do Statist Arguments Imply a Right to Exclude Both?,” in *Journal of Political Philosophy*, 24:3 (2016), 367-378.

³¹ Michael Blake, “Immigration, Jurisdiction, and Exclusion,” *Philosophy and Public Affairs*, 41:2 (2013), 103-130.

nature: the state controls a distinct territory within which it has special obligations to *protect* and *fulfill* human rights. While the obligation to respect human rights is global in scope, the obligation to protect and fulfill is specifically local: it binds within a restricted space. When a would-be migrant whose human rights were already protected and fulfilled in her home state enters another state's territory, she imposes an obligation on its inhabitants to contribute to guaranteeing her rights. This limits the freedom of those inhabitants, and Blake holds that people have a presumptive right to be free from the imposition of unwanted obligations without their consent. This gives locals a right to reject would-be immigrants whose human rights are already protected and fulfilled elsewhere.

Yet on Blake's account, the precise sense in which immigrants constrain the freedom of a state's prior inhabitants is somewhat murky. Normally we would say that a person's freedom was constrained if important options were no longer available to her, or if her life-plans and projects were impaired or damaged. But the entry of a migrant does not necessarily have such effects. Prior inhabitants already have a duty to support legitimate institutions on their territory—to pay taxes, comply with the law, and so on—and the burdens of their support may not be appreciably increased by migration (if, say, the migrants are few in number, or if they also contribute, through their taxes and compliance, to sustaining domestic political institutions). As Kates and Pevnick point out, the “primary way that immigration affects the freedom of a state's current inhabitants is by increasing the *costs* (financial and otherwise) of upholding certain existing institutions.”³² But if this is correct, it tells only in favor of a conditional right to exclude where migration is costly.

Blake might reply here that the mere triggering of a duty to a particular person constrains my freedom, even if that duty is not costly or burdensome to me. But do we have a weighty objection to others' triggering non-onerous duties for us? When I cross the street, I trigger duties on drivers to slow down; when I sit down in a chair in the lecture hall, I trigger duties on others not to sit there; when I take a shopping cart at the store, I trigger a duty on you not to take it for yourself, and so on. These duties do limit your moral freedom in trivial ways, but their imposition seems perfectly permissible. Everyday life would be impossible if we were obliged to seek others' consent every time we imposed a duty on them. As I discussed in Chapter 2, there may be weightier objections to the imposition of specific kinds of duties: for example, duties to respect conventional property arrangements. But construed as a general objection to triggering moral duties for others, Blake's argument seems too broad. It rests on a conception of freedom according to which any restriction on personal choice is presumptively wrong. If Blake's argument is instead more narrowly construed, however, in a way that brings in considerations of cost, then it supports only conditional exclusion.

What costs to receiving societies might tell in favor of limiting migration? Consider the following (in roughly decreasing order of urgency):

³² Ryan Pevnick and Michael Kates, “Immigration, Jurisdiction, and History,” *Philosophy and Public Affairs*, 42:2 (2013), 10.

(1) *National Security*: Cross-border movement can sometimes produce serious threats to constituents' safety. I assume there is a plausible justification for excluding terrorists, subversive agents, invading armies and others who might gravely threaten the security of a state's inhabitants.

(2) *Institutional Subversion*: As I argued above, inhabitants of the host society have an interest in maintaining their valued political institutions, as well as specific programs or policies that reflect widely shared priorities. This can justify limiting entry of migrants with sharply different commitments, if they come in large enough numbers. A society's political institutions may also be challenged from migration *backlash* among its own constituents. Citizens upset by large numbers of newcomers might vote for right wing or illiberal political parties, threatening a liberal polity's stability.³³ As noted, this does not provide a *moral* justification for limiting migration, but if backlash is sufficiently grave and widespread, it may provide *pragmatic* reason to do so, at least temporarily, while also giving the state and its citizens reason to work to transform these political attitudes.

(3) *Public Services*: Migrants typically make demands on public services, including healthcare, housing, schools, and law-enforcement. Given the immense demand to migrate, if a wealthy country were to cease controlling its borders, a sudden influx of large numbers of people could overwhelm these services. The cost of integrating migrants is also a concern, since there are prerequisites for successful functioning in a wealthy, industrialized host society. Unskilled immigrants—especially those from societies with preindustrial peasant economies—are unlikely to have the education, skills, or know-how to integrate without considerable social support. This integration process demands resources and planning, and could justify limiting migration flows to allow the state to keep up.

(4) *Welfare State*: Average welfare benefits in developed countries are many times the per capita income of some countries, and in a fully open borders scheme, this might attract those seeking to live off public benefits. If subjected to such high demand, a generous welfare state might become unsustainable, undermining the availability of public benefits, and exacerbating inequality. One option here is to place waiting periods on eligibility for public assistance and social insurance programs. But some public benefits—like emergency healthcare—may be difficult to regulate in this way.

(5) *Protection of Inhabitants' Ways of Life*: Very high rates of migration might undermine prior inhabitants' social and cultural practices. I argued in Chapter 3 that our interest in the stability of our located life-plans is significant enough to justify a right to territorial occupancy. It is important to note that the occupancy rights of local inhabitants do not necessarily extend to a right to exclude outsiders from the territory. If outsiders' entry is not disruptive to the prior occupants' residence and social practices, then it does not infringe their occupancy rights.

³³ Carens allows that backlash worries may provide grounds for limited restrictions on migration in "Migration and Morality: A Liberal Egalitarian Perspective," in B. Barry and R. Goodin (eds.), *Free Movement*, (University Park, PA: Pennsylvania State University Press, 1992), 32.

Still, population flows that disrupt inhabitants' residence or damage or destroy their social practices do infringe local occupancy rights. This is especially true for indigenous communities, whose traditional ways of life would be threatened by a mass influx of settlers onto their land. But it is likely true to a lesser extent of other local communities. A plausible version of this concern will limit it to *significant* harms to social and cultural practices that are not unjust or sustained by prejudicial attitudes. Still, sometimes large influxes of newcomers can have deleterious impacts on prior inhabitants' ability to live in their area, since they are priced out; to continue using their language in public life; to continue working in their jobs, or to practice their religion or crucial elements of their culture. Such serious impacts might provide a reason to limit migration. In a pluralistic society, as already emphasized, limits on immigration should be crafted in a culture-neutral way that does not favor some groups over others. Still, a general immigration target could work, in practice, to protect social, cultural, and economic practices already established on the territory from impacts that might undermine them. Such a general target would not necessarily involve the privileging of the majority culture at the expense of minorities.

(6) *Special Obligations to the Domestic Poor*: Some theorists argue that an open immigration policy, especially for low-skilled migrants, can suppress the wages of the domestic poor, cause job losses, and increase inequality in the receiving state.³⁴ Economists debate the extent of immigration's labor market impact, though the consensus is that the effects are small. Some argue that low-skilled immigration has had a slightly negative impact on the distribution of income in the US, exacerbating wage stagnation among unskilled workers, prominent since the 1970s.³⁵ Others hold that low-skilled migration has no effect on the wages of the unskilled. Economists in this camp argue that immigrants tend not to compete directly with native-born workers, whose better communication skills afford them different types of jobs.³⁶ New immigrants instead tend to compete with previous cohorts of immigrants.

I will not try to adjudicate this dispute here. I simply suggest that if it were *true* that admitting more migrants would suppress the wages of the domestic poor, cause job losses, and increase inequality, this might be a good reason to restrict admissions. Of course, to some extent, the domestic poor can be compensated through welfare benefits, improved education or retraining. Still, not all losses may be compensable, given the role that productive work plays in a person's sense of self-respect and status in society. So

³⁴ See Stephen Macedo, "The Moral Dilemma of US Immigration Policy: Open Borders versus Social Justice?" in C. Swain, ed., *Debating Immigration*, (New York: Cambridge University Press, 2007), 63-81.

³⁵ Most prominently George Borjas, who argues that immigration has caused a 9% decline in the wages of least-educated Americans. See G. Borjas, "The Labor Demand Curve is Downward Sloping: Re-examining the Impact of Immigration on the Labor Market," *Quarterly Journal of Economics*, 118 (2003), 1335-1374. For a contrasting view, see David Card, "Is the New Immigration Really So Bad?," *Economic Journal*, 115 (2005), 300-323 and "Immigration and Inequality," *American Economic Review*, 99 (2009), 1-21.

³⁶ See Gianmarco Ottaviano and Giovanni Peri, "Rethinking the Effects of Immigration on Wages," NBER Working Paper 12496. Arash Abizadeh, Manish Pandey, and Sohrab Abizadeh, "Wage Competition and the Special Obligations Challenge to More Open Borders," in *Politics, Philosophy, Economics*, 14:3 (2015), 255-269, make a similar argument.

there may be circumstances in which immigrant admissions could compete with the state's special obligations to its own worst-off.

(7) *Social Cohesion*: Some scholars express concern that increased diversity erodes the social trust and solidarity necessary to maintain a welfare state.³⁷ A number of prominent studies have shown a negative correlation between increased ethnic diversity and public welfare spending. The accuracy of these studies is disputed; the main evidence for these findings comes from the United States (with a history of racial conflict) and sub-Saharan Africa (with weak state institutions). Dissenting scholars argue that social solidarity depends more on the features of institutions than on the characteristics of the populations they govern.³⁸ As previously argued, diversity's reflexive impact on social cohesion does not seem to furnish *moral* reason for limiting migration. Still, if the threat to social cohesion is so grave as to undermine the liberal state's ability to provide important goods, it might provide *pragmatic* reason to limit migration, at least temporarily, while also working to reshape citizens' attitudes.

So there are several reasons a state might have for wishing to limit cross-border migration flows when they would impose significant costs on its inhabitants or its own institutional functioning. The conditional model suggests that these costs would provide at least *pro tanto* reasons for exclusion. Still, we must also weigh these costs against the claims of the migrants themselves. An important question is what level of social cost would establish a conclusory case in favor of limiting migration. That depends in part on the strength of the migrants' claims, to which I now turn.

3. A Human Right to Immigrate?

A number of theorists have argued that the freedom to enter foreign states, and to settle there permanently if one wishes, is a human right, and that immigration restrictions are generally unjust because they interfere with this right.³⁹ While these theorists often reference the case of poor migrants seeking to move to wealthy countries, their view is much broader: everyone—including the highly advantaged—has a right to move wherever they wish.⁴⁰

If it existed, a human right to immigrate would have dramatic implications for border control, since rights are typically thought to have priority over other social values. On a Rawlsian approach, for example, a basic liberty may be restricted only if this is needed to protect some other basic liberty, or leads to a more secure or extensive scheme

³⁷ Putnam, "E Pluribus Unum," 137-174.

³⁸ See Will Kymlicka and Keith Banting, "Immigration, Multiculturalism, and the Welfare State," *Ethics and International Affairs*, 20:3 (2006), 281-304.

³⁹ Kieran Oberman, "Immigration as a Human Right," in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi, (Oxford: Oxford University Press, 2016), 34. Carens, *The Ethics of Immigration*, 225; Philip Cole in Cole and Wellman, *Debating the Ethics of Immigration*, 160. Carens's case for freedom of movement has both a freedom component and an equality of opportunity component. He also argues that he does not see his argument as a "policy proposal" (229).

⁴⁰ Carens, *The Ethics of Immigration*, 278.

of basic liberties overall.⁴¹ The US Supreme Court also grants constitutional liberties priority over competing values, applying a “strict scrutiny” test to legislation restricting these freedoms. This requires the government to show that a law is based on a “compelling state interest,” and is narrowly tailored to achieve this interest by the “least restrictive means.” If global freedom of movement is a basic human right, then laws restricting it will be very difficult to justify.

Often, proponents of a human right to immigrate rely on a “cantilever” strategy of argument, which starts from the observation that domestic freedom of movement is already widely recognized as a human right. If restrictions on domestic movement are unjust, why not also international border controls, which have similar effects on our ability to live, work, and travel?⁴² This argument commits itself to no particular account of the rationale for domestic freedom of movement: it holds that whatever that rationale is, it also applies to cross-border movement.

By itself, the cantilever argument fails to convince. In drawing the contours of a right, we need to go beyond merely noting a similarity between one protected class of actions (moving domestically) and another (moving across borders). The shape and scope of a right depend upon the underlying interests that ground our recognition of it. Consider freedom of expression. Many people believe that stringent protections should be afforded to political speech, because such speech is essential to the healthy functioning of a democracy. Many also hold that stringent protections should be extended to scientific, informational, and creative speech, because of its importance for people’s ability to seek truth, and to fashion their own authentic opinions and beliefs. Yet most societies also limit certain categories of speech.⁴³ Laws regulating deceptive and false advertising, prohibitions on libel and slander, and restrictions on campaign contributions are widely viewed as compatible with freedom of expression. Though they limit speech, these regulations do not significantly jeopardize the fundamental interests that free expression is designed to protect, and they safeguard other important interests against threats that unrestricted speech might pose. So in deciding whether border controls violate the right to freedom of movement, we must give an account of the interests served by that right, and assess whether limits on international movement would threaten these interests.

Here, many proponents of the human right to immigrate invoke an unsatisfyingly broad interest in freedom. As Carens puts it, “the vital interest at stake [is]...freedom itself. You have a vital interest in being free, and being free to move where you want is an important aspect of being free.”⁴⁴ Kieran Oberman argues that the human right to immigrate is rooted in a basic human interest in being free to access the full range of “life

⁴¹ John Rawls, *A Theory of Justice*, (Cambridge, MA: Harvard Belknap, 1999), 214-220.

⁴² I take this term from David Miller, “Is There a Human Right to Immigrate?,” in Fine and Ypi (eds.) *Migration in Political Theory*, 15. See Article 12 of the Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/>, and Article 13 of the International Covenant on Civil and Political Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁴³ T.M. Scanlon, “Freedom of Expression and Categories of Expression,” in *The Difficulty of Tolerance*, (Cambridge: Cambridge University Press, 2003), 85.

⁴⁴ Carens, *The Ethics of Immigration*, 249.

options,” including friends, family, associations, expressive opportunities, religions, jobs, and marriage partners.⁴⁵ Since some life-options are contained within other states, we have a right to immigrate. Finally, Javier Hidalgo and Chris Freiman argue that there is a presumption against the state coercively restricting our liberty unless such restrictions are necessary to protect liberty itself.⁴⁶

These arguments raise three concerns. First, they are wholly beneficiary-centered. Oberman, for example, stresses how immigration controls hamper would-be migrants’ ability to access life-options, but says little about the impacts that migration flows may have on the life-plans of those who are already settled. But surely the justification of a right must take account not only of the beneficiary’s interests, but also of the consequences for other people of the general recognition of that proposed right. These consequences may affect the right’s shape and scope. For example, if domestic freedom of movement would serve the right-holder’s fundamental interests nearly as well, while imposing many fewer costs on others than global freedom of movement, this may tell in favor of border controls.

Second, the liberty-interest cited is implausibly broad. It seems to rest on a libertarian conception of freedom according to which any state restriction on our options is presumptively wrong.⁴⁷ Such a broad view of freedom would render much ordinary state action—minimum wage or maximum working-hours limits, professional licensure requirements, and environmental or historic preservation laws—illegitimate. Many of these state actions also coercively restrict our options, but it is not obvious that they are unjustified. In US Constitutional law, depriving a person of negative liberty typically only requires procedural due process. The state must merely show a “rational basis” for such laws. Restricting fundamental personal rights like freedom of speech, the freedom to marry, bear, and raise children, and personal privacy, however, triggers a much higher “strict scrutiny” burden of justification.

Finally, our general interest in freedom from restriction seems insufficiently weighty to support the argument. As Joseph Raz emphasizes, this broad conception of negative liberty “does not tell us anything about which freedoms are important, which are not, and why.”⁴⁸ A prohibition on jaywalking, or on driving the wrong way down a one-way street, restricts my freedom, as does a prohibition on my entering my house of worship.⁴⁹ But latter prohibition is of greater concern, and not because it leaves me with a

⁴⁵ Kieran Oberman, “Immigration as a Human Right,” 35.

⁴⁶ Christopher Freiman and Javier Hidalgo, “Liberalism or Immigration Restrictions, But Not Both,” *Journal of Ethics and Social Philosophy*, 10:2 (2016), 3-4.

⁴⁷ In this vein, advocates of the right to immigrate often voice complaints about the state “blocking interactions between consenting adults.” Oberman, “Immigration as a Human Right,” 41. See also Freiman and Hidalgo, “Liberalism or Immigration Restrictions,” 5, and Michael Huemer, “Is There a Right to Immigrate,” *Social Philosophy and Policy*, 36:3 (2010), 435.

⁴⁸ Raz, *The Morality of Freedom*, (Oxford: Clarendon, 1986), 6-12. Even Carens admits freedom of movement can be restricted, in some cases though he sees these restrictions as an enhancement of “overall freedom.” Carens, *The Ethics of Immigration*, 248.

⁴⁹ Ronald Dworkin, “What Rights Do We Have?,” in *Taking Rights Seriously*, (Cambridge, MA: Harvard University Press, 1978), 268-9; Charles Taylor, “What’s Wrong with Negative Liberty?,” in *Philosophy and the Human Sciences 2*, (Cambridge: Cambridge University Press, 1985), 217-9.

smaller number of options from which to choose. We care, not just about quantity of options, but also about the *quality* of our reasons for wanting control over certain options.⁵⁰ To determine *which particular* choices people should control, we must bring in an account of their fundamental interests. What makes the difference between a non-basic liberty that can be restricted for trivial reasons and a basic liberty that cannot?

Rawls defines a basic liberty as “an essential social condition for the adequate development and full exercise of the two powers of moral personality” that political citizens possess.⁵¹ These two moral powers are the capacity to form, revise, and pursue a conception of the good, and to access sufficient means for pursuing one’s determinate conception thereof (*personal autonomy*); and the capacity for a sense of justice in applying principles of justice to the basic structure of society (*political participation*). Rawls further clarifies the *significance* of a basic liberty: “a liberty is more or less significant depending on whether it is more or less essentially involved in, or is a more or less necessary institutional means to protect, the full and informed and effective exercise of the moral powers.”⁵² The more a freedom can be argued to be an essential institutional means to protect personal autonomy or political participation, the weightier the claim to that freedom will be. But since some freedoms—like the freedom to defame others, or to drive the wrong way down a one-way street—are not connected to the two moral powers. There is no presumption against restricting them.

Ronald Dworkin offers a similar argument. He distinguishes between *freedom*—the power to do whatever a person might wish, unimpeded by constraints from others or the state—and *liberty*—a sphere of personal choice that may not be taken away without compromising a person’s dignity as a responsible co-creator of his own life.⁵³ Liberty, in the latter sense, is especially tightly linked to our fundamental convictions about what has value and our need to live out these convictions.⁵⁴ Such convictions often present themselves as imposing non-negotiable obligations, and structure many of our most important decisions about how to live. But other freedoms—such as the freedom to paint one’s house a certain color, or not to pay taxes—bear little relation to fundamental ethical conviction. If these thinkers are correct, then there is no general right to liberty as such. Instead, there is a right to personal autonomy in fundamental choices, like the choice of religion, intimate personal relationships, and central ethical and moral ideals.

What about the freedom to migrate? Is it plausibly connect to personal autonomy, and if so, is this freedom *significant*, in Rawls’s sense? I believe that relocation abroad can sometimes be a means of pursuing central personal autonomy interests. Consider Carens’s examples:

One might want a job; one might fall in love with someone from another country; one might want to belong to a religion that has few adherents in

⁵⁰ David Miller draws a similar distinction between *basic* freedoms and *bare* freedoms in “Immigration: The Case for Limits.”

⁵¹ Rawls, *Political Liberalism*, (New York: Columbia University Press, 1993), 291-324.

⁵² Rawls, *Political Liberalism*, 335.

⁵³ Ronald Dworkin, *Justice for Hedgehogs*, (Cambridge MA: Harvard University Press, 2011), 366-9.

⁵⁴ Ronald Dworkin, *Life’s Dominion*, (New York: Vintage Books, 1994), 157.

one's native state and many in another; one might want to pursue cultural opportunities that are only available in another land.⁵⁵

Relocation to join loved ones may be an important guarantee for intimate family relationships. Travel abroad may be a means of practicing my religion—to make a special pilgrimage, or simply to find other adherents with whom to practice (suppose I am a Mormon stranded in Japan). Relocation can also serve occupational freedom: suppose it is my aspiration to become an aeronautical engineer, but I live in Sierra Leone and the only suitable degree programs are in the US and Europe.⁵⁶

Yet not every desire to relocate rests on a fundamental personal autonomy interest. Migrants' reasons for settling elsewhere have different levels of urgency. Consider the following spectrum:

- a. a desire to move to enjoy nicer weather (roughly 1 million American expats have flocked to Mexico seeking a low-cost beach lifestyle);
- b. a desire to move to access higher wages (a skilled professional receives a lucrative job offer elsewhere);
- c. a desire to move to access educational, career, or religious opportunities that one could also pursue at home, though less successfully (a Canadian is accepted to a Ph.D. program at Toronto, but wishes to attend Harvard's higher-ranked program);
- d. a desire to move to access a society or culture more congenial to one's temperament or aspirations (one is an atheist in a strongly religious society);
- e. a desire to move to access decent wages (a low-skilled worker enjoys a minimal standard of living at home, and seeks to migrate for better job opportunities);
- f. a desire to move to pursue educational, career, or religious opportunities that do not exist at all at home (the would-be aeronautical engineer in Sierra Leone must leave in order to pursue her chosen career);
- g. a desire to move to join one's spouse or children;
- h. a desire to move to secure one's subsistence, a livable environment, the protection of one's basic human rights, or to avoid cultural or political oppression.

I believe these reasons for moving are roughly in increasing order of urgency. Some of these reasons (f-h) reference interests that in part ground domestic basic liberties, while others (arguably, a-c) do not. Reasons (d) and (e) in particular are difficult intermediate cases, to which I shall return. But still, this list illustrates that some reasons for migrating are grounded in high-value interests, of the sort protected by fundamental freedoms domestically, while others are not. Reasons for migrating rooted in core personal autonomy interests may give rise to a strong claim to relocate.

David Miller has criticized this argument, holding that

⁵⁵ Carens, *The Ethics of Immigration*, 239.

⁵⁶ Joseph Carens, "Migration and Morality: A Liberal Egalitarian Perspective," and Kieran Oberman, "Immigration as a Human Right."

what a person can legitimately demand access to is an *adequate* range of options to choose between—a reasonable choice of occupation, religion, cultural activities, marriage partners, and so forth. Adequacy here is defined in terms of generic human interests rather than in terms of the interests of any one person in particular—so, for example, a would-be opera singer living in a society which provides for various forms of musical expression, but not for opera, can have an adequate range of options in this area even though the option she most prefers is not available.⁵⁷

I agree with Miller that no wrong is necessarily done to a person if not every valuable option is available in her society, so long as the options at her disposal safeguard certain generic human interests.⁵⁸ The fact that my choice of marriage partners here in the US does not run to North Koreans does not mean that I don't have a perfectly adequate choice of partners. While I chose my husband from a less-than-global range of options, my choice was not less authentic because of that fact.

Unlike Miller, however, I think that sometimes domestic states are not capable of providing an adequate range of options internally. This is especially true, I believe, when (a) people are *committed* to a particular conception of the good that comprehensively structures their life, and (b) a proposed border restriction would deprive them of access to an option that is fundamental to their pursuit of that conception, in a way that makes it very difficult for them to adjust. Suppose I went abroad on a school trip, met a North Korean, and fell in love with him. It is much more harmful to deny me the ability to marry and live with this North Korean than it is to restrict my opportunities to meet and fall in love with North Koreans in the first place. It is not sufficient to cut someone off from her husband, while pointing out that she can still access a range of marriage partners on this side of the border. There are strong reasons to think the fundamental right to intimate relationships should outweigh the state's claim to regulate membership in this case.⁵⁹

In a world of extensive cross-border interaction, many people are committed to projects and relationships involving individuals and opportunities in other countries. Frequently, this is because people have lived, for a time, in another country and developed attachments there. As Joseph Raz notes:

denying a person the possibility of carrying on with his projects, commitments and relationships is preventing him from having the life he has chosen. A person who may but has not yet chosen the eliminated option is much less seriously affected. Since all he is entitled to is an

⁵⁷ David Miller, "Immigration: The Case for Limits." See also Ryan Pevnick, *Immigration and the Constraints of Justice*, 85.

⁵⁸ The next three paragraphs draw on Anna Stilz, "Is there an Unqualified Right to Leave?" in Fine and Ypi (eds.), *Migration and Morality*, 57-79.

⁵⁹ Matthew Lister, "Immigration, Association, and the Family," *Law and Philosophy*, 29:6 (2010), 717-745.

adequate range of options the eliminated option can, from his point of view, be replaced by another without loss of autonomy.⁶⁰

This is one reason it is generally worse to deport people than to prevent new people from coming. While frustrated in their desires, would-be entrants generally do not suffer the destruction of the lives they have already built. Further, they can often seek out other options, much as I can apply for other jobs when I do not receive a coveted new position. But the example of family reunification shows that it is not always necessary that someone now live in a place, or have previously lived there, in order to have fundamental life-plans that can only be fulfilled in that place. While living in a place is perhaps the most common way of developing a life-plan tied to a specific location, there are other ways. For example, sometimes migration is the *only* option for pursuing an important autonomy interest, as when there are no opportunities in one's home country to receive a particular education, or to practice a chosen career. These autonomy-interests ground a weighty *pro tanto* claim to enter. This claim must still be assessed against possible countervailing considerations, including costs to those in the receiving society. But this *pro tanto* claim seems a good first step in an argument for a right to migrate.

The proponent of a human right to immigrate might object here that we do not require a person to demonstrate a central personal autonomy interest in order to travel or relocate domestically—so long as he obeys applicable traffic and property rules, he is simply free to move as he chooses. Why not treat international movement similarly? We should treat cross-border movement differently than domestic movement, I believe, because the underlying balance of interests is not the same. Two additional interests in part ground domestic freedom of movement: (1) our interest in generic options, and (2) our interest in self-protection against government power.

First, our general interest in accessing an adequate range of *generic* options for choice partly grounds domestic freedom of movement. Individuals must be able to explore valuable “experiments in living” that could provide alternatives to their current conception of the good. A suitable set of generic options must include relationships and goals with pervasive consequences for the shape of our life, not just trivial options, or options that are nearly identical to one another.⁶¹ Beyond the options to which she is currently committed, then, a person has an interest in access to some range of *possibilities*, options she might be interested in pursuing at some point, now or in the future.⁶² The role of generic possibilities is to ensure that our attachments are authentically chosen, and that we can revise them if we wish. Yet, unlike Oberman, who emphasizes the need to access the *full* range of life-options, I believe a suitable range of generic possibilities need not contain *every* option. My choice of an academic career is not less authentic because I wasn't able to go to Japan to explore sumo wrestling. What matters is that I was afforded a rich and diverse (not infinite) set of occupations from which to choose. Beyond a certain point, the provision of additional options has little effect on our ability to be autonomous choosers.

⁶⁰ Raz, *The Morality of Freedom*, 411.

⁶¹ Raz, *Morality of Freedom*, 375.

⁶² Oberman, “Immigration as a Human Right,” 40.

Further, there are significant costs associated with expanding our range of generic options to the globe as a whole, costs that are not equally present in the case of domestic movement. Discretionary movement can have harmful consequences, placing pressure on healthcare, schools, housing, or population density in popular destinations (San Francisco), and leading to decay in unpopular ones (Detroit). A domestic state has a greater ability to manage these costs internally than it does to manage them across borders. If internal migration causes dislocation or crisis in areas “left behind,” the state can fund investment or job retraining programs or locate government offices in a particular region, reducing the incentives for migrating.⁶³ Since receiving states do not control the environment in a sending country, they have fewer levers to alleviate these costs.

Second, domestic freedom of movement is grounded in an array of interests, including a *self-protection* interest against the potentially arbitrary use of political power. Lawmakers decide whether to raise or lower tariff barriers, how to set interest rates, whether to fund jobs or infrastructure programs, whether to allow banks to make risky loans or not, and so on. These political decisions have a pervasive impact on citizens’ conditions of life, and if badly made, they can inflict serious harms. Freedom of movement is a condition for the moral acceptability of an institution that allows officials to control and intervene in subjects’ lives in these ways: “if the government has these rights on her own account, the citizen also has correlative rights.”⁶⁴ If a government’s economic policies lead to devastation in one region, residents must be free to seek out alternative occupations and opportunities in another. If a lack of emergency preparedness leads to chaos after a natural disaster, residents of the affected area should be free to leave. And so on. If inhabitants are not to be dominated by state political power, they must be offered a set of countervailing rights that allow them to react to official decisions. One of these is the right to move around, at their discretion.

Let me sum up this discussion. I believe proponents of the human right to immigrate are correct to highlight that relocation abroad can sometimes be an important institutional means to pursue personal autonomy interests that also ground our domestic basic liberties. In part, this is due to current patterns of global interconnectedness, which encourage people to commit to goals, projects, and relationships involving foreign people and places. Though personal autonomy could be guaranteed in a more autarkic world, its implications are different in the more interconnected world we live in. In particular, people whose reasons for moving across borders reference fundamental autonomy interests have a strong *pro tanto* claim to relocate to a new country, even if they have not yet lived there. While this argument does not support a general human right to migrate, it may support a right to migrate for specific protected reasons. Presumably, though, the immigrants’ claims would need to be weighed against the claims of local inhabitants. I now turn to how we should balance these competing interests.

⁶³ Miller, “Is There a Human Right to Immigrate,” 24.

⁶⁴ *Crandall v. State of Nevada*, 73 US 35. In this I follow Michael Blake, who argues that the right to mobility should be seen as “a specific implication of moral equality which applies only within the context of a shared liability to the state,” much like the right to vote. Blake, “Immigration,” 229.

3. Balancing Conflicting Claims

How might the conditional model of exclusion work? Here it is worth making two assumptions explicit. First, unlike proponents of open borders, who generally hold that only *catastrophic* social costs can justify exclusion, I believe that migrants' interests in settling must be balanced against the interests of the receiving society's inhabitants without a strong presumption in favor of the would-be migrant.⁶⁵ While I reject the human right to immigrate, I do not believe that states should regulate immigration solely in the interests of their own members, e.g., to promote national economic well-being. Instead, in crafting immigration policy, citizens and officials have a moral duty to take the interests of would-be migrants into account alongside the interests of their constituents. Immigrants often have important reasons to move, some of which are grounded in the same personal autonomy interests that partly justify domestic basic liberties, and sometimes their interests may trump the less weighty interests of insiders. But I deny that we should begin with a strong *presumption* that migrants' interests will be dispositive.

Second, I believe that a government may show some partiality to the interests of its own constituents, so long as would-be migrants' fundamental territorial interests are protected in their home society. Here again I differ from Carens, who argues that "we have to weigh the claims of those trying to get in equally with those who are already inside."⁶⁶ Open borders theorists typically reject or problematize the assumption that the state has special duties to its own members, invoking the moral arbitrariness of state boundaries. If migrants have strong interests in living on a particular state's territory, why shouldn't the state treat those interests impartially with the interests of its constituents? Doesn't this rest on an arbitrary distinction among morally equal persons?

In my view, a justified division of responsibility among states grounds special duties to constituents. For example, states ought to specify and enforce property and other rights, provide justice-related benefits and public goods, and apprehend and punish criminals preferentially within their territories. This does not mean that states should pay no regard to the interests of outsiders, but that they should not view themselves as having equally strong obligations to provide these benefits to them.

Why is this division of responsibility—involving special duties to the state's territorial constituents—justified? Recall from Chapter 4 that the value of self-determination provides us moral reason to favor a system of separate states to a single world state.⁶⁷ A system of separate states is justified, on my view, because it allows for

⁶⁵ Carens argued in an early article that immigration could permissibly be restricted only if it would lead to a complete breakdown in social order. Oberman argues that the human right to migrate may not be restricted for reasons of economic cost, unless host country citizens are threatened with deprivation of basic goods like food and shelter. Oberman, "Immigration as a Human Right," 47.

⁶⁶ Carens, "Migration and Morality," 37.

⁶⁷ A division of responsibility among states is invoked by David Miller, *National Responsibility and Global Justice*, (Oxford: Oxford University Press, 2008), 249-261 and Charles Beitz, *The Idea of Human Rights*, (Oxford: Oxford University Press, 2009), 128-131.

political order to be imposed in a manner that shows proper respect for people's judgments as to how they should be ruled. I argued there that individuals have an important interest in avoiding subjection to *alien coercion*—coercion that in no way reflects their values and priorities. When one is pervasively subject to alien coercion, substantial aspects of one's life come to seem hostile, threatening, and beyond one's grasp. So individuals have a claim to *political autonomy*, to be ruled by an institution that in some way reflects their own priorities. Though political autonomy is an interest of individuals, it can be furthered through an individual's membership in a collectively self-determining group, if she affirms her participation in the group and accepts the higher-order values and procedures that structure it.

Consider, then, a representative individual, not knowing her citizenship, tasked with choosing principles to structure the international system. Alongside a strong interest in seeing her basic rights protected, I believe that this individual would recognize a strong interest in avoiding alien coercion. For this reason, in the normal case, she would prefer a rule permitting institutions to govern a territorially-based population only when those institutions reflect their shared political will. She would allow for certain exceptions to this rule in the case of serious human rights violations, or grave threats to a livable environment. But outside these exceptional cases, I believe she would see the interest in collective self-determination as taking priority over less urgent interests like increased income and access to desirable options and opportunities. She would not be willing to endorse benevolent colonial rule, for example, because it brought benefits of this less urgent kind.

If this is right, then the value of collective self-determination grounds a *territorial* division of responsibility among states. The state has, and *ought to have*, special duties toward constituents within its legitimate territorial jurisdiction that it does not have towards outsiders. To maintain otherwise would allow that a state should *rule* these outsiders—delivering justice-related benefits to them, and taking responsibility for their fates—even when it does not reflect the collective will of the cooperators in that population. But if there is good reason to disallow benevolent colonial rule, then there is also good reason to endorse a territorial division of responsibility among states. States *should* take greater responsibility for the fates of people within their boundaries, and less responsibility for the fates of people elsewhere. Otherwise they would disregard weighty claims to collective self-determination. Since this division of responsibility among states can be justified, the institution of territorial boundaries—involving, as it does, differential claims to government concern—is not morally arbitrary.

It might be objected that while this argument plausibly explains why the state should not take responsibility for outsiders in general, it is less plausible with respect to would-be migrants. While there is a weighty reason to avoid ruling foreign populations against their will, would-be migrants are generally eager to be governed by the host state. Indeed these people often find their birth state significantly alienating and see foreign institutions as better expressing their values and aspirations. Why, then, should the state not consider itself equally responsible for them?

There is considerable weight to this objection, and I believe that migrants' self-determination interests help to explain why states do not have a discretionary right to closure. But the state should consider itself responsible for these migrants only if it has good reason to allow them to settle on its territory. States cannot take responsibility for governing people on a "voluntary affiliation" basis. States play an essential role in establishing property and contract rights, definitions of tort liability, and so on. If each person had the discretion to sign up for the property regime of his choice, interactions between individuals in a contiguous space would create conflicts and disputes. So the state's justice-related functions must be performed *territorially*. Thus, if states have good reason not to extend their territorial jurisdictions, then they also have good reason not to consider themselves responsible for willing constituents who remain outside their territories. A state may claim responsibility for these people only if it has good reason to allow them to settle.

Does the state have a reason to allow migrants to settle on its territory? It is this question that the conditional model of exclusion aims to answer. And in deciding this question, I think it is permissible for the state to consider the effect of would-be migrants' settlement on its prior inhabitants, and on its own institutional functioning. As I argued in Chapters 2 and 3, prior inhabitants have an occupancy right in their territory, which gives them the liberty to reside permanently in that space, and to make use of it for their valued social, cultural, and economic practices. Occupancy rights are not necessarily exclusive, but they do ground claims against others not to undermine the shared social practices in which inhabitants are engaged. Second, the state has a justified special responsibility to its prior constituents, and it is entitled to consider this responsibility when deciding whether to acquire additional duties to new people. In the same way, I am entitled to consider the effects on my existing advisees when deciding whether to take on several new graduate students, or the effects upon my existing children of adopting four more.

This argument does not establish a discretionary right to exclude: as previously indicated, I doubt there is such a right: states instead have a moral duty to take the interests of would-be migrants into account in their admissions decisions. But it does explain why, when faced with would-be migrants, a state might permissibly appeal to its responsibilities to existing constituents as a good reason for prioritizing the claims of the latter over the former. In doing so, the state is not appealing to a morally arbitrary fact. If that state were, in general, to take equal responsibility for foreigners outside its territory, it would have to unilaterally coerce unwilling people, and such colonial relations are something non-members themselves have reason to reject. The essential strategy for developing the conditional model, then, is to begin with a state that has (justified) special responsibilities to its own population, but also reason to give weight to the claims of migrants to enter. In what scenarios might such a state reasonably exclude outsiders in fulfillment of its responsibilities, and when might it be obliged to accept them?

Recall that on the conditional model, states have a standing duty to accept would-be migrants in cases where they threaten no significant harms. This *duty to allow*

harmless migration limits how a state ought to control the land it governs: it cannot simply ignore would-be migrants' interests in settling. Because outsiders have significant interests in relocation, whenever their movement is not harmful to inhabitants, I think states have a duty to allow it. One necessary condition for a state's moral claim to exclude a would-be migrant, then, is that the migrant's proposed entry must threaten some significant harm to its inhabitants. In the absence of any such threat, borders ought to remain open: states have no general discretionary right to closure.

What about more complex cases, where harm is threatened? Here I have argued that the state must balance the interests of would-be migrants against the costs to its members, though it is permitted to give greater weight to members' claims. The priority for constituents is not infinite: where harms to constituents are relatively minor, and the benefits to would-be migrants very great, the state has a moral duty to admit the migrants.⁶⁸

Recall the cost-based reasons a state might have for restricting migration:

1. National Security
2. Institutional Threat
3. Public Services
4. Welfare State
5. Protection of Inhabitants' Ways of Life
6. Special Obligations to the Domestic Poor
7. Social Cohesion

Like migrants' interests in moving, these costs vary in their urgency. Let me start with the most serious ones. Reasons #1-4 reference significant threats to the stability of liberal political institutions. If a liberal state were to become unable to deliver important social services, to sustain its welfare state, or if its central political ideals and institutions were to be gravely threatened, then this would provide a strong case for restricting entry. These considerations provide reason for placing a ceiling on overall numbers of migrants at the limit of a state's "absorptive capacity." This limit is likely to be quite high, much higher than current rates of immigration to industrialized societies. Still, it may be lower than the overall demand to migrate under an open borders regime. Given projections about future climate change and mass migration, it is worth thinking about the ethics of scenarios in which the demand to migrate could outstrip a state's absorptive capacity.

Of course, it is hard to know *ex ante* exactly what the limits of a state's absorptive capacity are. All we can say is that significant threats to national security, public order, the welfare state, or a nation's core political values—were they to emerge—would constitute good reasons to restrict migration. A familiar worry is that the remotest possibility of a threat to these values can be exploited as a reason to close borders. A mere subjective perception of threat is not sufficient to restrict migration. Instead, a reasonable showing of harm—drawing on the objective methods of social science, and

⁶⁸ James Woodward, "Commentary: Liberalism and Migration," in Brian Barry and Robert Goodin, *Free Movement*, 59-84, proposes a similar approach and I have found his views especially helpful in writing this section.

publicly available evidence—is necessary. I recognize that this still leaves much room for debate over when evidence is “clear” and when threats become “significant,” but this is unavoidable in matters of political judgment. The difficulty of making such judgments is not reason to dismiss these concerns.

Significant threats of this sort are, I believe, weighty enough to trump migrants’ interests in moving in all but the most severe cases—i.e., where people seek to move to secure fundamental territorial interests, such as protection of their human rights and a liveable environment. Even here, these migrants might be justifiably excluded from a particular state if there are other potential host states whose institutional functioning is not so gravely threatened. It is true that migrants’ interests in subsistence or basic rights protection are more urgent than inhabitants’ interests in sustaining their liberal constitutional order or preserving their welfare state. But I have argued that since the state has justified special duties to its own constituents, government is not required to weigh the interests of would-be migrants strictly impartially.

Consider now three less urgent reasons for restricting migration: (5) defense of prior occupants’ ways of life; (6) special obligations to the domestic poor, and (7) concerns about social cohesion and integration. I assume a scenario where the demand to migrate does not threaten to overwhelm the state’s absorptive capacity and destabilize its political institutions. Nevertheless, the flow of migrants would likely cause other non-trivial harms, by exacerbating domestic inequality, lowering wages, decreasing social trust, or undermining important social and cultural practices.

These less urgent costs, in my view, are weighty enough to justify excluding some categories of migrants. Consider again:

- a. a desire to move to enjoy nicer weather;
- b. a desire to move to access higher wages above an already decent level;
- c. a desire to move to access educational, career, or religious opportunities that one could also pursue at home, though less successfully;

These are cases where would-be migrants have an attractive “territorial base” somewhere else and they lack any urgent interest in moving. Where their entry would threaten significant harms to the locals’ economic prospects, social cohesion, or valued social and cultural practices, then I believe that the locals have a sufficient justification for excluding them. Local inhabitants have special claims to live in this region, and to use the area for the practices that they value, and the settlement of these people would undermine their ability to do that. Governments may consider such harms to their inhabitants when deciding whether to grant would-be migrants the right to settle on their territory.

Most difficult are cases where migrants have interests in relocation that are plausibly more urgent than the costs to locals. Consider (in increasing order of urgency):

- d. a desire to move to access a society or culture more congenial to one's temperament or aspirations;
- e. a desire to move to access decent wages;
- f. a desire to move to pursue educational, career, or religious opportunities that do not exist at all at home;
- g. a desire to move to join one's spouse or children.

Even if locals are threatened with minor harms to their less-urgent interests, sometimes I think a government ought to allow migration, if it would confer much greater benefits on incomers. Though government can grant some priority to its inhabitants' interests, this priority is not infinite. Trivial harms to constituents do not trump weighty benefits to outsiders. For example, even if allowing family reunification for spouses and minor children of immigrants would slightly decrease social trust and cohesion, I believe receiving societies are obliged to allow it, because of the very great goods intimate association brings to people's lives. A policy granting people from extremely poor countries preferential access to higher education in wealthy states seems justified on similar grounds. Even if this would exacerbate domestic inequality, the opportunity to relocate would make an enormous difference to the migrant's life, in ways that implicate his central personal autonomy interests. If the locals can provide this weighty benefit while suffering only minor harms to themselves, then they should do so, though this comes at some cost to them.

While locals should be prepared to accept some costs to benefit migrants whose fundamental territorial interests are not at stake, I do not think that they are obliged to bear extremely grave burdens. The most difficult case is that of low-skilled migrants whose basic subsistence is not threatened at home, but who could greatly benefit from the more preferable job opportunities available in wealthy countries. This case is difficult because there are very large numbers of such migrants, and if all of them came, significant harms to the domestic poor, to cohesion and integration, and to social and cultural practices would likely result. Here I think the best that can be said is that states should be as open to these migrants as they can be without suffering significant setbacks to these interests. The most important conflict, in my view, is with obligations to the domestic poor. To the extent that states can remain open to low-skilled immigration consistently with discharging its obligations to its own worse-off (perhaps through compensation or retraining programs), it ought to do so. But there are limits to this approach: a wealthy state probably cannot take in all the economic migrants who would like to come. Since a state has special duties to its own constituents, harms of this kind can provide reason to limit migration, even when—impartially considered—the economic benefit to would-be immigrants would outweigh losses to the domestic worse-off.

I conclude by stressing that this conditional model grounds only a *limited* case for exclusion. There is no discretionary right to closure. Where migrants' entry is harmless, locals are obliged to allow it—and this means allowing a significant degree of permanent settlement by outsiders who desire to move to their land. States also ought to facilitate labor migration to the extent that is consistent with their special obligations to their domestic poor. When migration flows must be restricted to prevent significant social

harms, states should prioritize—within the queue—those would-be migrants who have fundamental personal autonomy interests in relocating to their territory. Finally, locals are almost always obliged to admit foreigners whose fundamental territorial interests are threatened elsewhere. These people have powerful reasons to enter, despite the harms they may pose to local practices, and locals are obliged to accommodate them.