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# Migration

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Chapter 59

International migration involves exit (emigration) and entry (immigration). Public debate in liberal democratic countries has focused mostly on immigration, with the issue often framed in binary terms. On one side are those who regard borders as unjust and inefficient. Most migrants want little more than to make better lives for themselves. What moral or political theory could justify preventing people from moving where they want to go? Global egalitarians and libertarians join with immigrants' rights advocates in arguing for generally open borders. On the other side of the debate are those who think states have a virtually unlimited right to restrict immigration. Cultural nationalists view immigration as posing a challenge to the national identity they value. Some social democrats and economic nationalists favor immigration restrictions for a different reason: protecting domestic workers from the competitive pressures said to be generated by immigration.

The topic of migration raises a number of challenging questions for constitutional democracies about the legitimacy of state power, the basic rights of individuals, and the substance and boundaries of citizenship. If people wish to migrate across borders, why shouldn't they be able to? States exercise power over borders, but what, if anything, justifies this power? Is it morally permissible for constitutional democracies to prevent their citizens from exiting the country and exclude prospective migrants from entering? If they are justified in excluding some and accepting others, how should they decide whom to admit?

This chapter examines how contemporary political theorists and philosophers have answered these questions with the aim of providing an overview of the main contributions to the ongoing normative debate on migration. It begins with a discussion of the "conventional view" that says states have the right to control migration and then turns to discuss arguments for "open borders." The third section examines critique of open borders. The fourth section considers more recent arguments for the conventional view and makes the case for a particular position.

## I THE CONVENTIONAL VIEW

Many people take for granted that states have the right to control migration. After all, states exercise power over borders, regardless of whether there is any compelling justification for it. Until recently, political theorists and philosophers had mostly been silent on the topic of migration and other issues that spill across borders. To take one prominent example, John Rawls developed his theory of justice for a democratic society “conceived for the time being as a closed system isolated from other societies” (1971, p. 8). Rawls is not alone. Many theorists writing about justice, equality, rights, and democracy mostly take for granted that their theories apply within the context of the nation-state, to those who are already members.

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

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

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

This cultural imperative grounds Walzer’s case for the state’s right to control immigration but he adds a qualification: the right to restrict entry does not entail a right to restrict exit. Controlling immigration is necessary to defend “the liberty and welfare,

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the politics and culture of a group of people committed to one another and to their common life,” but controlling emigration involves coercing people who no longer wish to be members (p. 39). Except in times of national emergency when everyone has a duty to work for the country’s survival, citizens must be free to exit their country. The right of exit is one constraint on the state’s right to control migration. This moral asymmetry between immigration and emigration suggests a second analogy.

Countries are like *clubs* in having admissions committees. Clubs have the right to control who can become a member, but they cannot prevent members from leaving. We might regard the U.S. Congress as the admissions committee charged with determining categories for admission and exclusion and setting numerical limits. To say that states, like clubs, have a right to control immigration is not to say anything goes. In debating particular admissions standards and the kind of community they want to create, Walzer says members can appeal to the “shared understandings” of members. He does not specify what sorts of constraints there should be on admissions standards; his point is that the distribution of membership in a society is “a matter of political decision” (p. 40). The club analogy, however, misses an important feature of the moral life of contemporary political communities.

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

What else are such states for?” (p. 42). Taking stock of these analogies, Walzer emphasizes what is unique to political communities: they are *territorial states* that possess jurisdiction over a particular territory. Unlike neighborhoods, clubs, and families, states have the right to control the physical location and movement of members and nonmembers in the territory. Yet, like clubs, they have the general right to set its own admissions policy, and like families, they have an obligation to take in those recognized as part of the “national family.” As he puts it,

Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life (p. 62).

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

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Walzer suggests one more constraint on the right of states to control migration. They are bound by the principle of mutual aid: positive assistance must be provided to foreigners outside the territory if it is “urgently needed” and the risks or costs of giving it are relatively low for the other party. Wealthy countries can usually fulfill this duty by sending foreign aid and development assistance to poorer countries. However, in the case of “persecuted and stateless” people, the duty of mutual aid can only be met by taking them in (pp. 33, 45). In light of this qualification, we can say the “conventional view” advanced by Walzer is not a case for “closed borders.” Rather, while liberal democratic states have a general right to control immigration in accordance with its national priorities, it must open its doors to refugees, family of current citizens, and forcibly displaced co-ethnics.

## II OPEN BORDERS

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

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

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

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

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that all individuals are entitled to. This right of free movement grounds a *pro tanto* duty on the part of liberal democratic states to open their borders.

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

A second set of arguments for open borders rests on the value of freedom. One argument says freedom of movement is a fundamental human right in itself. People have an interest in immigration that is fundamental to their well-being, and this interest is said to be of sufficient weight to ground a duty on others to respect the right to immigrate. Kieran Oberman argues we have a general interest in having access to “the full range of existing life options,” which includes both “attachments” (options we have already chosen) and “possibilities” (options we haven’t chosen but may wish to pursue in the future) (2016, pp. 35, 40). To access the full range of life options, people must have the right to immigrate to countries of their choosing.

A second freedom-based argument for open borders proceeds by way of analogy. It says freedom of international movement is a logical extension of rights we already take to be fundamental: the right of domestic free movement and the right to exit a country. Carens has pressed the consistency claim between *domestic* and *international* freedom of movement:

Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one’s native state and many in another; one might wish to pursue cultural opportunities that are only available in another land (2016, p. 239).

Carens concludes that liberals should regard freedom of international movement as a basic human right, which grounds a duty on the part of states to open their borders.

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Another consistency argument is made with regard to *exit* and *entry*. The right to exit one's country is widely recognized as a human right. The Universal Declaration of Human Rights (1948) includes "the right to leave any country" in its list of human rights. Philip Cole (2000) has argued that the right to exit a country entails the right to enter another. There must be a "symmetry" between exit and entry: "one cannot consistently assert that there is a fundamental human right to emigration but no such right to immigration." Cole argues that the liberal asymmetry position (defended by Walzer as discussed above) is "not merely ethically, but also conceptually, incoherent" (pp. 52–53).

A third freedom-based argument for open borders has been made by libertarians. We can find this argument periodically in the opinion pages of the Wall Street

Journal (1984): "Our greatest heresy is that we believe in people as the great resource of our land ... so long as we keep our economy free, more people means more growth, the more the merrier." The empirical assumption here is that complete or even partial elimination of migration barriers would bring vast economic gains, especially for migrants and the firms who employ them. The economist Michael Clemens (2011) provides a provocative metaphor: policies restricting migration are tantamount to leaving "trillion-dollar bills on the sidewalk." In a world without border restrictions, people would move from low-wage to high-wage regions out of a desire to improve their economic well-being and huge economic gains would result. Clemens suggests we could see overall gains of 20–60 percent of global GDP. The libertarian argument rests on freedom of contract and exchange. Libertarians regard the state as a voluntary association among consenting property owners. As Hillel Steiner (1992) has argued, "If I am willing to lease, sell, or give away space to other persons and am under no contractual obligation to refrain from doing so, the state has no authority to establish whether they are insiders or outsiders before permitting me to do so."

Steiner argues libertarians should strongly oppose legislated restrictions on international migration since such restrictions are taken as defending neither contractual agreements nor property rights. The role of the libertarian state is limited to enforcing "individuals' moral rights which consist exclusively of property and contractual rights." Thus, "migration restrictions aimed at protecting the *value* of property rights—let alone broader cultural values are entirely beyond its rightful authority" (pp. 91–93). So long as migrants do not violate the security and property rights of others, the libertarian state should not prevent their migration.

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

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that states would ever reach a circumstance in which the public order qualification would kick in. These weak qualifications do little to constrain the claim that borders should generally be open and people should generally be free to move if they wish.

### III CRITIQUE OF OPEN BORDERS

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

Blake's argument assumes that the scope of state coercion falls within the territorial borders of the state. Arash Abizadeh (2008) has challenged this assumption, arguing that virtually all foreigners are subject to the coercion of the world's most powerful states. Any state that takes democratic legitimacy seriously must justify border controls to everyone subject to them. Justification must take the form of equally enfranchising all those subject to coercion in a cosmopolitan scheme of democratic institutions. Abizadeh's argument rests on two assumptions: that the justification of coercion must take the form of equal enfranchisement of all those subject to coercion (not just citizens) and that a state's immigration policy coerces everyone in the world.<sup>1</sup>

A second objection rejects the claim that freedom of international movement is a human right. To be sure, people must be able to move freely in physical space in order to fulfill their basic interests, but how extensive must the scope of free movement be? David Miller (2016) has argued that our interest in freedom of international movement does not rise to the level of a human right. Human beings have a range of generic interests they are entitled to pursue, but in deciding on the specific form these interests should take, they must take account of what is feasible. For example, practicing a religion means "finding a faith one can believe in, but also finding a community of believers – a church, mosque, and so forth – that one can actually join given practical constraints on time, money, and distance." Contra

<sup>1</sup> For critique of both premises, see Miller 2016.



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Oberman, Miller argues a person's human rights are fulfilled when they live in a country that provides an "adequate range" of life options, options that are "sufficient" for a "decent human life" (pp. 51–52). In cases where the state cannot or will not provide its citizens with an adequate range of options, as in the case of refugees, international migration may be required, but the obligation to admit in such cases arises from a remedial responsibility to address injustice, not a human right to immigrate. In many cases, respecting people's freedom to move about within their country is sufficient to protect their basic interests.

A third objection focuses on the libertarian case for open borders. Neo-Lockeans like Steiner conceive of the political community as akin to a voluntary association of homeowners or business associates, but the cottage "community" that Steiner analogizes to the state operates *within* the jurisdiction of the state. Similarly, when an American employer signs a labor contract with a foreign worker, their agreement presupposes the broader context of the political community, including the system of laws that recognizes and enforces their contract and provides the public roads by which the worker travels to his employer (Song 2017). When a foreign worker sets foot on an American employer's property, he enters not only a parcel of private property but also the territorial space of the political community. The libertarian approach fails to distinguish between private property rights of individuals and firms and the territorial rights of states.

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

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

Miller offers a liberal nationalist account, which develops the cultural argument advanced by Walzer in explicitly nationalist terms. According to Miller, the right of states to control immigration is grounded in the right of *nations* to be self-determining. Citizens are not merely co-participants in a scheme of social cooperation or subject to the same coercive legal regime; "they also relate to one another as fellow nationals, people who share a broadly similar set of cultural values and a sense of belonging to a particular place" (2016, p. 26). Members of the nation have an interest in the character and preservation of their national culture. Immigration generates racial and ethnic diversity, which affects the pace of change of the national culture. In earlier work, Miller says, "immigration need not pose problems, provided only that the immigrants come to share in a common national identity, to which they may contribute their own distinctive ingredients" (1995, p. 26). However, "immigration

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might pose a problem” in certain circumstances: “where the rate of immigration is so high that there is no time for a process of mutual adjustment to occur; consider recent immigration to California, where a large number of immigrants have arrived in a relatively short space of time. In such cases the education system and other such mechanisms of integration may be stretched beyond their capacity” (128). In more recent work, Miller points to studies suggesting the racial and ethnic diversity generated by immigration may reduce social and political trust, which in turn may reduce public support for social welfare programs and the deliberative institutions of democracy (2016, p. 64). Nationalists conclude that if immigration does have this kind of impact, receiving states are justified in restricting immigration for the sake of protecting their national culture.

Miller’s nationalist argument rests on empirical claims that may not be accurate. If high levels of immigration do not have negative impacts on social trust, social welfare provision, or democratic participation, then it is not clear what reasons are left for excluding migrants. It may be the goal of preserving a distinctive national identity. One troubling aspect of the nationalist view is that by grounding immigration control in the imperative of preserving national identity, it may open the door to racial and ethnic exclusions. Miller explicitly rejects racial exclusions: “To be told that they [immigrants] belong to the wrong race or sex (or have the wrong color) is insulting, given that these features do not connect to anything of real significance to the society they want to join” (2014, p. 204). Yet, visions of national identity have always been contested, and race and ethnicity have historically played a central role in shaping what it means to be American, British, French, and so on. Consider the Chinese Exclusion Act, the national origins quota system, and the many other U.S. immigration and citizenship policies shaped by racial, ethnic, and other ascriptive ideologies (Ngai 2004; R. Smith 1997). Racial and xenophobic sentiments are not relics of the past; they are evident today in the rise of far-right parties in Europe and the “white nationalists” who helped usher Donald Trump into the White House. Liberal nationalists have sought to eliminate racial and xenophobic elements from their visions of national culture, emphasizing linguistic and cultural elements consistent with liberalism. Yet, the challenge for any nationalist view remains what to do when a nation’s commitment to racial and ethnic visions of national identity overtakes its commitment to liberal principles.

A second novel defense of the state’s right to control immigration draws on Lockean property theory. Locke himself began with the theological premise that God gave the earth to humankind in common and argued that individuals come to hold private property rights in particular parcels of land in virtue of mixing their labor with and adding value to that land (1980 [1689]). Contemporary Lockeanes have set aside the theological premise and developed the labor theory of value. As A. John Simmons puts it, “those who innocently work to discover, make, or usefully employ some unowned good ought to be allowed to keep it (if in so doing they harm no others)... [I]t would be wrong for others to take it away” (1992, p. 223). Ryan

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Pevnick adopts this Lockean intuition to justify the state's right to control immigration. In virtue of the labor they have contributed, citizens have property rights in their "collective accomplishments" (2011, p. 33). Like owners of a family farm, citizens are "joint owners" of state institutions:

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

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

Pevnick's account suffers the same problem as Steiner's libertarian theory discussed above, although Steiner draws on Locke to argue for open borders. Both conflate property rights and territorial rights of which the right to control immigration is a part (Song 2017). As the owner of my home, I can use and benefit from it and exclude people from entering, but my ownership claim does not entail the right to determine who can make the rules governing my home and all the homes of my fellow citizens. The latter is a fundamentally jurisdictional right that belongs to states. In addition, although Pevnick acknowledges states are not voluntary associations and emphasizes instead the role of labor in conferring ownership rights upon citizens, consent plays an unacknowledged role in conferring ownership rights. As he puts it, "In the case of illegal immigrants, by entering the country illicitly such individuals took their place in their community without the consent of the citizenry." He acknowledges that unauthorized migrants make contributions through working and paying taxes, but he contends that citizens have no obligation "to pass ownership of their institutions to illegal immigrants" because the migrants have "put themselves in this situation without the consent of the citizenry" (2011, pp. 164–165). Migrants' labor is insufficient to ground a claim to joint ownership; the consent of citizens is necessary. But we can apply this same consent standard to the citizens whom Pevnick regards as joint-owners of public institutions: very few citizens have become part of the collective of joint-owners by way of consent.

A third novel argument for the conventional view, advanced by Christopher Heath Wellman, is based on freedom of association. Wellman takes Walzer's club analogy to its logical conclusion. He starts with the premise that freedom of association is "an integral component of self-determination" (2011, pp. 39–40). Freedom of association includes both the right to include and the right to exclude potential associates. Wellman quotes Stuart White on this point: "When a group of people

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gets together to form an association of some kind (e.g., a religious association, a trade union, a sports club), they will frequently wish to exclude some people from joining their association. What makes it *their* association, serving their purposes, is that they can exercise this ‘right to exclude’” (1997, pp. 360–361). Wellman extends the value of freedom of association beyond small-scale associations to the state itself, arguing by way of analogy:

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

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

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

Among existing defenses of the conventional view, Wellman’s comes closest to a position of “closed borders.”

The club analogy upon which Wellman’s argument rests does not hold up. States are not voluntary associations; we do not freely enter them. The non-voluntariness of political membership raises the stakes of membership (Song 2017). Exclusion from a particular state can be hugely consequential in a way that exclusion from golf clubs typically is not. If one golf club refuses to admit me, I can join another or form my own. If a state refuses to admit me, I can’t form my own nor easily join another. If no golf club will admit me, the consequences are nowhere near as dire as the consequences of being a stateless person. In light of these differences, the burden falls on proponents to elaborate why freedom of association remains so fundamental for states. Wellman says control over rules of admission and membership are significant because new members will subsequently have a say in determining the future course of the association. In other words, freedom of association flows from the right of collective self-determination, but Wellman does not develop the connection. Rather than relying on problematic analogies, we need to examine the idea of collective self-determination and its connection to immigration control.

If there is any compelling argument for the state’s right to control immigration, I believe it rests on the right of collective self-determination (Song 2018). The three accounts examined above appeal to collective self-determination to justify a state’s right to control immigration, but they go awry in ignoring what is distinctive about political community as a form of association. Collective self-determination is the

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

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

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

Any attempt to justify the state’s right to control immigration based on collective self-determination must meet several challenges (Fine 2013). First, it must provide a coherent account of the collective who is to be self-determining. Second, it must connect the self-determining collective to a particular territory. Third, it must

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explain why the state's interest in controlling immigration outweighs the claims of prospective migrants to be admitted to the territory such that it can be said to have a general right to control immigration. Can these challenges be met?

First, we should regard the collective not as a nation, joint-owners of state institutions, or members of a voluntary association but as "a people" engaged in the shared political project of collective self-governance. What are peoples and how are they constituted? The idea is invoked in democratic theory and practice to refer to the agent in whose name political power is exercised. We can identify prominent invocations of peoplehood in foundational political documents around the world. The U.S. Constitution opens with the words "We the People of the United States." The French Declaration of the Rights of Man and Citizen begins: "The representatives of the French people."

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

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

The second challenge is to explain the connection between the self-determining collective and its right over a particular territory. The state is unique from other types of associations in being a fundamentally territorial entity. The state requires control over a particular territory in order to function as a state. But why is the state entitled to control access to the *particular* territory it claims for itself? We need to show that the people who are represented by the state have the right to occupy the

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territory in question. A state's claim of territorial rights over a particular territory depends on a prior entitlement to the area it governs. It is not the state but the occupants of the territory who hold these prior entitlements: only if the individuals residing in a particular place have a rightful claim of occupancy does the state, which represents those individuals, have legitimate jurisdiction over it. This right of occupancy is a pre-institutional claim of those who not unjustly inhabit a place to reside there permanently, to make use of the area for valued practices, and to be immune from expropriation or removal (Stilz 2013). What grounds the right of occupancy is the importance of stable residence for the pursuit of our life projects. As Hobbes argued, a person entering the social contract retains some rights, including "to his own body (for example) the right of defending, whereof he could not transfer; to the use of fire, water, free air, and place to live in, and to all things necessary for life" (1999). The implication is that the state's territorial rights derive ultimately from an individual's right to place. People have a right to occupy a particular place because stable residency in a particular place is necessary for personal well-being.

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

These are hard and important questions that I cannot pursue here, but briefly I do not think the legitimate occupancy condition necessarily unravels the case for the territorial rights of states. Where the agents and victims of the unjust appropriation are still alive and easily identifiable, the agent that was causally responsible for the injustice bears a responsibility to remedy the injustice. What about cases where the perpetrators and victims of the injustice are long gone? White settlers and government officials who expropriated Native American land are causally and morally responsible for the harms caused to Native Americans, but given that none of the original parties who perpetrated the injustices are still alive, who bears responsibility for remedying the effects of the injustice suffered by Native American descendants? One approach rests on establishing causal connections between perpetrators and victims, but it runs into the practical difficulties of making such connections in the case of injustices perpetrated long ago. We must also consider current occupants of the land, many of whom arrived after the injustices were perpetrated and have built their lives on the land. In response, some have argued that historical injustices should be regarded as having been "superseded" and the focus instead should be on securing

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the rights and well-being of current members of the political community (Waldron 1992). By contrast, others argue that democratic political communities must acknowledge and respond to past injustices to foster inclusion of those disadvantaged by past injustices. The responsibility to remedy the enduring effects of past injustices is a political responsibility that falls on all current members of the political community (I. M. Young 2011). Remedies might take symbolic and material forms, including apologies, return of stolen property, monetary compensation, and legal and constitutional provisions recognizing the self-government rights and land use rights of indigenous communities. The exact form that remedy should take will depend on a number of factors, including what those harmed by the past injustice want and the impact of granting the remedy on the state's obligations toward all members of the political community. There are no easy answers, but I believe the difficult questions raised by the legitimate occupancy condition can be addressed through taking historical injustice seriously.

A third challenge is to explain why the state's interest in controlling immigration outweighs the claims of prospective migrants to be admitted such that there is a general right to control immigration. There are clearly circumstances in which states are morally required to admit prospective migrants as in the case of refugees fleeing violence and persecution. Such cases constitute "obligatory admissions," cases where the decision to admit prospective migrants is required by justice (Carens 2013). In cases where states have played a causal role in turning people into refugees, they bear a remedial responsibility to take refugees in to repair the harm they have caused (Souter 2014). Another source of the duty to assist refugees is more universal in scope, the humanitarian concern that grounds the principle of mutual aid. What distinguishes refugees and other "necessitous migrants" from other migrants is their pressing need for protection against serious harm (Song 2018). It is akin to a duty of rescue in emergencies: when someone faces the threat of death or serious harm, we have a duty to rescue them if we can do so without causing serious injury to ourselves. Refugees are in need of rescue from persecution by their home states or the failure of their home states to protect them from violence by third parties.

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

The would-be immigrant who wants to cross into a given jurisdiction acts to impose a set of obligations upon that jurisdiction's current residents. That obligation limits the freedom of those residents by placing them under standing obligations to act in particular ways in defense of that migrant's rights. In response to this, legitimate



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states may refuse to allow immigrants to come in, because the residents of those states have the right to refuse to become obligated to those would-be immigrants (2013, pp. 119–120).

There is another fundamental interest not captured by Blake’s account, one that is irreducibly collective. It is the interest in collective self-determination. Collective self-determination enables, through its exercise, a distinctive kind of freedom, what Rousseau calls “moral liberty” and what we can call political freedom: “obedience to the law one has prescribed for oneself” (1987, pp. 150–151). Collective self-determination is a form of political freedom that is only possible through membership in a collective. So, if a demagogue were to seize power without the support of the people he seeks to rule, he would not take something away from the individuals *qua* individuals; instead, he takes something from the group as a whole, the right to collective self-determination. If prospective migrants enter without authorization, they sidestep the political process by which members of the political community can define who the collective self is and determine its future course. A state’s qualified right to regulate immigration flows from the right of a people to govern themselves (Song 2018).

The collective self-determination argument for the state’s right to control immigration offers a middle ground in a highly polarized debate about migration. In contrast to restrictive nationalists who argue for “closed borders,” we can acknowledge universal obligations to assist the world’s persecuted and poor. In contrast to proponents of “open borders,” we can recognize the moral significance of political membership: it grounds the particular rights and obligations of citizenship, which are more extensive than the rights and obligations we have in virtue of our humanity. When it comes to migration, morality requires states to take in refugees and other necessitous migrants, but it does not demand open borders or uncontrolled freedom of movement. What is required is a policy of what I call “controlled borders and open doors,” which gives priority to those fleeing persecution and violence as well as those with family ties to current members (Song 2018). It also recognizes that insofar as immigration negatively impacts the wages and working conditions of workers already here, including recently arrived migrant workers, liberal democratic states may be justified in restricting immigration.

## CONCLUSION

The issue of migration will continue to pose challenges to constitutional democracies because it implicates fundamental questions about the legitimacy of state power, the bases and scope of individual rights, and the substance and boundaries of citizenship. As a result, it is important to grapple with one’s views about these basic questions in pursuing debates about what kind of immigration policies to pursue.

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