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## Migration and discrimination: exploring the pathways of a more integrated research agenda

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### ABSTRACT

This special issue consists of four articles, contributed by David Owen; Désirée Lim, Sahar Akhtar and (as co-authors) Mollie Gerver, Miranda Simon, Patrick Lown and Dominik Duell. These contributions address issues related to migration policies with the aim of bringing normative theories of migration and discrimination into dialogue. These theories describe the various types of discrimination inherent in the domestic and global migration systems, as well as assess arguments, *pro et contra*, about whether these forms of discrimination are permissible.

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## Introduction

Liberal democratic states, like other states, are relatively unconstrained in their adoption of the migration policies of their choice. However, this discretion is generally thought to be constrained by certain moral limits. One such limit is set by the non-discrimination principle. Typically, selection policies based on e.g. race, ethnicity or religion are viewed as morally impermissible, while criteria based on e.g. family ties, relevant professional skills and humanitarian obligations are considered as permissible, or even required in some cases, as the case of refugees may demonstrate. While certain moral backslides happen at the level of policy, e.g. with Donald Trump's infamous 'Muslim Ban', non-discrimination has broadly become a morally and legally recognized normative limit on migration policies.

The articles presented in this special issue focus on migration policies through the lens of normative debates on 'migration' and on 'discrimination'.<sup>1</sup> The contributions

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focus on the ‘politics of migration’ and seek to answer the general question, ‘What does it mean for migration policies to respect the non-discrimination principle?’ In answering this question, they also answer a more theoretical question regarding the advantages and challenges of an integrated research agenda, by (i) taking ‘discrimination’ seriously while discussing the ethics and politics of migration; and (ii) taking the ‘ethics of migration’ seriously while discussing discrimination. Taken together, they shed light on how combining the normative debates on migration and discrimination may offer action-guiding political theory regarding migration policies, on the one hand, but also articulate and reflect on an integrated research agenda more theoretically, on the other.

### *Migration and discrimination in social sciences and political theory*

What does it mean for migration policies to respect the non-discrimination principle? Literature in social sciences has widely celebrated the ‘non-discrimination’ turn that migration policies have taken since the 1960s, only using seemingly legitimate considerations such as family ties, skills and humanitarian obligations as selection criteria, as a triumph of liberalism and universalism (Fuchs 1990; Hollifield, Martin, and Orrenius 2014; Joppke 2005). A similar point applies to the fact that foreign residents in the domestic sphere have increasingly been viewed as on par with native citizens, and permitted to acquire more legal rights (Hammar 1990; Soysal 1994). However, this optimism with regard to the non-discrimination of immigrants has been combined with reflections on the shortcomings of policies, regarding the corresponding requirements of non-discrimination. These reflections have been nurtured partly by an expansive development in understanding of the requirements of the principle of non-discrimination since the 1960s, and partly by the increased precariousness of migration statuses. Despite the apparently non-discriminatory use of traits in selection, global and domestic migration policies still widely mirror group hierarchies in terms of territorial admission (Gülzau, Mau, and Zaun 2016; Mau et al. 2015). Moreover, with the introduction of the reversibility of resident statuses, even an immigrant who acquires citizenship through naturalization can never escape the precariousness of their status (Ellermann 2020; Gibney 2013, 2020).

Although questions of migration and (non-)discrimination have thus far received a fair amount of attention within social sciences, there has so far been little systematic attempt to combine the normative theoretical literatures on migration and discrimination, or to see the implications of such an ‘integrated research agenda’ for actual migration policies at domestic and global levels. This special issue aims to partially remedy this situation.

As a pillar of liberal democratic ethos, the non-discrimination principle remains vague in its relevance to various migration policies. To explain, we need to start with a working definition of discrimination in philosophy, and to articulate its legal regulation. Discrimination is a kind of differential treatment or impact that people are subject to, which ‘consists of acts, practices, or policies that impose a (relative) disadvantage on persons based on their membership in a (salient) social group’ (Altman 2011). Differential treatment or impact is not always wrong. Yet certain forms of these are wrongful. According to some of the main theories in the field, this is so because: certain instances of differential treatment demean those discriminated against (Hellman 2008);

they disrespect the victims of discrimination in virtue of the discriminator's flawed deliberations (Eidelson 2015); they involve relating to those discriminated against as inferiors (Moreau 2020); or because they 'harm those discriminated against in ways that result in their lives going less well'<sup>2</sup> (Lippert-Rasmussen 2013); or, for that matter, they are wrongful for other reasons. Such instances of wrongful discrimination may result from epistemic biases, and/or of in/outgroup social psychological dynamics, or simply from considerations of self-interest in a sexist, racist etc. social context. 'Discrimination is prohibited by six of the international human rights documents' (Altman 2011), and also outlawed in many liberal democratic societies. All this suggests that we face a principle that has significant implications for migration policies, whose implications remain nonetheless vague.

When it comes to ethical dilemmas of migration, theories of discrimination remain vague regarding whether would-be immigrants should be considered as proper subjects of discrimination. This stems from a specific ambiguity regarding whether or not discrimination *conceptually* requires that, depending on the trait in question, the discriminator and the *discriminatee* share 'the same society', or are 'at least governed by the same overarching political structure' (Altman 2011). Generally, the literature seems to assume that for a discriminator to discriminate against someone they must be subjected to the same political structure. This assumption might stem partially from taking state borders and national scope for granted as a relevant scope of analysis, without due critical scrutiny, a form of *epistemic bias* with normative implications. At least, this same assumption has received significant criticism in social scientific and political theoretical literatures on migration, as a kind of 'methodological nationalism'. This has prompted scholars to critically scrutinize the theoretical underpinnings of their work (Sager 2016; Wimmer and Schiller 2006); methodologically revise important works in political theory (Baycan-Herzog 2022); as well as challenge previously set limits on debates about migration and multiculturalism (Boucher, Guérard De Latour, and Baycan-Herzog 2023). Mirroring this ambiguity, the normative literature on discrimination treats citizens with backgrounds of migration as 'proper subjects' of discrimination with reference to recognized traits such as race, ethnic origin or religious belief, while remaining ambivalent on the question of would-be immigrants and migrant admission policies. In other words, race, sexual orientation, gender identity, ethnicity, religion are recognized as constituting the relevant traits of 'group membership' for the concept of discrimination, or the concept of direct discrimination at least, in assessing various migration policies, including territorial admission. 'Citizenship' as a trait might only be partially relevant, given the relative silence of the literature on discrimination when it comes to territorial admission policies. If 'citizenship' were to be recognized as a fully protected trait, then most contemporary migration governance would become relevant for the scholarship on discrimination.<sup>3</sup> A similar vagueness exists regarding non-discrimination as a legally binding principle. For example,

<sup>2</sup>We find it important to emphasize that Lippert-Rasmussen's account does not only focus on the harm and includes prioritarian and desertarian components. As such, it is a very specific version of a harm-based account of the wrongfulness of discrimination.

<sup>3</sup>This is because both (1) a given citizenship that a would-be immigrant holds is the main determinant of whether (s)he will be territorially admitted, and (2) the set of rights (s)he can access within the host state – resulting in significant differences among the holders of various citizenships, in turn leading to relative disadvantages (Baycan-Herzog, n.d.).

‘nationality’ or ‘national origin’ are included alongside other legally protected traits, and in principle, the list of legally protected traits remains open.<sup>4</sup> Oddly enough, this requirement coexists comfortably with the stark inequality induced by changes in global migration governance. The migration and mobility rights of ‘the citizens of OECD countries and rich countries’ have increased in the last 40 years, whereas they have diminished or stagnated for ‘the citizens of African countries’ (Mau et al. 2015, 1192). While this moral and legal vagueness of discrimination is a limitation, it is also an opportunity for deeper scholarly engagement in this special issue.

Although the literature in the ethics of migration displays a strong normative consensus around the non-discrimination principle, there are only a few contributions, which directly engage with discrimination-based reasoning in the context of migration. These contributions can be roughly divided into three categories.

The first argument linking discrimination and migration claims that the *functionality of the historical processes* underlying the current inequalities in territorial admission policies is itself an instance of wrongful discrimination. This is because migration law *as such* functions to exclude individuals (seen as members of) historically disadvantaged races, and non-Western and colonized peoples (Fine 2016; Owen 2019), and because exclusion is wrongful *per se*.<sup>5</sup> This argument neither applies to a hypothetical world in which historic injustices did not take place, nor countries that are not agents, but only victims, of historic injustices.

A second argument claims that even though ‘citizenship’, relative to other traits, is only weakly protected, it needs protection because of its significant overlap with other protected traits (Kukathas 2017, 2021).<sup>6</sup> Unlike the first argument, in principle this applies even in a hypothetical scenario of no historic injustice. It is also compatible with the non-wrongfulness of migration restrictions despite historic injustices, provided the absence of a relevant significant overlap.

A third line of argument focuses on migration policies of territorial admission and residence alongside one another, and claims that justifying differential treatment to some groups—e.g. would-be immigrants – disregards its detrimental effects on other groups—e.g. citizens of migrant origin; or the host society at large. This is because both groups are linked through their shared common traits; negatively influencing the status of one group cannot avoid doing so for the other (Blake 2003; Mendoza 2016), and thereby risks threatening social cohesion in host societies (Baycan-Herzog 2021). Unlike the two previous arguments, this argument does not apply in situations without such overlap, i.e., when no present citizens have the same traits that would be grounds of exclusion for would-be migrants. However, when there is one, the present argument

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<sup>4</sup>For example, the International Covenant on Civil and Political Rights requires that: ‘The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*’ (Article 26; our emphasis).

<sup>5</sup>Although it is not fully clear what forms the basis of this moral wrong: disrespect, or disadvantage? Both? These remain implicit.

<sup>6</sup>We do not want to deny the similarity between these two arguments in their critical assessment of the current shape of border policies. However, the first offers a historical functional claim that locates the wrong in the very constitution of border controls, whereas the second focuses only on their current functioning. Conceptually, the second claim allows one to argue, for example, that 50 years ago border controls were less discriminatory than they are in 2024, whereas the first argument would claim that border controls *per definition* are discriminatory in a morally wrongful way.

applies even in the absence of historic injustices and even in the absence of an overlap between the recognized traits which migrants are excluded for, e.g. race or gender.

While these contributions have successfully begun to address some of the connections between the normative theories of migration and discrimination, they nevertheless remain incomplete in three related ways. First, they do not *fully* address territorial admission policies, regulated by bordering processes as well as the overarching norms embedded in global governance of migration, independently from other protected traits. Second, they offer insufficient grounds to (a) assess instances of wrongful discrimination with regard to persons as ‘immigrants’, and to (b) specify the kind of wrong in these cases.<sup>7</sup> Third, the relationship between the putatively wrongfulness-making feature posited by these three arguments and the wrongfulness-making features posited by standard accounts of the wrongfulness of discrimination (e.g., demeaningness (Hellman), disrespect (Eidelson), social inequality (Moreau) and harm (Lippert-Rasmussen) (mentioned above) remains unclear.

### **Brief summary of contributions**

This special issue brings together the normative debates on discrimination and migration, and allows each normative debate to be complemented by the relative advantages and specific conceptual tools of the other. From the perspective of the ethics of migration, it is crucial to identify the moral implications of the non-discrimination principle as a widely recognized legal and moral limit for various migration policies. From the perspective of discrimination, the concept of discrimination should not be taken to apply only at the national level.

The ethics of migration debate should not neglect discrimination-based arguments, as they reveal important moral limits, and may also generate stronger duties than other moral grounds – e.g. equality of opportunity, freedom of movement. In his contribution to this volume, David Owen shows how global migration governance is an instance of structural discrimination with respect to citizens of disadvantaged states when put into the historical perspective of European imperialism and colonialism. In addition, discrimination-based arguments are more relevant than before for capturing the political *zeitgeist* in host societies and are fertile for justice-enhancing recommendations with respect to migration policies. As much as democratic majorities have been unwilling to *extend* rights and benefits to migrants – in particular to those perceived as ‘culturally distant’ migrants, such tendencies have arrived at a new milestone when they started to *erode their existing rights*.

The political dynamics for selective inclusion raise questions pertaining to the role of arguments that are prevalent in the public sphere, which could raise ethical dilemmas related to migration and discrimination, as Gerver *et al.* demonstrate in their experimental work in this volume. The influence of various xenophobic right-wing political parties targeting ‘culturally distant’, typically Muslim minorities in Europe, during their political campaigns led to dramatic and symbolically

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<sup>7</sup>This is not to say that these arguments are not normative; they take discrimination as an inherently normative concept. However, they do not imply that all instances of discrimination are wrong (see also Altman 2011).

charged political developments such as ‘amending the constitution to ban the construction of new minarets in Switzerland’ (Baycan-Herzog and Gianni 2019) or the mainstreaming of ‘withdrawal of citizenship’ policies in various Western countries since 2010 (Gibney 2020). Long political campaigns, often articulated around racist and ethnocentric political rhetoric, have been able to successfully transform the political ideologies of specific groups, that ‘minorities do not belong’, into concrete society-wide policies that undermine minorities’ equal belonging.

In her contribution to this volume, Désirée Lim shows, under the current political circumstances, that border policies should be conceptualized as bordering processes that disrespect migrants and lead to status harms, at worst, by implementing cruel policies, e.g. separating Mexican children from their families at the U.S border. Such political developments oblige migration theorists to engage with the discrimination literature – and *vice versa*. Indeed, if bordering processes increasingly determine the political destiny of host states, and various dimensions of political life in such a significant manner, as Lim claims, then the underlying assumptions of the discrimination debate seem odd. By underlying assumptions, we refer to the ‘implicit’ or ‘explicit’ presupposition that ‘discrimination should be only discussed in a context of shared political institutions’.

Combined with the worry of methodological nationalism mentioned earlier, discrimination theory is, arguably, highly likely to evolve beyond such assumptions. Sahar Akhtar’s contribution in this volume, alongside her recent work (Akhtar 2022, 2024); have been paramount to taking global vulnerabilities and status hierarchies more seriously in normative analysis, rightfully eroding such established presuppositions. In her contribution, Akhtar argues that territorial admission policies based on criteria, which exclude people with disabilities, often discriminate against one of the globally most vulnerable groups of disabled people in ways that demean them. Indeed, the recent scholarship, including this special issue, is moving beyond such assumptions by considering the normative relevance of ‘global social status’ (Akhtar 2022, 2024), ‘relational egalitarianism’ (Sharp 2022), as well as central features of global migration governance (Fine 2016; Owen 2019).

## Conclusion

Migration and discrimination are topics of high political relevance in many countries. There is an abundance of theoretical literature on both the ethics of migration and on discrimination. Yet, few political philosophers have so far attempted to systematically integrate these two stands of literature. With this special issue, we aim to provide one such attempt. We hope and believe that this special issue amply illustrates the fruitfulness of doing so and will encourage others to adopt a similar aim.

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