

## *Freedom, Immigration, and Adequate Options*

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Abstract:

According to the freedom argument for open borders, immigration restrictions are generally unjust because these restrictions infringe on important freedoms, such as freedom of association and the economic liberties. Some authors have objected to the freedom argument by claiming that potential immigrants only have rights to sufficient options to live decent or autonomous lives and, consequently, states can permissibly prevent people from immigrating when potential immigrants have adequate options. In this paper, I show that this objection to the freedom argument for open borders is unsound and that restrictions on international freedom of movement can be morally impermissible even when potential immigrants have adequate options.

Keywords: freedom; immigration; self-determination; global justice

### **1. Introduction**

States prevent millions of people from immigrating. One estimate finds that the number of people who are willing to move immediately to high-income countries is fifty million a year. This is five times the actual number of people that do immigrate to these countries every year (Pritchett 2006, p. 72). High-income countries also deport many thousands of immigrants through coercive measures. Why do high-income states restrict immigration? Immigration restrictions are extremely popular. In most high-income states, majorities favor reducing immigration. Only tiny minorities favor increasing it (Pritchett 2006, p. 74). This opposition to immigration is not merely a function of the self-interest

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of the electorates of these countries (Heinsmueller and Hiscox 2007). Instead, most people believe that their states are *morally permitted* to restrict immigration. Christopher Wellman and Andrew Altman observe: “In the worlds of common perception and public policy, almost everyone presumes that sovereign states are entitled to control their territorial borders” (Wellman and Altman 2009, p. 187). Call the position that states can permissibly restrict immigration in some significant number of cases: *the permissible restrictions view*.

Most adherents of the permissible restrictions view acknowledge that the right to exclude has limits. Many people believe, for instance, that states are at least under duties to admit some asylum applicants and refugees. This moral requirement is embodied in international law and in the domestic laws of some liberal states. States’ prerogatives to restrict immigration are also constrained by demands for family reunification. However, the permissible restrictions view holds that states can exclude some potential immigrants, such as economic migrants or people who simply have the preference to live in another state. In recent years, the permissible restrictions view has attracted formidable philosophical defenders (Wellman and Altman 2008, ch. 7; Miller 2008, ch. 8; Pevnick 2011).

Although most people now accept some version of the permissible restrictions view, things may have been different in the late nineteenth century. Borders in the Western hemisphere were porous during this earlier period and elite opinion favored free international movement, at least relative to the contemporary era. The International Emigration Conference in 1889 articulated a common view when it claimed: “We affirm the right of the individual to the fundamental liberty accorded to him by every civilized

nation to come and go and dispose of his person and his destinies as he pleases.”<sup>1</sup> This statement suggests that people have general moral rights to free movement; states are under moral duties to admit all or the vast majority of potential immigrants. On this view, states lack moral discretion about whom to admit or exclude. Call this: *the open view*.

One influential argument for the open view appeals to the value of freedom (I will refer to this as “the freedom argument”).<sup>2</sup> The argument goes like this. Immigration restrictions restrict important freedoms. These freedoms include freedom of association, freedom of movement, and the economic liberties. It is unjust to coercively restrict these freedoms unless there is a powerful justification for doing so. In general, the considerations in favor of immigration restrictions are insufficiently compelling to justify restrictions on these freedoms. Therefore, immigration restrictions are, in general, unjust.

Several political theorists have recently criticized and rejected the freedom argument for the open view. In this paper, I will evaluate one important objection to the freedom argument. Here is the objection: states only owe outsiders assistance in achieving an adequate range of options to live decent or autonomous lives and this moral requirement is consistent with some immigration restrictions. While open borders promote various freedoms, states are not morally required to provide potential immigrants with these freedoms, as states can permissibly refrain from providing potential immigrants with options beyond a limited, adequate set. Call this: *the adequacy objection* to the freedom argument for the open view. David Miller, Ryan Pevnick, and other political theorists have powerfully defended the adequacy objection (Miller 2008, p. 207; Pevnick 2011, p. 83-85). I will argue that the adequacy objection to the freedom argument fails. Many immigration restrictions infringe on the freedoms of people with

adequate options and, in my view, this is a serious moral objection to these restrictions. I will clarify the adequacy objection to the freedom argument in section 2 and show why the objection is unsound in section 3 and 4. Section 5 concludes.

## 2. Freedom and Adequate Options

Immigration restrictions restrict important freedoms. By “immigration restrictions,” I primarily mean laws that are intended to prevent people from crossing borders or residing in a state’s territory on a permanent basis (I will leave another kind of immigration restriction—restrictions on naturalization—to one side in this paper). The freedoms at stake include:

- (i) *Freedom of Contract.* Immigration restrictions prevent people in different countries from forming certain contracts. Most notably, these restrictions prevent people in different countries from forming employment contracts and controlling the terms of their employment. They cannot contract to work in the same state.
- (ii) *Property Rights.* Immigration restrictions can restrict the liberty to use personal and productive property. For example, immigration restrictions prevent landowners in one country from inviting people in another country onto their land on a permanent basis.
- (iii) *Freedom of Association.* Immigration restrictions damage people’s ability to freely associate with one another. They interfere with people’s capacity to form and maintain intimate attachments with people in other states. These restrictions prevent people from living with their

friends and family in other states and they also prevent people from living with other members of their religious and cultural groups, if these groups live in different states.

- (iv) *Free Movement.* People have interests in being able to move to other countries, apart from the reasons listed above. People may identify with the culture in another state, dislike the culture or government of their current state, consider their ancestral homeland to be in another country, and so on. Here I mean to indicate that people have a great variety of interests in moving to other countries. In this respect, free international movement respects the pluralism of human desires, interests, projects, and values.

There are significant moral reasons against restricting the above liberties. It may be permissible to restrict the above liberties if there is an excellent justification for doing so. For instance, most people believe that it is permissible to restrict basic liberties if this is necessary to avert disaster. But it is unjust to restrict important liberties in the absence of an especially powerful justification. If immigration restrictions infringe on valuable liberties, then these restrictions require a powerful justification in order to establish their permissibility. So, in this sense, the freedom argument is a presumptive argument. By “presumptive argument,” I mean that, if the argument is sound, then we should consider this argument to be decisive unless there are reasons that defeat this presumption in exceptional cases.

The freedom argument relies on the claim that it is presumptively wrong to *coercively* restrict important liberties and, moreover, that states *coercively* restrict

important liberties when they restrict immigration. It is sometimes permissible to merely refrain from giving someone an option. Suppose that I decline to hire you for a job.

Contrast this scenario with another case. In this second case, I credibly threaten you with physical force if you try to contract with someone for employment. In the first case, I am permissibly refraining from providing you with an option; in the second case, I am coercively restricting your economic liberty. The freedom argument claims that immigration restrictions are in morally relevant respects like the second case.

Immigration restrictions coercively restrict a range of valuable liberties.

According to the freedom argument, justice requires open borders. At least, it is hard to imagine a world in which states can exclude potential immigrants and also refrain from damaging their interests in freedom of association, freedom of movement, and the economic liberties. If there is such a world, it is a remote possibility. Even in a world where global poverty and inequality were largely eliminated, this argument would still justify open borders. To see this, we can observe that people in high-income societies continue to have weighty interests in free movement within their own societies. If high-income countries restricted freedom of movement in their borders, most people would regard this restriction as a serious human rights violation. This judgment suggests that people in high-income countries have powerful interests in free movement. Similarly, people in a wealthier world would also continue have weighty interests in free international movement. States would still lack rights to exclude in a world with no poor people if the freedom argument is sound.

Many political theorists reject the freedom argument. Some of these theorists argue that states only owe outsiders an adequate set of liberties or options. States are

morally required to help ensure that people abroad have enough options to satisfy their basic needs or live decent lives. But states lack moral duties to help ensure that outsiders have a maximal set of options or freedoms. This more ambitious claim is necessary to defend open immigration. Yet it is false that states are under moral duties to provide potential immigrants with a maximal set of liberties or gratify their strong desires to move. States are only morally required to help provide outsiders with an adequate set of options. Some immigration restrictions are consistent with this duty. This is the adequacy objection to the freedom argument.

David Miller articulates this objection:

[I]f we are going to show that migration is a human right, a line must be drawn between basic freedoms that people should have as a matter of right and what we might call bare freedoms that do not warrant that kind of protection. It would be good from my point of view if I were free to purchase an Aston Martin tomorrow, but that is not going to count as a morally significant freedom—my desire is not one that imposes any kind of obligation on others to meet it. In order to argue against immigration restrictions, therefore, liberal philosophers must do more than show that there is some value to people in being able to migrate, or, as their behaviour shows, that they have a strong desire to migrate (Miller 2008, p. 204).

Miller says: “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” (Miller 2005, p. 196). Miller argues that, while people do have interests in crossing borders, these interests conflict with the rights that nations have over their territory. When potential immigrants lack adequate options to live

decent lives, these people may have rights to immigrate. Otherwise, nations have rights to exclude potential immigrants.<sup>3</sup>

Ryan Pevnick develops a similar objection to “rights-based” arguments for open borders. He argues:

decent human lives are not built by individuals constrained for a lifetime to a single room.... However, there is no reason why this range of movement must extend indefinitely. Instead, we already recognize as legitimate all kinds of limits on movement: you are not free to move onto property owned by others, to climb onto the lap of the Lincoln Memorial, or even to move too quickly on an interstate. These restrictions seem quite unlike the one confining us to a single room. They do not seem to be rights-violating. We can understand the difference in our intuitive responses to these two types of restrictions on movement by distinguishing between the need for a set of options sufficient for the creation of an autonomous life and an optimal set of options (Pevnick 2011, p. 84).

Pevnick contends that people have rights to enough options for them to live autonomous or self-authored lives. Yet people do not need an “optimal” or an enormous number of options to be autonomous. People only need a sufficient set of options to choose from in order to be genuine self-authors. According to Pevnick, people lack rights to immigrate to other states if they already have sufficient options.

Miller, Pevnick, and other theorists advance the following argument:

1. People have rights to immigrate to other states only if they are unable to secure an adequate range of options to live autonomous or decent lives in the state where they currently live.



2. Some states provide their residents with adequate options.
3. So, some people do not have rights to immigrate to other states.

If the adequacy objection is sound, then there is only an objection to immigration restrictions that interfere with the ability of outsiders to secure adequate options. The adequacy objection might help justify a distinction between refugees and other kinds of immigrants. As I noted in the introduction, many people believe that states should admit refugees and asylum-seekers, but reject the view that states are required to admit other potential immigrants, such as economic migrants who already have a decent standard of living and who simply want to gain access to higher wages in another country. The adequacy objection might help justify this distinction between the claims of refugees and the claims of economic migrants. States are under duties to admit refugees who lack adequate options to live decent lives, while states lack these duties to economic migrants and other potential immigrants who are reasonably well-off.

The adequacy objection also allows political theorists who defend immigration restrictions to rebut a powerful argument in favor of the open view. Political theorists who defend immigration restrictions accept:

- (1) States are morally required to ensure that people have freedom of movement within their borders.

But they deny:

- (2) States are morally required to open their borders to potential immigrants.

People presumably accept (1) because they believe that freedom of movement is intrinsically valuable or protects other important liberties. But, if this explanation of why states are required to protect freedom of movement is correct, then it appears at first

glance that the same considerations that justify domestic freedom of movement can also justify international freedom of movement. Defenders of the open view in fact argue along these lines that, like domestic freedom of movement, international freedom of movement is an intrinsically valuable liberty or protects other important liberties and is thus morally required. Joseph Carens raises this general objection to the permissible restrictions view. Carens asks: “If it is so important for people to have the right to move freely within a state, is it not equally important for them to have the right to move across state borders?” (Carens 1992, p. 27). It is unclear, at any rate, how people who defend the permissibility of immigration restrictions can justifiably accept (1) and reject (2).

The adequacy objection is an answer to Carens’ question. Defenders of the permissible restrictions view argue that the interests that ground rights to domestic freedom of movement fall short of grounding rights to international freedom of movement. According to this argument, people have urgent interests in enjoying sufficient options to pursue autonomous or decent lives. These urgent interests justify rights to domestic freedom of movement. That is, domestic freedom of movement and other basic rights protect people’s interests in enjoying adequate options. But, once people enjoy adequate options, they lack rights to immigrate. Thus, the considerations that justify domestic freedom of movement (an urgent interest in enjoying adequate options) sometimes fall short of justifying international freedom of movement. It is therefore insufficient to point out an analogy between domestic and international freedom of movement in order to justify the open view. If the adequacy objection is sound, then defenders of the permissible restrictions view can coherently endorse (1) and reject (2).

Before I evaluate the adequacy objection, I want to note that there are two different ways to interpret this objection. One interpretation is:

*Weak Interpretation.* People have human rights to immigrate to other states only if these people lack adequate options in the state where they currently live.

Human rights identify especially urgent moral claims. Rights against enslavement and torture, for example, are human rights because these rights protect extremely urgent interests. According to the weak interpretation, the adequacy objection merely aims to show that rights to immigrate do not always have the moral importance or urgency of basic human rights. But defenders of the adequacy objection also suggest a different interpretation:

*Strong Interpretation.* It is morally permissible for a state to deny admission to potential immigrants if they have adequate options.

According to the Strong Interpretation, it is not morally wrong to deny admission to people with adequate options. That is, there are no decisive moral reasons against immigration restrictions when these restrictions prevent people with adequate options from immigrating.<sup>4</sup>

The weak and strong interpretations of the adequacy objection can come apart. States can implement policies that are morally impermissible in the sense that there are decisive moral reasons against these policies even though these policies do not violate human rights. Human rights do not encompass all of the requirements of justice. Here is an analogy. Suppose that a state's system of taxation unfairly places a disproportionate share of the burdens of taxation on poor families, while richer citizens shoulder much less of a burden. This system of taxation might be morally impermissible because it is unfair.

But it would probably be an exaggeration to claim that this system of taxation violates human rights. Similarly, it is possible that immigration restrictions do not always violate human rights, but immigration restrictions are nevertheless unjust.

Defenders of the adequacy objection seem to endorse both the strong and the weak interpretations.<sup>5</sup> But the strong interpretation of the adequacy objection is the more fundamental version of the objection. Miller and Pevnick are advancing the adequacy objection as an objection to the freedom argument for the open view. Yet only the strong interpretation of the adequacy objection is actually inconsistent with the freedom argument. The version of the freedom argument that I endorse says that there are decisive moral reasons against most immigration restrictions; immigration restrictions are generally morally impermissible. This claim is compatible with the idea that immigration restrictions can sometimes refrain from violating the basic human rights of foreigners. For this reason, I will ignore the weak interpretation of the adequacy objection in the remainder of this paper. I will focus entirely on the strong interpretation of the adequacy objection (in the rest of the paper, when I refer to “the adequacy objection,” I am referring to the strong interpretation).

### **3. Restrictions on Freedom of Movement**

Some defenders of the adequacy objection argue that restrictions on someone’s freedom of movement are morally impermissible only if these restrictions prevent this person from acquiring a sufficient set of options to live a decent or autonomous life. Pevnick suggests this view. He says: “We are typically committed...to the right of free movement only in order to protect an individual’s interest in living autonomously; and

this requires...the protection of a sufficient set of options” (Pevnick 2011, p. 85).<sup>6</sup> On this view, we should distinguish between instances of interference with free movement that leave people with adequate options and cases of morally impermissible interference that place them below the threshold of adequacy.

However, it seems possible to impermissibly restrict a person’s freedom of movement even if this person has adequate options. Consider the following case. Imagine that Bradley is unemployed and is looking for a job. Bradley has enough resources to satisfy his basic needs and live a decent life. In fact, Bradley is reasonably well-off. He has substantial savings, he is healthy, and so on. Bradley also lives an autonomous life. He has the inner capacities to form autonomous judgments and develop conceptions of the good life. Bradley has access to a range of valuable options and so Bradley can choose between several decent ways of life. However, Bradley is still unemployed. He wants the benefits that come along with having a steady job, such as personal satisfaction, income, sense of self-worth, and so on. Luckily, Bradley receives several job offers. But he especially wants to work in a firm where his friends work. Moreover, Bradley’s job would be especially flexible and creative. Let’s imagine that another person, Ron, stands next to the firm’s building. Ron points a gun at Bradley and credibly threatens him with physical force if Bradley does not turn back. It is wrong for Ron to interfere with Bradley’s liberties, even though Bradley already has adequate options.

As this case illustrates, we can impermissibly restrict freedom of movement in cases where people have sufficient options to live decent or autonomous lives. To be clear, this claim does not necessarily imply that the adequacy objection is unsound, as there could be moral differences between Ron’s actions and immigration restrictions. But

the above case highlights the fact that people with adequate options can have important interests in enjoying freedom of movement, especially when this is instrumental to the exercise of other valuable freedoms, and that other agents have moral reasons to refrain from interfering with this freedom. The weight of these reasons can, of course, vary. If someone does not have adequate options to live a decent life, then we have especially powerful reasons to refrain from interfering with this person's movement if doing so would prevent her from improving her options. But there is no cutoff point. We can have strong moral reasons to avoid interfering with the liberties of people who have many options, as they can have important interests in enjoying freedom of movement as well.

The reasons against restrictions on freedom of movement are *pro tanto*. While these reasons speak against restrictions on freedom of movement, they can be outweighed by other considerations. Some restrictions on freedom of movement are morally permissible. Suppose that public officials forbid people from driving at hazardous speeds on the interstate. Although this is a restriction on freedom of movement, the freedom to drive at dangerous speeds on the interstate is not a valuable liberty. This freedom does not generally protect any urgent interest and it is not necessary for the exercise of any other important liberties. Despite this restriction on their freedom of movement, people retain their ability to exercise other liberties, such as their economic liberties and freedom of association rights. It is comparatively easy to justify restriction on freedom of movement in cases like this one.

Immigration restrictions are more difficult to justify. As I observed in section 1, immigration restrictions restrict freedom of movement in a way that interferes with a variety of important liberties. Some immigration restrictions interfere with border

crossings and forbid potential immigrants from entering a state's territory. States also prevent some immigrants from permanently living in a territory. States may require guest workers and visiting students to leave a territory after a certain amount of time.

Restrictions on border crossings and permanent residency dramatically limit the ability of potential immigrants to exercise their economic liberties and freedom of association rights with people in other countries. States impose other restrictions on immigrants as well. For instance, some immigrants have only partial access to the labor market. These immigrants can only work for certain employers or sectors of the economy. These restrictions interfere with the economic liberties of immigrants by forbidding immigrants from freely contracting for employment with other residents. Although some of these policies are more burdensome than others, all of these restrictions infringe on valuable freedoms. States have strong moral reasons to refrain from interfering with these freedoms. The moral reasons against these policies might be overridden by other considerations. But these reasons have force, even if they are outweighed.

To clarify my argument, it might be helpful to describe my view in terms of positive and negative duties. Negative duties are duties to abstain from harmful intervention, interference, or aggression. Immigration restrictions involve harmful interference. These restrictions violate negative duties to refrain from interfering with people's liberties. This interference may be impermissible even if potential immigrants already have adequate options, as negative duties to refrain from interfering with someone's liberties do not disappear when this person has adequate options to live a decent or autonomous life.

These features of negative duties differ from positive duties of assistance. Positive duties require people to perform certain actions, such as providing goods and services for others. According to a common view, we only have positive duties of assistance to ensure that foreigners have a sufficient set of options to live decent or autonomous lives. Some political theorists argue that duties of assistance to outsiders have a “target” and do not “apply continuously without end” (Rawls 1999, p. 117). There is some sufficiency threshold where positive duties of assistance are satisfied. If foreigners have sufficient options to live autonomously or attain a decent standard of living, then states lack additional positive duties to assist them. In contrast, immigration restrictions violate negative duties to refrain from interfering with people’s freedoms and these duties continue to have force even when people have sufficient options. The Bradley example illustrates this point about negative duties. It is plausible that Rob lacks a positive duty of assistance to help Bradley find employment, as Bradley already has a decent standard of living. Rob nevertheless has a negative duty to refrain from interfering with Bradley’s freedom of movement.

Moral rights to immigrate are not *entirely* constituted by negative duties. That is, when states are morally required to admit immigrants, states must do more than refrain from interfering with immigrants. States also owe immigrants positive duties. It is a common belief that states are morally required to provide certain goods and services to everyone in their territories. These include adequate protection of human rights, work-related protections, educational rights, and so on. Most people believe that states are under positive duties to provide some of these protections even for short-term visitors, such as tourists. If so, duties to permit immigration are not purely negative duties. Yet



there is nothing inconsistent in holding that states are morally required to admit immigrants in order to avoid violating negative duties *and* that states have positive duties to all residents. Consider another moral right: a right against assault. States have positive duties to ensure that citizens have adequate protection against assault by providing police protection and other measures. But states also have stringent negative duties to refrain from assaulting their citizens (Shue 1980). The same point generalizes to moral rights to immigrate. Although rights to immigrate have positive components, these rights are partly constituted by negative duties to refrain from interfering with the liberties of potential immigrants and these duties to potential immigrants obtain irrespective of whether potential immigrants have adequate options to live decent or autonomous lives.

So, to sum up, my argument goes like this. States have strong moral reasons to refrain from interfering with freedom of movement, especially when freedom of movement is necessary for the exercise of other valuable liberties. Immigration restrictions interfere with valuable liberties. Therefore, there are strong moral reasons against immigration restrictions, including restrictions that interfere with the freedoms of people who have adequate options. This does not yet show that it is wrong for states to refuse to admit people with adequate options to live decent or autonomous lives. To complete my response to the adequacy objection, it is also necessary to defend the view that these moral reasons against immigration restrictions are undefeated by other considerations in some cases where foreigners already have adequate options. If the moral reasons against immigration restrictions are undefeated in some cases in which people have adequate options, then it is sometimes wrong for states to prevent these people from immigrating. I will defend this step of the argument in section 4.

#### **4. Countervailing Reasons**

*A.*

Defenders of the adequacy objection could argue that, although immigration restriction involves interference, this interference is all-things-considered morally justified because there are good reasons for this interference. Other moral considerations defeat the moral reasons in favor of international free movement. Adherents of the adequacy objection might suggest that the considerations in favor of open immigration are decisive when the potential immigrants lack sufficient options to live decent or autonomous lives. In these cases, the interests of potential immigrants are sufficiently urgent to outweigh the moral considerations against open immigration. Otherwise, the reasons in favor of free movement are outweighed. This defense of the adequacy objection is consistent with much of my argument in section 3. I claimed there that we have significant moral reasons against infringements on valuable liberties. It is possible that these reasons are overridden. This defense of the adequacy objection says that, while we do have important moral reasons to refrain from interfering with potential immigrants, other moral considerations defeat these reasons.

To evaluate this argument, we need to know more about the nature of the moral reasons in favor of immigration restrictions. Why should we accept that states have moral rights to exclude people?

Some justifications of immigration restrictions appeal to the contingent costs of immigration. Immigration might threaten people's ability to preserve their national cultures. People have interests in cultural preservation. In some cases, these interests in

cultural preservation may outweigh people's interests in immigrating. Another argument for immigration restrictions invokes a conflict between immigration and domestic distributive justice. According to this argument, rapid immigration can undermine social solidarity and reduce political support for redistributive programs. Immigration can also place downward pressure on wages and increase inequality. There are reasons to restrict immigration when immigration conflicts with support for redistributive programs and public policies that promote equality between citizens. These arguments say that states can restrict immigration when immigration has certain bad effects.

I will refrain from evaluating whether arguments for immigration restrictions that appeal to the costs of immigration can *ever* justify immigration restrictions here. My claim here is only that these arguments fail to justify the adequacy objection. These arguments do not entail that states are under duties to admit potential immigrants only if these immigrants lack sufficient options. If these arguments are successful, they merely demonstrate that *some* immigration restrictions are morally permissible when immigration has bad effects. This conclusion is different from the adequacy objection. There are likely cases where (a) immigration does not have significant costs and (b) the immigrants in question are already above the relevant adequacy threshold.

Imagine the following case. Leticia is a resident of a poor country. Leticia is skilled: she has a degree in engineering. Leticia has a decent life. She has access to adequate nutrition, housing, health care, and so on. Nonetheless, Leticia would like to move to a richer country because her job opportunities would be better there. Moreover, she has had a hard time finding a job in her field in her native country, although she can find other jobs. If she immigrated to a richer state, she could find a good engineering job,

which is what she strongly prefers to the available jobs in her home country. In addition, she would contribute to the economy and rapidly integrate into the culture of this state. Finally, she would send remittances back home and these remittances would compensate for any costs that her emigration would cause. If the only reason to restrict immigration involves the costs of immigration, then it seems that the richer state should allow Leticia to immigrate. If there are any actual cases like this one, then arguments for immigration restrictions that rely on the costs of immigration are unable to support the adequacy objection. It is controversial whether there are many cases like Leticia's. Nevertheless, it is hard to rule out the possibility that there are some such cases. Defenses of the adequacy objection that appeal to the costs of immigration are thus vulnerable to empirical counterexamples.

Other arguments for immigration restrictions avoid appealing to the contingent effects of immigration. We might call these "deontological" or "rights-based" arguments. These arguments rely on the moral rights that states have to exclude people, irrespective of these contingent effects. According to this argument, political communities have moral rights to self-determination or ownership rights over their territories. These rights imply that states can presumptively permissibly restrict immigration. States can exercise discretion in immigration policy. On this view, it is presumptively morally permissible for states to exclude outsiders, even if immigration would have no bad effects. Yet there are exceptional cases where the interests of foreigners outweigh these rights. These exceptional cases are instances where potential immigrants lack sufficient options to live decent or autonomous lives. When people have very poor options and the only way that they can achieve a better set of options is through immigration, then states may be

morally required to admit them. But states' rights to control immigration trump the moral considerations in favor of free international movement in other cases (Miller 2007, p. 221).

To clarify, this defense of the adequacy objection goes:

1. In general, states have moral rights to exclude potential immigrants and control immigration.
2. But the urgent interests of potential immigrants in securing adequate options to live decent or autonomous lives potentially<sup>7</sup> outweigh the rights of states to control immigration.
3. When potential immigrants have adequate options, the rights of states to control immigration outweigh these people's claims to immigrate.
4. So, states may be morally required to admit potential immigrants without adequate options, but states can permissibly refuse to admit people who already have adequate options.

This argument is unsound. We should reject the claim that the rights of states to control immigration outweigh or override people's rights to cross borders when these people have adequate options. I will now consider in detail some influential arguments for the view that states have moral rights to exclude outsiders. In particular, I will consider arguments that appeal to the value of self-determination and collective ownership. I will show that these arguments are unsuccessful in establishing that immigration restrictions are morally permissible.

To explain my response to these arguments, let's first observe that there are two senses in which states could have rights to control immigration. Here is one sense:

*The Permissibility View.* States have rights to restrict immigration in the sense that it is morally permissible for states to restrict immigration.

The permissibility view is a view about the moral considerations for and against immigration restrictions. As I will use the concept of “moral permissibility,” a policy or law is morally permissible only if there are no decisive moral reasons against this policy or law. According to the permissibility view, the moral reasons in favor of immigration restrictions outweigh or otherwise defeat the moral reasons against these laws and, therefore, immigration restrictions are morally permissible. But here is alternative way to understand the right to exclude:

*Authority View.* States have rights to restrict immigration in the sense that outsiders have moral reasons to comply with or refrain from interfering with these decisions, even if these decisions are morally impermissible.

The authority view is not a view about the moral considerations that count in favor or against immigration restrictions. It is a view about the moral reasons that outsiders have to honor or comply with a state’s political decisions. The authority view is consistent with the falsity of the permissibility view. It could be the case that most immigration restrictions are morally wrong, but nevertheless outsiders should comply with or refrain from interfering with these laws.

My claim is that the value of self-determination and collective ownership can at most justify the authority view. But these values do not the permissibility view. While states might have the authority to control immigration in that outsiders should respect states’ decisions regarding immigration, immigration restrictions may still be morally objectionable.

*B.*

Many political theorists believe that states have rights to restrict immigration because states have rights to self-determination. Miller notes in defending immigration restrictions that he is “appealing . . . to the value of self-determination, to the importance to a political community of being able to determine its future shape, including for example the balance it wishes to strike between economic growth and environmental values, and pointing out that questions of membership are intimately involved in such decisions” (Miller 2008, p. 223). Christopher Wellman and Andrew Altman contend that legitimate states have moral rights to self-determination and that these rights imply rights to exclude potential immigrants (Wellman and Altman 2009, ch. 7). By “self-determination,” these authors mean that legitimate states have some kind of morally privileged position of dominion over their self-regarding affairs. These theorists acknowledge that rights to self-determination can be overridden by other considerations. But they claim that rights to self-determination explain why immigration restrictions are presumptively morally permissible. If a political community collectively decides to implement immigration restrictions, then this is a weighty reason for believing that these restrictions are not morally wrong.

Can the value of self-determination in fact help explain why immigration restrictions are morally permissible? Many people believe that self-determination does justify certain rights. Many people think that self-determination grounds an objection to colonialism and the forcible annexation of legitimate states. If states have rights to self-determination, this means that outsiders are under duties to refrain from coercively

interfering in the internal affairs of these states. What would justify these rights? It is commonly thought that colonialism and forcible annexation express the insulting message that a group lacks the competence to govern itself. According to some political theorists, coercive intervention with another legitimate state also fails to show proper respect for a political community's achievements in constructing and maintaining decent political institutions (Wellman and Altman 2009, p. 37-41).

But the claim that outsiders have duties to refrain from coercively interfering with a state's internal affairs falls far short of showing that any of this state's policies are morally unobjectionable. Here is a hypothetical example to illustrate. Suppose we believe that the Slovakia is a legitimate state. Slovakia adequately protects human rights and abstains from aggressive war. Suppose that we also believe that, if Slovakia is a legitimate state, then Slovakia has a right to self-determination—it would be unjust for other states to forcibly annex or colonize Slovakia. Yet Slovakia's policies may still be unjust. Consider the following scenario. Imagine that most citizens of the Slovakia favor the implementation of a military draft for young men, although there is a minority that vocally opposes the draft. Citizens select this policy through a fair and democratic referendum after extensive public deliberation. But this policy infringes on important freedoms and has virtually no compensating benefits—assume that a volunteer army would do a better job at providing military defense and would lack any significant drawbacks in comparison with conscription. Thus, there are strong moral reasons against this policy of conscription. Now, imagine that a proponent of conscription argues in public debate: “a military draft is morally permissible because the citizens of Slovakia have a right to determine the future shape of our community.” This argument seems



absurd. At least, it fails to show that conscription is morally permissible. The proponent of this policy overlooks the possibility that a community can shape its future in an unjust way. The mere fact that a community has the right to shape its future does not show that any particular exercise of this right is morally unobjectionable. The proponent's argument simply fails to explain why there are any significant moral reasons in favor of a policy of conscription.

So, it seems quite coherent and plausible to adopt the following set of judgments about this example:

(3) Slovakia has a right to self-determination.

(4) The fact that the citizens of Slovakia collectively decide to implement a policy of conscription does not give us a good reason to believe that this policy is morally permissible.

How can (3) and (4) be consistent? They are consistent because self-determination does not imply anything about the moral permissibility of particular policies or laws. Imagine that a proponent of any other public policy argued in favor of this policy by claiming: "this education/social insurance/taxation policy is morally justified because our state has a right to self-determination." This argument seems to involve a category mistake. The value of self-determination only explains who has the authority to decide public policy in the first place and the moral reasons that other agents have to refrain from interfering with these decisions. To show that a specific policy is morally permissible, we need to cite other considerations, such as whether this policy respects people's freedoms and whether the benefits of this policy outweigh its costs. At first glance, it is unclear why immigration policies would be any different from other kinds of public policies in this

regard. It is insufficient to merely cite a community's right to self-determination to establish even the presumptive permissibility of immigration restrictions. Self-determination is the wrong kind of consideration to justify restrictive immigration policies or public policy more generally.

But maybe immigration policy is different. Maybe self-determination can help justify immigration restrictions, even if self-determination is unable to justify other sorts of policies. Why might this be the case? Wellman and Altman give an answer to this question. Wellman and Altman understand self-determination in terms of freedom of association. They argue that voluntary associations, such as private clubs and religious organizations, and political communities are analogous in the sense that they both have rights to freedom of association. Furthermore, we normally believe that voluntary associations have the presumptive right to exclude people. If states also have rights to freedom of association, then perhaps they have the right to exclude too. Wellman and Altman say: “[j]ust as an individual has a right to determine whom (if anyone) he or she would like to marry, a group of fellow citizens has a right to determine whom (if anyone) it would like to invite into its political community” (Wellman and Altman 2009, p. 160).

I concede that, if states *were* voluntary associations, then states would have presumptive rights to exclude. The explanation of this claim is that voluntary associations are composed of autonomous individuals and it is generally permissible for individual people to refrain from associating with other people if they so wish. A voluntary association's right to exclude people is just the conjunction of each individual's right to autonomously govern her life. For example, suppose that Alan and Steve want to refrain from associating with Beth. Alan and Steve then form a chess club that Beth wants to join

as well. If it was morally permissible for Alan and Steve to refrain from associating with Beth prior to forming the chess club, then it is morally permissible for Alan and Steve to refrain from associating with Beth after forming the club. Moreover, if Alan or Steve change their minds in the future and do want to associate with Beth after all, they are free to leave the club in order to do so (there are low costs to exiting, suppose). Yet states are different from voluntary associations in some obvious ways. The residents of states rarely have the chance to voluntarily consent to joining states and, furthermore, the costs of exiting states are often high enough to impair the voluntariness of people's membership in states. Consequently, the explanation of why it is morally permissible for voluntary associations to exclude people fails to apply to non-voluntary associations, such as states. Membership in states is not a function of the autonomous choices of individuals.

Wellman and Altman acknowledge that, "unlike the Boy Scouts and the Augusta National Golf Club, political states do not owe their membership to the autonomous choices of their constituents" and that this fact raises problems for their account. They respond to this problem in the following way:

...without positing a [state's] right to freedom of association we could not satisfactorily explain what is wrong with one country forcibly annexing another. Imagine, for instance, that a series of plebiscites revealed both that an overwhelming majority of Americans wanted to merge with Canada and that an equally high proportion of Canadians preferred to maintain their independence. Would it be permissible for the United States to forcibly annex Canada? Even if the United States could execute this unilateral merger without disrupting the peace or violating the individual rights of any Canadians, this hostile takeover

would be impermissible. The crucial point for our purposes is that one cannot explain the wrongness of unilateral annexations such as this unless one supposes that countries like Canada enjoy a right to self-determination that include the right of Canadians, as a political community, to associate with others as they see fit (Wellman and Altman 2009, p. 161).

So, Wellman and Altman are claiming:

(5) To explain why it is morally impermissible for one state to forcibly annex another state, it is necessary to accept that these states have rights to freedom of association.

(6) If states have rights to freedom of association, then it is presumptively morally permissible for these states to exclude potential immigrants.

If (5) and (6) are true, then states have rights to exclude potential immigrants despite the fact that states are non-voluntary associations.

But (5) is false. We can plausibly explain why it is wrong to coercively annex legitimate states without presupposing that it is presumptively morally permissible for these states to exclude outsiders. It may be the case that forcible annexation would disrespect Canadians by expressing the insulting message that Canadians are incapable of competently managing their own affairs. Alternatively, annexation might be wrong because it is general wrong to threaten people with violence and physical force without provocation, even if no violence were ultimately used. Annexation may also fail to show due respect for the achievements of Canadians in creating and maintaining legitimate political institutions. Yet these explanations of the moral impermissibility of annexation do not necessarily entail that it is morally permissible for Canada to exclude immigrants.

We can imagine the public officials of the United States articulating the following view: “Canada has successfully respected the human rights of its citizens and abstained from aggressive war. In recognition of these achievements, the United States will honor Canada’s territorial sovereignty and right to self-determination. But we also believe that, to be *fully* just, Canada must implement a policy of open immigration.” This position seems entirely coherent. In fact, it is coherent to believe that the United States should refrain from invading Canada for any number of reasons and also that Canada is morally required to open its borders to immigrants. Consequently, it appears to be false that we *must* assume that states have rights to freedom of association in order to explain the moral impermissibility of forcible annexation. So, we should reject (5).

Some defenders of the adequacy objection invoke a different argument to justify immigration restrictions. These authors do not appeal to self-determination or freedom of association to explain why it is morally permissible for states to exclude potential immigrants. These theorists instead equate the rights that citizens have over their territories with ownership rights. Ryan Pevnick argues that a political community has a “right to benefit from and control the programs of mutual benefit that it has built” and that open immigration conflicts with “the ownership claim of the individuals who labored to create the relevant institutions” (Pevnick 2008, p. 244-245). The members of a state contribute to creating valuable institutions, such as the rule of law, welfare programs, and political institutions. Citizens contribute by paying taxes, obeying the law, and making collective decisions. They thereby acquire special claims over their state institutions. These claims are in fact collective ownership rights. When a community has collective ownership over a territory, the community as a whole has a right to decide how to use this

territory. Among other things, the community has a right to control, use, and benefit from this territory. According to Pevnick, these collective ownership rights also include rights to exclude potential immigrants.

The problem with using ownership rights to justify the permissibility of immigration restrictions is that, while owners of property have the right to exclude in the sense that owners would be wronged if someone used their property without permission, it can nevertheless be morally wrong to prevent people from using one's property. To illustrate, suppose that a member of Oxfam asks me to give some of my income to help reduce extreme global poverty. I respond: "but I have a right to my personal property!" This reply fails to engage with moral substance of the Oxfam employee's request. It could be wrong for me to fail to give my income to Oxfam, even if I rightfully own it and it would be wrong for the Oxfam employee to take my money without my permission. If I own something, I get to decide what to do with this thing and who can use it. This does not mean that denying you access to my property is morally permissible. We can have ownership rights over resources and moral duties to let other people use these resources.

Consider examples of collective property, such as public streets, sidewalks, parks, wilderness areas, subways, and courthouses. These are instances of collective property in that public officials determine who may access this property instead of private individuals. While public officials have the authority to decide how to use collective property, they are unable to permissibly exclude people from collective property at their discretion. Public officials are under moral duties to make these forms of collective property accessible. It might be unjust if officials prevent some residents from using collective property. There would be an objection if public officials prevented the

homeless, say, from using public parks. Like other forms of ownership, collective ownership rights involve rights to exercise authority over the use of property. These rights are ways of allocating decision-making about the use of resources. People can use this authority in a morally objectionable way.

We need to distinguish between the moral reasons we have to respect the decision-making of agents over a certain domain and the moral reasons that justify particular decisions. In the Oxfam example, if I were to say to the Oxfam employee that I have property rights over my income and that is why my refusal to give money to Oxfam is morally permissible, I would be making a mistake. I would be conflating my authority to decide what to do with my property with the permissibility of particular exercises of this authority. But, if I instead reply “I need this money to pay for my daughter’s education” or “I’m pursuing my dream to become an artist and, if I gave my money away, I couldn’t pursue my dream,” then I would be citing the morally important interests that my decision to retain my income would protect in this particular instance rather than the reasons that other people have to respect my decision-making about my property in general. To establish the permissibility of our decisions to exclude people from our property, we must appeal to the moral considerations that bear on these particular decisions and the interests that these decisions would promote—it is insufficient to merely cite our authority to decide what to do with the things that we own.

Something similar is true of collective property. While sometimes it seems morally permissible to exclude people from certain kinds of collective property, the explanation of this permissibility is not the bare fact that states have collective ownership rights over this property. Instead, the explanation involves the public interests that a

policy of exclusion promotes. For example, a society's interests in national security might justify preventing the general population from freely entering military bases. In this case, a policy of excluding people from collective property protects important public interests and these interests help explain why this exclusion is morally permissible. However, mere ownership over resources (either private or collective) in itself does not justify the permissibility of excluding people from these resources. If citizens collectively own their territory, then potential immigrants have reasons to respect the decisions that citizens make regarding whom to admit. Outsiders should refrain from immigrating without authorization or forcing states to admit potential immigrants. But citizens must do more than cite their ownership rights in order to justify the permissibility of exclusion. They must also appeal to the morally important interests that would justify exclusion in particular cases. This justification might plausibly involve the important public interests that immigration restrictions would promote and the costs that immigration would impose on citizens of the recipient state. As I argued above, we should doubt that these moral reasons relating to the costs of immigration line up in a way that justifies the adequacy objection.

C.

Arguments that appeal to self-determination and collective ownership rights do not justify the view that states can permissibly exclude people. While these arguments can perhaps show that the citizens of a state have the right to decide to whom to admit in the sense that it would be wrong for outsiders to interfere with these decisions, this view is compatible with the freedom argument as an argument for the open view. This is so



because it is possible that states are morally required to open their borders and that outsiders have duties to honor the decisions of these states by refraining from forcing states to admit immigrants or even immigrating without authorization. The most plausible version of the view that states have general rights to control immigration is not a view about the moral permissibility of immigration restrictions. It is only a claim that outsiders have certain duties to respect the decision-making of legitimate states. Rights to control immigration and moral rights to immigrate inhabit different moral terrains.

Recall that my version of the freedom argument says that there are moral reasons against coercive interference with valuable liberties. Defenders of the adequacy objection suggest that these reasons are outweighed by other considerations. This turns out to be false. At least, these theorists have failed to show that these countervailing considerations exist. It is false that states' rights to control immigration generally outweigh, undercut, or override moral rights to immigrate. If this is false, then the moral reasons in favor of international free movement are not in general defeated in cases where potential immigrants have adequate options.

## **5. Conclusion**

Restrictions on immigration constitute some of the greatest restrictions on freedom in modern times. Is the fact that these laws restrict freedom a significant moral objection to these laws, even if people who want to immigrate already have an adequate set of freedoms? I have argued that the answer to this question is "yes." It is still possible that some compelling justification of immigration restrictions is forthcoming. Nonetheless, if my argument is correct, then this essay helps supply a foundation for the

open view.

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<sup>1</sup>Quoted in Ian Goldin *et al.* (2010, p. 58).

<sup>2</sup> Joseph Carens articulated an early version of the freedom argument in Carens (1987).

<sup>3</sup> Miller at one point suggests that even people above the adequacy threshold have a “claim to be admitted, given that some of their important goals may not be realizable without crossing state boundaries.” He clarifies: “a claim is something less than a right, but those who refuse it must give the claimant a reason for doing so” (Miller 2007, p. 213). Miller is appealing to the value of self-determination here. Miller argues that, if a society collectively decides to pursue certain public policy objectives that are inconsistent with more immigration, this counts as an adequate explanation to potential immigrants above the adequacy threshold. In these cases, it is permissible for states to deny admission to people with more than adequate options.

<sup>4</sup> I use the concept of moral permissibility in the following way: agent A’s phi-ing is permissible if and only if A’s phi-ing is not morally wrong. A’s phi-ing is morally wrong if and only if there are decisive moral reasons against A’s phi-ing. In this paper, I am

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claiming that most immigration restrictions are impermissible in the sense that there are strong moral reasons against them and no other considerations defeat these reasons.

<sup>5</sup> Miller endorses both the strong and the weak interpretation of the adequacy objection. For example, Miller claims: “one cannot justify an unconditional right to immigrate on the basis of the (genuine) human rights of the would-be migrant” (Miller 2007, p. 213). Here Miller is endorsing the weak interpretation. But Miller also goes on to argue that nations have right over their territories and these rights conflict with the rights of potential immigrants to cross borders. Furthermore, Miller also argues that the territorial rights of nations are unable to justify the general exclusion of refugees (people whose human rights are insufficiently protected in their current state), but these rights can justify the exclusion of “would-be immigrants who are not in urgent need” insofar as this nation is pursuing public policies that conflict with more immigration (p. 229). This indicates the strong interpretation. Pevnick also endorses the strong interpretation. Pevnick explicitly sets out to show that the “case for open borders fails to prove that such a policy is required by justice” (Pevnick 2011, p. 78).

<sup>6</sup> Pevnick is not referring to basic human rights here. He is referring to the all-things-considered permissibility of restricting someone’s freedom of movement (Pevnick 2011, p. 85).

<sup>7</sup> I add the qualifier “potentially” because some political theorists believe that, when people lack adequate options, then they have a right to immigrate to *some* state where they can secure better options, but not necessary to all other states where they could secure better options (Miller 2007, p. 221).