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Original Research Article

EJPT

European Journal of Political Theory
1–23
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DOI: 10.1177/14748851231201469
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Colonial injustice, legitimate authority, and immigration control

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Abstract

There is lively debate on the question if states have legitimate authority to enforce the exclusion of (would-be) immigrants. Against common belief, I argue that even non-cosmopolitan liberals have strong reason to be sceptical of much contemporary border authority. To do so, I first establish that for liberals, broadly defined, a state can only hold legitimate authority over persons whose moral equality it is not engaged in undermining. I then reconstruct empirical cases from the sphere of international relations in which what I call 'colonial norms' continue to play significant structuring roles. I argue that it is sometimes only by unveiling these colonial norms and the roles they play that we can understand how some states today culpably contribute to undermining the moral equality of persons over whom they will come to claim immigration-related authority. I thus contend that paying attention to colonial norms distinctly enables us to reveal a set of instances in which all liberals should agree that states forfeit legitimate authority over would-be immigrants.

Keywords

Immigration, borders, colonial legacies, legitimate authority, structural injustice, international relations, resistance

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When border officials make the physical movement of would-be immigrants conditional on their meeting certain criteria, detain them, or turn them away by (threat of) force, they make a claim of legitimate authority based on their roles as representatives of sovereign states: the claim that would-be immigrants are obliged to obey or refrain from interfering with that state's orders.[1] Political philosophers and theorists have begun to challenge the commonplace idea that this assertion of authority is legitimate. However, their accounts have often done so based on views that, true or not, are not very widely shared, as they, for instance, rely on maximalist interpretations of the all-subjected principle of democratic inclusion (Abizadeh, 2008) or highly contested views on the scope of individual freedoms or the inherence of extreme violence to immigration policing (Sager, 2020). The assumption or assertion of the general legitimacy of border authority has thus largely prevailed. The demands of democracy and justice are most stringent within societies, a standard liberal argument goes, and possessing the power to decide about the admittance of immigrants is imperative to – perhaps even necessary to the very capacity of – meeting such demands (for instance, Pevnick, 2011; Song, 2019; Stilz, 2019).

This essay contends that even if we assume such *general* justifications of the legitimate authority of immigration control to be convincing, their adherents still have strong reason to be sceptical of the legitimacy of many *particular* assertions of such authority and have such reason partly by the lights of their own liberal presumptions. It is an argument that requires only a strong commitment to the principle of moral equality, all but universal among professed liberals, and an openness to be persuaded – on the facts – that there are often neglected yet ubiquitous ways in which domestic and international politics undermine the moral equality of persons. This argument rests on two cornerstones. The first is that those who defend or assume the legitimacy of border authority generally theorize from broadly liberal perspectives; indeed, they often explicitly aim to reconcile a commitment to liberalism with the justification of states' vast powers over (would-be) immigrants (especially Wellman, 2008). And while they do not endorse liberal cosmopolitan views on the scope of democracy or justice, or (quasi-)libertarian views on the strength of individual rights, they *do* believe in the moral equality of all persons: the fundamental principle that all humans are of equal moral worth (see, e.g. Blake, 2020, chaps. 5–6; Miller, 2002; Pevnick, 2011, chap. 1; Stilz, 2019, chap. 4). Among other things, this belief grounds an important part of their views on global justice, the principle that states cannot be permitted to violate the basic rights of foreigners, even if they have no (or few) positive obligations to further their interests. The second is that the pertinent literature has not yet taken full account of the wider contextual factors that should play important roles in evaluative or normative judgements about immigration control. As various observers have recently noted, it is especially the colonial histories and legacies connecting many immigration-destination states and the would-be immigrants they claim authority over that should figure more weightily in such judgements (see, e.g. Jaggar, 2020; Ypi, 2022).

I bring these two observations together by arguing that liberals generally accept that a state cannot claim legitimate authority over persons whose moral equality they injure, that many of the individuals that states *do* in fact claim authority over at borders are likely to have suffered grievous injuries to their moral equality caused or culpably contributed to by the conduct of these states, and that we cannot grasp the full extent of this situation

without analysing how state behaviour continues to be structured by *colonial norms*. More specifically, I present real-world cases in which extremely unjust – that is, moral equality-undermining – state behaviour is structured by such norms and show that it is sometimes precisely the expressive character of the underlying colonial norm that *makes* the injustice in question moral equality-undermining. The argument shows that liberals of all stripes, even those opposed to cosmopolitan justice or democracy, should avoid assuming or asserting that the authority states claim over (would-be) immigrants is legitimate before the pertinent contextual factors have been analysed. Theorizing about this matter on a level of abstraction that fails to account for these factors is liable to be misleading, and when context is accounted for, serious doubts about the legitimacy of de facto authority arise.

The article enriches the literature on the political theory of immigration in additional ways. While I offer a response only to those convinced that the state's assertion of authority over would-be immigrants is generally legitimate, and not those anyways doubting the legitimacy of this assertion on independent grounds, critics of border authority nevertheless have reason to welcome my account, given that it shows that their opponents' arguments are flawed even on their own terms. Importantly, moreover, I go beyond recent interventions that stress the relevance of colonial histories and legacies to the question which immigration regimes should be adopted as a matter of *justice* (Amighetti and Nuti, 2016; Schwabe and Urselmann, 2020; Ypi, 2022), heightening the stakes by stressing that colonial phenomena are also distinctly important for deciding matters of *authority*. In doing so, the argument expands on contributions that have pointed at other contextual factors as challenges to the state's legitimate authority over (would-be) immigrants (e.g. Aitchison, 2021; Blunt 2019; Sandven, 2022; Schmid, 2022). Importantly, it also refutes the idea that preexisting moral commitments can coherently overdetermine all relevant normative conclusions about migration control, so that non-cosmopolitan and cosmopolitan liberals may reach opposing conclusions on the basis of a shared set of facts – about colonial norms and practices, for instance (see Finlayson, 2020; Kreutz, 2022). This charge has been mobilized by 'realist' political theorists to illustrate the supposed implausibility of 'moralist' theorizing. My argument shows that it is at best descriptively true, in the sense that 'moralist' non-cosmopolitan liberals may refuse to update their priors in the face of empirically sensitive reasoning about the moral significance of colonial norms. But *pace* Kreutz and Finlayson, such stubbornness would diminish the coherence of their arguments. Given a ubiquitously shared liberal commitment to the moral equality of persons, non-cosmopolitan liberals will be hard-pressed to maintain what has often been too sweeping a commitment to the legitimate authority of immigration control.

I proceed as follows. The first section specifies how liberals take legitimate authority to be contingent on respect for moral equality. The second section conceptualizes contemporary injustices caused or supported by norms that functioned to justify colonial impositions as 'structural colonial injustices' and suggests that these, too, can undermine moral equality. The third section supports this claim and argues that it is sometimes precisely their structural colonial character that renders these injustices moral equality-undermining. I then draw out the argument's upshots for states' legitimate authorities over would-be immigrants while clarifying how it enriches current literature, and finally consider a possible objection before concluding.

The equal-worth principle of legitimate authority

Additionally to, or indeed often necessary for satisfying, the fundamental requirement that political authorities must be able to (at least hypothetically) attract the consent of reasonable subjects, liberal political philosophers have long tied the legitimacy of authority to the state's capacity to provide important social goods: order, stability, justice. Enlightenment-tradition liberals more specifically have tied the state's legitimate authority to its ability to facilitate a social order in which individuals can understand themselves as persons of *equal moral worth*, persons of equal intrinsic status and importance.

There are a variety of ways to flesh out such a principle. Rawls, for example, thought that the subjects of state authority have reason to accept its moral legitimacy only insofar as it secures their 'constitutional essentials', which include the basic rights and liberties of individuals as well as 'formal justice (the impartial and consistent administration of institutional rules)' and a guaranteed material floor (Shelby, 2016: 214; for Rawls's own formulation of his 'liberal principle of legitimacy,' see Rawls, 1993: 137). One way we can specify the fundamental concerns ultimately behind such a principle is to say that state authority can be judged legitimate only if it refrains from systematically undermining (at least) two crucial, innate human capacities. The first capacity is that for persons to understand their lives as equally meaningful and protection worthy as those of others: what we may term persons' basic capacity to manifest *self-respect*. The other is for them to form an authentic conception of the good and meaningful and have a real chance of pursuing it: what we may term their basic capacity to manifest *authentic agency*. For authorities to treat persons as being of equal moral worth just is, at least, for them to refrain from systematically undermining their chances at realizing these basic human capacities. Concern with equal moral worth – and with those of its requirements I have here termed self-respect and authentic agency – is prominent in contemporary Rawlsian assessments of legitimate authority (see Reidy, 2007; Shelby, 2016) but also in liberal and egalitarian thought beyond the Rawlsian tradition, including many of the accounts that presume or defend the state's legitimate authority over (would-be) immigrants (see Blake, 2020, chaps. 5–6; Miller, 2016, chap. 2; Pevnick, 2011, chap. 1; Stilz, 2019, chap. 4).

Perhaps most prominently, human rights theory is fundamentally concerned with the universal equal moral worth of human beings; many of those who condition legitimate authority on the authority's respect for human rights at least partly use the notion of human rights to translate the constitutive demands of equal moral worth into more concrete entitlements (see Altman and Wellman, 2009, chap. 1; Buchanan, 2013, chap. 1). Those who condition legitimate authority on its respect for *dignity* draw on these features as well. For Ronald Dworkin, for instance, self-respect and authenticity are the very constituents of dignity. Systematic respect for the prime importance of subjects' dignity, in turn, is a fundamental condition for a state's ability to generate obligations to obey the law, that is, its legitimacy (Dworkin, 2011). And based on a similar dignitarianism, Candice Delmas (2018) develops an account of the morality of violent resistance to illegitimate – dignity-denying – political authority.

Of course, these and other strands of thought largely disagree about the further requirements of equal moral worth, just as they disagree about the substantial question which

laws and norms or distributions and relations are ultimately required to satisfy its demands. The point I am trying to make, however, is that the liberal tradition can be understood as committed to conceiving an authority's good faith efforts to systematically respect the fundamental interests of those it directs in living self-respectfully and with authentic agency as a minimum necessary condition for its holding legitimate authority over them. Call this the *equal-worth principle (EWP) of legitimate authority*. Two things about this construal of the EWP must be stressed before moving on. First, in its widely accepted form, the EWP demands only *respect*, not *protection* or *fulfilment*, meaning that authorities must not actively harm moral equality (e.g. by taking away someone's means of subsistence), but need not implement measures to shield it from outside threat (e.g. by defending such means from the aggression of third parties) or realize the conditions of its existence (e.g. by creating the economic conditions for such means to materialize). This is important because an objector might note that liberals differ in their views on how far state concern for equal moral worth must extend for the state to meet conditions of legitimate authority. For instance, more demanding Rawlsians might make legitimate authority dependent on the full realization of constitutional essentials, thereby requiring the state to *fulfil* the conditions of equal moral worth, whereas those basing their views on legitimate authority on the centrality of basic human rights might hold that respect for and protection of such rights suffices. Importantly, especially non-cosmopolitan liberals might be disposed to thinking that principally justified assertions of authority over *foreigners* need only be constrained by respect for moral equality, not its protection of fulfilment (e.g. Miller, 2016, chap. 2). It is thus important to note that the EWP as understood here requires only respect, so that both less and more demanding moral equality-based views on legitimate authority are captured by it. After all, those demanding protection and fulfilment must also demand respect. As will become salient later on, good faith efforts at systematic respect for people's equal moral worth are absent also where states culpably *contribute* to (rather than solely cause) its undermining. But in this formulation, too, the imperative is a characteristically negative, not positive, one.

Second, the EWP acknowledges that concerns of justice are part of the liberal conception of legitimacy without collapsing the latter into the former. Liberals want to be able to say that legitimate states may contain unjust laws and practices. But nevertheless, they are committed to calling legitimacy into question when the state commits *extreme* injustices – those, we may say, that clearly violate their victims' equal moral worth. Because of this, and because of its postulation of respect for equal moral worth as necessary (but not necessarily sufficient) for legitimate authority, the EWP is sensitive to concerns of justice without being reduced to them. What I will argue in the following is that those who are committed to the EWP, including liberal defenders of state border authority, in fact have strong reason to entertain more radical positions on the illegitimacy of much contemporary immigrant exclusion.

Structural colonial injustice and illegitimate authority

Given that this argument will emphasize the salience of the contemporary existence of 'colonial norms', I want to begin by briefly motivating why I will not, at length,

discuss 'direct' colonial authority – that is, the status of projects of direct colonial rule over subjugated peoples and their land. In a word, this is because I think it is sufficiently clear that such projects of colonial rule do not have a legitimate claim to authority over their victims. Most importantly, subjects of colonial authority have been (and are) paradigmatically exposed to a large range of systematically violent and clearly moral equality-undermining processes and practices by their colonizer states: genocide, ethnic cleansing, slavery, rape and mutilation, forced labour, repression of modes of thought, cultural expression or religion; the list goes on. However, even the most benevolent colonizer – should one exist – will likely be involved in EWP-undermining activities, just by virtue of what colonialism *is*: 'a practice that involves both the subjugation of one people to another and the political and economic control of a dependent territory' (Ypi, 2013: 162). Denial of rightful self-governance and removal of rightful control over place are thus at the heart of the very concept of colonialism. It is not hard to see how being subject to governing authorities that characteristically impose such wrongs, even absent the violent practices that usually accompany them, undermines one's self-respect and authentic agency, and thus why it is fair to presume without further elaboration that direct colonial authority violates moral equality.

But what of the long legacies of the colonial world order? Post- and decolonial scholars have long counselled that while colonialisms begin with the impositions focused on above, colonial violence and injustice often persist even after their overthrowal, taking on forms not necessarily dependent on direct and overt territorial seizures and denials of formal structures of self-governance (e.g. Nkrumah, 1965). Of course, in the case of settler-colonialism, even those initial injustices all too often persist. But even where they are eliminated, we should be wary of concluding that colonial injustice is over once colonizers leave or independence declarations are signed. Pernicious norms originally meant to help erect and consolidate direct colonial subordination may have survived to this day, keeping colonial legacies alive even in formally decolonized circumstances. To better understand the legitimacy of contemporary state authority, we must investigate how it might be infused with such legacies, and to do that, we must first specify more clearly when they should worry us and how they might persist. To do so, I suggest that it is useful to understand one specific kind of wrongful colonial legacy in terms of 'structural colonial injustice'. Let me first offer a definition of such injustice and then elaborate on its conceptual specificities. According to the definition, *structural colonial injustice obtains when formal or informal norms (that govern behaviours and dispositions) which functioned to justify past direct colonial impositions cause or support the maintenance or (re)production of morally arbitrary patterns of social disadvantage in the present*.

This definition has at least three features worth pointing out. First, it affords a clear and widely acceptable benchmark according to which the moral status of colonial legacies can be assessed: their role in morally arbitrary patterns of social disadvantage. It would be question-begging and indeed misleading to assume that every norm that functioned to justify colonial impositions is automatically and always bound up with injustice. For example, the justification of British colonialism has partly relied on the normative belief that great virtues inhere in the British conception of the rule of law

(McBride, 2016). The possibility that effective colonization may not have occurred without this norm does not tell us much about the moral status of the norm itself or its moral status in fundamentally different contexts. Assessing the norm's roles in the maintenance or (re)production of morally arbitrary patterns of social disadvantage is a suitable process for establishing this status, because 'disadvantage' can capture a wide range of social phenomena and its patterned, morally arbitrary presence is archetypically indicative of an injustice.[2]

Second, the definition's focus on the content of norms that support the creation or entrenchment of morally arbitrary patterns of disadvantage relieves us of the often common need to pinpoint a reproduction of concrete past hierarchies of domination and victimhood in order to make sense of colonial tinges in contemporary sociopolitical life. Accounts of the reproduction of colonial injustice often argue that particular constellations of colonizer and colonized have been sustained into the present, albeit more covertly (e.g. Achiume, 2019; Nkrumah, 1965). Such accounts are important, as they may debunk false ideas about the eradication of particular relationships of aggression. But colonial modes of thought and action may also survive independently of the continuation of such concrete relations, where norms that had served the justification of colonial rule infiltrate the justificatory and motivational reasons held by many different actors and institutions of authority today. My account of structural colonial injustice thus allows us to consider the possibility that actors with no historical responsibility for direct colonial rule (and even the victims of such rule) can in principle come to perpetrate (structural) colonial injustice.

Third, the definition captures as colonial both injustices whose arisings or continuations are clearly *caused* by the unrelenting prevalence of colonialism-justifying norms and injustices whose causes are more muddled and multifaceted. Consider, for example, the injustices of dispossession that persist when (culturally or otherwise) important goods and artefacts stolen during colonization continue to be kept from the people and institutions able to make the strongest historical claim to ownership to (or guardianship of) them. Insofar as such a situation remains morally and politically palatable to the dispossessors in virtue of a dominant norm according to which historically important goods and artefacts should be kept by those 'best able to care for them' (those with the most advanced scientific and civilizational standards – they themselves), a present and continuing injustice may be said to exist *because of* a retainment of norms instrumental to the justification of colonial impositions. My understanding of structural colonial injustice covers such cases, but it also covers less clear-cut ones. Consider, for instance, law enforcement in a country like Britain. The fact that Black Britons are disproportionately vulnerable to being violated by police (presumably a morally arbitrary pattern of social disadvantage) is not directly and exclusively caused by the continuous presence of some colonial norm. Nevertheless, its persistence is inextricably bound up with the normative imaginary of racialized difference, an imaginary of prime ideological importance to the success of (and arguably *arising from* the need to justify and stabilize) colonial conquest (see Bell, 2016: 175–80; Mills, 2019; Williams, 1994; Táíwò, 2022: 44–49). Thus, a morally arbitrary pattern of social disadvantage is here supported by a

norm (or set of norms) that functioned to justify the colonial imposition, and my definition captures the example.

At this point, an attentive critic might object that this idea of 'structural colonial injustice' is overly broad and ultimately superfluous. It remains unclear what my definition of various injustices as 'colonial' in the outlined ways adds to the normative discussion of such injustices, regarding both the legitimate authority of their perpetrators and other questions. After all, I have not explained what, if anything, is *distinct* about structural colonial injustices. Pointing to various injustices' connections to colonialism may be helpful in *describing* or *contextualizing* them, but they remain *normatively objectionable* for entirely independent reasons. For instance, racialized patterns of vulnerability to police violence constitute unjust social disadvantage because they wrongly restrict people's freedom or treat them as inferior, not because of the colonial genealogies of their justificatory norms. As it stands, 'structural colonial injustices' are entirely reducible to independently specifiable wrongs. There is thus no reason to think that there is something distinct about them – as there is something distinct about distributive or epistemic injustices, for example – in virtue of which we might come to believe that states supposedly responsible for them violate the EWP. Hence, my account fails to show that introducing concerns about colonial phenomena into the discussion can make a substantive contribution to the liberal's moral evaluation of the legitimate authority of immigration control (the worry expressed in Finlayson, 2020 and Kreutz, 2022).

The objection allows me to further flesh out the purpose of the concept of structural colonial injustice for this paper's aims. I have indeed not shown structural colonial injustice to be a distinct, non-reducible type of injustice, but doing so is not necessary for it to be distinctly salient for evaluations of states' legitimate powers to control immigration (and other areas where they assert their authority). Because the definition is purposed to serve a goal other than the identification of a distinct type of injustice, its broadness is a feature rather than a bug. The goal is to employ the notion of structural colonial injustice towards the end of unveiling and (re-)assessing the norms that underpin and structure various injustices in contemporary politics. My claim is that doing so sometimes distinctly enables us to reveal the *severity* rather than the type of contemporary injustices: to understand that some of these go so far as to undermine the equal moral worth of persons. As I attempt to show in the next section, there are injustices whose normative implications cannot be appropriately drawn out without a prior evaluation of the colonial norms that structure them.

Structural colonial injustice in domestic and international politics

Before making this case, I want to be clear that there are also cases aptly described as structural colonial injustices in which describing them as such *does* merely contribute to telling a causal or contextual story; that is, a range of cases in which the lens of structural colonial injustice does fail to yield a 'normative surplus'. One paradigmatic example is the Windrush Scandal. In the Windrush Scandal, British authorities (obviously unjustly) stripped British Commonwealth citizens of basic citizenship rights and arguably

did so in keeping with a history of attempts to restrict full political membership to a racially conceived people of Anglo-Saxons that has long disqualified many de facto members of Britain's entire sociopolitical enterprise from due consideration (see Bell, 2016: 173–178; El-Enany, 2020; Goodfellow, 2020). Given that the normative acceptability of the restriction of full membership rights to an imagined, racially conceived core population has always been integral to maintaining Britain's colonial domination, the Windrush Scandal is a paradigm case of structural colonial injustice. But fundamental problems with the Windrush Scandal – reasons why its injustice undermines victims' self-respect and authentic agency – can be easily identified without consideration of the structural colonial background story. The injury at the heart of the Windrush Scandal is the morally arbitrary revocation of some citizens' full membership in a community of equals, treating them as if they are not worthy of their governments' equal concern and making them vulnerable to state interference – deportation to unfamiliar places – severe enough to fundamentally jeopardize their pursuit of even the most basic constituents of a formed conception of the good life. This alone is enough to see why the injustice of the Windrush Scandal constitutes a paradigmatic injury to its victims' self-respect and authentic agency and, consequently, why the British state does not hold the normative standing to claim legitimate authority over them. In other words, the Windrush Scandal is not a case in which we learn a distinct normative lesson from stressing the structural colonial character of the injustice, at least as far as questions of legitimate authority are at issue. It is a case that presents a particular state *practice* – systematically treating some of those entitled to citizenship as not worthy of its constituent benefits – that *itself* undermines its victims' equal moral worth.

This, however, is unlikely to be true of a range of cases whose salience has been neglected in the political theory of immigration. I want to specifically focus on the cases of *Structural Adjustment* and *Bilateral Investment Treaties in the Global South* (*BITs* for short), though I by no means claim that these exhaust the type of phenomenon I shall now analyse in greater detail. Indeed, given that they are likely to exemplify a fairly entrenched pathology of the global political order, my expectation is that one could unearth rather many relevantly similar cases that serve to demonstrate the same point (though my argument does not depend on this speculative proposition).

Let me start by zooming in on *Structural Adjustment*. For a long time, many societies in the Global South, unable to pay the interest – and sometimes the principal – on their extensive foreign debts, had no other option to avoid exclusion from international capital and the associated immiseration of their people than to turn to the powerful international financial institutions – the IMF and the World Bank – for help. These institutions would help renegotiate and restructure existing debts and often provide special loans themselves, on the condition of the 'structural adjustment' of debtor countries' economies. Structural adjustment was generally aimed at comprehensive neoliberalization and considerably worsened quality of life in debtor societies on all standard indicators (Bradshaw and Huang, 1991). There is, furthermore, overwhelming testimony from Global South leaders that the dependency engendered by structural adjustment would negatively impact the extent to which postcolonial political communities could conceive themselves as thoroughly self-governing collectives (see Holtom, 2005; Manley, 1980).

All in all, it is clear that the global social disadvantage entrenched and exacerbated by structural adjustment was severe. Couple this with three further facts. First, some of the crushing debt load was accumulated by colonizers who then foisted responsibility for it on the newly independent nations (Mallard, 2021). Second, a large part of the explanation for why Global South states were unable to comply with their debt obligations lies in the global ripple effects of changes in the U.S. hegemon's domestic monetary policy (Watkins, 1995, chap. 3). Third, this practice – one that effectively steered independent states into abdicating significant pillars of their socioeconomic self-determination – was arguably structured and justified by a dominant norm at work in these institutions, a norm according to which formal sovereign state equality need not translate into substantively equal protection from external imposition (compare Martin, 2022, chap. 6). Economic historian Jamie Martin's retelling of the history of the IMF shows that the US-controlled fund treated formally equally sovereign states with substantial difference almost from its inception, letting countries like Australia withdraw funds without strings attached while never even considering to allow states like Chile and Ethiopia to do the same (Martin, 2022: 242–243). As interstate quarrels about the IMF's founding statutes had precluded the codification of clear rules setting out the conditions under which conditionality was appropriate, such 'asymmetric interference' with presumptively equal withdrawing rights has since largely reflected the fund's managers' beliefs about whose claims to sovereign equality must be respected and whose claims can be disregarded (ibid, 235; 242–44). As critical legal scholars Anthony Anghie (2004) and Rose Parfitt (2019) stress, the genealogy of this norm of de facto sovereign *in*equality is foundationally entangled with colonial conquest, for which it emerged as ideological justification.

The first two facts strongly suggest that the global social disadvantage was morally arbitrary and thus unjust. It is implausible to say that the impacted peoples bear the responsibility for the disadvantage they incurred, and, *prima facie*, there seem to be no other compelling reasons to think that they were liable to incurring it.[3] The third fact specifies the background conditions enabling and structuring the injustice, identifying it as a structural colonial one. Importantly, and in contrast to the case treated above, the specifics of this case make it so that what allows us to appreciate the injustice in question as one that undermines the EWP is *precisely* its structural colonial character. This is so because a non-contextualized look at the practice itself is not likely to reveal the injury to self-respect or authentic agency manifesting in the proceedings as a whole. After all, the practice itself merely consists in an offering of the easing of (the meeting of) debt obligations conditional on domestic reforms. Given that it is questionable that the legal debt obligations track a genuine normative obligation and that the demanded reforms are likely counterproductive to the establishment of just social relations in the societies that are to implement them, one may well think that the practice is unjust, all things considered. But even if we think it unjust, it is not clear why it should necessarily involve the undermining of self-respect or authentic agency. After all, states and their citizens are not forced to assent to the practice, and the consequences of their doing so need not threaten the basic conditions of their agency.

To understand the normative stakes better, we need to consider the practice's background norm, the norm that not all formal sovereignty is substantively equal, with some peoples at greater risk of external imposition than others. Consider what those disadvantaged by a practice based on such a norm can reasonably take the practice to *express*. They would likely (and certainly reasonably) interpret the proceedings to convey that disregard for their well-being and self-governance is entirely appropriate *because* they do not possess a claim to self-determination equal to that of other peoples, a claim whose conditions seem to be imposed arbitrarily and by actors that do not represent them. This is a message that prescribes inferior treatment based on grossly untransparent factual and moral standards. It clearly functions to undermine the self-respect of its recipients, expressing that it is fine to constrain their agency in ways and to extents not permissibly done to others in potentially similar situations and thus categorizing them as being of lesser importance than such others. Indeed, indignation at this arbitrary denial of equal sovereignty has resurfaced time and again in grassroots struggles against structural adjustment (see e.g. Kraus, 1991; Reinsberg et al., 2023). *Structural Adjustment* thus violates the EWP, and understanding why requires looking beyond the immediate practice to unearth the presence and expressive content of a background norm which cannot be divorced from its structural colonial character.

It is important to acknowledge that the force of the argument from *Structural Adjustment* – that is, the argument that states wielding structural adjustment against the populations of debtor countries undermine the equal moral worth of the individuals making up such populations, therefore forfeiting their potential legitimate authority over them – faces a potential objection, although I think it is defeasible. That objection is rooted in a concern about *responsibility*. Specifically, there is the worry that it is difficult to ascribe the right kind of responsibility for *Structural Adjustment* and its effects to individual states, given that it is a policy leveraged by multilateral international organizations rather than such states themselves. So, does it make sense to say that there are states whose potential authority over victims of *Structural Adjustment* is rendered illegitimate, precisely by virtue of their responsibility for *Structural Adjustment's* effects?

I think so. The governance of the international financial institutions that condition aid on structural adjustment is overseen by states and their representatives, and some states can exercise vastly more significant control over their actions than others. Relative power in the IMF's board of executive directors, which oversees and supervises its operations, reflects states' financial contributions. At 17%, the United States holds by far the largest share of power of any single country, even allowing it to veto issues requiring the board's most stringent supermajority threshold (Weiss, 2022). Indeed, historical analysis demonstrates that U.S. hegemony ensured that the IMF would from its very beginning be set up in such a way that it could be effectively aligned with U.S. interests (see Martin, 2022: 237). Nevertheless, some European states as well as Japan and China exercise considerable power as well, as they are among the fund's second-tier contributors (with the United States constituting its own tier) (International Monetary Fund, 2022). IMF voting power thus roughly reflects broader patterns of global wealth.[4] Besides influence through voting power, it is also important to stress that at least those contributor states with considerable soft and hard power in the international state system – those unlikely to find themselves

existentially dependent on the good-will of other states and institutions like the IMF – do not plausibly face significant obstacles to abstaining from supporting and even campaigning and voting against IMF measures that would predictably exert EWP-undermining injustices on their target populations, such as *Structural Adjustment*. It may well be the case that some states – those whose existing disadvantages may render them existentially dependent on dominant powers' benevolence, and thus place them under duress – are *not culpable* for their complicity in bringing about injustices such as *Structural Adjustment*, but this still leaves a range of states appropriately held culpable.[5] Such states are morally and remedially responsible for undermining the equal moral worth of those impacted and, in absence of remedy, forfeit claims of possessing legitimate authority over these persons they may otherwise have had.

Those who remain unconvinced by this will be happy to learn that there are relevantly similar cases in which the proper ascription of responsibility is of lesser concern or indeed no concern at all. *Bilateral Investment Treaties in the Global South* (henceforth: BITs) represent just such a case, which goes as follows.

In response to initial strides made by newly decolonized states and their allies in their efforts to push multilateral decision-making processes towards a restructuring of the international economic order, Global North states – and primarily the United States – started lobbying for the widespread adoption of bilateral investment treaties (BITs) capable of staving off perceived threats to the global deployment and securing of private property and capital by virtue of direct contractual obligation (Vandevelde, 2005: 168–169). Ever since, BITs have been aimed at creating contractual agreements between states which guarantee that private investment can flow in a secure and relatively uninhibited manner from one state to another. More precisely, BITs usually include strong protections for investors by codifying their rights to prompt, adequate, and effective compensation for expropriations (often broadly understood); to equal treatment to domestic business; 'fair and equitable treatment', often understood as an entitlement to having their 'legitimate expectations' realized; 'most-favoured nation' treatment, that is, access to advantages originally granted to other states; and 'conditions of stability' for investment (see Chan, 2021: 206; Sornarajah, 2017: 241–242; Vandevelde, 2005: 171). Moreover, investors can usually pursue these characteristically vague entitlements through a system of ad hoc international tribunals, that is, outside the bounds of the complained-against state's own legal system; such tribunals have historically tended to rule in their favour, even when they litigated for the recognition of a particularly wide and favourable interpretation of the relevant clauses (Chan, 2021: 207; Vandevelde, 2005: 173–175). Seeking to safeguard their influence over the direction of Global South economies, the powerful Global North states in their pursuit of BITs first targeted the newly independent states that fought for a New International Economic Order (NIEO) they believed would substantiate their formal right to self-determination. However, Global South states overwhelmingly refused to sign up to what they likely deemed detrimental to their control over their own economic development (see Vandevelde, 2005: 170–172). Only when the aforementioned debt crisis and associated economic turmoil of the 1980's hit were postcolonial states left with little choice but to sign BITs, because the combination of a highly reduced availability of private lending and the Global

North's reduction of development aid payments removed the most viable alternatives to foreign investment as a source of capital for these chronically underfinanced societies (Vandevelde, 2005: 177–178).

A prevalent critique of BITs suggests that they constrain some states' capabilities for self-determined policymaking to possibly unjust extents or in ultimately unjust ways (Banai, 2015; Guntrip, 2016; Ratner, 2019). The idea here is that, in light of the circumstances, Global South states' formally voluntary acceptances of BITs must often be seen as the result of highly constraining choice situations. Their vulnerability to the dynamics of the global political economy has long rendered the acceptance of BITs all but irresistible and has consequently stifled many initiatives that such states would otherwise want to pursue. Indeed, BITs have historically not borne much of the handwriting of Global South states, instead having their content largely determined by Global North proposers and only then being presented to Global South states for their signatures (Vandevelde, 2005: 170). Given these conditions, recent announcements of some Global South states that they would no longer accept the heavy constraints on their social and economic self-governance associated with their BIT obligations and withdraw from current deals and/or commit not to conclude them in the future are notable (see e.g. Feris, 2014; Uribe, 2017).

Insofar as BITs should be judged unjust on grounds such as these, they are also rightly understood as structural colonial injustices in virtues of the norms they reflect and further entrench. As David Schneiderman has recently argued, many of the dispositions and standards that motivate Global North actors to pursue BITs with Global South states, as well as many of the ways in which the content of such BITs is determined and discursively justified, are governed by some of the same norms characteristically motivating and legitimating colonial impositions (Schneiderman, 2022, chap. 1). For instance, Schneiderman reconstructs that a large part of the justification of BITs relies on discourses of 'improvement' akin to the 'civilizing missions' of colonial conquests, where the intrusive power of foreign actors is deemed necessary for bringing about a progressive socioeconomic transformation of Global South societies; when in reality, it is only the intruding societies that truly benefit (Schneiderman, 2022, 26–29).[6] Relatedly, Schneiderman contends that the content of North-South BITs characteristically reflects the assumption that Global South societies cannot be trusted to adopt and comply with standards and practices deemed most reasonable by the Global North's vanguards of 'good governance': hence the inclusion of extraordinarily strong investor protections, punitive constraints on domestic policymaking, and ad hoc international arbitration. In other words, the same normative distrust of and condescension towards supposedly backward others that allowed colonial powers to instate their own standards and practices with violent force remains operative (Schneiderman, 2022, 29–32). Supporting literature suggests that the history of North-South BITs is shot through with the motivational and justificatory power of such civilizing discourse (see Vandevelde, 2005: 182–183; Miles, 2013; Tucker, 2018: 64–74; Haynes and Hippolyte, 2023).

Just like in *Structural Adjustment*, it is the structural colonial character of *BITs* that explains why they constitute a case of EWP-undermining injustice. Again, one might well judge Global North states' *practice* of pursuing BITs with Global South states

itself unjust – it may be exploitative or wrongfully harm some states' prospects of realizing desirable levels of socioeconomic self-determination. But, again, it is not clear that these injustices contain or represent injuries to equal moral worth. After all, one can sometimes both unjustly take advantage of the structural vulnerability of another and unjustly realize gains at the expense of another's capacity to self-direct their activities without thereby expressing that the other is inherently inferior or jeopardizing their capacity to form and act on conceptions of the good life (at least insofar as these injustices remain below a certain threshold of intensity and consequentialness). But where BITs are justified by reference to the colonial norms of civilization and improvement, they express a colonial hierarchy whereby the members of one people are conceived to be fundamentally unable to shape their collective lives in desirable ways by another people (or other peoples) with the power to correct their supposed mistakes. And where they are implemented in ways that aim at institutionalizing the distrust inherent in such civilizing logics, minimizing the to-be improved people's scope of self-governance by the letter of the (international) law, they reveal persisting belief in such a people's fundamental unreasonableness. In any of these events, the people and institutions that have driven the spread of BITs have often been very clear in communicating that they hold those they target in inferior regard. Individual members of the inferiorized people(s) would be perfectly justified in understanding this state of affairs as a grave injury to their self-respect, which renders it incompatible with the demands of the EWP. It bears repeating that this expressive side of a multifaceted injustice remains veiled when the practice is analysed in abstraction of the colonial norms that structure it; thus, so do the ways in which it injures equal moral worth.

As foreshadowed, *BITs* is a case in which individual states are clearly appropriately held responsible for the EWP-undermining justices involved. Global North states lobbying Global South states to accept the treaties in question, when there seem to be few alternative means to guaranteeing economic viability, clearly culpably contribute to the resulting state of affairs. After all, they could relatively easily have refrained from taking that particular course of action (even assuming powerful agents of capital can make it more difficult for states not to pursue these treaties), and their insistence is prohibitively hard for Global South states to reject.

Upshots for states' legitimate authority over (would-be) immigrants

The preceding discussion means to show that it is highly likely that states often culpably contribute to undermining the equal moral worth of such persons who they will later come to claim immigration-related authority over; and that sometimes realizing this requires taking seriously the colonial norms that still structure state conduct. Cases like *Structural Adjustment* and *Bilateral Investment Treaties* demonstrate as much: paying attention to structural colonial injustice distinctly enables us to reveal a potentially large set of instances in which states forfeit the potential of holding legitimate authority over foreigners.

Two important qualifications attach to this conclusion. I want to be clear, first, that any such determinations must be made on the basis of careful case-by-case analysis rather than follow from a 'decolonial' version of what Alan Patten once called 'explanatory cosmopolitanism': the sweeping and undifferentiated attribution of domestic social disadvantages to transnational or global causes (Patten, 2005; see also O. Táíwò, 2022). We can neither presume that all instances of engagement between powerful Global North countries and historically disadvantaged peoples of the Global South are characterized by injustice nor that those that *are* so characterized undermine moral equality in virtue of the expression of structural colonial normativity. Careful analysis is necessary, and all such analysis – including that of *Structural Adjustment* and *Bilateral Investment Treaties* – will be contestable on the facts. Second, I have not considered the counteracting normative potential of reparation and rectification. One may argue that individual instances of the structural-colonial undermining of moral equality – say, in the context of 1980's *Structural Adjustment* – can be rectified or repaired, and that successful rectification or reparation may re-establish a presumption of legitimate authority over the victims of such injustices. Insofar as it is precisely the function of rectification or reparation to right previous wrongs, it is odd to think that successful rectificatory or reparative processes would not rule out the (now-righted) wrong from counting as a compelling reason against the legitimacy of a particular authority regime. Nevertheless, the strength of these qualifications should not be overstated. Given that various investigations suggest a structural colonial character of *many* of the norms that undergird international relations (e.g. Tucker, 2018), as well as the absence of obvious candidate attempts at trans- and international rectification or reparation of recent and contemporary injustices, it remains highly plausible that we will sometimes be able to diagnose lasting and unrepaired EWP-undermining structural colonial injustice manifesting in global relations.

One highly salient way in which states exercise direct dyadic authority over foreign individuals is by controlling their movement across their territories and their immigration opportunities more broadly. Such control involves a force-backed demand of compliance and as such an assertion of authority. Importantly, would-be immigrants and the states that claim such authority over them may have existing histories of interaction, which sometimes include state responsibility for structural colonial injustices that have undermined would-be immigrants' moral equality. EWP-committed liberals, then, have good reason to believe that such immigration control authority is illegitimate in a potentially significant number of instances. This diagnosis supports an existing line of thought that mainstream liberal theorists have not so far taken seriously enough: that liberal legitimations of the state's authority over (would-be) immigrants must be predicated on the state's agents and institutions treating the subjects of their authority in line with the basic principles of permissible conduct and that the belief that many states, especially in the Global North, systematically fail to act accordingly looks increasingly justified (Aitchison, 2021; Sandven, 2022; Schmid, 2022). Subjecting individuals to illegitimate authority means enforcing their compliance without proper standing to do so. When states subject persons to illegitimate authority, necessary and proportional resistance of such persons is *prima facie* justified, and liberals should be open to understanding a

wide array of anti-control actions as justified means of self-defence against illegitimate force.

It is worth considering here how my argument complements but also contrasts with other recent critiques of immigration control authority. Importantly, one may think that a critique of such authority that targets the colonial norms which manifest in the wider arena of international relations misses the forest for the trees, because the most obvious manifestation of the EWP-undermining perpetuation of colonial norms occurs precisely in and through practices and processes *of immigration control itself*. One can extract a similar argument from recent contributions by Achiume (2019) and Aitchison (2021), who press the respective claims that many Global North countries owe many Global South persons citizenship and immigration rights due to their de facto subjection to 'neocolonial empire' (Achiume) and that immigration control authority becomes illegitimate when its exercise relies on racially discriminatory standards and assumptions (Aitchison).

I fully agree with Aitchison's argument and simply take myself to show that its animating concerns afford a larger and more expansive critique than he himself elaborates. The racism baked into many immigration control standards is very plausibly a form of structural colonial injustice, and in covert forms of immigrant discrimination, it may be that we need to unearth the structural colonial (in this case, racist) character of the underlying *norm(s)* to understand why the exclusionary *practice* violates the EWP. To my mind, however, there is simply no good reason to stop the analysis there. Aitchison (2021: 607) is right to argue that migrants need not respect the control directives 'of a foreign collective that disrespects them as morally tainted and unworthy'. But, crucially, insofar the immigration control authority of a state is potentially legitimized simply by reference to the wider self-determination rights political communities of the right kind possess, the context in which states undermine the moral equality of persons they then claim legitimate authority over does not seem to matter. Liberal commitments entail that any claim of legitimate authority over any person made simply on the basis of a political community's collective governing rights is forfeited when that community culpably injures their moral equality, regardless of whether such treatment occurs in the course of *this* particular assertion of authority or has been meted out beforehand (assuming it remains unrepaired or unrectified).

Besides expanding on Aitchison's analysis of the EWP-denying aspects of contemporary immigration control in the Global North, my argument also provides an elaborated avenue of critique for those convinced of the relevance of wider global and international injustices to questions of legitimate immigration control but hesitant to adopt Achiume's (2019) very expansive diagnosis of 'neocolonial empire'. On Achiume's account, contemporary immigration control measures in the Global North often undermine moral equality because they fail to treat Global South persons subject to them as *proper political subjects* of the controlling states, ignoring that a great many such persons have been made de facto subjects by these states' perpetration of neocolonial global rule. However, her account may be susceptible to the accusation that it effectively adopts what I have strived to avoid: a decolonial version of 'explanatory cosmopolitanism'. The claim that the world is now characterized by the existence of 'neocolonial empire', in which

people in the Global South are essentially made full political subjects of imperial formations ruled from Global North metropoles, is heavily contestable. Its justification may require a litany of empirical investigations that Achiume does not always provide. Whether her account ultimately convinces on the facts or not, my argument demonstrates that taking seriously the importance of international colonial norms and practices when evaluating the legitimacy of immigration control can yield radical conclusions without having to rely on empirical claims quite as bold as Achiume's.

Despite these departures from Aitchison's and Achiume's accounts, I am ultimately in agreement with them in seeing (some) migrants' resistance to immigration control authority as a justified and potentially powerful way of contesting colonial injustice. While adding to emerging agreement on this point, my argument also contends that one need neither restrict one's reasoning to the injustices occurring in the operation of immigration control regimes themselves nor defend extremely strong claims about the overarching empirical structure of international relations to reach it. Instead, it foregrounds the importance of investigating the character and normative support structure of the concrete practices that have shaped and continue to shape interactions between authority-claiming states and the societies from which would-be immigrants to such states hail. In concrete terms, this strategy might lead us to ask which of the Central American migrants the United States claims border-related authority over come from societies that the United States has pressured into accepting injustice-producing BITs shaped by EWP-undermining colonial norms held by its officials or institutions; or if any such norms underpin the European Union's trade relations with African societies whose members often strive to immigrate to EU member states. If so, even non-cosmopolitan liberals have strong reason to think that such persons' resistance to immigration control in the United States or European Union is principally justified, as controlling states have invalidated their potentially legitimate claims to authority over these persons on account of their violations of moral equality.

In lieu of conclusion: turning an objection into a caveat

One critical objection must be addressed before coming to a close. My argument challenges legitimate state authority only in the sense that it interrogates the foundations of the state's claim to legitimately create and demand obedience to its rules – or hold a right to non-interference with its actions – in virtue of its putatively appropriate standing to do so: what we may, for short, call 'right-to-be-obeyed legitimacy' (Shelby, 2016: 229). Critics may well interject that this overlooks important alternative ways in which rules can legitimately come to claim authority over persons. More concretely, critics may hold that immigration rules are themselves legitimately authoritative for would-be immigrants, regardless of the prior conduct of those who legislate or enforce them. An argument to such effect could proceed in two ways. The first is that immigration control regimes should be understood to exert legitimate authority because complying with them is *the best way* for would-be immigrants to comply with the moral reasons that *anyways* apply to them, in the sense of Joseph Raz's (1986) service conception of authority. The second is that immigration rules should be understood as authoritative

because they are justified by pre-political imperatives; perhaps unauthorized immigration is not wrong in virtue of the lawbreaking involved but because it violates basic moral rights. In both cases, a state without right-to-be-obeyed legitimacy may still possess 'enforcement legitimacy' insofar as its enforcement capacity can preclude the wrongs of unauthorized immigration.

Let me respond to these objections in turn. Raz's account of authority requires that subjects have good reason to believe that the authority regime in question tracks independent and pre-existing moral reasons for action. This requirement, in part, is what accounts for the service conception's ability to explain why we should obey traffic rules or even more politically charged laws crafted to govern a system of mutually beneficial social cooperation. But it can hardly make sense of any potential obligations of would-be immigrants to obey or refrain from interfering with exclusionary immigration laws. In what sense do these laws track pre-existing moral duties or interests or enable them to comply with the best reasons for action? I am very much inclined to follow Miller (2021) in doubting that there are general moral reasons for would-be immigrants to respect exclusive immigration laws that can be decoupled from the interests of the political communities that posit them, and one crucial upshot of this paper's argument is that such interests are not by themselves enough to generate legitimate authority. At the very least, critics mobilizing Raz's service conception as an objection to my account would have to say much more about the prior reasons would-be immigrants purportedly have to comply with immigration laws.

Perhaps the second version of the objection could help them do just that. There are two potential ways to argue that unauthorized immigration violates pre-political rights. The first proceeds by reference to the basic needs of a state's occupants. For instance, it could be argued that the enforcement of immigration restrictions is legitimate insofar as it is necessary to protect inhabitants' access to scarce goods such as food or to secure a minimum level of basic social resources. Second and very relatedly, it could be argued that immigration enforcement protects the basic right to relatively undisturbed territorial occupancy. Relatively undisturbed occupancy can be construed as a precondition for inhabitants' enjoyment of the basic goods and opportunities discussed above: perhaps their generation is dependent on the stable, long-term ability of such persons to inhabit and make use of a given piece of territory aptly demarcated by state boundaries. Even further, perhaps relatively undisturbed occupancy is a basic natural right because it is necessary for inhabitants to form and act on their located life plans, a central human need (Stilz, 2019).

In both cases, it can be granted that the argument as such has general appeal, especially from a perspective that emphasizes the preconditions for people to live and conceive of themselves as moral equals. It is unlikely, however, that it would be necessary for states responsible for EWP-undermining structural colonial injustice to exclude their victims to secure these basic needs. After all, such states are unlikely to be able to plausibly claim that the contested goods, opportunities or territorial securities are scarce or threatened enough to require protection from such victims *specifically*. Thus, the objection has merit, but only in circumstances far removed from current ones. Where circumstances have deteriorated to the extent that the immigration of victims would make life for 'natives' unacceptably precarious, such would-be immigrants may well be obliged to

view restrictive immigration rules as authoritative (and authorities in turn justified in enforcing restrictions). But especially powerful states do not currently find themselves in such situations, and no serious projections hold that they would even in a world in which migration was much more prevalent than it is today. The objection turns into a relatively inconsequential caveat.

The conclusion thus remains the same. In our contemporary world, those committed to broadly liberal understandings of legitimate authority, including defenders of the 'right to exclude', should agree that powerful states will often be unable to convincingly claim legitimate authority to enforce immigration restrictions. There is good reason to think that some of this is due to the moral equality-undermining colonial norms that continue to structure global politics, and it is only through revealing their prevalence that we can understand the full extent of the legitimacy crises characterizing many states' border control schemes. Far from being aptly predetermined by thick moral commitments, non-cosmopolitan liberals' affirmations of the legitimacy of states' immigration control authorities actually become less coherent and compelling the more we learn about the prevalence of such norms. Whether this conclusion says more about the real moral legitimacy of immigrant exclusion in our world or about liberal conceptions of legitimate authority is for others to decide. For now, we are left with an account that gives further support to those harbouring fundamental scepticism about the legitimacy of many immigration control regimes around the world.

Acknowledgements

This paper has greatly benefitted from thoughtful feedback and criticism by Vincent Harting, Matthias Hoesch, Cécile Laborde, Anna Milioni, Andrea Sangiovanni, Sarah Song, participants of the Migration Discussion Group (with special thanks to its organizers Juliette Monvoisin and Therese Herrmann), participants of the Normative Theory of Immigration Working Group (with special thanks to its organizer Benedikt Buechel), audiences at the 2022 ECPR General Conference and the 2022 MANCEPT Workshops, and various anonymous referees.

Declaration of Conflicting Interests

The author declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

Funding

The author disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This work was supported by the Deutscher Akademischer Austauschdienst as well as by the ZEIT Stiftung Ebelin und Gerd Bucerius (grant number 91649540).

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Notes

1. This reflects an ecumenical understanding of legitimate authority, one where the authority *either* holds a special normative power to create obligations (to obey) *or* a special privilege to not be interfered with. The distinction between normative powers and privileges tracks Hohfeld's analysis of the structure of rights (see Singer 1982).
2. Though of course people will disagree about *what* is morally arbitrary.
3. Notice that also conservatives about global justice should understand this case as an injustice – it violates widely accepted negative duties to refrain from harming rather than more controversial positive obligations to redistribute resources in a more equal way.
4. Much of this applies to the World Bank as well, as its own weighted voting scheme mirrors the IMF's.
5. I lack the space to consider ways of specifying a threshold to separate culpable from non-culpable states. I want to stress, however, that this line is not appropriately drawn by reference to states' past statuses as perpetrators or victims of direct colonial rule, but only by reference to their degree of responsibility for the present perpetration of structural colonial injustice. Even an ex-victim of colonial rule, such as China, may have come to bear such responsibility.
6. There is evidence that BITs do not even reliably increase foreign direct investment in target societies (Beri and Nubong 2021).

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