

## Religious Discrimination at the Border

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### Abstract:

One of the main questions Gillian Brock takes up in *Justice for People on the Move* (2020) is whether it is morally permissible for states to enact migration policies that discriminate on the basis of religion against those who wish to enter. The main focus of her discussion is on the United States context, and, in particular, the so-called ‘Muslim Ban’ enacted by President Donald Trump in 2017. While Brock offers a powerful critique of this policy, I argue that it is insufficient on its own to support her claim that migration policies that discriminate on the basis of religion *in general* undermine the legitimacy of the states that enact them. I argue that this claim can be supported within her framework by showing that such policies necessarily display disregard for the human rights of existing members of the discriminating state. I conclude with some reflections on the strength of this account of the moral impermissibility of religious discrimination at the border.

Keywords: Migration, justice, religious discrimination, human rights, legitimacy

### 1. Introduction

In *Justice for People on the Move*, Gillian Brock (2020) takes up a number of pressing questions about the moral justifiability of the existing global order, in which states enjoy extensive control over their borders. One set of questions she addresses concerns the moral permissibility of migration policies that discriminate on the basis of religion. Much of her discussion centres on the United States context, and in particular, the travel ban that was enacted by President Donald Trump in 2017, and subsequently repealed by President Joe Biden soon after his inauguration in 2021. This travel ban, which came to be known as the ‘Muslim Ban’, began as an executive order banning citizens from seven countries with majority Muslim populations from entering the United States. It was eventually replaced by a similar Proclamation (No. 9645), which was legally challenged, but ultimately upheld in a controversial Supreme Court decision in 2018. Although the Proclamation allowed for some exemptions in principle, in practice it functioned as an almost complete entry ban on members from the targeted countries (Brock 2020, 73).

Trump's Muslim Ban explicitly banned people on the basis of their nationality, and it did so in the name of national security. Still, it is best characterized as a policy of religious discrimination.<sup>1</sup> There is ongoing philosophical debate about exactly how discrimination should be defined, but it is widely agreed to involve (a) differential treatment that (b) disadvantages some people relative to others (c) on the basis of some perceived trait (Lippert-Rasmussen 2014, 15; Eidelson 2015, 17, Moreau 2020, 15).<sup>2</sup> To say that an instance of discrimination is based on some perceived trait is to say that the perception of that trait on the part of the discriminating agent constitutes part of the explanation for the differential treatment of those discriminated against (Eidelson 2015, 19). Importantly, this does not require that the perceived trait is explicitly cited as grounds for the differential treatment.

While Trump's Muslim Ban explicitly restricted entry on the basis of nationality and for reasons of national security, Brock notes that Trump repeatedly made statements indicating that fear, intolerance, and hatred on the basis of religion played an important role in motivating the ban, notably including his explicit call for a "total and complete shutdown of Muslims entering the United States" (Johnson 2015, cited in Brock 2020, 66). Given that the US constitution and immigration law prohibit religious discrimination, the proclamation would likely have been struck down had it explicitly banned Muslims. Arguably, then, Trump went as far as he could to minimize the number of Muslims entering the country within the bounds of the law.<sup>3</sup> As Justice Sotomayer argues in her dissenting opinion on the 2018

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<sup>1</sup> Following Brock, I will use a non-moralized concept of discrimination throughout this paper. Using this concept makes it meaningful to pose questions about when and why discrimination is morally wrong. 'Discrimination' is sometimes used in a moralized sense, which builds moral wrongness into the very concept. For those who prefer a moralized concept of discrimination, most uses of 'discrimination' in what follows can be replaced by 'differentiation'. I doubt that anything important hangs on whether a moralized or non-moralized concept of discrimination is adopted, at least in this case. For discussions of the distinction between the moralized and the non-moralized concept of discrimination, see Lippert-Rasmussen 2014, 24-26 and Eidelsen 2015, 14-15.

<sup>2</sup> An important qualification is that this holds only for *direct* discrimination. *Indirect* discrimination involves policies or practices that are facially neutral but disproportionately disadvantage people with a given trait. There is debate among philosophers about the relationship between direct and indirect forms of discrimination, as well as about whether indirect discrimination really constitutes a form of discrimination. See Eidelson 2015, Chapter 2. In what follows, I focus entirely on direct discrimination.

<sup>3</sup> Justice Sotomayer (2018) provides evidence to this effect. For example, she writes, "According to one advisor, "[W]hen [Donald Trump] first announced [the legislation], he said 'Muslim ban.' He called me

Supreme Court case in which Proclamation 9645 was upheld, national security claims were mere “window dressing” covering up Trump’s real motivation, and “a reasonable observer would conclude that the Proclamation was motivated by anti-Muslim animus” (Sotomayor 2018, 1, cited in Brock 2020, 69). It can therefore reasonably be interpreted as a policy of religious discrimination.<sup>4</sup>

Prompted by Trump’s Muslim Ban, Brock poses three related, but distinct, questions about discriminatory migration policies: (1) Was Trump’s Muslim Ban morally permissible? (2) May countries enact bans on Muslims entering their territory? And, (3) may countries enact migration policies that discriminate on the basis of religion (64)? Brock answers all three questions in the negative, on the grounds that migration policies that discriminate on the basis of religion undermine the legitimacy of states that enact them. In what follows, I argue that, while Brock mounts a forceful critique of Trump’s Muslim Ban, her arguments fall short of supporting her more general claim about the moral impermissibility of migration policies that discriminate on the basis of religion. I conclude with some reflections on how her account could be developed in order to support this claim.

## 2. Brock on the Impermissibility of Religious Discrimination at the Border

The question of whether it is morally permissible for states to enact discriminatory migration policies has received relatively little attention from scholars.<sup>5</sup> One reason for this might be that the moral impermissibility of such policies is widely taken to be so obvious that it does not warrant discussion.<sup>6</sup> But although there may be consensus among philosophers about the moral impermissibility of discriminatory migration policies, this is not obviously reproduced in the general public. Furthermore, a bit of reflection

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up. He said, ‘Put a commission together. Show me the right way to do it legally’.” (6), cited in Brock 2020, 71.

<sup>4</sup> Brock notes that some scholars interpret fear, intolerance, and hatred of Muslims as a form of racism, or as overlapping with racism (Brock 2020, 78). In this respect, the Proclamation might also be interpreted as discriminating on the basis of (perceived) race. Although my focus in what follows will be on the moral status of migration policies that discriminate on the basis of religion, much of it is also applicable to those that discriminate on the basis of race, among other perceived traits.

<sup>5</sup> The main exceptions are Blake (2002) and (2019). Walzer (1983) makes some cursory remarks about the permissibility of discriminatory immigration policies, and Miller (2016) discusses such policies over a couple of pages. Wellman (2011) and Fine (2016) both identify potential problems for these accounts, some of which will be discussed below.

<sup>6</sup> Carens (2013) sets aside discussion of this question for reasons along these lines.

on the question of the moral permissibility of discriminatory migration policies reveals that the answer is far from straightforward. This is, in part, because the question is closely bound up with two unsettled debates, namely the debate about when and why discrimination is morally wrong,<sup>7</sup> and the debate about the existence and extent of states' rights to exclude those who wish to enter.<sup>8</sup>

Regarding the latter, we can note that the question of whether states may permissibly enact discriminatory migration policies arises only for those who hold that states have at least a limited right to exclude. For advocates of open borders (for example, Carens 1987 and 2013), the moral impermissibility of states excluding people on the basis of their religion, or any other perceived trait, will follow from the impermissibility of states excluding people in general. It is for those who hold that states have a general right to exclude that the question arises as to whether there are any limits on whom they may exclude, and on what grounds. Most proponents of states' rights to exclude hold that this right is constrained by duties of aid, which, in some circumstances, require the admission of refugees or others in dire need (for example, Walzer 1983, Miller 2016). Proponents of states' rights to exclude also tend to affirm the impermissibility of exclusion on the basis of perceived traits such as race, ethnicity, nationality, and religion. The challenge for those who affirm this view is to provide an account of the moral impermissibility of such policies that squares with states' rights of self-determination, which are normally taken to include the right to select immigrants on grounds such as skills and wealth (Fine 2016).

Before getting into the details of the argument Brock advances for the moral impermissibility of migration policies that discriminate on the basis of religion, we should note that, although she does think states can permissibly exclude those wishing to enter in some cases, she offers a justification of this right that implies that it is highly constrained. Brock offers an instrumental justification of the right of states to exclude. She argues that this right is justified on account that it facilitates the delivery of justice, which is the justifying function of states and the state system (29). Justice, according to Brock, is cosmopolitan and centrally involves the universal fulfillment of needs, protection of basic liberties, fair terms of social cooperation, and the institutions necessary for these (21). Modern states and the state system are justified, on Brock's account, to the extent that they serve these purposes (29-30). This kind of account implies that the right of states to exclude only extends as far as is necessary for states to be able to perform their

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<sup>7</sup> Recent contributions to this debate include Hellman (2008), Lippert-Rasmussen (2011), Eidelson (2015), and Moreau (2020).

<sup>8</sup> Brock (2020) contributes to this debate. Other recent contributions include Wellman and Cole (2011), Pevnik (2011), Carens (2013), Miller (2016), and Blake (2019).

function of delivering justice. Brock teases out what this requires over the course of the book, but the details need not concern us here. What is relevant is that this kind of account implies that the right of states to exclude does not cover exclusion on grounds that have nothing to do with the capacity of the state to deliver justice. It is difficult to think of good reasons that discrimination on the basis of religion would enable a state to deliver justice.<sup>9</sup> On Brock's account, then, it looks like the impermissibility of migration policies that discriminate on the basis of religion follows from the more general impermissibility of exclusion on grounds unrelated to the state's ability to deliver justice.<sup>10</sup>

Interestingly, this is not the main argument Brock advances against discriminatory migration policies. The argument she advances in her discussion of Trump's Muslim Ban is one that is compatible with states having rights to exercise self-determination in ways that go beyond what is required for them to deliver justice, as she characterizes it. In this respect, it has the advantage of appealing to a broader range of proponents of the right of states to exclude, including those who see this right as being grounded in freedom of association (Wellman 2011), the value of nationality (Miller 2016), or associative ownership (Pevnik 2011).

Regardless of the grounds for the right of states to exclude, Brock argues that this right is conditional on the legitimate exercise of power on the part of the state. This is a foundational premise in her argument for why discriminatory migration policies are morally impermissible. She argues that when states discriminate on the basis of religion against those who wish to enter, they violate conditions necessary for the legitimate exercise of power (64-65). The right of states to control their borders is an extension of their right to self-determination; so only states that exercise power legitimately have the right to exclude.

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<sup>9</sup> One possible reason that comes to mind is national security; but I doubt this could ever justify exclusion on the basis of religion. National security was, in fact, the explicit ground provided in support of Trump's Muslim Ban. But Brock provides strong reasons for dismissing as unfounded claims about the security risks posed by Muslims (79-80). The heterogeneity of beliefs and doctrinal interpretations within any given religion makes it unlikely that true claims can be made about security risks posed by members of that religion *in general*, and *as such*.

<sup>10</sup> I admit that this is a bit quick since it need not follow from states lacking a right to exclude on discriminatory grounds that in doing so, they do wrong. Having *no right* to exclude does not entail having a *duty not to* exclude. That said, Brock does seem to hold that the only acceptable justification states can provide for excluding someone who wishes to enter must refer to their efforts to deliver justice. See in particular her discussion of acceptable and unacceptable justifications for exclusion (209-215).

If Brock is right that exclusion on the basis of religion is incompatible with the legitimate exercise of power, a state cannot then justify such actions or policies by appeal to its right to self-determination, since such actions or policies undermine a necessary condition for having this right in the first place.

But why think that migration policies that discriminate on the basis of religion constitute an illegitimate exercise of power on the part of states? Brock outlines three conditions that states must meet in order to exercise political power legitimately, and to thereby exercise legitimate control over their borders (38-39): The first requires that states respect their own citizens' human rights. Brock refers to this as the *internal requirement*, or LC1. The second legitimacy condition requires that states are part of a legitimate state system. Brock refers to this as the *system requirement*, or LC2. And according to the final legitimacy condition, states must contribute to the legitimacy of the state system by contributing to the fulfillment of human rights everywhere. Brock refers to this as the *contribution requirement*, or LC3. She argues that all three conditions are violated when states employ migration policies that discriminate on the basis of religion. Her focus is on LC1 and LC3. Any state that violates either of these thereby also violates LC2 by contributing to the illegitimacy of the state system.

Brock's discussion of how migration policies that discriminate on the basis of religion violate LC1 and LC3 focuses almost entirely on Trump's Muslim Ban. In the next section, I will argue that her account of why Trump's Muslim Ban violates LC1 does not straightforwardly generalize to all migration policies that discriminate on the basis of religion.

### 3. Brock's Critique of Trump's Muslim Ban: Internal Requirement Failure

According to Brock's first legitimacy condition (LC1), states must respect their own citizens' human rights (38). She argues that Trump's Muslim Ban violated this condition by showing disregard for core aspects of human rights practice, and by indirectly threatening the human rights of Muslims and members of other minority groups in the US. Brock notes that a central element of international human rights practice is the requirement that states must work towards the elimination of intolerance and hatred based on religion (77-78). Far from doing this, Trump and his associates routinely said and did things that encouraged intolerance and hatred towards Muslims. Brock furthermore cites empirical evidence that the human rights of Muslims and members of other minority groups in the US were eroded in the period following Trump's election (81-82). This includes evidence of increased violence and threats of violence against Muslim buildings, and the reported perception among Muslim Americans that it had become more difficult to be Muslim in America than it had been previously. Brock affirms the view of a number of commentators that, during his campaign and into his presidency, Trump created an atmosphere in which

white nationalists were emboldened, which in turn contributed to the erosion of the rights of Muslims in the US (82).

All of this points to the failure of the Trump administration to fulfill Brock's internal legitimacy condition (LC1). But what can we infer from this about the Muslim Ban in particular, and, more generally, about migration policies that discriminate on the basis of religion? It might be objected that Brock provides no evidence that the Muslim Ban itself contributed to the erosion of the rights of members of minority groups in the US. While the evidence she provides is compatible with the enactment of the Muslim Ban having causally contributed to the erosion of these rights, it might be objected that it is equally compatible with the erosion of these rights being fully explained by Trump's persistent anti-Muslim rhetoric. I think the most plausible interpretation of Brock's point can avoid this objection. What she seems to be arguing is that the Muslim Ban contributed to the erosion of the rights of Muslims in much the same way as Trump's anti-Muslim utterances. Like these utterances, the Muslim Ban constituted an expression of intolerance towards Muslims. The erosion of the rights of Muslims was most likely causally overdetermined; but just as we cannot infer from this that any particular anti-Muslim utterance made by Trump did not causally contribute to this outcome, neither can we infer that the Muslim Ban did not causally contribute to it. Trump's Muslim Ban must be seen as part and parcel of his anti-Muslim rhetoric and other expressive behaviours, which together contributed to creating the social atmosphere in which white nationalists were emboldened, and the rights of Muslims in the US thereby threatened.

On this account, the mechanism by which Trump's Muslim Ban contributed to the erosion of the human rights of citizens, thereby violating LC1, was its expressive force. This aspect of Brock's account has affinities with an argument against racially discriminatory migration policies advanced by Michael Blake (2002). According to Blake, such policies are morally objectionable because when a state discriminates against potential immigrants on the basis of race, it makes a sort of 'public announcement' that 'undermines the ability of citizens with the disfavored racial identity to see themselves as full participants in the project of self-rule' (2002, 284). Brock is less concerned with the effect of discriminatory migration policies on members' self-perception, and more concerned with the effect of such policies on how members of minority groups are treated. But, like Blake, her account focuses on the effects of discriminatory migration policies on members of discriminating states, rather than those who are excluded. In this respect, her argument is susceptible to an objection made by Christopher Heath Wellman (2011) against Blake's account.

According to Wellman, Blake's argument is weakened by the fact that it cannot account for the moral impermissibility of discriminatory migration policies in cases where no existing members of the discriminating state are adversely affected by them (2011, 149). The same could be said for Brock's account, so far. Brock's critique of Trump's Muslim Ban supports the claim that migration policies that discriminate on the basis of religion are morally impermissible *when* they contribute to the erosion of the human rights of members of the discriminating state. What is missing is an account of why such policies can generally be expected to have this effect. While Brock acknowledges Wellman's objection, she does not fully explain how her own account avoids it.

One reason for thinking that Brock's account avoids this objection might be that the failure to fulfill the internal requirement (LC1) is only part of her account of the impermissibility of migration policies that discriminate on the basis of religion. She also argues that such policies fail to fulfill the contribution requirement, LC3. Perhaps this explains why such policies are morally impermissible even when they don't erode the human rights of existing members of the discriminating state.

For reasons I will outline in the next section, I am skeptical that the failure to fulfill LC3 can stand alone in support of the moral impermissibility of Trump's Muslim Ban and, more generally, migration policies that discriminate on the basis of religion. In section 6, I explore a more promising approach to avoiding Wellman's objection, and to generalizing Brock's critique on the basis of LC1.

#### 4. Brock's Critique of Trump's Muslim Ban: Contribution Requirement Failure

Brock argues that Trump's Muslim Ban, and indeed Muslim bans more generally, fail to meet the contribution requirement for legitimacy (LC3). LC3 requires that states meet an ethos requirement according to which they must commit to maintaining "an ethos conducive to respect for the practice of human rights, such that everyone deserves to be treated with dignity and respect as a human being" (83). According to Brock, banning people on the basis of religion (among other things) violates this requirement because it fails to treat each person as an individual, which on her account, entails giving each person's claims "fair consideration, in attending closely to the reasons why that person seeks to be admitted and their particular personal characteristics" (85).

But if discrimination on the basis of religion is wrong because it fails to treat people as individuals, so too will be other instances of differential treatment that are widely considered justified. Consider, for example, an employer who advertises a position for a mechanical engineer, and includes among the employment criteria a degree in mechanical engineering from a recognized educational institution. The

employer explicitly refuses to consider anyone for the position who does not hold such a degree. Does this constitute a failure to treat as individuals applicants who do not hold the relevant degree? Perhaps; but even if so, this surely does not make it morally objectionable. This is because the employer is justified in applying this particular criterion in determining who to hire for the position in question. If an applicant does not meet this criterion, it simply doesn't matter what other characteristics they have, or what reasons they have for applying. What this suggests is that the wrong of discrimination, or of rejecting applicants without considering all of their particular reasons and characteristics, is not best captured by the idea that it involves a failure to treat people as individuals. Rather, when discrimination is wrongful, it is because it involves the application of illicit criteria in decisions that importantly affect people's lives.<sup>11</sup>

Religion may be an illicit criterion in making employment decisions;<sup>12</sup> but it doesn't follow from this that it is an illicit criterion in making decisions about the admission of immigrants into a state. Employment and international migration are sufficiently different contexts that an additional argument would be needed for thinking that reasons religious discrimination is wrong in the one context also apply in the other. I will not offer an argument one way or the other here. My point is, rather, that whether or not the enactment of migration policies that discriminate on the basis of religion violate the ethos requirement of LC3 depends on whether or not religion is an acceptable criterion to apply in making immigration decisions in the first place. The violation of the ethos requirement, then, cannot be used on its own as support for the impermissibility of this criterion, without begging the question against those who hold that it can be an acceptable criterion.

A similar objection applies to Brock's further argument that the enactment of migration policies that discriminate on the basis of religion fail LC3 by failing to show a commitment to global accountability practices. She points out that many world leaders and the global community were strongly against Trump's Muslim Ban, and she argues that such policies cannot be justified to countries with large Muslim populations, and the Islamic world in general (84-85). But the question of whether migration policies that

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<sup>11</sup> This is compatible with different accounts of the wrongness of discrimination. For example, the application of a given criterion could be illicit because of the harmful consequences it has for those affected, because of the motivations of the discriminators, because it is disrespectful to members of the targeted group, and so on.

<sup>12</sup> There are exceptions to this, including a number of difficult cases. For helpful elucidation of how to approach questions about religious discrimination, see Lægaard (2018).

discriminate on the basis of religion can be justified to any particular states or their members is bound up with the question of whether religion is an admissible criterion for making immigration decisions.

As I argued earlier, Brock provides a strong case for thinking that religion is *in some cases* an unacceptable criterion for making immigration decisions, namely when it involves the violation of LC1. When migration policies that discriminate on the basis of religion violate LC1, they will inevitably also violate the ethos requirement of LC3, since a policy that fails to respect the human rights of members of the state can but detract from a global ethos of respect for human rights. But we are still missing an argument for thinking that migration policies that discriminate on the basis of religion *in general* violate LC1. This is something I will try to provide in the next section.

Another way of supporting the claim that migration policies that discriminate on the basis of religion are never permissible would be to advance a convincing case for a human right against religious discrimination. Brock expresses scepticism that such a right could be justified (76). While I think the possibility of such a right deserves further consideration, I will set this aside here, and focus instead on bolstering Brock's claim that migration policies that discriminate on the basis of religion undermine the legitimacy of states that enact them by violating the internal requirement, LC1.

## 5. Back to the Internal Requirement

LC1 requires that states respect their own members' human rights. The question before us, then, is whether it is possible for a state to enact migration policies that discriminate on the basis of religion in a way that is compatible with respect for the human rights of their members. As we have seen, Brock convincingly argues that Trump's Muslim Ban constituted a failure to fulfill LC1 because it contributed to the erosion of the human rights of Muslims in the US. But what if there were no Muslims in the US? As Wellman's objection highlights, the effect of discriminatory migration policies on existing members of the discriminating state would seem to depend on the demographic composition of that state. A policy banning Muslims from entering the US could not have harmed the rights of Muslims in the US if there were no Muslims there. Brock refers to evidence that the rights of other minority groups were adversely affected by policies of discrimination towards Muslims. For example, she cites evidence that hate crimes against minorities of all kinds in the US increased from 2016 into 2018 (82). Arguably, then, the rights of members of any minority group within a state are vulnerable to the adverse effects of migration policies that discriminate on the basis of religion, even if they are not members of the targeted group. But this still makes the violation of LC1 contingent on the existence of minority groups in the discriminating state.

This may be a mainly theoretical concern, as both Blake suggests, given that most, if not all, existing states exhibit at least some degree of diversity (2002, 285). But this contingency is uncomfortable, not least because, as Sarah Fine points out, it implies that a state that cleanses itself of all religious minorities would do no further wrong in subsequently banning prospective immigrants on the basis of their religion (2016, 146).

In what remains of this section, I will argue that migration policies that discriminate on the basis of religion threaten the human rights of members of the discriminating state, even when the state is religiously homogeneous. One way in which such policies threaten the human rights of existing members is with respect to their social human rights. These are rights that protect our fundamental social needs, including the need for intimate social connections. These rights are recognized to a limited extent in existing human rights documents, and arguably should be expanded.<sup>13</sup> But even among the limited articulations of social human rights, we find, for example, a right to the protection of the family, as the ‘fundamental group unit of society’ (*International Covenant on Civil and Political Rights*, Article 23.1). Migration policies that ban members of certain religions from entering the state will undermine this right for members of that state who wish to found a family with someone who is a member of the banned religious group. It might be argued that such cases are rare, and that exceptions to otherwise discriminatory migration policies can be made. In fact, this is part of the reason Trump’s initial executive order was replaced by the proclamation: Whereas the original executive order constituted a complete ban, the proclamation allowed for exemptions in some cases, although in practice, few were granted (68). Exemptions might well address the concern about the social human rights of existing members, but note that as soon as an exemption is granted, the homogeneity of the society will be breached, and concerns about the impact of discriminatory migration policies on minorities is again relevant.

The threat posed to social human rights by migration policies that discriminate on the basis of religion applies also to discrimination on the basis of other ascriptive features such as such as race and ethnicity. Another way in which migration policies that discriminate on the basis of religion threaten the human rights of members of a homogenous state is specific to religion as the ground for discrimination. According to the *International Covenant on Civil and Political Rights*,

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either

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<sup>13</sup> For a forceful argument in support of social human rights, see Brownlee 2020.

individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. (Article 18.1)

Religion is not an immutable feature. Although many people's religious beliefs and commitments are shaped by those of their family or community, people can and do break away from the traditions in which they were raised. Freedom of religion involves not only being able to practice one's religion without fear of persecution, but also being free from the fear of persecution in adopting a new religion. In the context of a homogenous society, migration policies that discriminate on the basis of religion communicate the collective will to preserve that homogeneity, and imply hostility towards those who would upset this. Although this may not amount to coercive impairments of the freedom to adopt a religion, it contributes to an environment in which this freedom is greatly constrained. As in Brock's critique, this constitutes a violation of LC1 because it endorses rather than challenges sentiments of intolerance towards other religions. In this case, though, the problem with these sentiments is not that they contribute to the erosion of the rights of minorities within the state, but that they contribute to the erosion of the rights of those whose freedom to adopt a new religion, and to thereby form a minority, is constrained.

I have argued that, even in a religiously homogeneous state, migration policies that discriminate on the basis of religion are indicative of a disregard for the human rights of existing members. Even if no existing members of a religiously homogeneous state currently wish to found a family with a foreigner of another religion, or are currently considering adopting a new religion, the freedom to do so must always be secured as a matter of human rights. Although religiously homogeneous states are exceedingly rare, or even nonexistent, my argument also implies that such policies show disregard for an even broader set of human rights than Brock suggests. While the persecution and general insecurity of members of religious and other minority groups will tend to be of greater urgency than the ways in which the human rights of members of the religious majority are affected, the legitimacy of a state requires that it respect and protect all of the human rights of all of its members.

## 7. Conclusion

Brock provides a strong case for thinking that migration policies that discriminate on the basis of religion will violate LC1 when they causally contribute to the erosion of the rights of members of minority groups in the discriminating state. I have argued that this is not sufficient to support her more general claim that migration policies that discriminate on the basis of religion are always morally impermissible. In support of this claim, I have supplemented Brock's account by adding that such policies always show disregard for the human rights of members of the discriminating state, even when the state in question has a homogeneous population. But although the argument I developed in the previous section provides reason

for objecting to all migration policies that discriminate on the basis of religion, as an account of the moral wrongness of these policies, it feels incomplete. This is because, in focusing entirely on the ways in which such policies wrong existing members of the discriminating state, it treats as irrelevant the ways in which they affect their primary targets, namely those excluded on the basis of religion.

Although I have argued that Wellman's objection can be avoided within Brock's framework, this kind of account is nevertheless at odds with how the wrong of discrimination is normally understood. Some accounts of the wrong of discrimination see it as being wrong on account of how it affects others in addition to those discriminated against,<sup>14</sup> but there is something unsatisfactory about an account of the wrong of discrimination that makes no reference to those who are directly targeted by it. Brock tries to incorporate reference to those targeted by migration policies that discriminate on the basis of religion when she argues that they fail to treat those discriminated against as individuals; but I have argued that she does not succeed. This leaves open the possibility that a more persuasive account could be provided for thinking that those who are denied admission to a state on the basis of their religion, among other perceived traits, are thereby wronged. Such an account would provide a welcome supplement to the argument that migration policies that discriminate on the basis of religion violate LC1.<sup>15</sup>

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<sup>14</sup> Moreau (2020), for example, offers a pluralistic account of the wrong of discrimination. One of the ways in which she argues discrimination is wrong, when it is wrong, is that it unfairly subordinates members of a social group. On this account, a given instance of discrimination is wrong when and because it contributes to the social subordination of *all* (perceived) members of the group of which the individual discriminated against is (perceived to be) a member. Here, the wrong of discrimination is not fully accounted for by how it affects the direct target of the discriminatory act or policy, but by how it affects members of a particular social group in general. But because Moreau is focusing on cases of discrimination *within* a state, individuals directly targeted by this type of discrimination will inevitably be included among those who suffer the harm of social subordination as (perceived) members of the relevant group. This is not the case for those excluded from a state on the basis of religion (or any other perceived trait).

<sup>15</sup> Such accounts have recently been advanced by Miller (2016) and Blake (2019), but challenged by Fine (2016) who points out difficulties in distinguishing between acceptable and unacceptable grounds for exclusion for those who endorse the general right of states to exclude.

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