

GLOBAL JUSTICE, INDIVIDUAL AUTONOMY, AND MIGRATION POLICY

Justicia global, autonomía personal y política migratoria

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Abstract

Even though global justice does not require open borders in principle, it imposes significant constraints on how states can exercise their right to exclude in practice. First, rich states have the primary obligation to assist the poor in their home countries, and only a secondary obligation to host those who cannot be assisted where they live. Second, the employment of coercion must be proportional to the objective pursued, such that only in situations of imminent, direct, and serious risk are immigration restrictions justified. Third, whenever it is necessary to limit access, this limitation should be partial and temporary. States must procure alternative transit routes and restore freedom of movement as soon as possible.

Keywords

Global justice; individual autonomy; immigration policy; right to exclude; right to immigrate; open borders; ethics of migration.

Resumen

Aunque, en principio, la justicia global no requiera de fronteras abiertas, en la práctica impone restricciones significativas a cómo los Estados pueden ejercer su derecho de exclusión. En primer lugar, los Estados ricos tienen la obligación primaria de asistir a las personas pobres en sus países de origen, y solo una obligación

secundaria de acoger a aquellas que no pueden ser asistidas donde viven. En segundo lugar, el empleo de la coacción debe ser proporcional al objetivo perseguido, de manera que solo en situaciones de riesgo inminente, directo y grave están justificadas las restricciones a la inmigración. En tercer lugar, cuando sea necesario limitar el acceso, dicha limitación debe ser parcial y temporal. Los Estados deben procurar vías de tránsito alternativas y restablecer la libertad de circulación lo antes posible.

Palabras clave

Justicia global; autonomía personal; política migratoria; derecho de exclusión; derecho a inmigrar; fronteras abiertas; ética de las migraciones.

CONTENT

I. INTRODUCTION. II. WHY GLOBAL JUSTICE DOES NOT REQUIRE OPEN BORDERS. III. THREE PRINCIPLES OF JUSTICE IN MIGRATION POLICY: 1. Assistance. 2. Self-restraint. 3. Restitution. IV. OBJECTIONS, QUESTIONS, AND ANSWERS. V. CONCLUSIONS. *BIBLIOGRAPHY.*

I. INTRODUCTION

International migration takes place against the backdrop of nation-states, in the sense that it involves leaving one's country and placing oneself under the jurisdiction of another. Of course, this is a very simple account of a very complex reality, which ignores all the obstacles and difficulties along the way. At best, migrants will have to deal with several bureaucratic procedures and demonstrate that they meet the whole list of requirements (legal, economic, professional, educational, medical, linguistic, and so on) to enter another country. All too often, however, migrants, especially those hailing from the Global South, bump into the closed borders of most states and are victims of all kinds of abuses. Pushbacks, detentions, internments, deportations, forced illegality, labor exploitation, discrimination, and criminalization are part and parcel of the contemporary migration regime. In all these cases, states—of origin, transit, and above all destination—play a determining role, in the sense that their migration policies will determine the fate of migrants¹. In other words, migrants are “at the mercy of the state” (Blake, 2020a: 195). This is why we cannot avoid asking ourselves about the justice of migration policies.

Attention to this topic by political philosophy is quite recent. The “ethics of migration”, as it is commonly known, deals with the general principles of justice in migration. It covers a variety of issues relating to the movement, settlement, and membership of people in other countries, ranging from the limits on state discretion in the design of its admission and integration policies to the rights and duties of migrants, including refugees, family reunification,

¹ “While it is true that it is states that have the ultimate power to admit, other actors can possess a derivative power from the laws that states put in place. By establishing a system of work visas, for instance, states lend private corporations the power to nominate foreigners for admission by making job offers” (Buechel, 2023: 462).

guest workers, and irregular immigration (Hosein, 2019). But the issue that has received the most attention, to the point of neglecting all the others, is the right to exclude. By this I mean the authority that states claim for themselves to control the access to and settlement in their territory and to regulate the participation and integration of foreigners into the political community (Fine, 2013: 255).

Some authors, by appealing to the ideal of global justice (Carens, 2013; Holtug, 2020), relational equality (Sharp, 2022), the value of freedom of movement (Oberman, 2016; Hidalgo, 2019), democratic theory (Abizadeh, 2008), the right against harmful coercion (Huemer, 2010), and the principle of non-domination (Sager, 2017), have advocated a human (or at least a strong) right to immigrate. Others, in contrast, either from a communitarian or nationalist perspective (Walzer, 1983; Meilander, 2001; Miller, 2016b), freedom of association (Wellman, 2008), democratic self-determination (Song, 2017), domestic social justice (Macedo, 2018), collective property rights (Pevnick, 2011), and the right to avoid unwanted obligations (Blake, 2013), have defended the right of states to exclude potential immigrants. But, beyond this overly simplistic debate between open and closed borders (the so-called “open borders debate”), what are the concrete principles that states should respect in the governance of migration? The article tries to answer this question. The second section argues why global justice does not require open borders. The third section proposes three principles of justice in migration policy and analyzes their implications. The fourth section responds to an important objection and answers some questions. The final section contains the conclusion.

Before turning to the discussion, I would like to make two preliminary clarifications on the scope and methodology of this article. As far as the scope is concerned, the principles formulated here have migration policies in mind. They do not refer to the individual action of each person (for example, an employer who decides to hire an unauthorized migrant), but to the collective decision-making process. Borrowing Miller’s (2016b: 17) words, “this will be a work of political philosophy rather than of ethics. It will ask about the institutions and policies we should adopt in dealing with immigration rather than trying to tell individual people how they ought to behave”.

Regarding the methodology, broadly speaking, there are two ways of arguing in the political philosophy of migration. The first begins with a presumptive right to exclude and asks what the limits of justice on its exercise are. The second proceeds in reverse, taking freedom of international movement as the default position, and providing then for the situations that could justify the suspension of this right. I believe that the first approach is more fruitful when it comes to discussing the justice of migration policies, since a

human right to immigrate would rule out almost every migration policy as unjust². After all, what is the point of asking ourselves about the morality of border controls if we draw from the premise that they should not exist in the first place? The discussion about principles of justice in migration presupposes that the state has a pro tanto right to exclude, however conditional or constrained its exercise might be (Lægaard, 2010: 251). The main goal of this article is to explore the implications of justice for migration policy once we realize that open borders are not among them.

II. WHY GLOBAL JUSTICE DOES NOT REQUIRE OPEN BORDERS

The consequentialist argument for open borders as a requirement of global justice goes something like this:

P1. Global justice requires that everyone in the world has access to the means necessary to lead an autonomous life.

P2. The world in its current state is unjust: millions of people lack access to the means necessary to lead an autonomous life.

P3. Borders (re)produce this injustice, as they prevent access to the means necessary to lead an autonomous life.

P4. A world with open borders would allow these people to access the means necessary to lead an autonomous life.

C. Global justice requires open borders.

This is a remedial argument for open borders in a non-ideal world where many people lack access to the means necessary to lead an autonomous life (Bauböck, 2009). As Goodin (1992: 8) says, “if we cannot move enough money to where the needy people are, then we will have to count on moving as many of the needy people as possible to where the money is”. As long as and to the extent that rich countries do not comply with the requirements of global justice, they cannot close their borders (Bader, 1997: 30). The ultimate goal may be to set up effective mechanisms of global distributive justice, but in the meantime, we cannot turn a deaf ear to the pleas of the people who flee

² This contradiction is evident in *The Ethics of Immigration* by Joseph Carens (2013). It is no coincidence that the author adopts a bipartite structure. In the first part of the book, he assumes the prima facie right of states to control immigration and, through successive clauses, delimits that right. In the second part, however, he forgets the above and endorses open borders.

from poverty- and conflict-ridden societies in search of a better life. Open borders may be a second-best solution to global injustice, but they are necessary in the here and now (Wilcox, 2014: 131).

Even if the premises were true, the conclusion that states are under an obligation of justice to open their borders is unsound for three reasons. First, global distributive duties can be discharged in a currency other than the admission of immigrants³, so a state that fulfilled its duties in some other way could decide to close its borders unilaterally⁴. In fact, it might be argued that poor people should not be forced to leave their country of origin to receive the assistance they are entitled to by justice (Oberman, 2011). Second, open borders may be contrary to the objectives of global justice, as they could lead to an exodus of the skilled workers from developing to developed countries (Brock, 2009: 191; Higgins, 2013). While this is an empirically contested premise⁵, it is still normatively relevant because it shows that open borders are necessary *only* to the extent that they advance the ends of justice. Third, one can have access to an adequate range of options to develop an autonomous life without having free rein to move all over the world (Wellman, 2016: 88). No theory of justice, not even the most ambitious one, claims a right to the full range of existing life options, but only to the most extensive range compatible with the equal right of others. Consequently, if there is no right to access the full range of existing life options, there can be no right to access the full range of existing world countries, at least as a matter of justice. It is enough with *one* country providing effective access to an adequate range of life options. In conclusion, consequentialist arguments for open borders cannot establish a human right to immigrate to every country in all circumstances, but only

³ Other options would be to undertake structural reforms in the international political and economic institutions, sign fairer trade agreements with developing countries, establish a global redistributive tax, transfer income directly to the affected countries, send humanitarian aid, debt cancellation, and capacity building.

⁴ This is clearly not the case of refugees, who require admission into another country (Lister, 2012: 662). Nevertheless, duties towards them are not distributive in the strict sense, but humanitarian (Gibney, 1999).

⁵ One might counter that remittances represent an abundant source of revenue for many developing countries, thus compensating for the loss incurred by the departure of their most skilled citizens (Oberman, 2015: 243). However, it is the distributional impact that I am concerned with. In this regard, the primary beneficiaries of remittances are not the poorest segments of the population in sending countries, but the migrants' relatives, who tend to be relatively privileged too (Higgins, 2013: 71). For this reason, open borders would at best yield a justice-independent gain (Seglow, 2006: 236).

a conditional, contingent, and limited right: *conditional* on the state not fulfilling its global redistributive duties, *contingent* upon migration promoting the objectives of global justice, and *limited* to any one country that provides access to adequate options.

The deontic argument draws open borders from the application of the principle of moral equality on a global scale. For cosmopolitan luck egalitarians, the contingencies of birth should not determine a person's life chances, and so no one should be disadvantaged for morally arbitrary facts that escape their control (Shachar, 2009). This premise, which in principle no one disputes⁶, has radical implications for immigration. If birthright citizenship is a morally arbitrary fact—in the sense that no one deserves to be born where they were born—for which nobody should be disadvantaged, then people should have the right to migrate to other countries to offset this brute bad luck (Carens, 2013; Holtug, 2020).

However, that citizenship is morally arbitrary does not mean that it is irrelevant from a moral point of view. As Blake (2001) has convincingly argued, citizenship gives rise to a special concern for those who share liability to the coercive web of legal and political institutions constitutive of the state. This coercion is both a *prima facie* violation of the liberal principle of autonomy and necessary to establish a pattern of settled expectations within which autonomy can develop. To the extent that we cannot eliminate state coercion, it must be justifiable to everyone subject to it, especially to those who fare worse, which requires us to show that no other principle could make them any better off. This justification takes the form of distributive justice. Likewise, “mobility rights” are part of the bundle of rights that states grant only to those subject to their coercive authority as a justification for it (Blake, 2005: 235). However, since there is no similar coercion at the international level, there is no need to extend justice nor freedom of movement beyond borders. In conclusion, we can acknowledge the moral equality of individuals and nonetheless believe that this moral equality has distinct political implications in distinct institutional contexts (Blake, 2008: 965-967).

Finally, it is not only that justice does not require open borders, but it may be at odds with them. Distributive justice aims at an equitable distribution of the costs and benefits of social cooperation. Open borders, understood

⁶ Disagreements arise when it comes to interpreting what this moral equality entails. Some consider that nationality is irrelevant, and that we should treat all people equally with the exception, perhaps, of loved ones (*strong cosmopolitans*). For others, some degree of compatriot partiality is permissible and even desirable, in that it enables a moral division of labor (*weak cosmopolitans*) (Miller, 2016b: 22-24).

as an unrestricted right to free movement across the globe, would certainly allow some people to improve their life prospects by moving to other countries with more opportunities, but they are by themselves unlikely to produce a fair outcome in the distribution of goods (Stilz, 2022: 993). For one thing, people do not move in accordance with principles of distributive justice. As Seglow (2005: 327) notes, we are already quite skeptical of the free will of individuals bringing about a fair distribution of the costs and benefits of social cooperation. So, why think that the free movement of individuals will bring about greater distributive justice? Instead, we tend to confer upon political institutions the authority to coerce individuals into complying with their distributive duties. In fact, states routinely impinge on valuable individual freedoms to promote economic equality. Thus, if it is permissible (and sometimes required) to restrict the freedom of individuals for the sake of social justice, it seems only permissible to restrict their freedom of movement for the sake of global justice. This is not what open borders mean, though. In a world with open borders, people would generally be free to move to and settle in another country, “subject only to the sorts of constraints that bind current citizens in their new country” (Carens, 1987: 251), but not bound by an aspiration to maximize aggregate welfare or global redistributive utility (Ypi, 2008: 394).

In short, global justice does not seem to require open borders because (1) there are other ways of ensuring the means necessary to lead an autonomous life than opening borders; (2) justice demands different responses in different contexts, without it being a deviation from the liberal principles of impartiality and moral equality; and (3) the imposition of conditions and restrictions on mobility are justified (and even required) by justice in certain circumstances. Therefore, if we want to defend open borders, we cannot do so by appealing to global justice. This is not to say that states have a right to exclude as they see fit. They must still comply with the following principles of justice in migration policy⁷.

III. THREE PRINCIPLES OF JUSTICE IN MIGRATION POLICY

The three principles of justice devised here must be understood sequentially and in parallel to the migration process. The principle of *assistance* acts ex-ante, that is, prior to the departure of the migrant. If migration eventually takes place, the state must respect the principle of *self-restraint* in the

⁷ The next section draws on Niño Arnaiz (2023).

enforcement of border controls. Finally, in those cases where it is necessary to limit freedom of movement, and as long as this limitation persists, the principle of *restitution* applies.

1. ASSISTANCE

The principle of assistance imposes the primary obligation upon rich states to fight against global poverty at source. Only when it is not possible to assist poor people in their home countries would their resettlement be justified. The admission of immigrants is therefore a secondary obligation. Rich states have positive duties of justice beyond their borders, but these can—and should—be discharged *in situ* without the obligation to open them. Moreover, there is no duty to admit potential migrants whose needs are reasonably met where they live⁸. Nevertheless, exclusion is only permitted if:

1. *It does not constitute wrongful discrimination.* It would therefore be impermissible to apply any selection criteria on the basis of arbitrary facts such as national origin, ethnicity, beliefs, gender, sexual orientation, or mere linguistic-cultural affinity.
2. *The autonomy of migrants is respected.* Potential immigrants must be able to develop their life plans, and their needs and legitimate interests must be taken into account.

Regarding the first criterion, states should not make an instrumental use of their presumptive right to exclude in order to maximize their own interests at any cost by, say, promoting the immigration of qualified professionals and the great fortunes to the detriment of the least qualified and worse-off (Ip, 2020). Such a policy may be considered selfish and even immoral, but not necessarily unfair. Justice does not prohibit any instance of discrimination, but only discrimination on arbitrary grounds not related to the right or benefit at stake (Miller, 2016b: 101-102). In this sense, if a country needs more engineers and nurses or wants to attract foreign investors, the use of professional or income criteria for the selection of applicants is not irrelevant⁹. In fact, the attraction of human and financial capital is a common practice in many areas

⁸ I do not intend to defend the right to exclude, but rather to point out that open borders are not required as a matter of justice. It is still possible that other principles succeed in grounding a right to immigrate.

⁹ A different question is whether this causes deleterious “brain drain”, a problem that will be dealt with towards the end.

of domestic policy, either in healthcare policy with the selection of the most qualified doctors, in economic policy with special regulations that benefit large companies, or in fiscal policy with a tax relief for private pension plans. So, while there is room for disagreement about the justice of these policies, there is no reason why immigration should be any different.

One might worry that these sort of policies are regressive, in the sense that they benefit the rich at the expense of the poor. However, it depends on how they are implemented. As I discuss later, the implementation of this proposal would most likely require concerted action by the international community to ensure that everyone has access to the basic means of subsistence¹⁰, and only if it was not possible to assist them in their countries of residence would they be relocated. Their needs would be taken into account, but they would not have the right to choose their preferred country of destination.

This approach has an advantage over the proposal for open borders. Immigration requires a minimum of resources and certain skills, something that not everyone possesses. “The costs of migration, liquidity constraints, limited access to information on conditions abroad and skill-selective immigration policies prevent people living in poverty from moving, especially across borders” (UN DESA, 2020: 136). In the end, those who stand to benefit from it are the most advantaged, those who have the means, contacts, and aptitudes necessary to migrate (Pogge, 1997: 14; Miller, 2014: 368; Song, 2019: 89). The most disadvantaged, for their part, would be trapped in their countries of origin, unable to exercise this right¹¹. With the principle of assistance, however, everyone should have their basic needs covered where they live, so that they do not have to move abroad to secure them. Emigrating is a difficult and sometimes distressing process that involves severing social ties

¹⁰ I am adopting an internationalist conception of global justice, under the assumption that states have less stringent, but still significant, distributive duties abroad than at home (Blake, 2001; Nagel, 2005). For one thing, if it can be shown that open borders obtain under these limited conditions, then this is also true for cosmopolitan conceptions of global justice. I am further assuming that states are not causally responsible for the situation of human rights deficit in which many potential migrants find themselves, but that their responsibility is subsidiary, driven by humanitarian concerns. For a discussion of the duty to admit immigrants as a redress for the violation of their human rights or as a form of compensation for unjust past actions, see Wilcox (2007), and James (2022) and Al Hashmi (2023) respectively.

¹¹ According to Engler *et al.* (2020), countries with a per capita income below \$7,000 tend to have lower rates of emigration toward advanced economies. This suggests that people get trapped in poverty when they lack the resources necessary to overcome migration costs.

and leaving behind everything one has built throughout their life. For this reason, should they have an alternative, many migrants would opt to stay in their home countries¹². In this sense, the principle of assistance responds more adequately to the needs of people who would otherwise be forced to migrate. All too often, migration is a symptom of a deeper problem, whether poverty, inequality, war, natural disaster, or persecution¹³. This is why it is always preferable to go to the root of the problem and, when this is not possible, provide accommodation elsewhere.

In relation to asylum seekers, Wellman (Wellman and Cole, 2011: 123) has argued that it is permissible for states to discharge their duties of assistance without the need to host them, for example, by creating a safe haven at home or through another country. This proposal has been strongly criticized for its allegedly immoral implications. Most worryingly, rich states could pay to keep their borders closed by subcontracting the “services” of third, usually poor and corrupt countries with a questionable human rights record, to take in refugees for them. In light of the recent experiences with offshore asylum processing and the externalization of border controls (Shachar, 2020), it is reasonable to worry that migrants would not be treated fairly. While this is a serious problem, it is not least because western countries allow it to happen. Should they sign resettlement agreements with safe third countries and impose more strict standards of compliance on the subcontracting parties to ensure respect for the human rights of refugees, the outsourcing of asylum or immigrant admission need not be problematic (Sandelind, 2021). Although this practice seems intuitively wrong, it does not differ that much from a son’s decision to pay someone else to take care of his elderly father (Miller, 2016: 88-89). In both cases, the morally responsible agent is fulfilling its duty of assistance through another agent. Therefore, even if it does not speak wonders of the state that trades with its obligations of justice, this does not mean that it is acting unjustly. Justice comprises a greater margin of discretion than morality, which is usually more demanding in its content but not always enforceable.

At this point, I would like to make a clarification. I have said that states are not *obliged* to open their borders as a matter of justice, but it does not follow that states are *permitted* to do so. For example, some authors reasonably

¹² Others would still prefer to leave, but I will deal with that later.

¹³ By this I do not mean that people would not continue to have many other reasons to migrate in a just world. But migration for more trivial or idiosyncratic reasons would fall outside the realm of justice. This does not mean either that states are allowed to use whatever means they deem necessary to prevent the arrival of migrants (see the principle of self-restraint and the principle of restitution in this respect).

consider that international aid is preferable to immigration as a means for addressing global poverty, but do not rule out that immigration be used as a substitute for international aid (*e.g.*, Blake, 2002: 282; Wellman, 2008: 127; Miller, 2014: 368). Ultimately, they say, it is up to each state to decide the formula that suits them best. Hence, if they are substitutes, nothing seems to preclude that immigration be used as a way to discharge their duties of global justice. But this would contradict the principle of assistance, according to which rich states have the primary obligation to assist the poor in their home countries. As Oberman (2011) argues, the use of immigration as an anti-poverty measure violates the human right to stay, inasmuch as they are left with no reasonable alternative to meet their basic needs.

One might contend that international aid has long proven to be ineffective, whereas immigration confronts rich countries with the harsh reality, holding them accountable for their own failures. As a matter of fact, people seem to care more about the shipwrecked reaching their shores than the distant poor dying of hunger. I agree that we should not turn away the former, but neither should we abandon the latter. Different policies have different targets, and even though migration policy plays an important role in poverty alleviation, it is in and of itself no effective remedy to global injustice. The ultimate goal should be to improve living standards at home, so that no one is forced to leave to make ends meet.

The second criterion excludes, as we will see in the next sections, the possibility of deporting someone who has been residing in the host country for a long time (Carens, 2013: 151; Song, 2016: 244) as well as denying family reunification (Lister, 2010). It would in principle be possible, however, to prevent the entry for more trivial or idiosyncratic reasons (such as cultural affinity, climate preference, or professional aspirations) of those whose rights were adequately protected by their countries of origin¹⁴. It would also be possible to refuse the extension of a tourist, temporary worker, or student visa. In all these cases, the time of residence is not long enough to develop a strong sense of belonging and rootedness in a place or to commit oneself to a meaningful project the frustration of which would produce an irreparable damage to one's autonomy¹⁵.

¹⁴ Someone could object that this too undermines personal autonomy, in that it limits available options. For the moment, let us note that *justice* does not require the maximization of life options, but an adequate set of them (Miller, 2016a). This does not mean that there can be no strong *moral* reasons against immigration restrictions even when one already has adequate options at home (Hidalgo, 2014: 220).

¹⁵ Carens (2013: 151) acknowledges this very fact: "My argument that time matters cuts in both directions. If there is a threshold of time after which it is wrong to expel

The stay in that country should rather be treated as a means for gaining the skills and acquiring the resources necessary to pursue one's vital plans elsewhere, a short period of time that is to be integrated into their longer life course (Hosein, 2014). Most importantly, these visitors were fully aware of and voluntarily consented to the terms of their visa, knowing that they would have to return home upon expiration. In this case, choice makes a significant moral difference (Hidalgo, 2019: 84). Finally, the state could in principle deport overstayers or any other person who was discovered trying to sneak into the country without authorization. However, this is when the second principle comes in.

2. SELF-RESTRAINT

The previous principle presumed that states enjoy a broad margin of discretion when it comes to controlling their borders and regulating admissions. Along with the right to exclude, I have so far taken the acquiescence of potential immigrants for granted. But what would happen if they did not abide by the law and persisted in their attempt to migrate?¹⁶ In that scenario, curtailing freedom of movement should be the last resort. On the one hand, not all ends license the use of coercion against potential immigrants (*necessity*). For instance, concerns about cultural homogeneity and the labor market are normally not sufficient grounds for restricting immigration. This is either because the end itself is not legitimate or because there are other ways to achieve the same ends that are less intrusive. On the other hand, not all ends that license the use of coercion allow for the same degree of coercion (*proportionality*). For example, physical force may be warranted to prevent the entry of a potential criminal, but not to deport an unauthorized immigrant who poses no danger to national security. In the first case, this is because the benefits to society of preventing a major crime usually outweigh the costs to a potential criminal of having their mobility rights constrained. In the second case, this is because the costs to a peaceful immigrant of having their mobility rights constrained usually outweigh the benefits to society of preventing their entry.

It is very important to provide for the situations that could lead to the suspension of freedom of international movement, so that the decision is not left to the entire discretion of the government or the official in charge. To this effect, I propose three conditions that must be met for immigration

settled irregular migrants, then there is also some period of time before this threshold is crossed”.

¹⁶ This question has been explored at length by Hidalgo (2019), Huemer (2019), and Aitchison (2023). For a contrary view, see Yong (2018) and Miller (2023).

restrictions to be justified: (1) the risk must be *imminent*, so that there is no less intrusive way to avert it; (2) the risk must be *direct*, that is, the causal link between freedom of international movement and the unwanted situation must be straightforward and not the result of multiple independent factors; (3) the risk must be *serious* enough to justify the forfeiture of other fundamental rights and freedoms, such as freedom of movement within the country, freedom of association, or the right of assembly¹⁷. In short, if the degree of coercion must be proportional to the objective pursued and there are other avenues to achieve it that are less costly, then governments should think twice before excluding immigrants.

For example, if a massive influx of immigrants jeopardized the welfare system, the government could impose a waiting period on newcomers during which they could not benefit from social welfare programs (first condition unmet). Furthermore, if it is not clear whether freedom of international movement is the main cause of the problem or it stems instead from the perverse incentives of the social benefit system and the situation of poverty in the countries of origin, we might have to tackle these other factors first before restricting immigration (second condition unmet). Finally, if the threat is so serious and the collapse of the system seems imminent, then other equally drastic measures, such as imposing limits on cash withdrawals, increasing the tax burden, or cutting back social benefits, may also be required. But this is rarely the case, which suggests that immigration acts as a scapegoat (third condition unmet). Therefore, none of the three conditions are met, at least for the time being. If we look more closely at the most common reasons for restricting immigration, we will find that they cannot justify a broad right to exclude.

A hypothetical scenario in which these three conditions would converge would be the creation of illegal settlements in the sovereign territory of another country by a foreign power (a kind of neocolonialism). Suppose these settlers were establishing parallel forms of political organization that did not recognize the authority of the central government, such that democratic self-determination and the territorial integrity of the nation were being

¹⁷ For Yong (2017: 475), such strict conditions only make sense in the case of a “strong right” to free immigration. But since he denies that there is one, he proposes instead the “effectiveness” condition, according to which it would be enough for there to be “sufficient evidence” to believe that the restriction in question would promote the public interest, a legitimate political objective, or any principle of domestic justice. In this vein, the containment of the national population size, the reduction of poverty at home, the protection of the local environment, or the preservation of the public culture would satisfy the effectiveness condition for the restriction of immigration.

undermined (first condition met). Suppose, further, that these people came mostly from the same country, a foreign power with expansionist ambitions that was using its population to invade other territories. In this case, the causal link between freedom of international movement and invasion would be more than evident (second condition met). Finally, it seems that the gravity of the situation would require the national government not only to bar the entry of new settlers, but also to expel those who were already residing in these settlements and to dissolve them by force, in other words, to violate other fundamental rights (third condition met). In this scenario, the limitation of freedom of international movement would be justified. In any case, freedom of international movement should be the rule and not the exception.

3. RESTITUTION

Self-restraint in the application of coercive measures is a necessary but not sufficient condition for the respect of justice in migration policy. If the risk is so imminent, direct, and serious that the state has no choice but to restrict immigration, such restriction should be temporary and partial: *temporary* because it should not last longer than strictly necessary, restoring traffic as soon as possible; and *partial* because alternative routes must be sought after that allow others to travel without incident. In other words, it cannot serve as an excuse to suspend the right to freedom of movement indefinitely and unconditionally.

Returning to the last example, this means that, if the arrival of new settlers from an occupying force is prohibited, that prohibition should not extend to migrants from other countries or even to citizens from the invading country who are travelling for legitimate reasons¹⁸. Additionally, those unduly affected by the mobility restrictions have a right to reparation from the state, for instance, by demanding the computation of the time elapsed in order to qualify for permanent residence or by requesting the regularization of their status.

In the example of the welfare state, what other routes could be enabled? By routes I do not mean physical roads or other means of transportation (*e.g.*,

¹⁸ For example, the prohibition on citizens from some Muslim-majority countries from traveling to the United States —the so-called Donald Trump’s Muslim ban— was not warranted. Among other reasons, because it was a total ban, meaning that it was aimed at potential terrorists and peaceful visitors alike. In addition, judging by its intentionality, it did not seem to be temporary, but it was introduced on a permanent basis.

by plane or by boat), but solutions that respect as far as possible the spirit of freedom of movement. If the welfare state was under strain by a massive influx of immigrants, instead of preventing their access, the state could, in line with the principle of self-restraint, offer them the following deal: “you can enter the country, but you must give up social benefits in return, and you will be able to remain as long as you are self-sufficient”¹⁹. Some authors have been critical of this sort of compromise, either because it is a veiled restriction (Blake, 2020b: 394-395) or because it violates the principle of equal treatment (Miller, 2016b). I agree, but I think that it is better than prohibiting their entry outright without offering them an alternative (Huemer, 2010: 443-44). This at least respects their autonomy in decision-making to a greater extent.

In short, the government has the complementary obligation to secure alternative routes that allow freedom of movement and to restore traffic as soon as possible, compensating the people who may be affected by its disruption. This is what I have called restitution. If it wants to comply with this principle, the state must ensure the normal flow of people across its borders; and when the only available option is to restrict immigration, it must do so on a temporary and partial basis. In other words, this cannot serve as an excuse to de facto close borders.

IV. OBJECTIONS, QUESTIONS, AND ANSWERS

At this point, I would like to consider an important objection to this proposal. I started the article by assuming the right of states to control their borders, but I have then affirmed that they have an inexcusable obligation to respect freedom of international movement save for exceptional circumstances. It would seem, then, that I have moved from one strategy to the other, namely, from asserting the presumption of the right to exclude to adopting freedom of international movement as the guiding principle of migration policy.

One possible response to this objection is to note that the two strategies are not necessarily at odds, and that both come, albeit in a different way, to the same conclusion: that freedom of international movement must be weighed against the other interests at stake, such that the degree of openness of a border is a function of the importance assigned to each of them. As

¹⁹ “If the concern is to preserve the integrity of the welfare state, however, the most that could be justified is restricting membership of the welfare system” (Kukathas, 2014: 382).

Hidalgo (2016: 144) suggests, “to determine whether immigration restrictions are permissible, we must balance the moral reasons to permit immigration against the reasons to impose restrictions on immigration to arrive at an all-things-considered judgment about whether any given immigration restrictions are justified”. Another possible answer is to argue, following Blake (2020a), that although we are not required by justice to open borders, there are good moral reasons for doing so, especially when the costs of exclusion to the migrant outweigh the benefits to the host society. Where *justice* does not apply, Blake calls for *mercy*. In the case at hand, assistance would be a matter of justice, whereas self-restraint and restitution would be a matter of mercy.

Joseph Carens (2013: 11), for his part, justifies what he calls the method of “shifting presuppositions” not only by mere pragmatism—insofar as the right to exclude is the “conventional view” on immigration—, but as an exercise of democratic deliberation where we adopt presuppositions that we do not share with the aim of reaching an agreement with others. Finally, Mendoza (2015b) points out that it is not enough to say that states have a right to exclude, we need to ask *how* they can enforce it. But when questions of enforcement are factored in, the exclusion of immigrants becomes difficult to justify. On the one hand, states go to great lengths to prevent the arrival of migrants and to expel those who have entered without authorization. On the other hand, racist prejudices continue to inform admission and surveillance practices, making it almost impossible to insulate migration policies from racial discrimination. Consequently, although border controls may be justified *in principle*, enforcement renders them illegitimate *in practice* (Sager, 2017: 48; Fine, 2016: 141).

My answer is much simpler than that. I acknowledge that this contradiction exists, but I think this is what it takes to respect the autonomy of migrants. As I said before, migration can be a heartbreaking process that involves an abrupt disruption of the life one has built in a place. For this reason, many migrants would prefer not to leave that place *if* they had an alternative. The principle of assistance responds to this reality by providing poor people with the means necessary to lead an autonomous life, thus offering them an alternative to migration. However, there are other people who would still choose to migrate; people for whom migration is not a desperate way out of their problems, but a way to realize their goals in life. The principle of self-restraint responds to this other reality by respecting the autonomy of migrants to make vital decisions for themselves. Deciding where to live is an essential component of autonomy, and this includes both the decision to stay and the decision to migrate.

Let us now turn to answering some of the questions that may arise from the implementation of this proposal. What if someone who wishes to migrate

for reasons I have previously called trivial or idiosyncratic has their visa denied in the first place, but nonetheless persists in their attempt? In such cases, the authorities should take their determination as a reliable proof of (or as a proxy for) the intensity of their interests and refrain from using direct physical coercion to prevent their access to and stay in the territory. This does not preclude the imposition of some bureaucratic and legal barriers. For example, a state could exclude newcomers from certain public goods and non-essential services, provided that their basic human rights were not at risk²⁰. However, it does rule out the use of force against peaceful migrants (Ip, forthcoming), in compliance with the principle of self-restraint.

Another previous statement was that the authorities could deport immigrants who lack proper authorization to reside in the country. However, this prerogative diminishes with the passage of time, as the legitimate interest of the immigrant to remain in the country increases (Carens, 2013). The reservations are the same as before: (1) the state cannot inflict *physical harm* on them²¹, (2) nor can it maintain them in *permanent alienage*. At some point, the irregular migrant acquires full citizenship rights, and so they cannot be deported without having their rights violated and their autonomy severely impaired (Hosein, 2014).

I have not dealt with the question of emigration here. Even though, for obvious reasons, states have less leeway to restrict emigration than immigration, I do not want to conclude without making some remarks on this question. Immigration cannot be conceived separate from emigration, and the principles governing the former must be somewhat consistent with the principles governing the latter²². However, so long as there is no supranational institution with competences in migration policy and each country keeps acting in its own interest from a strict national(ist) logic, it will not be possible to ensure coherence between the

²⁰ Some might worry that this could lead to racial profiling and other forms of discrimination against immigrants. According to Mendoza (2014), when there is a tradeoff between the fundamental rights of immigrants and the enforcement of immigration restrictions, we ought to sacrifice the latter. While I agree with this general rule, I do not think it applies to this case. For one thing, they can always return to their countries of origin, where their human rights are adequately protected (Sandelind, 2015: 499).

²¹ How is it possible to deport someone without exerting physical violence over them? The state has one of these two options: either to obtain that person's acquiescence or to offer them something in return.

²² According to the general principle of justice in migration put forth by Lea Ypi (2008: 391), "if restrictions on freedom of movement could ever be justified, such restrictions ought to take equal account of justice in immigration and justice in emigration".

two. The three principles that I have formulated here fall into place in the framework of an international governance of migration. This is the only way to achieve justice in emigration and immigration.

For example, some authors claim that developing countries are justified in preventing the exodus of their most qualified citizens, either by imposing a period of compulsory service or a tax on emigration (Brock and Blake, 2015; Stiliz, 2016)²³. However, when the international factor is included into the equation, the result changes completely. The developing countries would not have to bear the brunt of “brain drain”, since the obligation to meet the basic needs of their poor citizens (*principle of assistance*) would not fall (only) on the better off compatriots, but on the international community as a whole, that is, on all of us. An international migration governance scheme would be much more respectful of the rights of migrants (*principle of self-restraint*). Finally, the decision to close borders would not be left to the entire discretion of each state, or else the borders of other states would remain open (*principle of restitution*).

There is one last question, perhaps the most important one. Can this proposal work in the real world, especially if we bear in mind that states have for their most part been reluctant to take any action in the fight against global injustice? To be honest, I have no satisfactory answer to this question. My guess is that principles of justice in migration are more likely to be implemented at the regional level, where the differences in the standards of living among countries are not large. While this is the best we can hope for at the moment, it can lay the foundations of a future international organization for the governance of migration.

V. CONCLUSIONS

Three conclusions can be drawn from this article: (1) Global justice does not require open borders. (2) Global justice requires respect for the autonomy

²³ Ferracioli (2022: 125) goes a step further and argues that “liberal states have a duty to exclude prospective immigrants when (1) it is foreseen (or should be foreseen) that skill-based migration will bring about or exacerbate harm in the form of human rights deficits (when the ratios of professionals to the overall population are such that migration will render vulnerable populations less able to access an adequate level of essential services); and (2) when sender states offer minimally decent jobs that are sufficiently attractive to prospective skilled immigrants so that they can adequately employ their professional skills if they do not emigrate”. See Mendoza (2015a: 180-183) for an eloquent response to the “brain drain” argument for immigration restrictions.

of migrants. (3) Respect for the autonomy of migrants requires open borders. There is an obvious contradiction here. One of the conclusions must therefore be rejected, but which? It might be that justice only requires respect for the autonomy of citizens, in line with the political conception of justice I have adopted here. Another possibility is that respect for the autonomy of migrants does not require open borders, as the adequate range objection seems to suggest. Lastly, my argument that global justice does not require open borders could be mistaken. I am afraid I cannot offer a definitive answer to this question, but I hope the three principles outlined above can help us find a way out.

I have initially posited that states have broad discretion in the design of their migration policies. However, this does not imply that they can exercise their discretion at will or that they are free of obligations beyond borders. On the one hand, discrimination on arbitrary grounds is prohibited, and the autonomy of migrants must be respected. On the other hand, rich states have positive duties towards the global poor, which should be discharged by assisting them in their countries of origin (*principle of assistance*); and, where this is not possible, by granting them admission, or alternatively, by paying another country to do so in their place. This principle is mostly useful for forced migrations (whether for reasons of poverty, political persecution, natural disasters, wars, and the like), but it poses serious problems in the case of people who migrate more or less voluntarily. After all, if we ban access to the latter, would we not be undermining their autonomy too?

This is when the next principle comes in, which requires that the degree of coercion be commensurate to the magnitude of the interest at stake. This does not rule out the application of dissuasive measures such as bureaucratic and economic obstacles (indirect coercion), but it does prevent the use of physical force (direct coercion) to restrict freedom of movement when there are less intrusive means, the relationship between the two facts is not proven, and the gravity of the situation is not such that it justifies—and even requires—the limitation of other fundamental rights and freedoms (*principle of self-restraint*). Only under these conditions can states restrict immigration. It is very important to provide for the specific situations that could lead to the suspension of freedom of movement so that it does not become a catch-all. But this is not enough. The government should enable alternative routes and restore traffic as soon as possible, so that it does not serve as a pretext for suspending freedom of movement indefinitely and across the board (*principle of restitution*).

These principles have been conceived with liberal democracies in mind, not only because they are the preferred destination for many migrants, but above all because they reflect the values that these countries claim to uphold: on the one hand, respect for individual freedom and personal autonomy, the

principle of non-discrimination, social justice, and the rule of law; on the other, democratic self-determination, national security, public health, the welfare state, and the legitimate interests of its citizens. These are the values that, with varying success, I have tried to combine. To ensure a balanced assessment of all these aspects, it is not a good idea to leave it to the entire discretion of each state (Hidalgo, 2016). Otherwise, it is not difficult to predict which side the balance will tip to. That is why, I insist once again, it is necessary to strive for a global governance of migration.

In the end, we have moved from a presumptive right to exclude to an actual (albeit weak) right to immigrate. This move is entailed by a commitment to the autonomy of migrants, which is itself a requirement of justice. Rich states can and should assist poor people in their home countries whenever possible, but they cannot hide behind their right to exclude in order to thwart the life plans of many other people who, in the exercise of their autonomy, take their fate into their own hands by moving to another country. Some degree of indirect coercion may be permitted, but with the passage of time irregular immigrants gain the right to remain, and this is also no longer valid. The underlying logic behind these principles is that people should be able to decide where to live and that migrating is a choice, not an obligation. This begins by ensuring decent living conditions in the countries of origin. Otherwise, the right to migrate becomes an empty signifier, for people cannot be said to have the freedom to move if they are forced to move (Oberman, 2011: 258).

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