

# 3

## Immigration as a Human Right

*Kieran Oberman*

Immigration restrictions curtail freedom. They prevent people from going where they want to go, seeing whom they wish to see and taking jobs they wish to take. When repressive states enact such restrictions internally, they face condemnation by the international community. Yet the legitimacy of immigration restrictions, which are enforced by almost all states, is commonly taken for granted.

This chapter argues that people have a human right to immigrate to other states. People have essential interests in being able to make important personal decisions and engage in politics without state restrictions on the personal and political options available to them. It is these interests that other human rights, such as the human rights to internal freedom of movement, freedom of association, and freedom of occupational choice, protect. Commitment to these already recognized human rights thus requires commitment to the human right to immigrate, for without this further right the underlying interests are not sufficiently protected.<sup>1</sup>

<sup>1</sup> While a number of authors have suggested that immigration restrictions are morally inconsistent with conventional human rights, the idea of a human right to immigrate has not been sufficiently developed or defended. This chapter addresses that shortfall in the literature, offering an account of what the right does (and does not) entail and the fundamental interests underlying it. For these related arguments see Steven Burr, "Immigration and the First Amendment," *California Law Review* 73 (1985), 1889–1928; Joseph H. Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), pp. 225–87; Phillip Cole, *Philosophies of Exclusion* (Edinburgh: Edinburgh University Press, 2000); Robert E. Goodin, "If People Were Money..." in Brian Barry and Robert E. Goodin (eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (University Park, PA: Pennsylvania State University Press, 1992), pp. 6–22; Ann Dummert, "The Transnational Migration of People Seen From within a Natural Law Tradition" in Brian Barry and Robert E. Goodin (eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (University Park, PA: Pennsylvania State University Press, 1992), pp. 169–80; Hillel Steiner, "Hard Borders, Compensation, and Classical Liberalism" in David Miller and Sohail H. Hashimi (eds.), *Boundaries, Autonomy and Justice: Diverse Ethical Views* (Princeton, NJ: Princeton University Press, 2001), pp. 79–88.

Does this mean immigration restrictions are always unjust? On the view of human rights adopted here, human rights are not absolute. Restrictions might be justified in extreme circumstances in which immigration threatens severe social costs that cannot otherwise be prevented. Outside these circumstances, however, immigration restrictions are unjust. The idea of a human right to immigrate is not then a demand for open borders.<sup>2</sup> Rather it is a demand that basic liberties (to move, associate, speak, worship, work, and marry) be awarded the same level of protection when people seek to exercise them across borders as when people seek to exercise them within borders. Immigration restrictions deserve no special exemption from the purview of human freedom rights.<sup>3</sup>

Section 3.1 defines the idea of a human right to immigrate that the chapter defends. Section 3.2 introduces the core argument for this right, identifying the two main interests at stake. Section 3.3 develops the argument by explaining why people are entitled to access options that lie beyond a supposedly “adequate” range, accessible within their own state. Section 3.4 addresses two arguments for exclusion, from distributive justice and culture. Section 3.5 considers the objection that, in our current world, immigration restrictions are almost always necessary to prevent severe costs. Section 3.6 concludes.

### 3.1 What is the Human Right to Immigrate?

Before presenting my argument for a human right to immigrate, let me first define the right that I shall defend. It has four important features. First, it is a moral, rather than a legal, human right. Moral human rights set out what people are morally entitled to. Legal human rights are those recognized

<sup>2</sup> The open borders slogan is adopted by Joseph H. Carens, “Aliens and Citizens: The Case for Open Borders,” *Review of Politics* 49 (1987), 250–73 although even Carens does not defend the absolutist stance that the slogan suggests. Carens has since described his position as supporting “open borders as an ideal” (Joseph H. Carens, “The Philosopher and the Policy Maker: Two Perspectives on the Ethics of Immigration with Special Attention to the Problem of Restricting Asylum” in Kay Hailbronner, David A. Martin, and Hiroshi Motomura (eds.), *Immigration Admissions: The Search for Workable Policies in Germany and the United States* (Providence, RI and Oxford: Berghahn, 1997), pp. 3–50 at p. 7. But if “open borders” is too strong a description of the non-absolutist, pro-free-movement position, “open borders as an ideal” is too weak. Something can be an ideal without entailing stringent duties upon anyone to bring that ideal about. For these reasons I think the language of human rights is preferable to that of “open borders.”

<sup>3</sup> This freedom argument for a human right to immigrate can be distinguished from a poverty argument that regards immigration as a means to address global poverty. I have addressed the poverty argument elsewhere; see Kieran Oberman, “Immigration, Global Poverty and the Right to Stay,” *Political Studies* 59 (2011), 253–68; Kieran Oberman, “Poverty and Immigration Policy,” *American Political Science Review* 109 (2015), 239–51.

in law.<sup>4</sup> No current legal human rights document includes a human right to immigrate. There may be a case for enacting such a right into law, but that case is not made here.

Second, I shall assume an interest account of moral human rights according to which these rights “are grounded in universal interests significant enough to generate duties on the part of others.”<sup>5</sup> To prove that there is a moral human right to immigrate I must therefore defend two claims. First, the “interest claim” holds that people have significant interests in being free to immigrate. Trivial interests cannot ground human rights. In Sections 3.2 and 3.3, I show that the interests people have in the freedom to immigrate are not only significant, but are, in fact, the same interests that ground already recognized human freedom rights. Second, the “duty claim” holds that the interests people have in the freedom to immigrate generate duties on the part of others to respect this freedom. Sections 3.4 and 3.5 defend this claim. The duties generated include, most obviously, the duty upon recipient states not to prevent people from entering or residing within their territory. However, further duties may also be generated, such as the duty to create the conditions under which the freedom to immigrate can be exercised without the infliction of severe social costs; this is an idea I explore in Section 3.5.

Third, as I have already indicated, the human right to immigrate is a non-absolute right. In this sense, it is exactly like other human rights. Sometimes, for the sake of competing moral values, a human right can justifiably be curtailed. As James Griffin has put it, human rights are “resistant to trade-offs but not too resistant.”<sup>6</sup> If the costs of immigration are particularly severe, restrictions might be justified. I shall return to this point in Section 3.4.

Fourth, the human right to immigrate is a right people have to enter and reside in foreign states for as long as they like. It thus includes the right to visit a foreign state for a short period of time, as well as the right to permanently reside there. However, the right does not in itself entail a right to citizenship in the state in which one resides. While a strong argument can be made for awarding citizenship to long-term residents, it is a further argument to the one made here.

<sup>4</sup> For the difference between moral and legal rights see Thomas Pogge, “Severe Poverty as a Human Rights Violation” in Thomas Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes what to the Very Poor?* (Cambridge: Cambridge University Press, 2007), pp. 11–54 at p. 13.

<sup>5</sup> John Tasioulas, “The Moral Reality of Human Rights” in Thomas Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes what to the Very Poor?* (Cambridge: Cambridge University Press, 2007), pp. 75–101 at p. 77.

<sup>6</sup> James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), p. 77.

### 3.2 The Underlying Interests

The human right to immigrate is grounded on interests that already recognized human freedom rights protect. By “human freedom rights” I mean the sorts of rights to basic freedoms that are found in international human rights documents. The Universal Declaration of Human Rights (1948),<sup>7</sup> for instance, lists rights to internal freedom of movement (Article 13.1), freedom of religion (Article 18), freedom of expression (Article 19), freedom of association (Article 20), freedom of occupational choice (Article 23.1), and the freedom to marry (Article 16). The first of these rights is, in a sense, the one most closely related to the human right to immigrate. Article 13.1 holds that “[e]veryone has the right to freedom of movement and residence within the borders of each state.” The right protects people against the internal application of the sort of restrictions that immigration restrictions represent: restrictions on where people live, work, and travel. Such internal restrictions were enforced in Soviet Russia and apartheid South Africa and are still enforced in a number of repressive states today.

Let me first explain how the human right to immigrate follows from the human right to internal freedom of movement, before making the same point in regards to the other human freedom rights listed. Underlying the human right to internal freedom of movement are two interests: one personal, the other political. The personal interest is the interest people have in being free to access the full range of existing life options when they make important personal decisions. By “life options” I mean those options that give our lives meaning and purpose: friends, family, civic associations, expressive opportunities, religions, jobs, and marriage partners. If one’s internal freedom of movement is subject to a non-trivial degree of restriction, then the range of life options one can access will also be constrained. If the state bans you from entering a region of a country, you are excluded from accessing almost all the life options that exist within it: you cannot visit friends or family, attend a religious or educational institution, express your ideas at a meeting or cultural event, seek employment, or pursue a love affair, anywhere within that region.

While the human right to internal freedom of movement protects our interest in being free to access the full range of existing life options, the protection it provides is insufficient since there are many life options that exist beyond the borders of the state in which we reside. As Joseph Carens notes:

Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few

<sup>7</sup> Henceforth UDHR.

adherents in one's native state and many in another; one might wish to pursue cultural opportunities that are only available in another land.<sup>8</sup>

If human rights are to fully protect our freedom to access the full range of life options, then we must have a human right to immigrate to other states.

Let us turn to the political interest underlying the human right to free movement. People have an essential interest in enjoying a free and effective political process. Free movement is essential for free political activity since one cannot organize in support of a cause by (say) attending a demonstration if one is prevented from getting there. Moreover, since free movement is a condition for free association—one needs to move in order to meet people—it is also vital for everything that free association makes possible, including political dialogue, conflict resolution, and the free exchange of ideas.<sup>9</sup> Finally, free movement is necessary for the collection of reliable information regarding political affairs, for unless you can go to the affected areas or have someone you trust go for you, you cannot find out what is happening there.

These points support the human right to internal freedom of movement, but they equally support a right to immigrate. This is true even if we assume the traditional view that people have no rights to political participation abroad. In order to make informed and effective contributions to the political process in one's own country, one must have the freedom to talk to, learn from, and cooperate with people living elsewhere. In a world in which so many problems are international problems and the effects of government policies are felt globally, it is crucial for democracy that citizens of different countries are permitted to interact. It is by interacting that people can gain firsthand experience of the effect of their own government's policies on people living in foreign countries. It is by interacting that people can find out about ideas, policies, and approaches that may be working (or not working) abroad and deserve to be tried (or avoided) at home. And it is through interaction that people can effectively fight for those common causes, such as action on climate change, international financial regulation, and international conflict resolution, that require a transnational solution. The power of governments and corporations transcend borders; ordinary people must not be trapped behind them. Closed borders constrain political activity, restrict the free exchange of ideas, and prevent people from acquiring important information with which they can hold their governments to account.<sup>10</sup>

<sup>8</sup> Carens, Joseph H., "Migration and Morality: A Liberal Egalitarian Perspective" in Brian Barry and Robert E. Goodin (eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and Money* (University Park, PA: Pennsylvania State University Press, 1992), pp. 27–8.

<sup>9</sup> Of course, with modern forms of communication, *some* political and associative activity can take place without movement. Nevertheless, without freedom of movement, political and associative activity is profoundly constrained and thus not *free*. I expand on this point below.

<sup>10</sup> The US Supreme Court made this point in its rejection of emigration restrictions: "America is, of course, sovereign; but sovereignty is woven in an international web that makes her one of the family of nations. The ties with all the continents are close—commercially as well as culturally. Our

Note that to protect these interests in personal and political freedom, people must have the right to reside in a foreign state for as long as they like; a right to visit is not sufficient. A time restriction on a person's stay restricts the range of options available to them in much the same way as an entry restriction does. This point is clear in the case of long-term life projects, such as romantic relationships and employment opportunities, which often require more time than temporary visas allow. But the point also stands in the case of short-term activities such as visiting friends or attending a political meeting. Temporary visas allow us to engage in such activities, but only as long as their validation periods last. As soon as the validation period ends, the activities are once again prohibited. If I wish to meet a friend or attend a meeting on Tuesday but face deportation on Monday, then I am denied these options just as surely as I would have been had I been refused entry in the first place. Visas allowing people to stay in a country for a temporary period are no more acceptable than their domestic equivalent: permits allowing people to stay in an area of a country for a temporary period. Both violate underlying interests in personal and political freedom.

A similar point can be made regarding telecommunications. It is certainly true that the internet and other technology can help us pursue our personal and political projects across distances. Nevertheless, such technology cannot replace direct human contact. Humans, being as the creatures they are, have a special need for face-to-face communication. A romantic relationship or friendship conducted over Skype is no substitute for the real thing. A society in which people are kept under house arrest, but enjoy excellent broadband, is not a free society. When people are permitted to interact in person, and not just virtually, they inevitably meet different people, say different things, initiate a different set of projects, and, more generally, experience a different quality and intensity in their interactions. Restrictions on direct human contact are thus profound incursions upon personal and political liberty, even in the internet age.

There is one final point of analogy to be drawn between the human right to immigrate and the right to internal freedom of movement, which is that the latter, as well as the former, protects the freedom to access options available in foreign states. To see this, recall that Article 13.1 of the UDHR requires that everyone be granted "freedom of movement and residence within the borders of *each* state" (emphasis added). In a clarifying document, the UN Human Rights Committee has emphasized that the right is one that "[e]veryone

concerns are planetary, beyond sunrises and sunsets. Citizenship implicates us in those problems and perplexities, as well as in domestic ones. We cannot exercise and enjoy citizenship in world perspective without the right to travel abroad..." (*Aptheker vs. Secretary of State*, 378 U.S. 500 (1964), pp. 519–21). Also see *Kent vs. Dulles*, 457 U.S. 116 (1958), pp. 126–7.

lawfully within a State enjoys.”<sup>11</sup> Thus the human right to internal freedom of movement, conventionally defined, applies to foreigners as well as citizens. As soon as foreigners pass passport control, they are entitled to go as they please. There is good reason why the right is defined in this way: people have essential interests, both personal and political, in being able to access life options available in foreign states. People should be left free to associate with friends, visit religious institutions, pursue love affairs, and attend conferences within the territory of foreign states, as well as their own. But if people have essential interests in being able to access life options available in foreign states, then they have a right to immigrate to those states. One cannot access options available within a state if one is denied access to its territory.

I have shown that the interests that ground the human right to internal freedom of movement also ground a human right to immigrate. Let me add that the latter right can equally be derived from the other human freedom rights I have referred to: rights to freedom of expression, association, religion, occupational choice, and the right to marry. Immigration restrictions place a bar between citizens and excluded foreigners. They interfere with the freedom of both to decide for themselves with whom they communicate, associate, worship, work, study, or marry. They cut people off from careers they may wish to pursue, religions they may wish to practice, ideas they may wish to explore, and people with whom they may wish to pursue relationships. Immigration restrictions act, in other words, precisely like those internal restrictions on individual liberty that conventional human freedom rights protect us from. Our set of human freedom rights is thus incomplete without the human right to immigrate.<sup>12</sup>

### 3.3 The Inadequacy of an “Adequate” Range

Having sketched the argument for a human right to immigrate let me defend one important aspect of it: the claim that conventional human freedom rights are grounded upon an interest people have in accessing the *full* range of existing life options. Against this claim it could be argued that a smaller range of life options is sufficient to satisfy the essential interests that human rights serve. We might imagine a range large enough to award us a decent choice of occupations, associations, religions, and so forth but nevertheless far smaller than the total number of options the world has to offer. If such a range

<sup>11</sup> Human Rights Committee, “General Comment No. 27: Freedom of Movement (Article 12),” CCPR/C/21/Rev.1 (1999), para 1.

<sup>12</sup> For the argument that immigration restrictions violate freedom of association see Steiner, “Hard Borders.” For a similar argument regarding freedom of speech see Burr, “Immigration.”

of options is sufficient, then the argument for a human right to immigrate collapses. States could offer this smaller range internally and no one would have an essential interest in entering a foreign state to access additional options.<sup>13</sup>

Let us call this view of human freedom rights the “adequate range view”. The first point that needs to be made regarding this view is that it cannot support conventional human freedom rights. The human right to internal freedom of movement, for instance, is defined by the UDHR as the “right to freedom of movement and residence within the borders of each state.”<sup>14</sup> A proponent of the adequate range view must deny that people have this human right. If the human right to freedom of movement only entitled people to an “adequate” range of options, then those living in a state with a larger than “adequate” range would lack a human right to freedom of movement across the whole territory of their state. If Belgium offers an “adequate” range of options and the US offers many times more options than Belgium, then the US offers a range of options many times larger than an “adequate” range. On the adequate range view, the US could divide its territory up into hundreds of Belgium-sized chunks, placing guards and razor wire at the borders of each one, without violating the human right to freedom of movement.

Next, consider the other human freedom rights I have mentioned. If people only have a human right to the freedom to access an “adequate” range of options, then states could radically curtail the freedoms they protect without violating our human rights. Judaism could be banned, without any violation of the human right to freedom of religion, as long as an “adequate” range of religions went unrepressed. The government could burn books in the town square without any violation of the right to freedom of expression, as long as there was an “adequate” range of books left on the shelves. Public meetings could be shut down and social clubs closed without any violation of the human right to freedom of association, as long as an “adequate” range of meetings and clubs remained open.<sup>15</sup>

<sup>13</sup> David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), pp. 205–8; Ryan Pevnick, *Immigration and the Constraints of Justice* (Cambridge: Cambridge University Press, 2011), pp. 84–5.

<sup>14</sup> “The right to move freely relates to the whole territory of a State, including all parts of federal States” (Human Rights Committee, 1999, Human Rights Committee, “General Comment No. 27,” para. 5).

<sup>15</sup> Could anyone really believe that such acts do not constitute a violation of human freedom rights? In *National Responsibility*, 207, n.6, Miller suggests just this, arguing that while in liberal countries people may demand a “free choice of occupation, the right to practise any religion they choose, etc.,” in non-liberal countries rights “do not extend as far.” In his contribution to this volume, Miller seems to have revised his view, at least in relation to the human right to internal freedom of movement. Miller now contends that people do have a human right to freedom of movement across the entire territory of a state, but that this is only because it is necessary to



Still, it is worth asking what precisely is wrong with the adequate range view? What essential interest do people have in accessing options beyond an “adequate” range? In answering these questions it is helpful to draw a distinction between two ways people relate to options. First, there are the options that we have chosen or have somehow become attached to: our family, our career, our religion, and so on. Second, there are all the other options that we are not attached to but could, at least potentially, be interested in pursuing, either now or in the future. Let us term the former “attachments” and the latter “possibilities.”

It is relatively straightforward to see that people can have essential interests in accessing attachments that lie beyond an “adequate” range. Consider for instance, the example of someone who believes in a religion that is not represented in her own state and wishes to go abroad in order to practice it. What is a proponent of the adequate range view to say to this person? “It is sad that you cannot practice your religion here but there are other religions you could choose. Why not pick one of them instead?” For a religious believer, other religions are not genuine alternatives since they lack the primary quality the believer finds in her own religion: the quality of being the true religion. Or consider those separated from friends and family. There may be a range of other people with whom they could form relationships, but they cannot be expected to view these others as adequate alternatives to those they love.

Now while I think it clear that people have essential interests in accessing attachments, David Miller’s contribution to this volume nevertheless contests that claim so it is worth pausing here to consider his objections. There are two. The first contends that the interests people have in accessing attachments, such as their religion or the people they love, are merely “subjectively strong interests of particular persons” not “the essential interests of human beings as such.” Only the latter, Miller suggests, can ground human rights. Miller’s second objection notes that when people seek to associate with other

prevent “restrictions of movement being detrimentally placed on some people that are not placed on others.” I find this new argument as unconvincing as the “adequate” range argument. It is unconvincing for a number of reasons, but let me here confine myself to one central point. Any law can be discriminatorily applied. Laws against drugs, incitement, libel, sexual misconduct, or anything else can be (and have been) discriminatorily applied against one part of the population, leaving others free to do as they please. To solve this problem, we need not get rid of the laws. We can instead insist upon their universal application. This is as true of laws restricting freedom of movement as much as any other. Non-discrimination cannot then ground the human right to internal freedom of movement. All it can ground is a human right not to have one’s freedom of movement restricted on a discriminatory basis—a right that is compatible with any level of restriction, including the blanket denial of free movement to all. If then we still wish to insist that internal freedom of movement be universally granted, not universally denied, it is because we recognize that the human right to internal freedom of movement is grounded on other values besides non-discrimination.

individuals (fellow religious believers, love interests, etc.) those other individuals are entitled to refuse to associate with them. From this, Miller concludes that the interest people have in associating with particular people cannot be an essential one. An essential interest could not be so easily waved aside.

Each of these objections involves a mistake. The first confuses universal interests with claims to generic objects. It is true that human rights are grounded on universal interests. It is false that universal interests can only ground claims to generic objects. People are entitled to be with the particular people they love and practice the particular religion they believe in because being with the people one loves and acting in accordance with one's fundamental beliefs are interests that all human beings share. Since the objects of one's affections and the prescripts of one's conscience are relative to the person, objects of a generic variety cannot fulfill these interests. As Miller himself concedes, "potential partners and religions are not substitutable in the way that foodstuffs are." The same principle applies in the case of other human rights. Consider the human right to healthcare. The right is grounded on a universal interest in leading a healthy life but what any individual needs to be healthy depends upon the person. When a diabetic complains against being prescribed AIDS medication and when an AIDS patient complains against being prescribed insulin, they cannot be dismissed as being fussy. In the case of healthcare, a generic solution is no solution. Likewise in the case of love, religion, and other attachments.

The second objection rests on a misconception of why people have rights to refuse to associate with others. Rights of refusal are not merely compatible with human freedom rights, they are a consequence of them. People are entitled to choose whom they marry, which religions (if any) they join, and with whom they spend their time. If people are forced into associations, they are denied these choices. The fact that people have rights of refusal is not then a sign that the freedom to choose with whom one associates is of little moral importance. On the contrary, it shows how vital it is. Miller is then quite wrong to suggest that the rights of individuals to refuse association are analogous to state restrictions on individual freedom, as if the two differed only by degree. In fact, rights of refusal and state restrictions are of opposing kinds. When individuals invoke rights of refusal, they *make* choices over whom they associate with. When states restrict individual freedom by blocking interactions between consenting adults, they *deny* people choices.<sup>16</sup> In choosing

<sup>16</sup> Note that there may be nothing wrong with states preventing nonconsensual interactions by (say) instituting anti-harassment laws. In such cases, the state is merely giving force to individual choice.

to refuse to associate with someone, an individual *exercises* her human freedom rights. In imposing unjustified restrictions that prevent consenting adults from associating, states *violate* these rights.<sup>17</sup>

I have said enough regarding attachments. What about possibilities? Possibilities, recall, are options to which we are not attached but which we may be interested in pursuing either now or in the future. That our human freedom rights protect our freedom to access possibilities, as well as attachments, is clear, for otherwise we could not explain the extensive scope of human freedom rights which permit us, amongst other things, to join and establish new civic associations, meet new people and make new friends, learn about and convert to new religions, and attend meetings on subjects we know little about. But why are our human freedom rights this extensive?<sup>18</sup>

There are at least three points to consider here. First, people have an essential interest in conscience, a value which involves more than simply acting in accordance with one's ethical beliefs but also searching for answers to "ultimate questions": "questions of life and death, the meaning of life, life's ethical foundation and so forth."<sup>19</sup> Because people have this interest they have an interest in the conditions of freedom that make conscience possible. As Martha Nussbaum has argued:

From the respect we have for the person's conscience, the faculty of inquiring and searching, it follows that we ought to respect the space required by any activity that has the general shape of searching for the ultimate meaning of life, except when that search violates the rights of others.<sup>20</sup>

<sup>17</sup> Miller is right to think that immigration restrictions can sometimes be justified and also right to think that immigration restrictions require justification. However, in denying that people have a human right to immigrate, he sets the bar of justification much too low. Immigration restrictions can only be justified when they are necessary to prevent severe costs. See Section 3.4 below.

<sup>18</sup> Anna Stilz, in her contribution to this volume, seems to deny that people have rights to pursue possibilities. She distinguishes between the importance of being able to travel to a country to be with the person one loves, pursue one's career, or practice one's religion and the option of marrying someone from a country (North Korea in her example) whom one has not yet met. While the former freedoms are "basic liberties," the denial of the latter, according to Stilz, involves "no wrong" at all. Stilz is right to think that the freedom to maintain attachments is a basic liberty but mistaken to trivialize the freedom to pursue possibilities. Were the US government to ban her, a US citizen, from marrying American-Koreans, converting to Mormonism, or becoming an engineer, I think she and many others would think it a profound wrong, even if she takes little interest in these options at present. Stilz's failure to take immigration restrictions as seriously may stem from her tendency, exhibited in her choice of language, to miss the fact that immigration restrictions are government imposed restrictions and not some natural occurrence. When I complain against being excluded or deported from a country I am not complaining against "the context of choice I happen to be born into," but against a foreign government that has coercively prevented me from living my life as I choose.

<sup>19</sup> Martha Craven Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (New York: Basic Books, 2008), p. 168.

<sup>20</sup> Nussbaum, *Liberty of Conscience*, p. 168.

When a state removes certain life options from us, it narrows and distorts our search for answers to questions of ultimate meaning. Indeed, it may do worse than that: it may rob us of the truth. For who is to say that the religions and philosophical doctrines that state restrictions prevent us from accessing are not the true ones or contain an element of the truth?<sup>21</sup> Notice moreover that even if, at present, we are not interested in a particular option this does not mean that we will not be interested in the future. People can become deeply committed to ideas or ways of life that, twenty years previous, they dismissed as nonsense. Finally, note that even in regards to options that we are never interested in, the fact that they remain accessible to us can sharpen our understanding and commitment to options that we do pursue.<sup>22</sup> In short, conscience requires freedom: freedom not merely to pursue those options to which we are already attached, but also to question and explore options that lie beyond our immediate horizon. In practice, this means that we must be permitted to associate freely, to learn from others and express ourselves to others as we choose, to experiment with different ways of living, to study different ethical and religious traditions, and, by extension, to travel or settle where conscience—this faculty for searching and inquiring—takes us. Restrictions on freedom of association, expression, religion, or movement are thus restrictions on conscience whether they are imposed within states or at the borders.

Second, besides our interest in conscience, we have an essential interest in not having others, and in particular states, determine our options when we make basic personal decisions.<sup>23</sup> We have an essential interest, in other words, in what Joseph Raz has called “independence”: a condition of autonomy that is violated if others subject us to their will by coercively narrowing the options available to us.<sup>24</sup> As Raz stresses, coercion infringes independence, and thus autonomy, even if it leaves those subjected to it with an “adequate” range of options.<sup>25</sup> Our interest in our independence is an interest we have in being

<sup>21</sup> John Stuart Mill, On Liberty, in John Stuart Mill (ed.), *On Liberty and Other Essays* (Oxford: Oxford University Press, 1998), pp. 1–128 at pp. 22–40.

<sup>22</sup> Mill, “On Liberty,” pp. 40–51.

<sup>23</sup> Something like this sentiment is captured in the US Supreme Court’s decision in *Kent vs. Dulles*, p. 126: “Travel abroad, like travel within the country . . . may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.”

<sup>24</sup> Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 377–8.

<sup>25</sup> Raz, *The Morality of Freedom*, p. 377. For a careful exposition of the claim that immigration restrictions are coercive and as such infringe autonomy, see Arash Abizadeh, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders,” *Political Theory* 36 (2008), 37–65 at pp. 57–60. For subsequent debate, see David Miller, “Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh,” *Political Theory* 38 (2010), 111–20; Arash Abizadeh, “Democratic Legitimacy and State Coercion: A Reply to David Miller,” *Political Theory* 38 (2010), 121–30.

awarded certain standing by others, which involves the recognition that it is us, not them, who should get to determine the course of our lives.<sup>26</sup> From this perspective, a key purpose of human freedom rights can be seen as dividing off, from the host of issues over which states rightfully yield authority, a subset of matters, basic in each person's life, that the individual should be allowed to determine for herself. These matters include where she lives, with whom she lives, who her friends are, which religion she practices, which associations she joins, what work she does, and how she spends her free time. When states interfere in these matters, without strong justification, they deny us the recognition we are owed as autonomous persons. Unjustified restrictions, both internal and at the border, trespass on the personal domain.

Finally, we should not forget the political interest underlying conventional human freedom rights. This interest cannot be properly protected simply by awarding people an "adequate" range of life options or allowing people to access those options to which they are already attached. If governments are to be held to account regarding all geographical areas their policies affect, then people need to be able to access all these areas. The freedom to move around a locality or to access existing attachments is not sufficient to investigate the effects of government policies elsewhere. Moreover, the freedom to pursue possibilities includes the freedoms to explore new ideas and to change one's mind regarding political affairs; freedoms which are crucial to the maintenance of a free society. Governments must then grant people the liberty to meet, organize, and protest as they wish. When political activity is constrained, the opinions formed and decisions taken bear the mark of state coercion. If democratic decisions are to represent the genuine view of the electorate, rather than the view the electorate arrive at when subjected to state coercion, people must be awarded full political liberty.

To sum up: this section has shown that people do have essential interests in accessing options that lie beyond an "adequate" range. They have essential interests in accessing options to which they are already attached (such as religions and loved ones) and interests in conscience, independence, and political liberty that can only be satisfied if states refrain from interfering in their life choices. We should not then reject the conventional view of human freedom rights as protecting the freedom to access the full range of available life options. However, if we accept this conventional view, then we must accept that people have an essential interest in being free to immigrate to other states, for otherwise the range of life options they can access is greatly constrained.

<sup>26</sup> Raz, *The Morality of Freedom*, p. 378.

### 3.4 Objections from Culture and Distributive Justice

Someone might accept the above argument and yet insist that the interests identified cannot ground a human right to immigrate because states have a right to exclude foreigners if they so wish. This objector would, in effect, accept the interest claim (that people have fundamental interests in the freedom to immigrate) but deny the duty claim (that states must respect the freedom to immigrate).

There are many different arguments that have been given for why states have a right to exclude foreigners. Since I do not have space to address them all, let me pick out two that are particularly prominent: arguments from distributive justice and culture.<sup>27</sup> In replying to these arguments, I hope to offer the reader a model for how we might reply to all arguments of this sort: arguments, that is, which seek to justify the right to exclude on the basis of the supposed cost that immigration would otherwise impose in relation to some important value. The argument from distributive justice holds that exclusion can be justified to avoid deepening distributive injustice. Unrestricted immigration, it has been claimed, would drive down the wages of the poorest and destroy the social cohesion that sustains support for redistributive policies.<sup>28</sup> The argument from culture holds that exclusion can be justified to preserve a host state's culture. Without immigration restrictions, it is contended, host state cultures would be radically altered, if not entirely superseded, by immigrant cultures.<sup>29</sup>

The first point to note regarding these arguments is that they rely on empirical premises that are open to empirical contestation. It is far from clear, for instance, that immigration does drive down the wages of the poorest

<sup>27</sup> Another argument that is, perhaps, even more forceful, is that immigration produces brain drain that harms the global poor. I have addressed this argument in Kieran Oberman, "Can Brain Drain Justify Immigration Restrictions?," *Ethics* 123 (2013), 427–55.

<sup>28</sup> George J. Borjas, *Heaven's Door: Immigration Policy and the American Economy* (Princeton, NJ: Princeton University Press, 1999); Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004), pp. 71–5; David Goodhart, "Too diverse?," *Prospect Magazine* (2004), 30–7; John Isbister, "A Liberal Argument for Border Controls: Reply to Carens," *International Migration Review* 34 (2000), 629–35; Stephen Macedo, "The Moral Dilemma of U.S. Immigration Policy: Open Borders Versus Social Justice?" in Carol M. Swain (ed.), *Debating Immigration* (Cambridge: Cambridge University Press, 2007), pp. 63–81; James Woodward, "Commentary: Liberalism and Migration" in Brian Barry and Robert E. Goodin (eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (University Park, PA: Pennsylvania State University Press, 1992), pp. 59–84.

<sup>29</sup> Carens, "Migration and Morality," pp. 36–40; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), p. 93; David Miller, "Immigration: The Case for Limits" in Andrew I. Cohen and Christopher Heath Wellman (eds.), *Contemporary Debates in Applied Ethics* (Oxford: Blackwell, 2005), pp. 193–206 at pp. 199–201; Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), p. 39; see also Samuel P. Huntington, *Who Are We? The Challenges to America's National Identity* (New York: Simon and Schuster, 2004).

citizens. A prominent study on the effects of the large influx of Cuban immigrants to Miami, following the Mariel boatlift, found it had virtually no impact on wages or employment in the city.<sup>30</sup> Other studies have arrived at similar results.<sup>31</sup> Nor is it clear that immigration saps support for the welfare state. Canada stands as an example of a country that has sustained both high rates of immigration and high levels of social spending.<sup>32</sup> Europe too may offer a story of how immigration and welfare can be combined.<sup>33</sup> Even the assumption, underlying most arguments of this kind, that lifting immigration restrictions would result in a flood of new arrivals, requires closer analysis: a point I shall return to in Section 3.5.

It is not the empirical premises of these arguments that I wish to focus on, however, but the normative conclusion that the supposed costs justify restrictions. That conclusion is too quick. Even when costs occur, it may nevertheless be morally incumbent upon a state to permit immigration.

In fact, I will argue, social costs can only justify restrictions under two conditions: (1) the costs are particularly severe and (2) there is no acceptable alternative means to address them. Since social costs can only justify immigration restrictions in this restricted range of circumstances, arguments for distributive justice and culture offer no objection to the idea of a non-absolute human right to immigrate.

The logic underlying this approach is that when we trade off the freedom to immigrate against other values we must award it the same weight as other basic freedoms when they face similar trade-offs. We should award the freedom to immigrate the same weight as freedom of movement, association, expression, religion, and occupational and marital choice, since, as we have seen, the same underlying interests are at stake.

That we award these other freedoms significant weight is clear from the fact that we recognize these freedoms as human rights. In certain cases, these freedoms may justifiably be restricted in order to avoid social costs, but such cases arise only when the threatened costs are particularly severe and there is no acceptable alternative means to avoid them. So, for instance, in the case of freedom of expression, it might be permissible to ban a political protest if it threatens to result in rioting but not to avoid some more minor cost, such as

<sup>30</sup> David Card, "The Impact of the Mariel Boatlift on the Miami Labor Market," *Industrial and Labor Relations Review* 43 (1989), 245–57.

<sup>31</sup> Rachel M. Friedberg and Jennifer Hunt, "The Impact of Immigrants on Host Country Wages, Employment and Growth," *The Journal of Economic Perspectives* 9 (1995), 23–44; Marco Manacorda, Alan Manning, and Jonathan Wadsworth, "The Impact of Immigration on the Structure of Wages: Theory and Evidence from Britain," *CEPR Discussion Paper* DP7888 (2010).

<sup>32</sup> Keith G. Banting, "Is There a Progressive's Dilemma in Canada? Immigration, Multiculturalism and the Welfare State," *Canadian Journal of Political Science* 43 (2010), 797–820.

<sup>33</sup> Marcus M. L. Crepaz, *Trust Beyond Borders: Immigration, the Welfare State and Identity in the Modern State* (Ann Arbor, MI: University of Michigan Press, 2008).

temporary traffic disruption or offense to opponent groups. Nor would it be permissible to ban the protest if there was an acceptable alternative means to avoid the riot, such as increased policing.

If we award the freedom to immigrate the same weight as these other freedoms then the same two conditions must apply. If we apply these conditions, however, then a number of justifications for exclusion fail, either because the supposed costs they refer to are not sufficiently severe or because there are alternative means by which the costs may be addressed. Let me develop each of these points in turn.

To see why many of the supposed costs of immigration do not provide sufficient reason to exclude, take the example of distributive justice. Some of the theorists that make the distributive justice argument suggest that exclusion can be justified not only when immigration threatens to deprive poor citizens of basic goods such as food and shelter but also when it threatens to harm the interests of those citizens who are merely poor relative to their richer compatriots.<sup>34</sup> In other words, these theorists claim exclusion can be justified not only for the sake of minimal sufficiency but also distributive equality.

This point is important, for while exclusion might be justified if immigration threatens to push citizens below some minimal sufficiency threshold, it cannot be justified in order to better realize more ambitious distributive ideals. If we consider comparable trade-offs between distributive justice and other important freedoms, we find that we are unwilling to make any incursions into these freedoms for the sake of further gains in distributive justice once people's basic needs have been fulfilled. Right-wing literature may undermine support for the liberal conception of distributive justice, but this provides no justification for banning its publication. Freedom of marital choice allows wealthy people to marry each other if they so choose (and they often do choose), frustrating one means by which poor people can better themselves, but this provides no justification for interfering in people's choice of who they marry.<sup>35</sup> Freedom of occupational choice allows talented people to threaten to refuse to do socially productive labor unless they earn higher than average wages, yet even G. A. Cohen, who has done much to raise this issue as a source of distributive injustice, argues that we should pay the talented more rather than infringe on their freedom of occupational choice.<sup>36</sup> Finally, freedom of movement within a state can undermine distributive justice by overwhelming local welfare programs with new applicants, but barring extreme cases when

<sup>34</sup> Isbister, "A Liberal Argument," p. 363; Woodward, "Commentary."

<sup>35</sup> Christopher H. Wellman, "Immigration and Freedom of Association," *Ethics* 119 (2008), 109–41 at p. 26.

<sup>36</sup> G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), pp. 181–222.



basic needs are under threat, distributive justice cannot justify internal restrictions.<sup>37</sup>

Next consider the argument from culture. Once again, we need to distinguish here between different levels of impact. If immigration were to threaten to destroy a state's culture or a crucial element of its culture, such as its language, then restrictions might be justified. Indeed, restrictions seem equally justified at the domestic level when minority cultures come under threat. Thus there is strong case to think native communities in North America can exclude outsiders given the vulnerability of their cultures. Sometimes, however, theorists making a culture-based argument go further, arguing that exclusion can be justified simply to prevent a culture from undergoing an important change. For instance, Carens has suggested that Japan might be permitted to exclude to prevent it from becoming a multicultural state.<sup>38</sup> To restrict immigration merely to avoid cultural shift of this sort would be an unacceptable restriction on the freedom to immigrate.

Again, it is useful to consider analogous trade-offs with related freedoms. Take freedom of expression. By expressing themselves freely and absorbing new ideas, people produce profound cultural shifts. Think of the changes in social attitudes towards sex or the place of women in society that has occurred in the last fifty years. Or consider how cultures have been transformed by innovations in art, music, and entertainment. Such changes have been a shock to many and there have been some who have wanted to use the power of the state to stop these changes from occurring. Yet states cannot restrict free expression to prevent profound cultural shifts of this sort. People have a right to freedom of expression and this right cannot be overridden so easily.

Indeed, note that it is because immigrants tend to exercise their rights to freedom of expression that they are capable of producing profound effects upon a host state's culture. Were immigrants to keep publicly silent, expressing themselves freely only behind closed doors, their impact would be much diminished. It is because immigrants play their music in public, establish restaurants, open shops, set up radio stations, produce newspapers, and, above all, interact with the citizens of the host state that they tend to have a large cultural impact. The truth is that immigration restrictions are only as effective as they are in preventing shifts in culture because they allow states to do indirectly what human rights law prevents them from doing directly, namely, denying people opportunities for free expression.

Finally, consider the right to freedom of movement within a state. Western states tend to be culturally diverse, but there are areas within even the most

<sup>37</sup> Joseph H. Carens, "Immigration and the Welfare State" in Amy Gutmann (ed.), *Democracy and the Welfare State* (Princeton, NJ: Princeton University Press, 1988), pp. 207–30.

<sup>38</sup> Carens, "Migration and Morality," p. 37.

diverse states in which the population is as homogenous as Japan's. Think, for instance, of those rural areas in the U.S. or Canada where immigrants rarely venture. Sometimes, in boom times, such areas become attractive to immigrant populations in a way they were not before. An influx occurs and the area begins to assume a multicultural character. While locals continue to practice their own way of life they must rub shoulders with people who do not. Sometimes local people, upset by these changes, will demand that their authorities take action to prevent more immigrants moving in. Nevertheless, in such cases, restrictions on internal freedom of movement cannot be justified. The human right to internal freedom of movement, which all, including immigrants, are legally entitled to enjoy, must be respected even when local areas are subject to profound cultural shifts of this sort. A desire to maintain cultural homogeneity cannot justify internal migration restrictions, so why think that it can justify immigration restrictions?

So far we have been considering cases in which immigration necessarily threatens a cost to some other value. I have argued that even when a trade-off is unavoidable we should permit immigration except when the costs of doing so are particularly severe. My second point, however, is that often a trade-off is avoidable, for there are steps a state can take to avoid the costs in question without restricting immigration. The second condition for justified exclusion is thus often unfulfilled. Consider distributive justice. When immigration threatens to overload welfare programs, or lower wages for poor workers, the state has more than two options: doing nothing and excluding foreigners. Another option would be to raise taxes, either on richer citizens or the migrants themselves (or both) and use the money raised to fund the welfare programs and boost the incomes of the poorest citizens. Indeed if, as many economists argue, increased migration has efficiency gains, then it might be possible to fund these measures using revenue that would not otherwise be raised.<sup>39</sup> Immigration could, in this sense, pay for itself.<sup>40</sup>

Similarly if immigration threatens a state's culture, the state can adopt other means to protect it, by, for instance, encouraging immigrants to integrate into the host state's culture. How much integration a state can demand and what measures it can take in this regard are both controversial matters, but I think it is acceptable for a state to expect resident foreigners to learn the native

<sup>39</sup> Borjas, *Heaven's Door*, p. 87; Gabriel J. Felbermayr, Sanne Hiller, and Davide Sala, "Does Immigration Boost Per Capita Income?," *Economics Letters* 107 (2010), 177–9.

<sup>40</sup> Howard F. Chang, "The Disadvantages of Immigration Restriction as a Policy to Improve Income Distribution," *SMU Law Review* 61 (2008), 23–46 at pp. 31–3. It might be objected that, in a democracy, the government may be unable to raise taxes because of resistance from voters. But all this shows is that voters are capable of acting unjustly. The fact that a decision is made democratically does not relieve voters of the moral responsibility to make a just decision, quite the reverse.

language and encourage them to do so by refusing to provide translation for non-essential services, especially if at the same time it provides subsidized language classes.<sup>41</sup>

Finally, one policy that states can adopt in order to limit any cost that immigration imposes is encouraging foreigners to stay in their home state voluntarily by creating greater economic opportunities for them there: a point I shall return to in Section 3.5. To conclude this section: the freedom to immigrate must be given the same weight, when traded off against other values, as related freedoms which are already recognized as human rights. For this reason, exclusion can only be justified when the costs of admitting foreigners are particularly severe and there is no acceptable alternative means to avoid these costs. Because of these conditions, exclusion cannot be justified as easily as other theorists have claimed. The right that states have to exclude is a narrow one and as such is compatible with a non-absolute human right to immigrate.

### 3.5 The Objection from Scarcity

In this section, I wish to consider one further objection to the idea of a human right to immigrate. The objection holds that even if we accept only a narrow set of justifications for exclusion, as I have argued we should, rich states would still be justified in excluding a large proportion of the world's population from their territory. If immigration restrictions were lifted, it might be argued, vast numbers of would want to migrate, far more than rich states can accommodate. Human rights are supposed to entail duties. If a human right to immigrate would entail no duty upon rich states to admit most people that wish to enter, how can it be a genuine right?

The first point to make regarding this objection is that it is not clear how many people would move if they were free to do so. Admittedly there is evidence suggesting large numbers would move. A survey carried out in Mexico by Robert Suro of the Pew Hispanic Center found that four in ten Mexicans said they would migrate to the U.S. if given the opportunity to do so.<sup>42</sup> Sometimes when immigration restrictions are lifted, large numbers move. The UK Home Office estimates that 600,000 people entered the UK from the European accession states between May 2004 and June 2006.<sup>43</sup> On the other hand, people do not always move when they have an incentive to do

<sup>41</sup> Kymlicka, *Multicultural Citizenship*, pp. 95–100; David Miller, *On Nationality* (Oxford: Clarendon Press, 1995), p. 385.

<sup>42</sup> Robert Suro, *Attitudes Towards Immigrants and Immigration Policy: Surveys Among Latinos in the US and Mexico* (Washington, DC: Pew Hispanic Center, 2005), p. 13.

<sup>43</sup> BBC News, " 'Nearly 600,000' New EU Migrants," August 22, 2006.

so. Migration within the EU has historically been low despite sizeable wage inequalities between states.<sup>44</sup> Moreover, even when large numbers do migrate, they might return soon after, as many of those that came to the UK after accession have since done.<sup>45</sup>

Let us suppose, however, that the empirical premise is true: only a small proportion of those that would want to move could actually be accommodated. Even then the objection fails. The idea of human right to immigrate would remain meaningful since the right entails other duties besides the duty to admit and these other duties could be fulfilled even when the duty to admit could not. As Jeremy Waldron notes, it is a mistake to think that rights correspond to duties in a one-to-one fashion.<sup>46</sup> Rather, rights generate a series of duties, including “background duties” that help to secure the right. David Miller, who supports this view, expresses it as follows: “in cases where because of scarcity we cannot meet our direct obligation to protect A’s right, we can still act on background duties that make it more likely that that right will be fulfilled in time.”<sup>47</sup> Thus if there is a shortage of medical resources (say), we may have no duty, at the present moment, to attend to everyone’s needs, but we may still have duties to raise production of medical resources, train more doctors, or launch an inquiry into the state of health services. In this way, an “individual’s right does not simply disappear from view once it has been traded off against the rights of others” but “remains in the picture and must be taken seriously as residual source of other duties and obligations.”<sup>48</sup>

In the case of the right to immigrate, the relevant background duties are duties to implement policies that reduce the costs of lifting immigration restrictions. Perhaps the most important policy of this sort is the creation of greater opportunities in poor states. If poor states made much-needed reforms, such as tackling corruption, and if rich states provided fairer terms of trade, cancelled debts, and gave more (and better targeted) foreign aid, then over time, migratory pressure might be reduced to levels at which it would be safe for rich states to completely open their borders. In making this claim I draw no simple equation between poverty and migration. The empirical evidence points to a “hump-shaped” relationship: better-off poor states produce *more* migrants than the poorest states. Were more done to tackle poverty, then, in the short term at least, migratory pressure might actually increase. Nevertheless,

<sup>44</sup> Robert J. Flanagan, “European Wage Equalization Since the Treaty of Rome” in Lloyd Ulman, Barry Eichengreen, and William T. Dickens (eds.), *Labor and an Integrated Europe* (Washington, DC: The Brookings Institute, 1993), pp. 167–87.

<sup>45</sup> Naomi Pollard, Maria Latorre, and Dhananjayan Sriskandarajah, *Floodgates or Turnstiles?: Post-EU Enlargement Migration Flows to (and from) the UK* (London: Institute for Public Policy Research, 2008), p. 5.

<sup>46</sup> Jeremy Waldron, “Rights in Conflict,” *Ethics* 99 (1989), 503–19.

<sup>47</sup> Miller, *National Responsibility*, p. 194.

<sup>48</sup> Waldron, “Rights in Conflict,” p. 512.

in the longer term, development should reduce migratory pressure.<sup>49</sup> The European Union provides evidence of this. As I noted, the history of free movement within the EU has, on the whole, been a history of low migration despite the persistence of sizeable wage inequalities between member states. Two factors help to explain this. First, poorer member states such as Spain and Ireland experienced sizeable development.<sup>50</sup> This development came partly because the EU has done more than simply lift immigration restrictions. It has also offered its members aid and free trade.<sup>51</sup> Second, quite simply, people generally seem reluctant to migrate. As Joseph Carens notes when he considers the EU case:

Some people love novelty and adventure, but most people are not keen to leave home, family and friends and to move to a place where they don't speak the language and don't know their way about. Most consider doing this only when they think they have a lot to gain.<sup>52</sup>

In this section, I have argued that the right to immigrate entails background duties to create the circumstances under which exclusion is unnecessary. This relates closely to the point made in the previous section that states have a duty to avoid conflicts between the freedom to immigrate and other values. There I argued that *before* states trade off the freedom to immigrate for other values they have a duty to seek alternative means to address the problem. Here I am arguing that even *after* a state has traded off the freedom to immigrate for other values it still has a duty to undertake policies that, in time, will make such a trade-off unnecessary.

### 3.6 Conclusion

This chapter has shown that people have a human right to immigrate based on their interest in making important personal decisions and engaging in politics, free from state restrictions on the range of options available to them. While states may have a contingent right to exclude when the costs

<sup>49</sup> Rogers Brubaker, "International Migration: A Challenge for Humanity," *International Migration Review* 25 (1991), 946–57 at p. 949; Timothy J. Hatton and Jeffrey G. Williamson, "What Fundamentals Drive World Migration?" in George J. Borjas and Jeff Crisp (eds.), *Poverty, International Migration and Asylum* (London: Palgrave Macmillan, 2005), pp. 15–38 at p. 18.

<sup>50</sup> Flanagan, "European Wage Equalization," p. 184.

<sup>51</sup> Richard E. Baldwin and Charles Wyplosz, *The Economics of European Integration*, 2nd edn (London: McGraw-Hill, 2006), pp. 166–9; Antoni Castells and Marta Espasa, "Do Structural Actions Contribute to Reduced Regional Disparities in the European Union?" in Bernard Funck and Lodovico Pizzati (eds.), *European Integration, Regional Policy, and Growth* (Washington, DC: World Bank, 2003), pp. 167–77.

<sup>52</sup> Joseph H. Carens, "Open Borders and the Claims of Community," *APSA Annual Meeting Paper* (2010), 13.

of immigration are particularly severe, such a right is compatible with the idea of a human right to immigrate.

While immigration restrictions might be justified if necessary to avoid severe costs, outside these special circumstances they constitute a violation of our human rights. Since even the most progressive states restrict immigration and since it is implausible that all the restrictions they impose are necessary to avoid severe costs, we must conclude that even the most progressive states violate the human right to immigrate. The fact that the human right to immigrate is so frequently violated should not, however, make us any more tolerant of its violation. When states prevent us from going where we want to go, associating with whom we wish, or speaking our minds to those who care to hear our thoughts, the appropriate reaction is one of indignation. It does not matter whether states prevent us from doing these things by fining us, imprisoning us, deporting us, or denying us entry: indignation is the appropriate response since states have no right to interfere in our lives in these ways. Once we recognize and condemn unjustified immigration restrictions as the human rights violations they constitute, we take the first step in the long process of achieving their removal.<sup>53</sup>

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