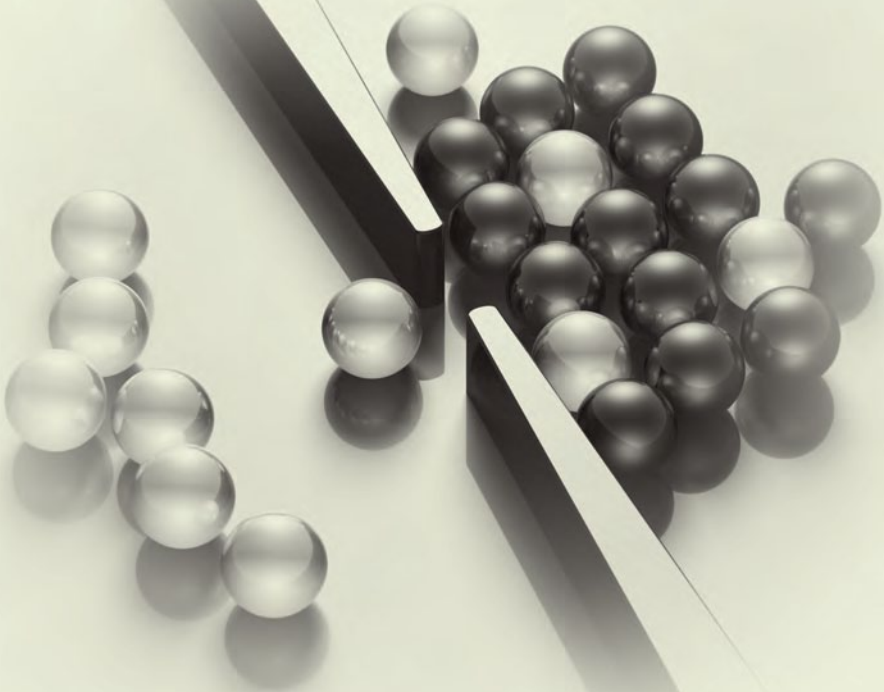


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IMMIGRATION JUSTICE

Peter W. Higgins

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Peter W. Higgins

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For my parents, and Ping

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CONTENTS

Acknowledgments	vi
1 The Philosophical and Empirical Context	1
2 Nationalist Approaches to Immigration Justice	22
3 Cosmopolitan Approaches to Immigration Justice	59
4 The Priority of Disadvantage Principle	110
5 Immigration Justice: In Defense of the Priority of Disadvantage Principle	145
6 Admission, Exclusion and Beyond: Which Immigration Policies Are Just?	199
Notes	233
Bibliography	255
Index	264

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Chapter 1

THE PHILOSOPHICAL AND EMPIRICAL CONTEXT

1.1 INTRODUCTION

The title of this book signifies that immigration policy is not a matter of ethics (understood to refer to the moral analysis of individual action and character), but is rather a matter of justice, and more precisely, structural justice. A central contention of this book is that the justice of an immigration policy can be ascertained only through consideration of the pervasive, systematic, and unjust inequalities engendered by the institutions that constitute our social world. This is because immigration policies affect people not as individuals *per se*, but as members of social groups that are brought into existence by the ways in which formal rules, informal norms, and stable practices (that is, social institutions) unequally distribute opportunities among those implicated in them. That is to say, the way an immigration policy affects a person is not idiosyncratic, but rather is a function of that person's gender, race, economic class, sexuality, ability, age, and citizenship status, among other things. What I am asserting here, but will argue for throughout this book, is that one cannot wholly determine whether or not an immigration policy is just in our social world, given its present nature, unless one's principles for making such assessments treat gender, race, economic class, sexuality, and so on, as salient categories of analysis.

The institutions that characterize our social world are contingent features of it, and they vary to a considerable extent from one society to the next, both in terms of the social groups they create and the way they distribute opportunities among groups. This complicates the task of figuring out which immigration policies are just in two ways. One is that the justice of an immigration policy cannot be adequately assessed in an *a priori* way; the empirical circumstances in which a policy is enacted

are relevant to the assessment of its justice, and therefore demand careful investigation. This explains my conviction, borne out by the arguments of this book, that methods of reasoning about the justice of states' immigration policies that do not attend to the contingent but nonetheless relatively stable features of our world that produce social inequality are likely to generate policy recommendations that are, if not simply unjust, at least contrary to the moral goals that motivate them. The second is that, in virtue of morally salient empirical differences between the national social contexts in which an immigration policy may be enacted, it is unlikely that any specific type of immigration policy will be just or unjust universally. Rather, what immigration policies are just will vary from one country to the next.

The chapters that follow fill in and give support to the ideas I have articulated so far. They also challenge, in ways that relate to these ideas, some recurring assumptions that inform reasoning about immigration justice in philosophical, political, and popular discussions. One of these assumptions concerns the nature of states and relations among states. The intensification of processes of globalization, with respect to capital, commodities, and production, renders increasingly anachronistic the related notions that states can engage in purely self-regarding conduct and that states are impervious to the policy decisions of other states. Global interdependence and the mutual vulnerability of states have numerous implications for reasoning about the justice of states' immigration policies. Whether it appears in the application of principles of political morality to states' immigration policies, or in the justification given for those principles, appeals to what Thomas Pogge calls explanatory nationalism—the idea that morally significant social phenomena can be explained entirely in terms of domestic factors (Pogge 2002: 15)—should, at this point in human history, be regarded by default with suspicion. Immigration policies themselves have tremendous impacts beyond the borders of the state that enacts them, most obviously for the foreigners who will be granted or refused admission in accordance with them. States' immigration policies may also have grave consequences for foreigners who do not wish to move, or who lack the resources to do so. The effects of states' immigration policies on non-migrating foreigners are among the most morally significant since these people are often those most disadvantaged by prevailing national and global institutions.

What focus on social groups disadvantaged by prevailing institutions

makes apparent, in relation to the moral analysis of states' immigration policies, is that the value of freedom of international movement varies among individuals in relation to the social and economic resources each has command over. For a significant portion of the human population (perhaps the majority), the liberty to move about the globe free of state interference at the border has very little value. This observation calls into question another recurring assumption that features in the justification of some philosophical proposals for the just regulation of immigration—the thought that states' immigration policies might be used as tools for alleviating global poverty. I do not mean to suggest that states' immigration policies should not be morally assessed for their extra-national economic consequences. On the contrary, while the immigration policies that states adopt are probably not capable of significantly reducing severe global poverty, some may entrench and perhaps intensify existing global economic inequality. Whether this is the case with respect to any particular immigration policy depends, in ways I will describe in subsequent chapters, on the circumstances in which it is adopted. It is my view that the global economic consequences of a state's immigration policies, particularly for groups disadvantaged by dominant social institutions, are among their most morally salient aspects; this illuminates precisely why thoroughgoing assessments of the justice of states' immigration policies must not neglect the structural inequalities that are typical of our social world.

1.2 SOME SALIENT ASPECTS OF CONTEMPORARY GLOBAL MIGRATION

Large-scale migrations have taken place since the beginning of human history, but contemporary patterns of population movements are distinctive because of their global scope and their economic and social consequences. In 2010, approximately 214 million people—just over 3 percent of the world's population—lived outside the country of their birth as immigrants for at least twelve consecutive months (UNDESA 2012). The number of people living outside the country of their birth has, moreover, increased six-fold since 1910, and this rate of increase is nearly 50 percent greater than the rate of global population increase. More than half of this increase in the number of immigrants worldwide has occurred in the last forty years (Benhabib 2004: 5).

1.2.1 Patterns of Contemporary Global Migration

Stephen Castles and Mark Miller project that rates of international migration will continue to increase for the foreseeable future, for several reasons: growing inequalities in wealth and opportunities between the developed countries of the “Global North” and the developing countries of the “Global South” will motivate people to move from the latter to the former in search of better living standards; millions of people will be displaced by more frequent and more intense ecological pressures; violent political conflict will drive people out of their countries of birth; and globalization of capital and commodities, especially in the form of newly created areas of free trade, will propel unprecedented movements of labor (Castles and Miller 2009: 5). United Nations Department of Economic and Social Affairs (UNDESA) research corroborates Castles and Miller’s prediction. According to UNDESA, the net number of international migrants to more developed regions is projected to average 2.4 million annually between 2010 and 2050, 96 million in total (UNDESA 2011).

The destination for many (60 percent) of the world’s migrants is indeed the Global North (among whom, 58 percent originate in the Global South) (UNDESA 2012). Thirty-three of the world’s forty-five developed countries have been net receivers of international migrants in recent years. This group includes traditional countries of immigration such as Australia, Canada, New Zealand, and the United States, most of the populous countries in Northern, Southern and Western Europe as well as the Russian Federation and Japan. According to UNDESA projections, the major net receivers of international non-refugee migrants between 2005 and 2050 are projected to be the United States (1.1 million annually), Canada (200,000), Germany (150,000), Italy (139,000), the United Kingdom (130,000), Spain (123,000) and Australia (100,000) (UNDESA 2006). That European countries are among the largest receivers of immigrants is a relatively new phenomenon. Prior to the Second World War, most European countries experienced net emigration (to the “classical countries of immigration”). While Western and Northern European countries have experienced net immigration since 1945, Southern European countries did not become countries of immigration until the 1980s; as of 2009, Central and Eastern European states are becoming countries of immigration (Castles and Miller 2009: 8).

Migration from the Global South to the Global North eclipsed international migration within the Global South for the first time in 2010. Approximately 40 percent of migrants reside in countries of the Global South, 85 percent of whom originated in another less developed country (UNDESA 2012). Several developing countries have been attracting non-refugee migrants in large numbers, including Hong Kong, Israel, Kuwait, Malaysia, Qatar, Saudi Arabia, Singapore, South Africa, Thailand and the United Arab Emirates (UNDESA 2006). Eighty-seven percent of the world's 15.6 million refugees are hosted by countries of the Global South (UNDESA 2012).

Prior to the Second World War, most international migrants were European. In contrast, Asia is by far the major contemporary source of migrants (1.3 million non-refugees annually), followed by Latin America and the Caribbean (1.1 million) and then Africa (0.4 million). Over UNDESA's 2005–2050 projection period, more than half of all net non-refugee emigrants from less developed regions are expected to be from Asia, between 25 and 30 percent will be from Latin America and the Caribbean, and the remaining non-refugee emigrants will be from Africa. The countries with the highest levels of net non-refugee emigration are projected to be China (–329,000 annually), Mexico (–306,000), India (–241,000), the Philippines (–180,000), Pakistan (–167,000) and Indonesia (–164,000) (UNDESA 2006).

Even though it is the case that countries of the Global North are (considered individually) the greatest receivers of migrants and that countries of the Global South are (again, considered individually) the greatest suppliers of migrants, South–North migration comprises only 35 percent of global migration. (Thirty-four percent of migration is South–South, 25 percent is North–North, and 6 percent is North–South.) Most migrants born in Europe, Asia, Africa, and Oceania reside in the same major world area of their birth, and the plurality of migrants born in North America still reside in North America. Only migrants born in Latin American and the Caribbean are more likely to reside outside the major world area of their birth (UNDESA 2012).

1.2.2 Causes of Contemporary Global Migration

As these data indicate, flows of international migration are not haphazard; certain regular patterns of movement can be identified. Yet contemporary patterns of global migration are more complex than is

appreciated by the thought that people simply move from poor places to rich ones. It is important to acknowledge foremost that, as Castles and Miller argue, “people tend to move not individually, but in groups” (Castles and Miller 2009: 7). By this claim, Castles and Miller mean both that people tend to go where they know other people or have acquaintances, encouraged by personal ties, and that the reasons individuals move are not anomalous or unique to them; rather, the forces impelling people to take up residence in a new country affect entire groups of people on account of their memberships in those groups. (This explains, for example, why, even though women and men are roughly equally represented among migrants worldwide, there are notable gender imbalances within certain categories of migration, as well as within particular country-to-country flows (Castles and Miller 2009: 12).)

For this reason, among others, Castles and Miller reject what they call the “push–pull” theory of international migration, the traditionally most popular view on the causes of global migration. As Castles and Miller note, the push–pull theory “emphasize[s] tendencies of people to move from densely to sparsely populated areas, or from low- to high-income areas” (Castles and Miller 2009: 21–2). Among those who explain the causes of international migration in this way, commonly cited push factors include “demographic growth, low living standards, lack of economic opportunities and political repression,” while “demand for labor, availability of land, good economic opportunities and political freedoms” (Castles and Miller 2009: 22) pull migrants toward particular countries. “Push–pull” is perhaps a misnomer for the sort of view Castles and Miller describe, however, because in some sense, all theories of the determinants of international migration cite reasons that compel a person to leave her own country and that draw her to some other particular country. What chiefly characterizes the view Castles and Miller call the “push–pull” theory is its focus on poverty, persecution, and overpopulation as the significant forces of emigration.

Castles and Miller argue that the “push–pull” theory does not reliably predict contemporary patterns of international non-refugee migration. Though one might expect on such a view that those with the fewest economic opportunities or lowest standards of living would migrate in the greatest numbers, Castles and Miller point out, first, that “it is rarely the poorest people from the least-developed countries who move to

the richest countries; more frequently the migrants are people of intermediate social status from areas which are undergoing economic and social change" (Castles and Miller 2009: 23). Thus, and moreover, the initial effect of economic development in poor countries is, perhaps surprisingly, increased emigration: "This is because the early stages of development lead to rural–urban migration, and to acquisition by many people of the financial and cultural resources needed for international migration" (Castles and Miller 2009: 305). (The economic conditions under which net emigration ceases and is replaced by net immigration takes, Castles and Miller note, generations to develop.)

Second, though the push–pull model predicts movements from densely to sparsely populated regions, there is no correlation between a country's population density and its rates of emigration or immigration (Castles and Miller 2009: 23). (Indeed, reflection on the domestic analogue of this prediction quickly reveals how fantastical it is; the overwhelming tendency is for people to move in the direction of more densely populated areas.) The causes of immigration the push–pull theory cites seem to reflect the reasons sixteenth- to early twentieth-century Europeans migrated to and colonized the Americas, Africa, Australia, and South Asia. While some fled political persecution, tyrannical oppression, and famine, many sought sparsely populated territories containing "un-owned" land to appropriate and cultivate. And so, although Castles and Miller claim that the "push–pull" theory is "individualistic and ahistorical" (Castles and Miller 2009: 22), it seems to me, rather, that the explanations it invokes are better described as anachronistic and culturally particular.

Furthermore, the push–pull theory overlooks a number of forces in contemporary patterns of migration. I mention three in particular here. First, Castles and Miller argue that international migration is often motivated by social networks linking immigrants in receiving countries to family, friends, and associates in sending countries. They observe that the overwhelming majority of Mexican migrants to the United States obtained legal residence through family reunification policies (Castles and Miller 2009: 28). Indeed, two-thirds of immigrants admitted to the United States annually are granted visas on the basis of family reunification. Second, increasingly common ecological crises displace a growing number of people, already in the millions, each year (Castles and Miller 2009: 4). Third, various aspects of globalization will continue to spur ever-increasing cross-border movements. In particular, Castles

and Miller note that the establishment of regional and global free trade areas and agreements will demand the movement of labor (Castles and Miller 2009: 4).

While the plurality of non-refugee migrants tend to go from a poor country to one that is somewhat less poor, it would be a mistake to think that once a person has decided to leave her country of origin, she simply chooses, from among a variety of options, under conditions of perfect knowledge of wage levels and employment opportunities in potential receiving countries, to go to the one where she believes her economic welfare will be maximized. To the contrary, the most salient patterns of contemporary migrant flows follow historical patterns of colonization and military involvement. Castles and Miller remark:

migration from Mexico to the USA originated in the southwestward expansion of the USA in the nineteenth century and the deliberate recruitment of Mexican workers by US employers in the twentieth century. The migration from the Dominican Republic to the USA was initiated by US military occupation in the 1960s. Similarly, both the Korean and the Vietnamese migrations to America were the long-term consequence of US military involvement. The migrations from India, Pakistan and Bangladesh to Britain are linked to British colonial presence on the Indian subcontinent. Similarly, Caribbean migrants have tended to move to their respective former colonial power . . . The Algerian migration to France (and not to Germany) is explained by the French colonial presence, while the Turkish presence in Germany is the result of direct labor recruitment by Germany in the 1960s and early 1970s. (Castles and Miller 2009: 27–8)

Castles and Miller defend the “migration systems theory” of patterns and causes of international movement. This theory places significant weight on the effects of historical relations between states and contemporary global economic institutions in initiating, shaping, and propelling large-scale international movements of people.

According to migration systems theory, the economic interests of wealthy states, among the many forces in international migration, explain in large part what patterns of international migration have arisen. On this view, wealthy countries have encouraged and recruited certain kinds of immigration, and adopted certain kinds of immigration

policies (to the extent that domestic xenophobic political pressures have allowed),

mainly as a way of mobilizing cheap labour for capital. It perpetuate[s] uneven development, exploiting the resources of poor countries, to make the rich even richer . . . labour migration [is] one of the main ways in which links of domination [are] forged between the core economies of capitalism and its underdeveloped periphery. Migration [is] as important as military hegemony and control of world trade and investment in keeping the Third World dependent on the first. (Castles and Miller 2009: 26–7)¹

It is unsurprising, for this reason, that Castles and Miller do not recommend the liberalization of wealthy countries' admissions policies as a remedy for global inequalities of wealth and opportunity. Although increasing international migration is a symptom of these inequalities, it "is not the solution to the North–South gap. Migration will not resolve North Africa's unemployment problem, or appreciably reduce the income and wage gap between the USA and Mexico, or make a significant impact on rural poverty in India" (Castles and Miller 2003: 284).

1.3 FREEDOM OF MOVEMENT AND INTERNATIONAL LAW

The role of international law in regulating cross-border movements of people is very limited. For the most part, this can be attributed to the reluctance of states to cede their sovereign power to admit and to exclude foreigners according to criteria of their own choosing. While some regional initiatives constrain the authority of states to restrict admission (most significantly the 1992 Maastricht Treaty, which allows citizens qualified freedom of movement within the territory of EU-member states), states are largely free to admit or to exclude at their own discretion. The most significant exceptions to this are Articles 13, 14, and 15 of the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, and the 1951 Convention and 1967 Protocol Relating to the Status of Refugees.

The UDHR provides for a handful of rights related to freedom of movement. Article 13 guarantees each person "the right to freedom of movement and residence within the borders of each state" and "the right to leave any country, including his own, and to return to his

country." In other words, citizens may move freely within the borders of their own state, and, having left, may re-enter; each person may emigrate from any country. Article 15 also guarantees certain related rights: it holds that "Everyone has the right to a nationality," and "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." That is, states may neither expel their own citizens, nor may they prevent them from leaving.

With the exception of the right of emigration, the rights set forth in Articles 13 and 15 are rights of citizens. International law makes significantly fewer demands on states on behalf of foreigners. While Article 14 of the UDHR holds that "Everyone has the right to seek and to enjoy in other countries asylum from persecution," this right is subject to substantial qualification produced in subsequent international law. The 1951 Convention and 1967 Protocol Relating to the Status of Refugees provide minimal protections for refugees who are already present in and have been legally recognized as refugees by the receiving country, but neither makes any demand on states that they admit foreigners seeking asylum.² Similarly, international law assigns no duties to states to admit as immigrants (or to exclude) foreigners who are not fleeing persecution, whose admission is the subject of this book's inquiry.

1.4 THE PHILOSOPHICAL SIGNIFICANCE OF IMMIGRATION AND IMMIGRATION POLICY

International law is not alone in its lack of attention to transnational migration. Prior to 2000, philosophers had said very little on the subject. The philosophical literature on immigration policy has expanded notably since then, but is still modest, and philosophical attention to the topic is probably still not commensurate with the moral gravity of the issues it raises. On the face of it, one would think that immigration policy would be (and would have long been) a central concern of political philosophy.

1.4.1 Why should Political Philosophers be Concerned with Immigrant Admissions?

Political philosophers have traditionally been concerned with the internal justice of states: they have asked whether and how the modern state's monopoly on coercion within its territorial boundaries can be

justified, and how domestic social institutions must be arranged in order to be just. Somewhat more recently, political philosophers have also questioned what obligations states and their citizens have to other states and to individual foreigners. Political philosophers have, for the most part, not examined the moral basis for the distinction between citizens and foreigners, even when they have argued that citizens and foreigners are morally equal. They have also rarely challenged the moral legitimacy of states' discretionary authority to admit and to exclude foreigners from their territory.

Often political philosophers have disregarded questions of admissions and membership on the implicit assumption that these questions can be addressed later in ways that are consistent with the internal principles of justice they defend (Cole 2000: 194). In many cases, questions of admissions and membership are not merely overlooked, but are explicitly excluded on the basis of artificial assumptions about the nature of the state that are built into theories of justice (Benhabib 2004: 1). For example, in *Political Liberalism*, John Rawls writes:

A democratic society, like any political society, is to be viewed as a complete and closed social system. It is complete in that it is self-sufficient and has a place for the main purposes of human life. It is also closed . . . in that entry into it is only by birth and exit from it is only by death . . . Thus we are not seen as joining society at the age of reason, as we might join an association, but as being born into a society where we will lead a complete life. (Rawls 1993: 41)

Rawls' idealizing assumptions exclude questions about the justice of various immigration policies from the concern of political philosophy. On the other hand, when explicitly addressing matters of international justice in *The Law of Peoples*, Rawls does not effectively annihilate international migration by stipulation, but rather maintains that it is nonetheless irrelevant to political philosophy, as "the problem of immigration is . . . eliminated as a serious problem in a realistic utopia" (Rawls 1999: 9). In a realistic utopia the causes of international migration (which Rawls asserts are persecution, political oppression, famine, and overpopulation) would no longer be present; for this reason, Rawls argues, theories of international or global justice need not concern themselves with questions of immigration justice.

Despite what Rawls' omissions and exclusions suggest, the criteria

states use to determine which foreigners should be admitted and which should be excluded is worthy of critical moral analysis. I take for granted that it is important for political philosophers to determine whether or not states are internally just, and to determine the principles by which this evaluation may be made. In fact, much contemporary political philosophy has been devoted to answering important questions such as “By what principles of justice must states distribute social goods among members?” However, one cannot entirely answer this question without first specifying the criteria by which the membership of states is constituted. (That is, whether principles of internal distribution are just or not depends on what principles of membership are in place.) For the most part, one has access to the goods states distribute only if one is a member. And whether or not one is a member of a certain political community may have more significance for one’s opportunities and well-being than whether or not the distribution of social goods within one’s community is just; the poor of an affluent community may be better off than the middle class of another. In other words, questions of membership are morally prior to questions of distribution. No distribution of goods can be just if the group of people among whom the goods are to be distributed has not been justly constituted (that is to say, if some people are being unjustly excluded from the domain within which the distributive principles operate).

Someone ardently opposed to the philosophical examination of the moral justifiability of states’ membership decisions might argue that we can set membership questions aside, assuming that they have been just, and then reason about how states ought to distribute important social goods among members. However, states’ membership decisions affect distributional patterns, domestically and internationally. States’ decisions about how many and which foreigners to admit can alter the opportunities and well-being of present members; and, as I note in Chapter 2, members who belong to social groups that are already disadvantaged are the most vulnerable to the negative impacts of states’ admissions decisions. Moreover, political philosophers who believe that states and their citizens can have obligations to other states and to individual foreigners may not dismiss the moral significance of states’ membership decisions for two additional reasons. First, most obviously, the opportunities and well-being of prospective immigrants are profoundly influenced by states’ admissions decisions. Second, equally significantly, but less often appreciated, states’ decisions about

how many and which prospective immigrants to admit may have grave consequences for economic and human development prospects in poorer countries.

1.4.2 Preliminary Objections: Immigration in a Realistic Utopia

In this subsection and the next I consider arguments that deny that immigration policy is a significant topic for political philosophy. The first comes from Rawls, who argues in *The Law of Peoples*, as I just noted, that assessing the justice of states' immigration policies is not an urgent task for political philosophers. Rawls derives his theory of international justice by reasoning about what obligations states (or, as Rawls would have it, "Peoples") would have to one another in a "realistically utopian" international order (or "Society of Peoples"). Given the circumstances that characterize the realistically utopian international order, Rawls infers that very little transnational migration would occur in it. Thus, he concludes, "The problem of immigration . . . is eliminated as a serious problem in a realistic utopia" (Rawls 1999: 9).

Rawls defines a realistically utopian international order as one in which all domestic political orders are liberal (that is, they possess an internally just constitutional democratic government) or at least "decent" (in which internal institutions are hierarchical, but nevertheless allow for the right of citizens to play a substantial role in making political decisions) (Rawls 1999: 17). A realistically utopian Society of Peoples excludes other kinds of domestic political orders, including "outlaw states" (regimes that refuse to comply with a reasonable Law of Peoples, and that engage in aggressive war (Rawls 1999: 90)), burdened societies ("societies whose historical, social, and economic circumstances make their achieving a well-ordered regime . . . difficult if not impossible" (Rawls 1999: 4)), and benevolent absolutisms (which honor human rights but deny members a meaningful role in political decision making (Rawls 1999: 3)).

There are four causes of immigration, in Rawls' view, and each "would disappear in the Society of liberal and decent Peoples" (Rawls 1999: 9). The first is "the persecution of religious and ethnic minorities, the denial of their human rights," and the second is "political oppression of various forms" (Rawls 1999: 9).³ Third, "often people are simply fleeing from starvation," which, Rawls says, is typically "caused by political failures and the absence of decent government" (Rawls

1999: 9). Finally, immigration may be caused by “population pressure in the home territory” (Rawls 1999: 9). Rawls cites the social inequality and subjection of women as the primary cause of overpopulation, but notes, “once that inequality and subjection are overcome, and women are granted equal political participation with men and assured education, these problems can be resolved” (Rawls 1999: 9). Since each of immigration’s four causes are due to political dysfunction in sending countries, and since such political dysfunction does not occur (by definition) in liberal and decent societies, immigration will not occur on a scale, or for reasons, that warrant the attention of political philosophers in a realistically utopian international order.

We must ask, then, why Rawls takes the realistically utopian Society of Peoples as the starting point for international political philosophy. Rawls invokes a utopian conception of the international order that abstracts away from many of the particularities of the actual international order in order to allow the derivation of general principles of international justice that apply in worlds other than this one.⁴ However, this utopian conception of the international order must be realistic if it is to apply to our world.

More specifically, Rawls argues that the most important problems of political philosophy concern the conditions of justice under reasonably favorable circumstances. Rawls similarly takes the realistic utopia as his starting point in his works on the justice of domestic political orders. In *Justice as Fairness*, Rawls states that:

we are concerned for the most part with the nature and content of justice for a well-ordered society. Discussion of this case is referred to in justice as fairness as ideal, or strict compliance, theory. Strict compliance means that (nearly) everyone strictly complies with, and so abides by, the principles of justice. We ask in effect what a perfectly just, or nearly just, constitutional regime might be like, and whether it may come about and be made stable under the circumstances of justice and so under realistic, though reasonably favorable, conditions. In this way, justice as fairness is realistically utopian. (Rawls 2001: 13)

The “fundamental question of political philosophy” is, according to Rawls, “what is the most acceptable political conception of justice for specifying the fair terms of cooperation between citizens regarded as

free and equal and as both reasonable and rational, and (we add) as normal and fully cooperating members of society over a complete life, from one generation to the next?" (Rawls 2001: 7–8). Answering this question, Rawls argues, requires political philosophers to engage in ideal theory, and thus to take the realistic utopia as their methodological starting point, because "the current conflict in democratic thought is in good part a conflict about what conception of justice is most appropriate for a democratic society under reasonably favorable conditions" (Rawls 2001: 13). In other words, the fundamental problems of political philosophy cannot be addressed properly without adopting the perspective of ideal theory, that is, assuming that reasonably favorable (political and economic) conditions obtain, and thus setting aside existing injustices.

Although Rawls argues that "the idea of a well-ordered society should also provide some guidance in thinking about non-ideal theory, and so about difficult cases of how to deal with existing injustices" (Rawls 2001: 13), I wish to argue, first, that adopting the perspective of ideal theory will generate faulty normative recommendations for immigration policy.⁵ Under the sort of favorable global political and economic conditions that characterize the realistically utopian international order, one might think states ought to adopt one of two kinds of immigration policies. On the one hand, in an international order containing only liberal and decent regimes, it appears that no one (or very few) would have pressing moral reasons for wanting to move to another country. Therefore, states might unobjectionably adopt extremely restrictive immigration policies. On the other, in a realistically utopian international order, if one accepts Rawls' speculation about the causes of international migration, so few people might want to move to another country that there would be no cause for any state to restrict immigration. However, under present non-realistically-utopian circumstances, I argue (in the next two chapters) that both policy options would exacerbate rather than alleviate existing injustices. Under present circumstances, the majority of the world's prospective immigrants have morally significant reasons for wanting to move that states may not simply dismiss by sealing their borders. At the same time, given present global economic circumstances, unrestricted migration from poor countries to wealthy ones may harm disadvantaged groups in receiving societies and would harm non-migrants in sending countries. For this reason, it would be morally irresponsible

for wealthy countries to utterly eliminate restrictions on immigration. Thus, reasoning from the realistically utopian international order is not only unhelpful, but is also positively counterproductive for the purpose of addressing moral problems and injustices related to international migration in this world.

Second, even if one agrees with Rawls that political philosophers should reason from the realistically utopian international order, his conclusion, that from this perspective there is no need to examine the justice of states' immigration policies, does not follow. This conclusion follows only if one accepts Rawls' empirical assumptions about the causes of international migration; however, these assumptions are mostly false. Though Rawls is correct about the causes of some international migration—considerable international refugee migration is caused by domestic persecution and political oppression—he is mistaken about the causes of most non-refugee migration. As Castles and Miller argue, very little international migration is the result of absolute poverty and almost none is caused by domestic population pressure. On the contrary, most international migrants are of intermediate social and economic status, and there is very little non-refugee migration among the world's poorest populations. Rawls' realistically utopian Society of Peoples is one that is exclusively comprised by liberal and decent Peoples, and although it excludes by stipulation "burdened societies," it still allows for significant global economic inequality. If Rawls' factual assumption (that a primary cause of contemporary migration is poverty-induced starvation) were correct, then one would rightly expect the rate of international migration to slow considerably in Rawls' realistic utopia. However, Rawls' factual assumption is false; most migrants are not desperately poor in an absolute sense. The implication for Rawls' theory is that even in a realistically utopian international order, in which reasonably favorable political and economic conditions obtain and in which there are no "burdened societies," international migration would persist at a considerable rate—perhaps, in fact, at a greater rate than at present.

Most international non-refugee migration is caused by forces that Rawls overlooks. First, as I noted previously, international migration often is motivated by social networks linking immigrants in receiving countries to family, friends, and associates in sending countries.⁶ Second, increasingly common ecological crises, whose causes are often geographically distinct from their most serious effects, displace a

growing number of people each year, already in the millions, and these are unlikely to be abated by the universalization of liberal and decent domestic political structures. Third, the establishment of regional and global free trade areas and agreements will demand the movement of labor. It is perhaps less than surprising that Rawls does not take these forces of migration into account; Rawls' realistic utopia clearly conceives of the international order as a void; in it, fully sovereign Peoples have no significant bi-lateral or multi-lateral relations (formal or informal) with one another, and there are no supra-national institutions. This explains why Rawls thinks mere modification of domestic political and economic orders will eliminate the "push" factors of migration—he does not think there are any other actors with causal efficacy. Each of these forces is likely to persist despite the attainment of the favorable conditions of Rawls' realistic utopia. Thus, since the causes of international migration Rawls cites are inaccurate, and since the primary determinants of contemporary migrant flows are unlikely to disappear even under "reasonably favorable conditions," it is likely that international migration will persist at a rate worthy of moral attention even in a realistically utopian international order.

1.4.3 Preliminary Objections: Immigration as Epiphenomenal

The second reason one might give to dispute the significance of immigration policy in political philosophy is that international migration is an epiphenomenon: the cause of most non-refugee international migration, and the moral problems that motivate this topic, are independent of and prior to states' immigration policies. More precisely, this objection holds: in the absence of vast inequalities of wealth and opportunity between states, very few people (who are not refugees) would wish to leave the country in which they were born and raised. If wealthy states discharged their obligation, however it is conceived (whether as a duty of assistance or as a duty of rectification), to alleviate global poverty (by whatever means are most effective), "migration would no longer be a serious moral problem, because relatively few people would want to move and those who did could and would be accommodated somewhere" (Carens 1992: 35).⁷

Thomas Pogge defends a version of this argument. Although he agrees that wealthy states should select immigration policies that will help to reduce global poverty, he "question[s] whether we should

expend scarce political energy and resources on these issues. Rather than try to get our compatriots to support admitting more needy foreigners . . . we should instead try to enlist them for other moral projects with regard to which our mobilizing efforts can be much more effective" (Pogge 1997: 12).⁸ Pogge gives four reasons why "those who accept a weighty moral responsibility toward needy foreigners should devote their time, energy, and resources not to the struggle to get more of them admitted, but rather to the struggle to institute an effective programme of global poverty eradication" (Pogge 1997: 14).

First, the number of extremely poor people in the world exceeds the number of people wealthy countries might ever willingly admit by well more than a billion. Second, immigrant admissions, as a means of alleviating global poverty, favor those who already possess the material resources that international migration requires. Third, immigrants' remittances exacerbate intra-country inequality in sending countries since their recipients are typically not among the poorest (Pogge 1997: 14–15). Finally, Pogge argues, "with the political effort it would take to pressure some Western government to admit an extra hundred needy foreigners, we could alternatively pressure this same government to allocate a few extra million dollars to global poverty eradication," which, "if effectively spent, could protect not a hundred, but thousands or even tens of thousands of desperately poor persons" (Pogge 1997: 17).

I will not argue that rich countries should admit more immigrants as a strategy for alleviating global poverty. To the contrary, I will argue, in Chapter 3, that such strategies tend to be both ineffective and counter-productive. But this shows precisely why the justice of states' immigration policies should be taken up by political philosophers. I agree with Pogge that immigration policies are not the proper tools for alleviating global poverty, but I disagree with what his arguments might therefore be taken to suggest: that political philosophers who consider global poverty to be an urgent moral problem should not concern themselves with the justice of states' immigration policies. While it is true that no immigration policy, given current global economic circumstances and institutional arrangements, can reduce global poverty more than marginally, many immigration policies are capable of exacerbating global poverty. Thus, political philosophers must find ways to sort the benign ones from the irresponsible ones. While many of the most pressing moral problems that appear to cause international migration and to motivate discussion of the issue are best resolved by reform to the

institutions of the global economic order (rather than by the manipulation of states' admissions criteria), many immigration policy options will exacerbate the very same problems.

Moreover, Pogge gives little reason to think that the advocacy of global poverty eradication programs and the pursuit of just immigration policies are mutually exclusive. As Joseph Carens, who defends permissive immigration policies on the sorts of grounds Pogge critiques (among others), comments, "in terms of politics, it is not clear that increasing aid and increasing immigration are really incompatible. In general, the same political actors support or oppose both" (Carens 1992: 35).

Further, to repeat a now familiar point, people would still migrate in the absence of global poverty. The extremely poor constitute only a tiny portion of contemporary non-refugee immigrants; indeed, eradicating poverty might increase immigration pressure on wealthy states, since more people would thereby have the means to travel to and to live in rich countries. Additionally, given the weight many countries have historically placed on family reunification as a category of admission, considerable "chain migration" will continue indefinitely. What these points suggest is that international migration is not a mere epiphenomenon of global poverty.

Ultimately, this objection suggests that in a world without unjust inequalities of wealth and opportunity, no immigration policy would be just or unjust; thus, political philosophers need not devote their attention to the topic. However, this would be news to most political philosophers who have already examined the issue. A large portion of extant philosophical approaches to the regulation of immigration have not treated the effect that an admissions policy has on global poverty as a salient moral consideration. There may be many reasons a particular immigration policy is just or unjust, and not all concern the effect of the policy on global poverty. It is important to examine these approaches to establish whether or not they are successful, and if not, to determine what considerations are salient for the moral evaluation of states' immigration policies. That is the ambition of this work.

1.5 AGENDA

The central question of this book is this: "What criteria for granting and refusing admission to prospective immigrants may states justly

adopt?" The scope of this work's inquiry thus does not extend to the justice of criteria states may adopt to determine which legal residents may become citizens, nor does it extend to questions about the justice of policies regarding the treatment and legal benefits and rights of residents (documented or undocumented). This book's subject includes policies governing the admission of foreigners for permanent residence; I mostly will not examine policies related to the admission of asylum-seekers or "non-immigrants." While categories of admission vary from one country to the next, in US law, for example, permanent residents are distinguished from "non-immigrants" by the fact that non-immigrants enter the United States only temporarily, for a specific purpose (while permanent residents, as their classification suggests, enter the country to reside indefinitely).⁹ I believe the conditions under which asylum-seekers and non-immigrants are admitted may raise distinct moral concerns for which a separate analysis is likely necessary.

This book is a defense of a necessary condition of the justice of states' immigration policies. This condition, which I call the Priority of Disadvantage Principle (PDP), holds that just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged. The PDP is, it seems to me, highly intuitively plausible on its face. Indeed, my principle may seem uncontroversial, perhaps even uninteresting. The PDP's appearance of plausibility is not deceptive, yet my principle challenges the three most common views among political philosophers on immigration justice. First, as a principle of political morality, it challenges the most traditional view about immigration justice in philosophical discourse (and the most entrenched in popular discourse): that states are morally free to admit and to exclude foreigners as they will. (I refer to this view as the "moral sovereignty of states view.") Second, since unjustly disadvantaged social groups are present in all countries, the PDP circumscribes the applicability of nationalist principles of political morality, which (at their most general) morally bind states to choose immigration policies that promote "the national interest." (I call this view "prescriptive nationalism.") Finally, though I argue that states' immigration policies are subject to cosmopolitan principles of justice (which regard a person's nationality as morally irrelevant in itself), I dispute the most commonly held view among cosmopolitans on immigration: that (wealthy, liberal) states ought to open their borders.

Each of the subsequent chapters supplies a crucial element of the

defense of the PDP. In Chapters 2 and 3, I challenge existing philosophical approaches to the just regulation of immigration that are incompatible with the PDP. Chapter 2 examines specific nationalist approaches, while Chapter 3 considers specific cosmopolitan approaches. I critically and comprehensively explicate the PDP in Chapter 4, and, having done so, defend it in Chapter 5. The final chapter, Chapter 6, provisionally applies the PDP to general sorts of criteria of admission and of exclusion that states commonly adopt, as well as to a few other “admissions-related” policies that are particularly noteworthy, given the concerns of the PDP.

Although I conceive the PDP as universally applicable, I argue that it requires different states to adopt different immigration policies. It is my contention that what immigration policies are just for a state cannot be determined in an *a priori* way, in the absence of relevant empirical data—something, it seems to me, that much extant philosophical work on immigration appears to suggest. Rather, the immigration policies that are just for a particular state will depend, first, on that state’s economic and political position in the international order, and second, on what social groups that state’s policies are likely to affect most. Since states vary significantly in these respects, the determination of what immigration policy a particular state ought to adopt will require, I argue, sensitivity to contextual differences and extensive empirical investigation. At the most general, the PDP requires that receiving countries select admissions criteria that encourage and shape patterns of global migration in a way that minimizes harm to poorer countries most vulnerable to the negative impacts of the former’s immigration policy choices. Subsequent chapters will bear out this thought.

Chapter 2

NATIONALIST APPROACHES TO IMMIGRATION JUSTICE

2.1 INTRODUCTION

This chapter examines philosophical proposals for the just regulation of immigration that I classify as prescriptively nationalist.¹ Prescriptive nationalism, as I characterize the position, holds that states ought to choose immigration policies in accordance with “the national interest.” Prescriptive nationalists conceive of the national interest differently among themselves, and while it would be too simple to understand any of these proposals as conceiving of the national interest merely as the aggregate of citizens’ interests, all similarly hold that the state should prioritize the interests of citizens over those of foreigners in the selection of immigration policies. Cosmopolitan approaches to immigration justice (which I evaluate in the next chapter) hold, in contrast, that states may not show favor for citizens over foreigners (each group considered as such) in the selection of immigration policies.

Prescriptive nationalism is sometimes confused with a distinct position on immigration justice: the moral sovereignty of states view (as I call it). The moral sovereignty of states view holds that states have absolute moral discretion with respect to the selection of immigration policies. In contrast to the moral sovereignty of states view, prescriptive nationalism is a substantive moral position (a feature it shares with cosmopolitanism). That is, it holds that principles of political morality delimit what immigration policies states may justly adopt. Despite certain accidental similarities between the positions, I believe it is appropriate to distinguish conceptually between prescriptive nationalism and the moral sovereignty of states view. Defenders of the latter often recommend that states choose their immigration policies in accordance with the national interest; however, the moral sovereignty

of states view does not entail that states must choose in accordance with the national interest. The moral sovereignty of states view does not, in principle, provide any moral guidance for states to choose immigration policies; indeed, this is not only an essential feature of the view, but it is also alleged by its defenders (who deny, in principle, that principles of political morality override the discretion of states to choose their immigration policies), to be a virtue of the view. I argue for the rejection of the moral sovereignty of states view in the Chapter 5.

Prescriptively nationalist proposals for regulating immigration vary significantly among themselves in terms of what quantity and kinds of immigration they hold promote the national interest. Though no nationalists defend entirely closed or entirely open borders, some defend fairly restrictive immigration controls, and some defend relatively permissive ones. What accounts for these differences among prescriptive nationalists is not general moral principles, but factual assumptions; while some nationalists believe that immigration is on balance harmful to the national interest (in whatever terms that is conceived), others hold that immigration is generally conducive to the national interest. I critically examine nationalist proposals of both sorts below. While I will criticize each nationalist proposal for a variety of reasons, each of them, I argue, depends on empirical assumptions about global migration, migrants, and the effects of immigration that are both unsupported and, indeed, contradicted by the best evidence. Although this alone is sufficient to reject extant nationalist proposals for regulating immigration, it is not sufficient to reject prescriptive nationalism itself as an approach to immigration justice. For this reason, I return to prescriptive nationalism in Chapter 5 to pose more fundamental challenges to nationalist approaches to immigration justice generally.

2.2 POLITICAL COMMUNITIES AND IMMIGRATION POLICY

Perhaps the most prominent single contribution to discussions of immigration in philosophy belongs to Michael Walzer, who defends exclusionary immigration policies on two distinct nationalist grounds (the argument from domestic cohesiveness and the argument from cultural distinctiveness) (Walzer 1983). Before turning to these arguments, it is necessary to set them in context by examining Walzer's general position in relation to immigration justice. Walzer explicitly

defends the view that states (or, as he tends to call them, “political communities”) ought to be understood as having near-absolute moral discretion to adopt whatever admissions policies they wish: “The distribution of membership is not pervasively subject to the constraints of justice. Across a considerable range of the decisions that are made, states are simply free to take in strangers (or not)” (Walzer 1983: 61). The discretion of states to admit or to exclude prospective immigrants is constrained in two ways for Walzer: first, admissions policies must cohere with the conceptions of justice shared by members of the political community; second, admissions policies must conform to the principle of mutual aid, which requires (in the context of immigration) that political communities admit “necessitous strangers” when doing so would not significantly harm current members of the community (Walzer 1983: 32–3).

Walzer’s general position on immigration justice, in virtue of these aspects, aligns with what I call the moral sovereignty of states view. I examine the arguments Walzer advances in support of this view in Chapter 5. However, the two arguments of Walzer’s I discuss here only make sense when understood as substantive moral defenses of exclusionary admissions criteria. Though Walzer’s primary conclusion seems to be that states should be largely morally free to select any admissions criteria they like, both of the arguments I examine in this chapter clearly require states to adopt restrictive immigration policies on substantive moral grounds. Since the moral sovereignty of states view rejects in principle the legitimacy of moral constraints on the discretion of states to choose immigration policies, it appears that Walzer’s views on immigration justice are internally conflicted.

2.2.1 Domestic Cohesiveness

Walzer’s argument from domestic cohesiveness originates in a discussion of the dissimilarities between states and neighborhoods. Although states and neighborhoods both occupy territory, and although individuals may belong to a particular one or not, neighborhoods (unlike states) do not exercise formal control over membership. Walzer rejects the notion that neighborhoods should, in this respect, be a model for states; he argues that the failure of states to control immigration brings about parochialism and segregation within local communities:

if states ever become large neighborhoods, it is likely that neighborhoods will become little states. Their members will organize to defend the local politics and culture against strangers . . . Neighborhoods can be open only if countries are at least potentially closed. Only if the state makes a selection among would-be members . . . can local communities take shape as “indifferent” associations, determined solely by personal preference and market capacity . . . To tear down the walls of the state is not, as Sidgwick worriedly suggested, to create a world without walls, but rather to create a thousand petty fortresses. (Walzer 1983: 38–9)

This argument is a prescriptively nationalist defense of exclusionary immigration policies. It is nationalist insofar as the beneficiaries of Walzer’s recommendation are current residents, and their benefit comes at the expense of prospective immigrants who are excluded. And, although Walzer does not make it explicit, it is a defense of a restrictive immigration policy, and not merely of the right of states to exclude (or to include). Equipped with the right to admit or to exclude, states may opt to admit large numbers of immigrants, and may even eliminate restrictions on immigration (although they may reinstate restrictions at their discretion). The loss of domestic cohesiveness that Walzer forewarns cannot be prevented by granting states the mere right to control membership, since they may choose thereby not to control it. Preservation of domestic cohesiveness requires states, on Walzer’s reasoning, to in fact limit the number (and perhaps kind) of foreigners who may enter.

There are several reasons to discount the argument from domestic cohesiveness. First, this argument relies on a sociologically inaccurate, romanticized conception of “political communities.” Walzer argues that the state must be closed for local communities to be “indifferent associations.” However, all modern states regulate immigration, and most admit only a fraction of those who might enter in the absence of regulations. Yet most local communities are not “indifferent associations determined solely by personal preference and market capacity.” On the contrary, most local communities are to varying degrees segregated by race, class, ethnicity, nationality, and sometimes even sexuality—and not simply because people prefer to live among others they consider similar in some respect. Primarily, this segregation is due to structural forms of disadvantage that result in loss of economic

opportunities for groups that are already otherwise disadvantaged; it is also often the result of implicit hostility and explicit threats of violence that members of some social groups tend to live in segregated local communities. By failing to attend to the presence of certain domestic disadvantaged social groups, Walzer is led mistakenly to endorse the claim that restrictive immigration policies foster internal social and cultural cohesion.

Second, there is something paradoxical about the claim that states should adopt restrictive immigration policies to prevent segregation within local communities. Walzer opposes the sort of local racial, ethnic and national segregation found in ancient Alexandria and early twentieth-century New York (Walzer 1983: 38). Yet he proposes to prevent this from occurring by excluding immigrants (who are often racially, ethnically, and necessarily nationally distinct from the majority of the population of the receiving country) at the border. This is akin to a school superintendent proposing that black students be prevented from attending the predominantly white schools in her district to save them from being socially excluded within those schools. To prevent informal segregation within local communities, Walzer proposes something that is, morally, no better—formal segregation at the national boundary.²

2.2.2 *Cultural Distinctiveness*

Walzer's second argument holds that states must control membership in order to preserve cultural distinctiveness: "the distinctiveness of cultures and groups depends upon closure and, without it, cannot be conceived as a stable feature of human life. If this distinctiveness is a value, as most people . . . seem to believe, then closure must be permitted somewhere" (Walzer 1983: 39). This argument is, like Walzer's first, a nationalist defense of exclusionary immigration policies. It is nationalist because only citizens, not foreigners, benefit from the preservation of a political community's cultural distinctiveness. Moreover, the considerations to which Walzer appeals do not require merely that states be allowed to control membership (since this is compatible with the elimination of immigration restrictions), but that they actually restrict immigration both in terms of quantity and kind. Walzer's language betrays this aspect of his argument: while initially Walzer argues that cultural distinctiveness "depends upon closure," later he

says merely that, if cultural distinctiveness is valuable, "then closure must be permitted."

However, the sort of cultural distinctiveness that Walzer wants to preserve is a feature of political communities, not of states. That is, the argument from cultural distinctiveness relies on an equivocation of political communities and states. For Walzer:

the political community is probably the closest we can come to a world of common meanings. Language, history, and culture come together . . . to produce a collective consciousness . . . the sharing of sensibilities and intuitions among the members of a historical community is a fact of life. (Walzer 1983: 28)

However, it is clear that political communities, wherever they exist, are not coextensive with the boundaries of states, where a variety of languages may be spoken among culturally diverse ethnic groups whose interpretations and understandings of national history may diverge significantly. Most states contain many political communities (as Walzer conceives of them), and these communities often extend beyond the territorial boundaries within which states have legal sovereignty. At best, therefore, what Walzer presents is an argument for political communities' informal membership controls, not states' restrictive immigration policies.

Worse still, Walzer's equivocation seems to rely implicitly on a perspective about political communities that privileges dominant groups within the society at the expense of minorities. Walzer invokes an essentialist conception of the political community that erases difference and dissent within, as is common in attempts to justify the rights of groups. Yael Tamir argues, for example, that:

The notion of group rights . . . presupposes "the group" as a unified agent. Rights are bestowed upon "the group" in order to preserve "its" tradition and defend "its" interests. Identifying "the" tradition and "the" interests of "the" group becomes a precondition for realizing these rights. Consequently, internal schisms and disagreements are perceived as a threat to the ability of the group to protect its rights. Group leaders are therefore motivated to foster unanimity, or at least an appearance of unanimity, even at the cost of internal oppression. (Tamir 1993b: 47–8)

In the same way as Tamir describes, Walzer portrays that state as a culturally homogeneous political community in an effort to establish its right to restrict membership.

A final shortcoming of Walzer's argument from cultural distinctiveness is that it is based in a bizarre understanding of global migration flows. Walzer's worry is that if political communities do not restrict immigration, the features in virtue of which each is culturally distinct from others will erode over time as the human population moves about. Walzer's reasoning appears to commit him (certainly inadvertently) to the strange view that in the absence of restrictive immigration policies, the human population will reassemble itself in uniform, proportionate national composition within each political community. (Thus, eventually, the population of each political community will be comprised by roughly 19 percent former residents of China, 17 percent former Indians, 5 percent former Americans, and so on.) It is hard to overstate the implausibility of this idea. (In fact, its extreme implausibility suggests that it is not cultural distinctiveness *per se* that concerns Walzer, but rather cultural change; I examine below a more precisely articulated nationalist argument for immigration restrictions that appeals to the alleged harms of cultural change from David Miller.³) What the implicit assumption in Walzer's argument overlooks is that each country is subject to different patterns of immigration flows, whose composition depends on a variety of factors unique to each society: its historical relations with other states, contemporary trade agreements, its state of human development (especially in relation to nearby states), its geographical location, and its ongoing social and cultural links with other states, to name a few (Castles and Miller 2009: 27). Hence, even in the total absence of immigration restrictions, the distinctiveness of national cultures is not likely to decline.

2.2.3 *General Objections*

Certain considerations tell against both of Walzer's arguments for restrictive immigration policies. First, despite making what are, at base, consequentialist arguments that rely on empirical predictions, Walzer's evidence for his predictions is mere speculation. (In principle, it is not clear what evidence could be produced for either prediction, since neither has been tested by any modern state.) Second, both of Walzer's arguments implicitly suppose that the value of domestic cohesiveness and cultural distinctiveness (or either of them individually) override

the often urgent moral claims of prospective immigrants. Yet, Walzer neglects to provide an analysis that might show this to be the case. In other words, even if it is true, for example, that unrestricted immigration erodes cultural distinctiveness, that fact does not justify limiting immigration unless one can show that the moral value of the lost increment of cultural distinctiveness is greater than the moral value of what is denied to excluded foreigners.

In part, this is perhaps because Walzer conceives of the admission of non-refugee immigrants as a matter of charity or supererogation. This is clear in his conclusion, which is that “the distribution of membership is not pervasively subject to the constraints of justice.” What underlies this conclusion is an assumption that Walzer makes both implicitly and explicitly. For example, Walzer asks,

Can a political community exclude destitute and hungry, persecuted and stateless—in a word, necessitous—men and women simply because they are foreigners? Are citizens bound to take in strangers? Let us assume that the citizens have no formal obligations; they are bound by nothing more stringent than the principle of mutual aid. (Walzer 1983: 45)

In other words, what citizens “owe” foreigners is assistance; to admit foreigners is supererogatory, since states do not have obligations of justice to foreigners. I argue that Walzer’s conclusion is premised on this unsupported, artificial assumption.

That Walzer understands the admission of non-refugee immigrants as a matter of charity is further confirmed by his discussion of the principle of mutual aid, according to which individuals and states have an obligation to provide aid to those in dire need as long as the cost is not excessive to the benefactor (even when there are not pre-established bonds between the benefactor and those in need). According to Walzer, this principle sometimes may require states to take in “necessitous strangers.” In order to motivate the belief that states are bound in this way by the principle of mutual aid, Walzer discusses its application in a few cases: “two strangers meet at sea or in the desert or, as in the Good Samaritan story, by the side of the road” (Walzer 1983: 33). To Walzer’s credit, he acknowledges that states (and individuals) can have obligations to others in need even when they have no established bonds to each other.

However, Walzer misrepresents the position of affluent states in relation to the poor in countries of the Global South. The principal way in which Walzer misrepresents this relationship is by implying through his examples that affluent states and their citizens are merely in a position to help the citizens of poor countries. While I do not disagree that individuals in affluent states have a positive duty of assistance to the poor in countries of the Global South, the obligations of the affluent are much more stringent than the characterization of their duties as merely positive suggests. Walzer's analogies (meeting a stranger in the desert, or finding a stranger at your doorstep who has been injured by some unknown party), as well as his rhetorical tendency to refer to foreigners as "strangers," obscure the fact that countries of the Global North in significant ways bring about the conditions which lead "strangers" to seek admission. Thomas Pogge argues compellingly that wealthy states, through their control of global economic institutions (such as the World Trade Organization, the International Monetary Fund, and the World Bank), actively harm the poor in countries of the Global South (for example, by maintaining high trade tariffs on imports, especially those they consider "unfairly cheap," while requiring poorer states to reduce significantly theirs) (Pogge 2002: 17). This is one example Pogge cites in defense of his argument that the obligation of wealthy states toward the global poor is not merely a positive one (that is, a duty of assistance), but is rather negative—a duty to refrain from harming, and to compensate those who have already been harmed. (I will discuss Pogge's argument and its significance for prescriptively nationalist approaches to immigration justice at greater length in the following section.)

If the global poor are understood merely as needy strangers whose poverty is causally unrelated to the affluence of the Global North, then choosing admissions policies in a way that is responsive to their interests appears, wrongly, to be a matter of charity. This explains why Walzer appears to hold that maintaining present levels of cultural distinctiveness and domestic cohesion is morally more important than fulfilling the claims of impoverished foreigners. However, apprehending the nature of the relationship between affluent countries of the Global North and members of disadvantaged social groups in poorer countries calls into question the weight Walzer accords cultural distinctiveness and domestic cohesion.

2.3 NATIONAL IDENTITY AND IMMIGRATION POLICY

Walzer's is the classic statement of the prescriptively nationalist argument for restrictive immigration policies. David Miller appeals to nationalist considerations similar to Walzer's in defense of restrictive immigration policies, improving on Walzer's argument in many ways. Miller invokes the idea of "national identity" to justify admissions policies that limit the total number of foreigners who may enter annually. Miller acknowledges that national identity is ever-changing, in part due to various sub-cultures that exist within nation-states, and that, for this reason, there is no reason to think that immigration itself necessarily poses a threat to national identity: "Why should immigrants pose a threat to national identity once it is recognized that that identity is always in flux, and is moulded by the various sub-cultures that exist within the national society?" (Miller 1995: 128). Nevertheless, Miller argues, immigration may upset the continuity of a national society's ever-changing identity unless restricted.⁴

There are two circumstances, Miller argues, in which states may restrict immigration. "One occurs," Miller says, "where the rate of immigration is so high that there is no time for a process of mutual adjustment to occur" (Miller 1995: 128). This entails only, Miller says, that states may limit immigration in quantity, but not in kind. "The other circumstance is where the immigrant group is strong and cohesive enough to constitute itself as an independent nation" (Miller 1995: 129). However, Miller qualifies, "this is not likely to arise unless the group in question has been expelled *en masse* from some other place" (Miller 1995: 129). This circumstance similarly justifies the state, Miller argues, in limiting the total number of visas allocated, but does not permit a state to exclude immigrants on the basis of their nationality.

2.3.1 *The Argument from National Identity*

For his argument to be successful, Miller must provide a plausible conception of national identity, and show why national identity is the sort of thing that should receive significant weight in moral calculations. National identity, on Miller's view, is parallel to other aspects of a person's identity that are shaped by membership in a social group. Nonetheless, national identity is distinct from other group-based aspects of personal identity in several respects. First, national

communities, Miller argues, are constituted by shared belief: “nations exist when their members recognize one another as compatriots, and believe that they share characteristics of the relevant kind” (Miller 1995: 22). The existence of a national identity “depends on a shared belief that its members belong together, and a shared wish to continue their common life. So when I identify myself as belonging to a particular nation, I imply that those whom I include as my co-nationals share my beliefs and reciprocate my commitments” (Miller 1995: 23). In this way, Miller contends, national groups are distinct from mere aggregates of people distinguished by (perceived) common physical or cultural traits.

Some social groups may be characterized by the possession of a common set of beliefs, but few will also be marked by a shared sense of historical continuity, as, for Miller, national groups are. The distinctive historical continuity of national groups gives rise to a sense on the part of members that they have special ethical obligations to past generations (to continue their projects) and to future generations (to ensure their well-being). Thus, the national community is an ethical community, or “a community of obligation” (Miller 1995: 23). Co-nationals have reciprocal obligations to one another that they do not have to outsiders; these obligations derive from shared nationality, not shared humanity. But, “if this mutuality fails—not in a particular case, but in general—the character of the group or community to which I think I belong is put in question” (Miller 1995: 65).

In addition, like some other group-based aspects of personal identity, national identity is an active identity, says Miller; national communities are groups that have joint projects or goals toward which they work (Miller 1995: 24). Moreover, national identity is in part constituted by an attachment to a particular geographical place, making national groups unique among social groups. “A nation,” Miller argues, “must have a homeland” (Miller 1995: 24), and this explains why so many national groups strive for statehood; statehood protects a national group’s legal authority over a geographical territory.

Finally, national identity requires that those who possess it share in a common public culture. This public (as opposed to private) culture “may be seen as a set of understandings about how a group of people is to conduct its life together” (Miller 1995: 26). The public culture is public in the sense that it includes political principles (“such as a belief in democracy or the rule of law” (Miller 1995: 26)), as well as social norms. It may, but need not, include religious beliefs and a national

language, but cuisine, norms of dress, and music “are not normally part of the public culture that defines nationality” (Miller 1995: 26). A nation’s public culture is not monolithic or all-encompassing, Miller cautions; thus, he argues, this notion of public culture is compatible with a variety of private cultures flourishing within it, including ethnic sub-cultures.

There are three ways in which it is morally valuable, Miller argues, that individuals identify with the members of the groups to which they belong, including national groups. First, group-based identification provides moral motivation; at least, Miller argues, it mitigates the effect of conflict between personal goals and obligations to the community or group on moral motivation. According to Miller, “to the extent that I really do identify with the groups or community in question, there need be no sharp conflict between fulfilling my obligations and pursuing my own goals and purposes” (Miller 1995: 66). Universalist conceptions of morality, on which one’s obligations are (at least directly) independent of one’s group memberships, “have rather little motivational power. But when I see my own welfare as bound up with the community to which I belong, contributing towards it is also a form of goal-fulfilment” (Miller 1995: 67).

Community identification enhances moral motivation in a second way, according to Miller. Since members of groups have, by definition, reciprocal obligations to one another, “the act of making a contribution is not a pure loss, from the point of view of the person making it, because he is helping to sustain a set of relationships from which he stands to benefit to some degree” (Miller 1995: 67). Thus, “ethical behavior becomes easier for imperfectly altruistic agents” (Miller 1995: 67).

Miller argues that community identity is morally valuable, finally, because formal systems of reciprocity and practices of mutual benefit are established and maintained more easily in a bounded community or group of individuals who identify with each other in terms of their common group membership. “Groups and communities,” Miller argues, “form natural sites on which more formal systems of reciprocity can establish themselves. They mark out sets of people who are already well-disposed to one another in certain respects, and this makes it easier to create formal practices of mutual benefit” (Miller 1995: 67). Indeed, Miller contends, national identity is more valuable in this respect than other group-based identifications: “The potency of nationality as a

source of personal identity means that its obligations are strongly felt and may extend very far—people are willing to sacrifice themselves for their country in a way that they are not for other groups and associations” (Miller 1995: 70). In particular, for instance, Miller argues that without a common sense of national identity, liberal democracies could not establish or maintain egalitarian redistributive programs. The possibility of mutual benefit alone cannot explain, according to Miller, why co-citizens (as opposed to co-nationals) provide opportunities and resources to the least advantaged among themselves.

Here, then, is one way of representing Miller’s prescriptively nationalist argument for restrictive immigration policies:

1. The continuity of the identity shared by the members of a nation is a significant moral value.
2. Unrestricted immigration threatens the continuity of the identity shared by the members of a nation.
3. Therefore, states ought to restrict immigration (to the degree necessary to preserve the continuity of this identity).

The truth of Miller’s premises has received critical scrutiny elsewhere.⁵ I wish to argue, on two distinct grounds, that the conclusion does not follow.

2.3.2 Questioning “The” National Identity

Miller’s nationalist argument for restrictive immigration policies avoids many of the objections that Walzer’s suffers. Nevertheless, the two arguments share some faults. One is that Miller’s premises are about nations, but his conclusion makes a claim about states. National identity, by Miller’s description, is a property of members of national communities, or nations. Miller is explicit that one should not conflate nations with states: “‘nation’ must refer to a community of people with an *aspiration* to be politically self-determining, and ‘state’ must refer to the set of political institutions that they may aspire to possess for themselves” (Miller 1995: 19, emphasis in original). Miller follows Weber in defining a state as “a body that successfully claims a monopoly of legitimate force in a particular territory” (Miller 1995: 19). However, having acknowledged this distinction, Miller advocates the adoption of policies by states for reasons that are applicable only to nations. Even if one

accepts that there are nations, in Miller's sense, and that the members of each possess a distinct identity, it is states (whose members do not share an identity, but a common political allegiance) that have the legal authority to regulate territorial admission. While Miller may show that national groups may exercise informal control over membership, his equivocal argument cannot be taken to yield any conclusion about what (immigration) policies states ought to adopt.

Moreover, distinguishing appropriately between states and nations clearly entails, as Miller himself notes, that many states are multinational, exercising political authority over many distinct nations. Some nations have come to be divided over two states, and in some cases single nations are scattered as minorities over a variety of states (Miller 1995: 19). Miller's conclusion does not follow, however, unless one assumes that the members of each state share a single national identity; the existence of multiple nations and national identities within a state would give rise to conflicts over what sorts of immigration policies are necessary to preserve "the" national identity. In this respect, Miller's argument resembles that of Walzer, who argues that states must restrict immigration in order to preserve cultural distinctiveness. In response to Walzer, I appealed to Tamir's argument that assuming the homogeneity of the culture is a precondition for establishing the rights of the political community. Miller's argument depends on the same sort of cultural essentialism, except that for Miller, the argument invokes the assumption of a homogeneous national identity. By Miller's own admission, this assumption is false. Seyla Benhabib comments further:

In this holistic vision, peoples are viewed as carriers of a coherent moral worldview. But this holistic conception of society belongs to the infancy of social science. Missing from this vision is an appreciation of the significant internal divisions of human societies along the lines of class, gender, ethnicity, and religion. This holistic vision takes the aspirations of liberal-nationalist movements in their period of ascendancy in the second half of the nineteenth and early part of the twentieth century as paradigmatic, and presents these aspirations as if they were social facts. (Benhabib 2004: 80)

Benhabib argues that one consequence of conceiving of national identity as Miller does is that "the cultural citizenship rights of peoples who are not organized as states themselves, but who are members of larger

sovereign states—such as the Aborigines in Australia, First Nations in Canada, Native Americans in the USA, and the Indios in Latin America—disappear from the landscape” (Benhabib 2004: 84). Policies designed to promote “the” national identity inevitably privilege the identity shared by members of dominant national groups. To acknowledge national minorities and other disadvantaged groups—either to acknowledge that each state contains many nations, or to acknowledge diverse, conflicting conceptions of national identity within groups—would make nonsense of the idea that the state should select immigration policies with the goal of preserving the continuity of “the” national identity.

2.3.3 *Explanatory Nationalism*

Miller’s prescriptive nationalism faces one other objection in common with Walzer’s: the validity of Miller’s argument depends on an unacknowledged and undefended acceptance of an objectionable descriptive theory Pogge calls “explanatory nationalism” (Pogge 2002: 15). First, some additional explication of Miller’s view is necessary.

2.3.3.1 *Miller’s conception of international obligation*

Despite his view that compatriots have special obligations to each other that they do not have to non-nationals, Miller does not think that individuals may morally disregard foreigners. Instead, Miller argues that members of a nation have obligations to non-members that are best understood in terms of basic rights: “There are generic conditions for living a decent life which can be expressed in terms of rights to bodily integrity, personal freedom, a minimum level of resources, and so forth,” and, unlike the obligations of nationality, these rights “derive simply from our common humanity” (Miller 1995: 74). For the most part, Miller argues, legitimately basic rights are negative (rights to forbearance and non-interference) but a few are rights to provision, “for example in cases where a natural shortage of resources means that people will starve or suffer bodily injury if others do not provide for them” (Miller 1995: 74).

Upon whom do these rights make demands? Following his own nationalist view about the role of shared identity in generating obligations, Miller argues: “we must suppose that it falls in the first place on the national and smaller local communities to which the rights-bearer

belongs" (Miller 1995: 75). However, when basic rights cannot be protected without cross-border intervention or provision—when a nation cannot protect its own members' basic rights—"there is a general obligation, falling equally on all those in a position to provide aid, to step in and safeguard the basic rights of those threatened" (Miller 1995: 76).

When nation A fails to protect the rights of (some set of) its members, B, the first obligation of a third-party nation, C, is "to use all reasonable means to induce A to protect the rights of B" (Miller 1995: 77). These means might include public condemnations of policy-makers in A, (threat of) economic sanctions or withdrawal of military support, and "in the last resort attempting directly to remove from power those responsible for the policies leading to the rights violations" (Miller 1995: 77). If such measures would compromise the self-determination of nation A, however, then C may have, at best, a weak obligation to provide the necessary resources itself. Nevertheless, "C cannot then be placed under an equally strong obligation [as A] to fulfil B's rights" (Miller 1995: 77). Though C may be in a position to protect B's basic rights, Miller says, "it would be hard to blame C if she decided not to do this. This suggests that there could only be a humanitarian obligation to, for example, send relief to famine victims in circumstances where relief was being withheld by their own government" (Miller 1995: 77).

What, according to Miller, are the causes of basic rights violations? Miller is explicit in his view that when basic rights are violated, the cause is local: while basic rights might be violated by utterly natural causes such as "resource shortages caused by drought or flooding," even these conditions may be exaggerated by "misguided economic decisions made in the past, and they may be perpetuated by the institutional rules that continue to be applied" (Miller 1995: 76). Worse yet, "the cause may simply be the unwillingness of better off people in the society in question to make the changes that would secure the rights of the worst off, for instance to introduce publicly funded welfare schemes" (Miller 1995: 76). Natural disasters and internal corruption or complacency are not the only possible causes of rights violations, however, in Miller's view. Individual members of nation C may violate the rights of individuals in nation A, and "it is probably true that the ethical claims of nationality could not justify anyone in violating the rights of an outsider by, say, killing or injuring him" (Miller 1995: 79). Whatever the obligations of nation C to members of A, it is important to note that Miller is "considering here the international obligations that would arise in the

absence of any ongoing scheme of co-operation between the national communities in question" (Miller 1995: 76).

2.3.3.2 Pogge's critique of explanatory nationalism

Miller's view on individuals' and nations' duties to foreigners is embedded in a descriptive theory that Pogge calls "explanatory nationalism." At its most general, explanatory nationalism is the view that the causes of a phenomenon can be given wholly in terms of factors internal to nation-states. For some *explananda*, explanatory nationalism may be true. Pogge conceives of explanatory nationalism more narrowly, in relation to severe poverty in the Global South. Specifically, Pogge identifies explanatory nationalism as the view that severe poverty (and related systematic violations of basic rights) can be fully explained in terms of national and local factors (Pogge 2002: 15). For prescriptive nationalists such as Miller, positing explanatory nationalism (even if only implicitly) is necessary to show that one's duties to foreigners are a matter of humanitarianism and perhaps merely supererogation. I explain why below. I will start by invoking Pogge's arguments to explain why explanatory nationalism (with respect to severe global poverty and related phenomena) is inadequate.

Methodologically, explanatory nationalism is often deficient for three general reasons. First, it usually involves the false assumption that if some factor, *F*, is present in all cases, and if outcomes diverge from one case to the next, then *F* cannot be part of the causal explanation for any of these outcomes. (Only variables, not constants, can explain divergent outcomes.) As Pogge notes, this commonly accepted methodological assumption is belied in many simple cases. For example, that oxygen is present in all cases in which fire occurs, as well as in cases in which it does not, does not show that the presence of oxygen is not part of the cause of a fire (Pogge 2002: 14). Nevertheless, on the basis of this assumption, explanatory nationalists often neglect global economic institutions controlled by the world's most affluent states (such as the WTO, the IMF and the World Bank) in their analyses of why poverty persists in some countries but not in others in favor of domestic factors that vary from one country to the next.

Second, Pogge says, explanatory nationalists often seem to overlook the fact that causes are themselves the effect of some prior cause (Pogge 2002: 14). For example, explanatory nationalists frequently claim that severe poverty in the Global South is a product of internal

governmental corruption and complacency (indeed, Miller says this explicitly). Nevertheless, explanatory nationalism is methodologically flawed in this respect as well “because it portrays the corrupt social institutions and corrupt elites prevalent in the poor countries as an exogenous fact: as a fact that explains, but does not itself stand in need of explanation” (Pogge 2002: 112).

Third, explanatory nationalists disregard the effect of the global economic order, imposed by affluent countries of the Global North, for sheer lack of relevant evidence: “there being only this one world to observe, it is hard to obtain solid evidence about how the overall incidence of poverty would have evolved differently if this or that global factor had been different” (Pogge 2002: 14). In contrast, evidence about the effects of various domestic institutional arrangements on poverty is abundant, since each poor country (and importantly, each formerly poor country) differs from others in terms of natural environment, history, culture, political and economic system, and government policies, as Pogge observes.

The methodological deficiencies of explanatory nationalism provide compelling grounds for responding with skepticism to explanatorily nationalist accounts of severe global poverty. They do not, by themselves, supply positive reason to reject such accounts, however, or to accept Pogge’s view that wealthy countries of the Global North actively contribute to severe global poverty, in large part through their control of global economic institutions. In support of this view, and against explanatorily nationalist accounts of severe global poverty, Pogge offers four arguments. First, global economic institutions are arranged to the greatest benefit of already wealthy countries and Western corporations, with little regard for the systematic harms these institutional arrangements impose on already poor countries. For example, the World Trade Organization treaty rules force poor countries to open their markets while allowing wealthy countries to adopt protectionist economic policies. As Pogge notes, rich countries’ tariffs on imports from poor countries are four times higher than tariffs on imports from other rich countries: between 1999 and 2005 this has cost poor countries \$700 billion, more than twice what is needed to bring each poor person above the World Bank’s one-dollar-per-day poverty line (Pogge 2002: 17). Rich countries impose additional “anti-dumping” duties on imports from poor countries that they deem “unfairly cheap,” while subsidizing by hundreds of billions of dollars per year their domestic

agriculture, textile, and clothing industries—areas in which poorer countries are otherwise best able to compete in global markets (Pogge 2002: 17–18). Global economic institutions contribute to the persistence and severity of poverty in other ways as well:

By greatly increasing international interdependence, this order exacerbates the vulnerability of the weaker national economies to exogenous shocks through decisions and policies made—without input from or concern for the poorer societies—in the US or EU (e.g., interest rates set by the US or EU central banks, speculation-induced moves on commodity and currency markets). (Pogge 2002: 116)

That the terms of global economic institutions are tilted in these ways to the advantage of wealthy states is primarily the result, Pogge argues, of the already weak bargaining position of poor countries; these terms are “shaped in negotiations where our representatives ruthlessly exploit their vastly superior bargaining power and expertise, as well as any weakness, ignorance, or corruptibility they may find in their counterpart negotiators, to shape each agreement for our greatest benefit” (Pogge 2002: 20).

Pogge does not dispute the thesis (which Miller asserts) that part of the causal explanation for severe poverty in the Global South is that their governments are “autocratic, corrupt, brutal, and unresponsive to the interests of the poor majority” (Pogge 2002: 22). But surely, Pogge says, this is an interesting fact itself in need of explanation; part of the explanation is that affluent countries of the Global North treat corrupt rulers and elites as legitimate representatives entitled to consent on behalf of the people they manage to subjugate, notwithstanding that they have not been elected “in anything resembling free and fair elections” (Pogge 2002: 22).

This first point illuminates three further ways that wealthy states cause severe poverty in the Global South, according to Pogge. Second, the international arms trade both entrenches oppressive, undemocratic rule in many poor countries, and diverts funds from meeting basic needs (Pogge 2002: 22). In contrast, for example, to the \$4.65 billion rich countries spent on development assistance for meeting basic needs in 2000, rich countries sold developing countries \$25.438 billion in conventional weapons. The US accounts for 50 percent of these sales,

while Russia, France, Germany and the UK account for an additional 37 percent (Pogge 2002: 219).

Third, global economic structural norms confer upon those who manage to bring a country under their political and military control what Pogge calls “the international resource privilege.” The international resource privilege authorizes the ruler(s) of a country, no matter how they came to power, to sell the country’s resources on the global market (Pogge 2002: 22). The international resource privilege entrenches the power of oppressive rulers who have not been democratically elected, while at the same time, encouraging corruption, coup attempts, and civil wars (Pogge 2002: 114). The injustice of the international resource privilege is highlighted by the fact that there is no analogous domestic resource privilege: a group that overpowers the guards and takes control of a warehouse may be able to sell the goods, but those who buy them are merely the possessors, not the owners (Pogge 2002: 113). Unlike a domestic resource privilege, however, the international resource privilege is recognized because “a reliable market supply of natural resources is important to the affluent consumer societies, and we therefore benefit from a rule that allows buyers to acquire legally valid ownership rights in such resources from anyone who happens to control them” (Pogge 2002: 22). For the vast majority of the residents of poor countries the international resource privilege is not so beneficial; it provides “repressive rulers a source of revenue and [provides] incentives to try to seize political power by force” (Pogge 2002: 23).

Last, global economic structural norms grant rulers of sovereign states, regardless of how they came to power, an international borrowing privilege: the authority to borrow money in the country’s name. Like the resource privilege, the borrowing privilege facilitates oppressive rule by providing funds to ruling dictators and corrupt elites, and encourages political instability by providing incentives to take political power by force (Pogge 2002: 22). In one respect, the international borrowing privilege is worse than the resource privilege for the global poor since it also exacerbates existing poverty by increasing a country’s debt service obligations (Pogge 2002: 114). As Miller observes, poverty persists in some countries because their governments do not invest in infrastructure, education and health care systems, and welfare programs. Pogge agrees, but unlike Miller, who claims that this is due to corruption, complacency, and greediness on the part of rulers and

elites, Pogge points out that many poor countries simply cannot generate the necessary domestic investment capital because of the heavy burden of foreign debt service obligations accumulated under oppressive rulers.⁶ As a result, such countries become dependent on foreign investment capital, which is usually conditional on the absence of legally mandated standards for minimally decent working conditions, and forces citizens to engage in exploitative sweatshop and sex tourism work (Pogge 2002: 143).

2.3.3.3 *Immigration policy as a matter of justice*

What is the significance of the untenability of the nationalist explanations of severe poverty (and consequent moral harms) in the Global South that Miller articulates for his view on immigration policy? I highlight Pogge's critique of explanatory nationalism with respect to global poverty not only because I believe it is significant in this context in its own right, but also as an illuminating example of a more general view for which I believe it constitutes evidence: that explanatorily nationalist accounts of morally significant institutional phenomena (as opposed to interpersonal interactions) ought to be regarded, by default, with suspicion.

Miller's allegiance to nationalist accounts of the causes of morally significant institutional phenomena (such as severe poverty in the Global South) leads him to conceive of international relations as having a nature that gives rise only to humanitarian duties of assistance on the part of states with respect to foreigners. As Pogge comments in a discussion of Rawls, whose view on this subject is similar to Miller's:

To be sure, we deplore the misery abroad and recognize a positive moral duty to help out with aid and advice. When poverty is due to natural causes, we demand that "there should be certain provisions for mutual assistance between peoples in times of famine and drought and, were it feasible, as it should be, provisions for ensuring that in all reasonably developed liberal societies people's basic needs are met." Insofar as "the great social evils in poorer societies are likely to be oppressive government and corrupt elites," we may be able to help by exerting some pressure on the rulers—perhaps through loans, trade, or diplomacy. But, since we see no causal link between global factors and the incidence of oppression, corruption, and poverty, we do not even ask whether

those who shape global institutions and, more generally, the global context in which the poorer countries are placed have a negative moral responsibility for world poverty. (Pogge 2002: 141)⁷

This makes sense of why Miller takes it that the threat immigration (allegedly) poses to the continuity of national identity justifies the state in adopting restrictive immigration policies meant to shield national identity from abrupt transformations: national identity is (according to Miller) profoundly morally valuable, while the moral claims of foreigners affected by the state's selection of immigration policies generate, at best, only weak duties of assistance. In other words, in Miller's view, there is little reason for thinking that foreigners will have moral claims on the state (in relation to its selection of immigration policies) weighty enough to override citizens' interest in preserving the national identity. This is because states can, at best, have only relatively weak humanitarian duties of assistance to foreigners, a view Miller accepts due to his nationalist conception of the causes of morally significant institutional phenomena, such as global poverty.

Pogge's critique of the improbability of explanatorily nationalist accounts demonstrates, both in relation to global poverty and generally, that the circumstances in which states select policies that affect foreigners, such as immigration policies, are circumstances of justice (as opposed to circumstances of beneficence). What I mean to emphasize is that foreigners affected by the state's selection of immigration policies (whether as prospective migrants or in some other capacity) have weighty claims of justice against states (in relation to their selection of immigration policies). This means, to put as fine a point on it as possible, that Miller's argument for restrictive immigration policies is invalid. Miller concludes that states may restrict immigration in order to shield the national identity from sudden disruption, but the inference to this conclusion from his premises seems plausible only because Miller's explanatory nationalism makes the moral claims of foreigners affected by the state's selection of immigration policies seem weak in comparison to citizens' interests in preserving the continuity of the national identity. Once Miller's explanatory nationalism is rejected (in favor of accounts that recognize the extra-national causes of global poverty and other morally significant phenomena), there is no longer a basis on which to discount the moral claims of foreigners relative to those of citizens, and, therefore, no reason to accept Miller's conclusion.⁸

2.4 IMMIGRATION AND THE ECONOMY

Though rarely advanced as a ground for limiting immigration by philosophers, the effects of immigration on the economies of receiving states are perhaps the most familiar appeal made in popular and mainstream political discussions for immigration restrictions. Within these discussions, the conclusion most often drawn is that wealthy states ought to restrict immigration substantially, both in quantity and kind, on account of the economic burdens immigrants allegedly place on receiving societies. In particular, opponents of immigration in wealthy countries make three sorts of claims: first, that immigrants increase native unemployment by occupying some of a limited number of available positions; second, that immigrants' presence in the pool of job-seekers depresses wages for citizens (both by increasing competition for jobs and because immigrants, including documented immigrants, are often willing to work for lower wages than citizens); and third, that immigrants disproportionately receive welfare benefits and other public goods distributed by liberal welfare states.⁹ Indeed, despite general opposition to government regulation, neoliberal economist Milton Friedman opposes unrestricted immigration for precisely such reasons; he asserts that "you cannot simultaneously have free immigration and a welfare state," on the assumption that the benefits of the welfare state will entice overwhelming numbers of foreigners to immigrate (*Economist* 2002a).

2.4.1 *Immigration as Economically Beneficial*

That a high level of immigration harms the economic interests of wealthy states does not seem to be supported by the best evidence, however. Economists increasingly argue that, to the contrary, wealthy societies ought to allow significantly greater numbers of immigrants, both "skilled" and "unskilled," to enter than they currently permit, either permanently or temporarily, if they wish to promote their long-term economic interests.

Defenders of the view that states ought to restrict immigration in virtue of its effects on the receiving economy rely on a nationalist principle of political morality that they rarely articulate explicitly, and that they therefore also never defend: that states ought to adopt the immigration policies that best promote the national economic interest. In

what follows, I evaluate this prescriptive economic nationalism among writers who argue that wealthy states ought to enact more permissive immigration policies. There is good reason to think that these writers' empirical premise (that greater quantities of immigration are economically advantageous for affluent countries) is true, at least on aggregated measures. Thus, presentation of their evidence for this premise throws into doubt the arguments of prescriptive economic nationalists who defend more restrictive immigration policies.

The prescriptive economic nationalist argument I am presently considering can be represented in this way:

1. States ought to adopt the immigration policies that best promote their national economic interest.
2. Wealthy states' economic interests are best promoted by permissive immigration policies.
3. Therefore, wealthy states ought to adopt permissive immigration policies.¹⁰

I mentioned above that the economic effect of immigration on receiving countries has not been a primary concern for philosophers writing on immigrant admissions (perhaps because the focus has been on the admissions policies of countries already very wealthy in comparison to the sending countries of most prospective immigrants), although some have addressed the issue in response to anticipated objections to their views (Wellman and Cole 2011: 262–4, Brock 2009: 196–7). The major source of support for the view that wealthy receiving countries should liberalize their admissions policies in order to capture a larger share of the economic benefits of immigration is mainstream media, in particular *The Economist*, the arguments of whose (typically unnamed) staff writers I draw upon generously in this subsection. The source of the argument may explain why its first premise, the moral premise, is consistently taken for granted as true, and why the argument's defense proceeds by giving evidence exclusively for the second premise and against objections to it. In this regard, prescriptive economic nationalists make three clusters of points.

Economic nationalists argue, first, that "an expanding workforce permits faster [GDP] growth. More people can do more work, and many migrants are young adults who are particularly productive" (*Economist* 2008b). The immigration of highly skilled foreigners creates

jobs in wealthy countries (“every foreigner who is given an H1B visa creates jobs for five regular Americans” (*Economist* 2008d)), and indeed many particular industrial sectors in affluent societies depend on foreign labor: “migrants increasingly alleviate specific labour shortages in rich economies. Some economies could not function without foreign workers” (*Economist* 2008b). Economic nationalists typically defend liberalization of immigration restrictions for both “skilled” and “unskilled” migrants, so also frequently argue that “ill-paid sectors such as the hotel industry, fast-food, farming, nursing and animal-slaughtering . . . could not survive without their immigrant workers. The argument is that immigrants take the nation’s dirty and dangerous jobs because [citizens] will not” (*Economist* 2005a). In part, the explanation for the economic benefits of immigration is indirect: “an influx of workers reduces the risk of wage pressures and rising inflation” (*Economist* 2008b). That is, by increasing the labor pool, immigration “helps to stop wages rising even further, and allows the entire economy to run at a higher speed than might otherwise be possible” (*Economist* 2002a).

Greater immigration is in the economic interest of wealthy states, some economic nationalist argue, also because (and contrary to the claims of economic nationalists opposed to immigration) immigrants contribute, on average, especially in the long term, far more to affluent society’s tax revenues than they receive in public welfare benefits, “not least because most immigrants arrive as young and healthy adults” (*Economist* 2005a). Setting benefits received by immigrants against taxes paid, the National Research Council reports that net contribution to public tax revenues of immigrants to the US is approximately \$10 billion per year: “while an immigrant with less than high-school education had a negative long-term fiscal impact of \$13,000, a better educated immigrant produced a long-term gain of \$198,000. In 2002, the President’s Council of Economic Advisors put the gain at up to \$14 billion a year” (*Economist* 2005a). Similarly, Britain’s Home Office estimates that “the foreign-born population pays about 10 percent more to the government than it receives in expenditures” (*Economist* 2002a). Perhaps the most significant aspect of immigrants’ contribution to public tax revenues is its long-term benefits for wealthy societies whose aging populations threaten to overburden social security systems. Economic nationalists argue that immigrants alleviate wealthy countries’ deficit between the tax revenue generated by their native

working-age population and the expenditure imposed by their aging populations' social security payments in two ways: "If migrants make a net contribution to taxes over their lives, they reduce that debt. But even if they do not . . . they increase the number of future taxpayers. The same debt spread over more payers automatically reduces the individual burden of future taxpayers" (*Economist* 2002a).

Prescriptive economic nationalists, *qua* nationalists, give moral priority to the interests of (at least some) citizens. This much is clear in the arguments I've mentioned so far, in which the interests of immigrants and other foreigners affected by the immigration policies of wealthy states are referenced parenthetically at best. These sorts of arguments conceive of the value of prospective immigrants in almost exclusively instrumental terms. This is most clear in the third set of arguments that economic nationalists typically advance in favor of permissive immigration policies. Immigrants' contributions to the economies of wealthy societies are often partially explained in terms of the fact that they will accept work that citizens will not, at wages that citizens will not accept. Even where this does not have macro-economic benefits, it benefits individual citizens and their families micro-economically. So, as some economic nationalists note, "migration probably raises the living standards of the rich (think of all those foreign nannies and waiters)" (*Economist* 2002a), as well as the middle class: "migrants can also release skilled natives to do a job (for example by providing child care that allows a parent to go back to work)" (*Economist* 2008b).

2.4.2 "The" National Economic Interest

I highlight these analyses of the economic impact of immigration appearing in *The Economist* not as conclusive evidence that immigration is, all things considered, a benefit to the economies of wealthy receiving countries, but rather because they are the best example of the prescriptive economic nationalist defense of permissive immigration policies. Nevertheless, the second premise of their argument does seem, if one aggregates the economic consequences of immigration for wealthy receiving societies, to be correct, if somewhat overstated. Castles and Miller's review of the economic consequences of immigration indicates that, perhaps most importantly, there is little consensus among economists on particular aspects of the impact of immigration on the economies of wealthy receiving countries, such as its effect

on unemployment, inflation, wages, and tax revenue. Most seem to agree, however, that the net macro-economic impact of immigration is modest but positive in the aggregate (Castles and Miller 2009: 230–3).

What is worrisome in the prescriptive economic nationalist argument for permissive immigration policies is that it depends on a unified conception of “national economic interest.” However, as with analogous conceptions of “national culture” and “national identity,” it seems clear that to suppose there is a unified national economic interest (in the sense that the same policy might be equally beneficial to all citizens) is sociologically inaccurate; moreover, as with notions such as “the” national culture and “the” national identity, it seems likely that what is taken to be “the” national economic interest will in fact just represent the economic interests of the most privileged and powerful groups within the society.

That different citizens’ economic interests are disparately affected by the policies that states may adopt seems uncontroversial; how any one citizen’s economic interests are affected by the adoption of some policy will depend on how she is already positioned within the society, economically and socially. Indeed, empirical data on immigration to wealthy countries suggests that what largely determines the effects of an immigration policy on any given citizen is her economic and social position within the society. Most economists seem to agree that, on-balance, the owners of production and capital, as well as middle-class and affluent consumers, benefit most from immigration (both “skilled” and “unskilled”) (Castles and Miller 2009: 231). On the other hand, those who are already economically and otherwise socially disadvantaged in receiving countries tend to bear disproportionately the burdens of increases to the number of foreigners admitted as immigrants. Most data suggest that immigrants do not cause increased unemployment among natives, both because immigrants affect the economy in both direct and indirect ways that increases the total number of jobs available, and because immigrants, more often than not, work in sectors that are already inadequately staffed by citizens (*Economist* 2008b, 2006). (Indeed, this is often a condition of their admission.) The burdens appear, rather, to consist primarily in wage depression for poor and working class (“unskilled”) citizens, with whom immigrants tend to compete most for jobs. (This is often true even when immigrants are “skilled” because receiving societies, particularly wealthy ones, tend to devalue the education, training, and experience of immigrants from

poor countries; thus, for example, many people educated and trained as doctors and nurses in their country of origin find that, upon arriving in the US, Canada, Australia, and the EU, they can find employment only as medical assistants, orderlies or dependent care workers. This phenomenon is sometimes called “brain waste.”) A frequently cited study in this regard, by George Borjas (quoted in Castles and Miller 2009: 232), finds that immigration to the United States between 1980 and 2000 has kept the wages of least-skilled citizens 5–10 percent lower than they would have otherwise been.¹¹ Other studies find a smaller, but nevertheless negative, impact on the wages of working-class and poor Americans (Castles and Miller 2009: 232).

Definitive evidence on this empirical point is limited, but many economists appear to agree that increases to the number of foreigners admitted to affluent countries as immigrants has a mixed but slight-to-moderate on-balance negative effect on poor and working-class citizens (who tend disproportionately to be women and/or racially disadvantaged) in the short term, if not in the long term as well (Castles and Miller 2009: 231–2). What this shows is that the empirical premise of the prescriptive economic nationalist argument is false (or, at least, misleading) as stated. If revised to read “The economic interests of affluent citizens of wealthy countries are best promoted by permissive immigration policies,” the empirical premise could be endorsed without qualification. However, the moral premise is no longer plausible if modified in a way that preserves the argument’s validity: “States ought to adopt the immigration policies that best promote the economic interests of their affluent citizens.” This is one reason prescriptive economic nationalist arguments for permissive immigration policies should be rejected.

2.4.3 Particularist Nationalism

A second reason is that prescriptive economic nationalism is not a candidate answer to the question “What principles should states use to select just immigration policies?” While prescriptive economic nationalism is certainly a normative position (in the sense that it provides criteria for policy selection), I argue that it is inappropriate to regard prescriptive economic nationalism as a moral position on states’ admissions policies. The criterion for policy selection it endorses is not so much morally indefensible as simply amoral.

Pogge distinguishes between different sorts of prescriptive nationalisms in a way that illuminates this criticism. As he notes, while some variants of prescriptive nationalism are universalist, others are particularist. The latter “hold that nationalist commitments are valuable only when they are commitments to some specific nation” (Pogge 2002: 119). Particularist nationalism is exhibited by those who believe that only their own nation’s success matters. In contrast, universalist nationalists “assert that all nations can be valuable communities and can, by realizing this potential, generate the same obligations and prerogatives for their members, when they are similarly placed in the relevant respects” (Pogge 2002: 119). Universalist nationalists, therefore, hold that all national communities can be morally worthy of preservation and protection.

That prescriptive economic nationalist arguments (whether they conclude in favor of permissive or restrictive immigration policies) are a species of particularist nationalism is confirmed in multiple ways. First, prescriptive economic nationalists do not defend their arguments in specifically moral terms; as I have noted, none explicitly acknowledges or defends the moral principle that the validity of their argument requires. Moreover, while prescriptive nationalists (considered as such) need not urge the adoption of policies contrary to “the national interest” for the benefit of foreigners and other states, they equally cannot present their arguments as moral when such arguments favor policies that allow for violations of the basic rights and harm to the vital interests of foreigners.¹² That no prescriptive economic nationalist takes seriously the effects of the immigration policies they endorse on foreigners, even when they might experience considerable harm, suggests that prescriptive economic nationalism is particularist rather than universalist. Economic nationalists often make this aspect of their argument explicit; for instance: “The first essential is to accept that the voters’ right to a say about who and how many can enter must take precedence over the rights of those unlucky enough to be born in poorer parts of the world” (*Economist* 2002b). And similarly: “The booming economies of the developing world are sucking back talent that was once America’s for the asking” (*Economist* 2008d).

To determine which nationalisms are defensible as moral positions (as opposed to merely normative but amoral positions) about immigration policy, one must distinguish between universalist and particularist nationalisms. Pogge argues that “on account of the chauvinist, often

racist, distinctions [the latter] views invoke, they are not worth serious moral discussion" (Pogge 2002: 119). Although I am inclined to agree, the point I wish to underscore is that, as particularist nationalists, economic nationalists are simply not offering an answer to the question this book asks: "What immigration policies are just?" In other words, even insofar as the first premise of the economic nationalist argument is true, it is not true in the relevant, moral sense.

2.4.4 The Domestic Poor

The economic nationalist argument for permissive immigration policies does not succeed for these reasons. One might argue, however, that my first objection to this argument (that permissive immigration policies benefit wealthy receiving countries only in the aggregate, and may harm domestic disadvantaged groups) supplies the basis for a distinct nationalist approach to the political morality of immigration policy. If it is true that permissive immigration policies harm the economic interests of disadvantaged groups in wealthy receiving countries, and one could show that states have special moral obligations to domestic disadvantaged groups, then it would seem that wealthy receiving countries ought to restrict immigration insofar as it is necessary to protect the economic interests of the domestically disadvantaged.

Stephen Macedo argues that wealthy receiving countries ought to restrict immigration for precisely this reason (Macedo 2007).¹³ In particular, Macedo calls for substantial limits on the admission of "poorly educated and low-skilled" foreigners, whom he faults for "increased competition for low-skilled jobs, lowering the wages of the poor, and increasing the gap between rich and poor" citizens. Echoing Miller, Macedo argues in addition that "the high proportion of non-citizens among the poor may also lessen support for social welfare policies" (Macedo 2007: 63–4). Macedo acknowledges that admissions policies of the sort he advocates are contrary to the interests of the foreigners whose exclusion he defends, foreigners who are generally materially worse off than disadvantaged groups in wealthy receiving countries. Nevertheless, he contends, "the comparative standing of citizens matters in some ways that the comparative standing of citizens and non-citizens does not" (Macedo 2007: 64).

Macedo does not deny that states have moral obligations to foreign governments and their citizens; states must, in his view, observe duties

of fair dealing, rectification for historical injustice, and humanitarian assistance (Macedo 2007: 70). These are duties owed to human beings as such, whether they are compatriots or foreigners. However, Macedo argues, compatriots have special obligations of distributive justice to each other as “co-participants in self-governing political communities” (Macedo 2007: 64). Why is this morally significant? According to Macedo:

As members of a political community, we are joined in a collective enterprise across generations through which we construct and sustain a comprehensive system of laws and institutions that regulate and shape all other associations, including religious communities and families. We are born into political communities and are formed by them. From cradle to grave (and beyond), our interests, identities, relationships, and opportunities are pervasively shaped by the political system and the laws that we collectively create, coercively impose, and live within. The basic values of our political order pervasively shape the lives of those who reside within. (Macedo 2007: 73–4)

In virtue of these shared political relations, Macedo maintains, persons have duties of distributive justice to fellow citizens in addition to duties owed to humanity as such.¹⁴ This, in Macedo’s view, explains why the state ought to enact immigration policies in service of the economic interests of the domestic poor even if those policies deprive much poorer foreigners of enhanced economic opportunities. In particular, Macedo proposes that wealthy receiving countries limit “immigration based on family reunification (perhaps limiting that preference to spouses and minor children), placing greater weight on priorities for education and other skills, and curbing undocumented or illegal immigration” (Macedo 2007: 77).

A small problem for Macedo’s proposal is that it rests on what appears to be an exaggerated estimate of the negative impact of “low-skilled” migration on the working class and the poor in wealthy receiving countries. Immigration does not seem, on-balance, to “take jobs away from” the least well-off citizens, and its impact on the wages of domestic disadvantaged groups—the worst of its harms—appears to be fairly small, if my discussion above is correct. Moreover, as Ryan Pevnick (arguing against Miller) points out, the claim that the

immigration of poor foreigners undermines support for redistributive programs “is (at least) not unambiguously supported by the empirical literature” (Pevnick 2009: 148). These observations do not undermine Macedo’s argument, but they do show that its success depends on heavily discounting the interests of poor prospective migrants relative to the interests of citizens.

There are theoretical reasons to question Macedo’s proposal as well. One is that Macedo does not consider that the sorts of immigration policies he advocates may violate duties that he allows states to owe foreigners *qua* human beings. On Macedo’s view, states have duties of fair dealing (which includes “nonexploitation, the avoidance of force and fraud, and the duty to curb the capacity of one’s citizens or corporations to harm and exploit others,” as well as “doing our fair share to address common problems” (Macedo 2007: 75)), duties of rectification for past injustice (“if we have exploited or oppressed poorer and weaker societies, or if we have allowed our corporations to do so, then we have debts to these other societies that require some sort of recompense” (Macedo 2007: 76)), and duties of humanitarian assistance (“to do what we can to relieve distress, to end suffering, to stop gross violations of human rights, and to get a society on its feet so that it can look after its own affairs” (Macedo 2007: 76)).

Macedo is mostly correct when he notes that people who are poor in an absolute sense generally do not engage in transnational migration, lacking the resources it typically requires. (Macedo 2007: 79). Absolutely poor people do cross national boundaries, but usually only from their country of origin to a neighboring, equally poor country, often driven by violent conflict. What is rare is the migration of a person poor in absolute terms to a wealthy country of the Global North. This means that it would be difficult to make the case that wealthy states that exclude poor migrants thereby violate duties of humanitarian assistance. Prospective migrants are almost never poor in an absolute sense, though they are often poor relative to the standards of the receiving state. While it seems likely that wealthy states that exclude relatively poor prospective migrants would thereby violate duties of distributive justice to them, Macedo holds that duties of distributive justice apply only among compatriots. Nevertheless, in a small range of cases, people who are absolutely poor are able to reach the borders of wealthy countries, especially if the wealthy country (for example, the United States) is geographically proximate to a much poorer society

(for example, Haiti). In these cases, Macedo's own argument entails that the wealthy country may not refuse admission to poor migrants without violating duties of humanitarian assistance.

Macedo may argue that excluding migrants who are poor in an absolute sense is permissible even if doing so violates duties of humanitarian assistance because their admission harms the economic interests of the domestic poor, and therefore violates duties of distributive justice states owe their citizens. However, in order to support this reply, Macedo must also provide a reason for privileging states' duties of distributive justice to their own citizens over duties of humanitarian assistance to foreigners when the two come into conflict. Even if one finds Macedo's argument that states have duties of distributive justice only to their own citizens compelling, it does not by itself also show that states' duties of distributive justice to their own citizens override duties of humanitarian assistance in cases of conflict. It seems to me that it is most plausible to hold, at least in this case, if not generally, that duties of humanitarian assistance override duties of distributive justice (as Macedo conceives of them) not only because the domestic poor of wealthy countries enjoy a much higher standard of living than do residents of the Global South who are poor in an absolute sense, but also because the admission of poor foreigners is unlikely to significantly affect the economic interests of the domestic poor of wealthy countries (in virtue both of their likely very small numbers and the likelihood that Macedo has, generally, exaggerated the impact of the immigration of the "unskilled").

Macedo's proposal would also violate the duties of fair dealing and (indirectly) rectification he says states have to each other and foreigners. Wealthy countries that severely restrict the immigration of foreigners who do not meet criteria for education and skilled-ness by setting an overall annual ceiling and awarding preference to middle-class and wealthy, college-educated professionals with marketable skills (as Canada does, and as Macedo favors (Macedo 2007: 77)) entrench and intensify extreme poverty in the Global South by making possible and encouraging massive South-North migration flows of the people most capable of improving human development prospects in poor countries. (I develop this point in much greater detail in Chapter 3.) Macedo appears to assume that wealthy countries' immigration policies can harm, among foreigners, prospective migrants only, and for this reason, does not consider that his proposal may violate duties of justice by unduly and avoidably harming the global poor. In this respect,

Macedo's proposal is excluded by the duty of fair dealing he himself maintains states have toward each other and foreigners. Moreover, if one accepts Pogge's analysis of the causes of extreme global poverty (as Macedo appears to do (Macedo 2007: 76)), wealthy countries of the Global North have, by Macedo's conception of them, duties of rectification with respect to poverty in the Global South. Immigration policies of the sort Macedo advocates contravene these rectificatory obligations. As before, Macedo's argument that states have duties of distributive justice only to their own citizens does not by itself also establish that states' duties of distributive justice override their duties of fair dealing and rectification for past injustice.

I wish to argue, finally, that Macedo's account of why states have duties of distributive justice only to their own citizens does not support the exclusion of foreigners from the scope of distributive justice. According to Macedo, considerations of distributive justice apply among compatriots because compatriots are mutually engaged in a collective project of self-governance; compatriots "share a system of binding laws" (Macedo 2007: 71), and institutions that they themselves create and enforce upon each other, and which profoundly influence each other's identities and life circumstances. This much seems right, even if (as I think) Macedo over-emphasizes the importance of formal political institutions to the exclusion of social institutions that are often informal to varying degrees, such as gender, race, and class. That compatriots participate together in a system of collective self-governance does not explain, however, why it is morally significant. Why does it generate duties of distributive justice among co-participants?

Macedo might say that compatriots have duties of distributive justice to each other simply because they collectively create and live under the same set of laws and institutions. This does not seem morally significant in itself, however; that you and I are bound by the same set of rules would give no reason why we should have special obligations to one another that we do not have to others, even if we together created those rules. Alternatively, one might think that compatriots have duties of distributive justice to each other because their "interests, identities, [and] relationships" are "pervasively shaped" by the shared institutions under which they live; compatriots "are formed by" their shared political institutions (Macedo 2007: 74). Once more, however, it hard to see why this in itself ought to mean that compatriots have duties to each other that they do not have to foreigners; that you and I are mutually

bound by a set of rules, no matter how profoundly they influence our identities and life circumstances, does not seem intrinsically relevant to the question of whether I ought, morally, to favor your interests over the interests of people bound by different, identity-defining, rules.

What seems morally significant about co-participation in systems of collective self-governance is the mutual vulnerability to each other's actions and decisions that members share; compatriots have great causal efficacy with respect to each other. This suggests that co-participation in systems of collective self-governance is merely of instrumental significance; it explains why compatriots have great causal efficacy with respect to each other, which is, itself, the reason that duties of distributive justice hold among compatriots. This account of the scope of distributive justice is not only compelling, but also what Macedo appears to have in mind: "We have strong common obligations as fellow citizens because we collectively govern one another: we collectively make hugely consequential decisions" (Macedo 2007: 74).

This interpretation, the most plausible way of understanding Macedo's account of the moral significance of shared nationality, does not support excluding foreigners from the scope of distributive justice, however. Unless one accepts implausible explanatorily nationalist accounts of the causes of morally significant phenomena or an ahistorical Westphalian conception of sovereignty, one cannot deny that states have causal efficacy with respect to other states and individual foreigners. Pogge's analysis of the causes of global poverty is by itself ample evidence that states in fact have tremendous causal efficacy in relation to other states and their citizens. This is nowhere more apparent than in states' decisions regarding immigrant admissions.

Understanding the moral relevance of common citizenship in terms of the mutual vulnerability to which it (non-uniquely) gives rise explains why Macedo's exclusion of foreigners from the scope of distributive justice on the grounds that "membership in international bodies [such as the UN] does not have the same significance" (as membership in the same state) is beside the point (Macedo 2007: 74), as well as why his claim that "cosmopolitan distributive justice . . . makes no sense absent a cosmopolitan state" (Macedo 2007: 74) reflects a tacit conflation of Westphalian ideals with reality. Only if one supposes that states and their citizens are relatively impervious to extra-national influence does it seem plausible that individuals would have to share a political allegiance in order to be vulnerable to each other's decisions. States clearly

have the power to significantly affect the life circumstances and opportunities of foreigners, wealthy countries of the Global North more so than others. Indeed, observing the disproportionate global influence of wealthy countries of the Global North illuminates just how bizarre it would be to think that their citizens have more extensive duties to those with whom they share reciprocal causal efficacy (namely, their compatriots) than they do to those who mostly lack causal efficacy with respect to the citizens of wealthy countries (namely, poor residents of the Global South).¹⁵

2.5 CONCLUSION

My arguments in this chapter should not be understood as favoring relatively permissive immigration policies or as favoring relatively restrictive immigration policies. The purpose of this chapter has been to demonstrate that prescriptive nationalists have not put forward reasons for restricting immigration or for permitting more that can survive scrutiny. In this chapter, I have argued that extant prescriptively nationalist approaches to immigration justice can be defended neither morally nor empirically. I have canvassed a variety of arguments, each of which appeals, either explicitly or implicitly, to a (nationalist) principle of political morality combined with empirical predictions about the effects of permissive immigration policies. A recurring theme of my objections to these arguments is that they rely, more often than not, on poorly evidenced factual speculation about the effects of immigration on receiving societies. Even when this has not been the case, these arguments have invoked social scientific concepts (such as national culture, national identity, and national interest) that are both sociologically inadequate and harmful to social groups that are disadvantaged.

There are doubtless many other prescriptively nationalist arguments that can be brought to bear on immigration policy, not only because of the common xenophobic tendency to scapegoat immigrants for different sorts of social problems, but also because each of the approaches I examine here may be exploited to different purposes under altered empirical assumptions. Nonetheless, I believe the arguments I raise in this chapter are pliable enough that they will be useful in defeating the imminent proposals I've failed to anticipate. However, the failure of the prescriptively nationalist arguments I consider in this chapter is not attributable solely to the deficiencies of specific proposals; I believe that

prescriptive nationalism ought to be rejected on principle as well. To this end, I will present several arguments in Chapter 5 with the goal of showing that nationalist principles of political morality are not appropriate as criteria for selecting just admissions policies. Meanwhile, I will argue in the next chapter that while extant cosmopolitan approaches to immigration justice do not falter on principle, most rely on empirical assumptions that, as in prescriptively nationalist proposals, are contradicted by the best evidence.

Chapter 3

COSMOPOLITAN APPROACHES TO IMMIGRATION JUSTICE

3.1 INTRODUCTION

This chapter and the previous one both advance the argument for the Priority of Disadvantage Principle (just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged) by subjecting competing views to critique. Chapter 2 examined approaches to immigration justice that are nationalist, by which I mean that they are premised on the idea that states should favor the interests of their own citizens over those of foreigners in their immigration policy choices. This chapter's concern is for cosmopolitan approaches to immigration justice.

Cosmopolitan approaches to immigration justice share with nationalist approaches the feature of being substantive moral positions. That is, both cosmopolitan and nationalist approaches hold that universal principles of justice constrain states' selection of immigration policies. The difference between cosmopolitan approaches and nationalist approaches is in the content of the universal principles of justice that each holds delimit states' moral discretion to choose immigration policies. In contrast to nationalist approaches, cosmopolitan approaches to immigration justice maintain that states may not favor the interests of citizens over those of foreigners in the selection of immigration policies. From a cosmopolitan perspective, a person's nationality is morally irrelevant in itself.

In this chapter, I distinguish between two major types of cosmopolitan approaches in terms of their substantive policy recommendations: inclusive and exclusive. The most well known cosmopolitan approaches to immigration justice have been of the inclusive variety, holding that states should eliminate entirely or mostly restrictions on immigration.

I shall examine several distinct rationales offered by different theorists for this view. While defenders of inclusive cosmopolitan views all reach similar conclusions as regards immigration policy (namely, “open borders”), those whom I characterize as exclusive cosmopolitans all defend distinct policy recommendations. What they have in common is a commitment to cosmopolitan principles and the view that states ought to restrict immigration non-trivially. (As this paragraph makes clear, neither cosmopolitan nor nationalist approaches to immigration justice are defined by the substantive policy-related conclusions they reach—for example, by whether they argue for more permissive or more restrictive admissions criteria.)

My goal in this chapter is to show that extant cosmopolitan approaches to immigration justice fail on their own terms—that they are either internally inconsistent, that they fail to justify their own conclusions, or both. In most cases, I find that the approaches I examine here depend, both in the formulation and justification of guiding principles and in the application of these principles to policy, on false empirical assumptions about global economic and political institutions, and about immigrants and international migration. However, I do not reject extant cosmopolitan approaches to immigration justice on principle, as my own principle, the PDP, is itself cosmopolitan.

3.2 INCLUSIVE COSMOPOLITANISM

Inclusive cosmopolitan approaches hold that the moral equality of citizens and foreigners requires states to open their borders by eliminating all or most restrictions on immigration. Here, I consider five defenses of this position: the consequentialist argument, the liberal consistency argument, Rawlsian arguments, the argument from democracy, and the libertarian argument.

3.2.1 *The Consequentialist Argument*

Even if most philosophical defenders of “open borders” do not argue for their position primarily or explicitly on consequentialist grounds, almost all assume that eliminating immigration restrictions would generate greater benefits than costs, either overall (giving everyone’s like interests equal consideration), or at least for the worst-off globally. In particular, many advocates of open borders claim that, by substan-

tially lowering formal barriers to immigration, wealthy countries of the Global North could bring about a considerable reduction in global poverty and economic inequality. Some hold that wealthy, liberal states are morally required to eliminate restrictions on immigration as one way of (partially) discharging their obligation (whatever its specific nature) to the global poor.

3.2.1.1 The alleged global egalitarian economic consequences of open borders

The idea that wealthy, liberal states could significantly alleviate global poverty by eliminating formal barriers to immigration finds voice among several philosophers and political theorists (Huemer 2010; Chang 2007; Kymlicka 2001; Trebilcock 1995; Nett 1971).¹ Joseph Carens, for example, invokes this idea in defense of open borders, arguing:

[that] Borders should generally be open and that people should normally be free to leave their country of origin and settle in another, subject only to the sorts of constraints that bind current citizens in their new country. The argument is strongest, I believe, when applied to the migration of people from third world countries to those of the first world. Citizenship in Western liberal democracies is the modern equivalent of feudal privilege—an inherited status that greatly enhances one's life chances. (Carens 1987: 251–2)

Carens appeals to the alleged egalitarian economic consequences of open borders even more explicitly when he argues,

Freedom of movement would contribute to a reduction of political, social, and economic inequalities. There are millions of people in the Third World today who long for the freedom and economic opportunity they would find in affluent First World countries . . . The exclusion of so many poor and desperate people seems hard to justify from a perspective that takes seriously the claims of all individuals as free and equal moral persons. (Carens 1992: 26)

The thought underlying Carens' claims in both of these passages, and the egalitarian, consequentialist argument for open borders generally,

is that the global poor lack economic opportunities in their countries of residence, as a result of which their well-being is seriously impaired. If wealthy, liberal states eliminate formal barriers to immigration, the global poor could partake of the abundant economic opportunities these states currently reserve for their own legal residents.

Carens does not defend open borders exclusively, or even primarily, on consequentialist grounds. (See subsection 3.2.3 for an examination of Carens' central arguments for open borders.) In contrast, the prospect that greater freedom of international movement would significantly diminish global poverty is the major reason that wealthy, liberal states ought to eliminate immigration restrictions, according to Chandran Kukathas (Kukathas 2005, 2003). Kukathas argues:

The great majority of the people of the world live in poverty, and for a significant number of them the most promising way of improving their condition is to move . . . Even if the general condition of a society were good, the situation of particular individuals would often be poor, and for some of them immigration would offer the best prospect of improving their condition. To say to such people that they are forbidden to cross a border in order to improve their condition is to say to them that it is justified that they be denied the opportunity to get out of poverty, or even destitution. (Kukathas 2005: 211)

According to Kukathas, freedom of international movement facilitates reductions in global economic inequality by permitting the movement of labor from areas with fewer to areas with greater economic opportunities: "The global effect of migration is positive, as it involves a movement of people from places where they are less productive and often unable to make a living to places where they are both more productive and better off" (Kukathas 2005: 212).

The evidence for the egalitarian global economic effects of open borders is essentially speculative. After all, wealthy, liberal states have never permitted free immigration from much poorer countries in global economic circumstances remotely resembling those that obtain today, if they ever have. Insofar as evidence is presented at all, the most frequently given in defense of the consequentialist defense of open borders is a 1984 study by Bob Hamilton and John Whalley claiming, on the basis of theoretical economic models, that the elimination of

restrictions on immigration by countries worldwide in 1977 would have doubled global aggregate GNP (Hamilton and Whalley 1984: 61). What is the basis for this staggering claim? As Michael Trebilcock explains, “open immigration encourages human resources to move to their most productive uses, whatever the localized distributional impact in countries of emigration or immigration” (Trebilcock 1995: 232). In other words, the argument is one from efficient use of human “resources”: the elimination of barriers to transnational migration permits workers to move from areas where the supply of labor is too great in the direction of areas where there is unfulfilled demand for labor.

There are several faults underlying Hamilton and Whalley’s conclusion, as well as in the consequentialist defense of open borders on grounds of global poverty alleviation, however (regardless of the extent to which the latter relies on the former). First is that the argument depends on the tacit adoption of an idealized conception of the (international) mobility of the global poor. For the vast majority of the 46 percent of the world’s population that is poor by World Bank standards (Pogge 2002: 2) and lives “without freedom of action and choice that the better-off take for granted” (World Bank 2001: 1), travel to wealthy liberal states in North America and Europe is not affordable. People who are severely malnourished, are suffering from easily and cheaply preventable or treatable diseases, or do not have access to safe drinking water are, indeed, mostly excluded by the admissions criteria of wealthy, liberal countries of the Global North. However, the elimination of formal barriers to their immigration would not make them more free to move about internationally because their exclusion from wealthy, liberal countries of the Global North is, in almost all cases, over-determined. The ability to migrate transnationally demands material means that, for the most part, only those who are relatively privileged, economically and educationally, possess. That this is the case is corroborated by the facts that most migrants to North America and Europe are middle class in their country of origin, and that the majority of immigrants in North American and European countries have originated in countries that, by UNDP standards, are high- and middle-development (Brock 2009: 193; Castles and Miller 2009: 74; Shachar 2009: 84; Tanner 2005: 3; Pogge 1997: 14). Roberto Suro points out, for example, that Mexican migrants to the United States “tend to have high rates of employment before they leave, often in comparatively good jobs requiring some skills in the local context. Their

schooling and earnings place them neither at the bottom nor at the top of their communities" (Suro 1994). That "open borders" would not benefit the worst-off does not, by itself, mean that one ought to reject the proposal, which may benefit others. Nevertheless, this argument, beyond showing that the chief benefit claimed of open borders is exaggerated (perhaps wildly so), also demonstrates that the tenability of the proposal is precarious, since its primary justification lies in its benefit to members of already privileged groups, including the residents of receiving countries. (See section 2.4.)

A minority of the global poor may be positioned (socially, geographically, or in some other respect) to immigrate to wealthier countries with more abundant economic opportunities in the absence of formal barriers to their entry. However, a second problem for the consequentialist defense of open borders (as well as for Hamilton and Whalley's prediction) is that it relies, again tacitly, on an idealized conception of the typical poor migrant's social wherewithal, as well as on an explanatorily nationalist understanding of the causes of severe poverty. The potential for freedom of international migration to benefit a person depends on the extent to which she is privileged or disadvantaged by social structures related to gender, race, and class (among other things). Ayelet Shachar comments that the redistributive potential of freedom of international movement requires, on the part of migrants:

sufficient knowledge of where to move in order to improve one's economic prospects and to gain greater political freedom, in addition to basic linguistic and occupational skills, the willingness and ability to leave family members and a familiar cultural context behind, and related factors that deeply, and often unequally, shape the potential mobility of men and women in international patterns of migration. That is, there is a problem of gender, resource, and information asymmetries, which could potentially create a bias against those who may be most in need of the redistributive (and arguably also the liberating) dimension of global migration. (Shachar 2009: 76–7)

Shachar's point underscores that the structural causes of social disadvantage in virtue of which persons are vulnerable to severe poverty are not themselves addressed by changing potential migrants' locations of residence. Even if, for example, affluent countries of the Global North,

in addition to eliminating formal barriers to migration, subsidized the cost of migration for the poor, it is very unlikely that this would alter in any significant respects their material circumstances. The consequentialist argument for open borders errs (Hamilton and Whalley's reasoning is particularly at fault here) by neglecting the structural causes of global poverty, (apparently) assuming instead that severe poverty is the result of factors internal to certain societies. In the absence of this assumption, it is hard to make sense of why it would seem plausible that evacuating the areas of the world where poverty is concentrated (by reducing formal barriers to immigration by liberal states) would substantially diminish the incidence of severe poverty globally.

A third fault is the closely related, but distinct, worry that freedom of international movement is not unqualifiedly beneficial even for those who possess the material means transnational migration requires. Many migrants to wealthy liberal states, most of whom are women and/or members of racialized groups that are disadvantaged in both the sending and the receiving country, experience new forms of exploitation in the receiving country as both a condition and a consequence of their migration. Geraldine Pratt and Brenda Yeoh argue that the kind of transnational mobility that would be fostered by porous national boundaries in liberal states does not necessarily help the global poor. Since other structures of inequality, such as gender, are left intact, transnational mobility merely tends to change the ways in which the global poor are harmed. Pratt and Yeoh explain:

Women transmigrants, during the sojourn as labour migrants, often find themselves accorded few citizen's and civil rights in destination countries and trapped within patriarchal notions of "women's work" and "women's place." The rules of marginality and 'otherness' which operate to keep transmigrant contract workers in their place are often refracted through the gendered lenses of the host nation; as a result, women transmigrants, when put into a comparative frame with their male counterparts, find their bodies subject to a more oppressive disciplinary framework, their skills further devalorised, and their spaces even more circumscribed. (Pratt and Yeoh 2003: 162)

It would be easy to underestimate the significance of this criticism by assuming that it describes a "special case" of particularly disadvantaged

migrants whose circumstances do not obtain for “the typical migrant.” On the contrary, women constitute the majority of the world’s 86 million migrant workers, and the feminization of the transnational migration of workers is increasing (United Nations Development Fund for Women 2006).

The greatest number of female migrants work as domestic workers or as sex workers, areas that often are unregulated and do not fall under national labor laws. They generally lack access to social services and are subject to abuses including harsh working and living conditions, low wages, illegal withholding or garnishing of wages, and illegal or premature termination of employment. UNIFEM reports:

Women, especially unskilled workers (who constitute the majority of women migrant workers), are subject to rights violations and discrimination at the hands of brokers, recruiters, employers, and migration officials. They find themselves vulnerable as women, as foreigners and as unskilled labourers, exposing them to abuse and exploitation such as physical and social isolation, sexual harassment, and sexual and physical violence. (UNIFEM 2006)

UNIFEM’s report describes the circumstances of documented migrants. For this reason, it is unlikely (contrary to what one might think, namely that these are the burdens of undocumented migrants) that eliminating restrictions on migration would substantially improve the conditions of transnational migration for women migrant workers.

Many women migrants work in the homes of their employers performing domestic service. Even among documented migrants, Alison Jaggar argues, “employers often take advantage of their vulnerability to force them to work long hours, to withhold pay, to subject them to violence and sexual abuse, and sometime to hold them in conditions close to slavery” (Jaggar 2009b: 42). International migration, Jaggar contends, plays a role in creating and maintaining a cycle of gendered vulnerability that is transnational in scope, as “performing this labor also often increases the domestic burdens of migrant women’s female family members who must take on the work of caring for the children that migrants have left behind, so reinforcing the gendered vulnerability of migrant women’s mothers, sisters, and daughters” (Jaggar 2009b: 42). Global migration, as this discussion reveals, impacts women (usually of color, relative to the receiving society’s racial classification scheme) disproportionately negatively,

in ways that are not apparent in a so-called gender-neutral analysis of its consequences.

The proposal that wealthy, liberal states remove formal barriers to immigration does not merely fail to benefit those whose poverty renders them internationally immobile; it, fourth, positively harms them. The emigration of skilled, college educated, middle-class professionals in large numbers from relatively poor countries harms those who remain in several ways, but, in the most general sense, it does so by undermining prospects for human development. Large-scale emigration, in fact, initiates a self-perpetuating cycle of underdevelopment in already poor countries, since lost human development prospects both discourage emigrants from returning and encourage more residents to leave. In this way, it threatens both to intensify and to increase the incidence of extreme poverty. The evidence that the immigration policies of wealthy countries may have this consequence, sometimes called “brain drain,” is not speculative. It is already the case that world’s wealthiest countries give preference in admission to, and sometimes recruit, skilled, educated professionals from poorer societies in order to enhance their own global economic competitiveness. These policies produce a variety of morally serious harms that would surely be magnified in the absence of restrictions on immigration.

The World Bank reports that one-quarter to one-half of college-educated citizens in certain countries such as Ghana, Mozambique, Kenya, Uganda, and El Salvador live abroad in an OECD country, and in countries such as Haiti and Jamaica, this number rises to more than 80 percent of college graduates (Dugger 2005). On average, 41 percent of tertiary-educated individuals from the Caribbean region live abroad in an OECD country; this rate is 27 percent for Western Africa, 18 percent for Eastern Africa, 16 percent for Central America, and 13 percent for Central Africa (Kapur and McHale 2005). In general, medium-sized and small countries with a low or middle Human Development Index appear to be most vulnerable to brain drain. Skilled emigration is far less harmful, and may not be harmful at all, for larger less developed states (such as India, China, Brazil, and Indonesia), whose population size renders the rate of emigration insignificant (Kapur and McHale 2005).

The emigration of health professionals from poor countries is among the gravest harms brought on by wealthy countries’ admissions policies (Brock 2009: 198–200). More than half of the doctors born in Haiti, Fiji, Mozambique, Angola, Liberia, Sierra Leone, and Tanzania now live

in an OECD country. Nearly that many have emigrated from Jamaica, Guinea Bissau, Senegal, Cape Verde, Congo, Benin, Togo, Ghana, Kenya, Uganda, and Malawi. Ninety percent of nurses trained in Haiti and Jamaica have emigrated to an OECD country (Castles and Miller 2009: 64). In the Philippines, qualified doctors retrain as nurses, a qualification that improves their visa prospects (Castles and Miller 2009: 65). African countries require at least one million more health-care workers than they currently have, as a result of “fatal flows” of nurses and doctors from poor African countries to North America and Europe, in order to reverse the trend of plummeting life expectancies caused by pneumonia, AIDS, malaria, and tuberculosis (Dugger 2004).

The loss of professionals in other fields is significant as well. For example, in recent years, over 30 percent of agricultural researchers and experts in Pakistan, once staffing government departments managing and producing knowledge in relation to agricultural development and environmental preservation, have emigrated (Tanner 2005: 5). Skilled emigration generally may be among the causes of political instability in some poor African countries, as it deprives countries of residents best positioned and able to challenge government corruption and democratically illegitimate military rule (Tanner 2005: 4).

The immigration policies of wealthy, liberal states that facilitate large-scale emigration from poor countries undermine human development prospects in one further way. Immigration policies that favor skilled, educated professionals (whether by giving them admissions preference or by simply allowing free migration) substantially diminish tax revenues for sending countries in both a direct and an indirect way. First, emigrants are disproportionately high-income earners. Desai, Kapur and McHale estimate that India loses 12 percent of its tax base through migration to the US alone (Desai et al. 2004: 675–6). Second, the prospect of emigration compels poor countries to reduce tax rates for the highly skilled, eliminating the progressivity of the income tax schedule (Desai et al. 2004: 676).

3.2.1.2 *Remittances*

Many migrants send remittances to family members in poorer parts of the world. In response to criticisms of the sort I have made against the consequentialist argument for open borders, many defenders of the argument claim that these remittances have the effect of reducing global poverty, on balance, even if affluent countries’ immigration poli-

cies are harmful in the that respects my criticisms highlight. Carens, for example, mentions international remittances as part of a response to the “brain drain” objection to his argument for open borders (Carens 1992: 33). Indeed, remittances appear to constitute a substantial form of income for poor countries. The UNDP estimates that 500 million people currently receive remittances, totaling, according to the World Bank, \$199 billion through official channels in 2006. The actual amount may be as much as 50 percent higher, as many migrants send money by informal means in order to avoid bank and wire transfer fees (Castles and Miller 2009: 59). What is more, remittances exceed official aid-related inflows to developing countries (Adams and Page 2005). In virtue of these facts, one must ask: is the consequentialist defense of open borders vindicated by taking account of the effect on remittances on poverty in poor countries?

There are many reasons to be skeptical that remittances reduce global poverty. First, reports on the egalitarian promise of remittances assume a static level of poverty in countries that receive them. The argument that remittances reduce poverty in countries of the Global South neglects the fact that one significant causal contributor to poverty in these countries is the exodus of citizens with skills and education that are marketable in affluent countries. In other words, remittances only reduce poverty under conditions that are themselves partially responsible for its pervasiveness.

Additionally, the primary beneficiaries of remittances are migrants’ family members, who tend to be socially situated in most ways very similarly to each other (except with respect to gender). Since most migrants are not poor in an absolute sense, the recipients of remittances generally are not either (Brock 2009: 205; Desai et al. 2004: 676; Tanner 2005: 9).

Most disconcertingly, remittances actually make the plight of the truly poor, who do not receive remittances from sojourning relatives, worse. For many poor families in Mexico, for example, who do not have a relative sending them cash earned in the US, affording basic necessities has become more difficult than ever as the influx of dollars into the economy causes inflation, and makes their pesos increasingly useless. Sam Quinones reports that:

Without dollars, year-round residents are priced out of the market for many goods and services. “Real estate is really out of reach for those of us who live and work here and earn pesos,” says

Guadalupe Ramos, director of the Lazaro Cardenas Center for Studies of the Mexico Revolution in Jiquilpan, a town 10 miles from Jaripo. “We can’t compete with those who come down from the U.S. who buy homes or land for whatever price people ask. They pay it, and we can’t.” (Quinones 2004)

Castles and Miller confirm that remittances exaggerate extant inequalities in two ways: first, by going disproportionately to better-off residents, and second, by causing price inflation for land and other scarce resources (Castles and Miller 2009: 60–1). For these reasons, it seems highly doubtful that the appeal to remittances can salvage the global egalitarian hope that open borders proposals promise.

3.2.1.3 *Paternalism*

The criticisms I have posed in this section suggest that by eliminating restrictions on immigrant admissions liberal states would, on balance, harm the intended beneficiaries of freedom of international movement. Suppose for the sake of argument that these criticisms support the adoption of admissions policies by wealthy, liberal states that exclude some, even many, migrants from poor countries of the Global South. (I will present a precisely articulated version of the policy implications of my view in Chapter 6, following the principle I develop in Chapter 4.) Would it be paternalistic, and therefore morally objectionable, for affluent liberal states to deny admission to some immigrants from poor countries on the sorts of grounds I have invoked in this section (that is to say, “for their own benefit”)? In Carens’ view, yes: Carens asserts that it would be paternalistic “for rich countries to say that they were closing their borders to help the poor ones out” (Carens 1992: 34).

However, affluent liberal states would not be acting paternalistically toward prospective immigrants from poor countries if they refused them admission for the benefit of the citizens of poor countries. This objection misunderstands the nature of paternalism, which occurs only when A restricts the freedom of B for B’s own benefit. I have argued that, by removing formal barriers to immigration, affluent liberal states would harm both those who do not migrate and some of those who do. With regard to the former, were liberal states to refuse admission to prospective immigrants for the benefit of the internationally immobile (to prevent “brain drain” for example), this would be a case, merely, of A restricting the freedom of B in order to prevent harm to a third

party—which is not paternalism, but rather an application of Mill’s Principle of Harm. The case of the latter, in which affluent liberal states refuse admission to prospective immigrants for their own benefit (in order to prevent cases of gendered exploitation, for example), is best understood, I argue, as a case of “A (affluent liberal states) not harming B (prospective immigrants),” and is therefore not a case of paternalism.

Even if the latter case is understood as “A restricting the freedom of B for B’s own benefit,” that is, as paternalism, I argue that the action of liberal states that refuse admission to prospective immigrants for their own benefit bears morally salient differences from standard cases of paternalism that make such action morally justifiable. In standard cases of paternalism, A bears no moral or causal responsibility for the conditions under which, if B acts in certain ways, B will be harmed. In the case in question—in which liberal states refuse admission to prospective immigrants in order to prevent them from being exploited, for example—liberal states themselves bear a considerable portion of the moral and causal responsibility for the conditions under which, if citizens of poor countries immigrate, they will be harmed. Suppose, for example, that I attempt to sell you a house that, I fail to disclose, contains deadly levels of carbon monoxide as a result of my own negligence. In the absence of this information, you are eager to buy the house from me. Just as I am about to sign over the deed to you, my conscience interferes and I refuse to sell. It seems clear that I am not behaving wrongly in this case; it is not even clear that I am behaving paternalistically, since I am responsible for the conditions under which you might be harmed. If my actions in this case are analogous in morally relevant respects to the actions of liberal states that deny admission to prospective immigrants for their own benefit, then liberal states are not, in doing so, acting paternalistically, and (even if they are) they are not acting wrongly.

Finally, Carens’ charge that it is paternalistic for wealthy countries to refuse admission to prospective immigrants from poor countries for their own benefit depends on a question-begging assumption, namely, that citizens of sending countries have a moral prerogative to entry into receiving countries. Suppose that, contrary to your wishes, I refuse you admission into my home because I have the flu, and do not want you to get sick. Though, in doing so, I restrict your freedom for your benefit, this is not a case of paternalism. This would count as a case of paternalism only if you had the moral prerogative to enter my home. Likewise, to say that it is paternalistic for the receiving country to deny admission

to a prospective immigrant for her own benefit presupposes that the prospective immigrant possesses the moral prerogative to enter the receiving country. In this way, Carens' charge of paternalism assumes what it must prove.

It is difficult to grasp, ultimately, what the motivation for defending open borders on grounds of global poverty alleviation is. Strategies that address poverty by global redistributive mechanisms or reform of global economic structures seem likely to be more effective because, apart from my criticisms, they target the causes of poverty and its cyclical nature (Brock 2009: 192; Shachar 2009: 85). Both of these strategies are idealistic, and unlikely to occur anytime soon; but the same is true of the proposal that affluent liberal states open their borders. Even if my criticisms of the consequentialist argument for open borders fail utterly, alternative strategies of global poverty alleviation nevertheless remain more morally attractive because they do not require people to uproot themselves in search of reasonable economic opportunities. As Carens himself observes, "most human beings do not love to move. They normally feel attached to their native land and to the particular language, culture, and community in which they grew up and in which they feel at home" (Carens 1992: 270). The defense of open borders, for these reasons, must be made on other moral grounds.

3.2.2 *The Liberal Consistency Argument*

Phillip Cole advances the most radically inclusive view on immigration among cosmopolitans (Wellman and Cole 2011; Cole 2000), defending freedom of international movement as the object of a right that liberal states must, on pain of consistency, adopt. This right entails, Cole argues, that liberal states must not prevent the entry of any foreigners, except members of invading armies. Cole defends this radical conclusion on three distinct grounds.

3.2.2.1 *Moral equality*

Cole's first argument appeals to the liberal principle of moral equality, according to which all human beings have an equal moral status, and further, must be treated in a way that is consistent with this equal moral status. The principle of moral equality enjoins liberals, Cole argues, to provide a non-arbitrary justification for discrepancies between liberal states' internal principles (those that apply to citizens) and their exter-

nal principles (those that apply to foreigners). In particular, liberals who wish to defend exclusionary immigration policies must explain how their commitment to the principle of moral equality is consistent with citizens, but not foreigners, possessing a right of entry to the state. Cole argues that there is no non-arbitrary distinction between citizens and foreigners that can justify this inequality (Cole 2000).

Cole argues compellingly that extant attempts to reconcile exclusionary immigration policies with the liberal commitment to universal moral equality are unsuccessful.² However, Cole does not establish that the moral equality of citizens and foreigners entails a universal human right to freedom of international movement. My first criticism of Cole's defense of this right is that it depends on a very specific and minimalist conception of moral equality that he neither acknowledges nor defends.

What does Cole mean by "moral equality"? More precisely, what is it with respect to which liberal states must treat foreigners and citizens as equals? Cole cites Will Kymlicka's claim that the principle of moral equality encumbers the state with the "duty to treat people with equal consideration" (Kymlicka 1990: 34), and agrees with Kymlicka that "a theory is egalitarian . . . if it accepts that the interests of each member of the community matter, and matter equally" (Kymlicka 1990: 4). This suggests that it is Cole's view that the principle of moral equality requires liberal states to consider equally the interests of citizens and foreigners, an understanding of the "space" of equality usually associated with utilitarians. However, this is not the conception of moral equality upon which Cole's argument for a right to freedom of international movement relies.

Cole's argument is that:

The dilemma for liberal theory is how it can achieve coherence between its internal principles and external principles—by internal principles I mean those that govern its treatment of its own citizens; by external principles I mean those that govern its treatment of non-citizens, for example applicants for immigration. The liberal dilemma as I have described it is how to ensure that both these sets of principles are consistent with core liberal values such as the moral equality of persons. (Cole 2000: 11–12)

In other words, Cole's view is that the discrepancy between the way liberal states treat their citizens and the way they treat non-citizens

is inconsistent with the principle of moral equality. Cole's charge that liberal states that deny the right of entry to foreigners (while granting it to citizens) violate the principle of moral equality, then, requires conceiving of the moral equality of persons in terms of equality of negative liberty rights (an understanding of the space of equality usually adopted by libertarians). That is, Cole's charge of liberal incoherence commits him to the view that the principle of moral equality enjoins liberal states to accord equal negative liberty rights to all individuals.

Cole does not acknowledge his argument's dependence on this controversial, minimalist conception of the space of equality, and thus, he does not defend it. What makes this problematic is that this way of conceiving of the space of equality contrasts with other conceptions of the space of equality more commonly adopted by liberals: equal consideration of interests, equality of resources, and equality of opportunity, capabilities, or positive freedom. I argue, *contra* Cole, that on any other typical liberal way of conceiving of the space of equality, the moral equality of persons does not require a universal right to freedom of international movement.³

This is because Cole's right to freedom of international movement requires liberal states to open their borders. I argued above that the elimination of immigration restrictions by affluent liberal states is actually harmful to the global poor in a variety of respects: the poor in developing countries mostly do not have the resources to move abroad to wealthy, liberal states; those who can move often find the conditions of migration exploitative, especially insofar as they belong to social groups that are already disadvantaged in the receiving country; large-scale emigration undermines efforts for human development in already poor countries; and remittances tend to do as much harm as good. These considerations demonstrate that, if one understands moral equality less minimally (whether in terms of equal consideration of interests, equality of resources, or equality of opportunity, capabilities, or positive freedom), then one must oppose the blanket elimination of immigration restrictions. Once the aforementioned empirical considerations are taken into account, and the notion of moral equality underlying Cole's arguments is given a more robust interpretation than he himself implicitly affords it, it is clear that liberals may consistently oppose the formal negative liberty that Cole defends. Indeed, my arguments above suggest that to allow for freedom of international movement is, *contra* Cole, a violation of the principle of moral equality.

Second, the validity of Cole's argument rests on a misconception of the extensions of and the relationship between the concepts "citizen" and "foreigner." Cole reasons as though each person is, in all contexts, either a citizen or a foreigner—as though each person is either universally a citizen or universally a foreigner. Furthermore, his reasoning seems to imply that "citizen" extends to all and only those who are citizens of liberal states, and that "foreigner" extends to all and only those who are not citizens of liberal states. This way of understanding the extensions of these concepts makes sense of Cole's first argument for a right to freedom of international movement: liberals' commitment to the principle of moral equality is inconsistent with the denial of equal negative liberty rights to foreigners, who, unlike citizens, do not possess a right of entry. Therefore, to be consistent, liberal states must grant a right of entry to foreigners.

However, this way of understanding the extensions of and relationships between the concepts of "citizen" and "foreigner" is mistaken. The human population is not composed of some people who are citizens and others who are foreigners. With a small number of unjust exceptions, each person is, at the same time, both a citizen (of one or two states) and a foreigner (with respect to all others). This understanding eliminates the appearance of inconsistency in the denial of the right of entry to foreigners by liberal states; those who are foreigners in relation to liberal states are citizens of another state, where they have a right of entry, and which equally denies the right of entry to foreigners (the citizens of liberal states). While all individuals possess the right of exit from any state, all individuals (equally) possess the right of entry to only one state (except for those who have dual-citizenship or are citizens of an EU-member country).

Cole's description of the right in question tends to obscure these misconceptions to some extent. By describing that which foreigners lack relative to citizens as a "right of entry," Cole's argument seems more plausible; indeed, citizens possess a right of entry, but foreigners do not. Cole also describes this right as a right to freedom of international movement. However, described in this way, the right does seem to be distributed equally to all individuals: each person equally, but quite limitedly, possesses the right to freedom of international movement (each person may cross back into the country of her citizenship). Another way of conceiving of the right in question makes Cole's mistake plain: no person (except for citizens of EU-members countries)

possesses a right of immigration (since crossing back into the country of one's citizenship is not a case of immigration).

3.2.2.2 *The moral asymmetry of immigration and emigration*

Cole makes the case for the right of immigration through the exposure of another apparent liberal inconsistency as well. Liberals, *qua* liberals, are committed to the existence of a right of emigration, but, Cole argues, the right of emigration implies a right of immigration; one is not free to leave a state if one is not also free to enter another. In other words, in Cole's view, the rights of emigration and of immigration are symmetrical: each one logically implies the other.⁴ Liberals may deny the right of immigration, but then they must accept, on pain of consistency, that there is no right of emigration—a position that is both unattractive in itself, and illiberal (Cole 2000: 43–59).

I wish to pursue two challenges to this argument, both of which Cole considers but rejects (unwarrantedly, in my view). The first points out that the right of emigration implies a right of immigration only if one accepts that the object of the right of emigration is entrance into another state. However, one can consistently uphold what Cole calls the “asymmetry view” (that there is a right of emigration, but no right of immigration) if one holds the weaker position that the object of the right of emigration is mere non-interference on the part of the state when one attempts to leave—that the right of emigration does not entail success in leaving the state.

Cole anticipates this response, but rejects it as follows:

We can ask whether this interpretation of the moral right of emigration is an acceptable representation of freedom of international movement from a liberal point of view. The preservation of liberal asymmetry seems to involve, not only setting aside the moral right to immigration, but the reduction of the moral right of emigration to an unacceptably impoverished level. (Cole 2000: 56–7)

However, only those who have already accepted that the right of immigration is implied by the right of emigration will tend to agree that understanding the right of emigration as merely requiring that the state not interfere with one's attempts to leave is “unacceptably impoverished.” In other words, the only defense Cole gives his stronger interpretation of the right of emigration begs the question in favor of his

own view. Moreover, understanding the right of emigration as merely negative makes the right of emigration and the right of immigration Cole defends symmetrical: Cole conceives of the right of immigration negatively, holding that it requires merely that receiving countries not block foreigners' entry. Cole does not argue that the right of immigration demands that individuals be provided with the material means of migration.⁵

Alternatively, one might concede to Cole that the right of emigration implies a right of immigration (that is, that the two are symmetrical), but hold that both of these rights should be understood as *prima facie* rather than as absolute—that the state may abridge them in extraordinary circumstances under which their observance would have disastrous consequences. As Cole comments, that individuals are thought to have a right to emigration at all is a recent development within liberal theory: “The liberal asymmetry view became orthodoxy in theory and practice in the period after the second world war; but it is still recognised that the right of emigration can be restricted under extreme conditions” (Cole 2000: 45–6).

Thus, the objection continues, while liberal states currently have no cause to abridge the right of emigration, there are pressing reasons to abridge the right of immigration. Cole considers this challenge but assumes (not unreasonably) that the pressing reasons to abridge the right of immigration that the objection invokes are alleged harms to liberal states that would be flooded by a tidal wave of poor, brown criminals, free-riders, and terrorists whose unusual customs would destabilize domestic culture (Cole 2000: 47). As Cole rightly responds, these arguments are faulty in a number of respects. Understandably focused on such popular xenophobic arguments against immigration, Cole overlooks the harmful consequences that mass emigration from the Global South brings about, both for migrants themselves and their compatriots who cannot or do not wish to take up residence in a foreign country. In this way, one can maintain that no right of immigration presently obtains without abandoning the symmetry of the rights of emigration and of immigration.

3.2.2.3 *The argument from human agency*

The method of reasoning about what immigration policies are just in Cole's first two arguments for a right to freedom of international movement belies the reasons for treating immigration policy as a matter of

justice. Cole reasons about the question “What immigration policies are just?” as if the answer is determined by a logical analysis of what the fundamental principles of liberalism entail. However, immigration policy is an issue of justice because of the already unjust circumstances of the world. Extant immigration policies and philosophical proposals for regulating immigration are unjust, if they are unjust, because they contribute to and reinforce these circumstances. In a perfectly just world, there would be little need for a discussion about what immigration policies are just, because people’s reasons for wanting to migrate would be anomalous and relatively trivial; it is not clear why anyone would be terribly concerned with the justice of immigration policies unless it were the case, as it is, that residence in a particular state largely determines one’s opportunities and well-being. In other words, there is little reason to be concerned with freedom of international movement for its own sake; rather, freedom of international movement is important, morally speaking, because whether and where one is a citizen partially determines one’s life chances and material well-being. If our world did not contain systematic inequalities in terms of morally arbitrary features of individuals such as gender, race, class, sexuality, and so on, then there would be very few reasons to be concerned with whether one is a resident of this country or that one.

I do not believe that Cole defends the right to freedom of international movement as important for its own sake; he is not really concerned, for example, with the right of middle-class Americans to retire rich in Costa Rica. Cole’s first two arguments for the right to freedom of international movement are, on the surface, independent of consequentialist considerations. However, I believe the moral force of Cole’s arguments depends not so much on the pain of inconsistency for liberal defenders of exclusionary immigration policies, but rather on the intuitive sense of injustice that the arbitrary denial to foreigners of access to important material benefits that affluent liberal states afford their own residents inspires.⁶ And yet, because Cole’s first two arguments overlook the ways in which immigration policies interact with extant unjust social institutions and affect those disadvantaged by them, Cole’s final policy recommendation does nothing to alleviate the injustice that presumably motivates his project. Cole’s third argument, in this respect, improves on his first two.

Cole’s third argument for a universal human right to freedom of international movement, in contrast to his first two, does not appeal

to the alleged logical implications of liberalism. Instead, Cole's third argument, the argument from human agency, invokes the vital human interests that (in Cole's view) freedom of international movement protects as a basis for claiming that there is a moral right of international mobility. According to Cole, this right permits states to restrict immigration only under the circumstances in which international law already permits states to restrict emigration: "in the absence of any clear case that immigration poses a threat to 'the life of the nation' as defined in the Siracusa Principles, it should be brought under the same legal framework as emigration, creating a liberal legal order of universal mobility" (Wellman and Cole 2011: 306).⁷

Cole's argument originates in his response to Miller's objection that freedom of international movement is a bare freedom rather than a basic freedom, and that it therefore does not warrant status or protection as a right (Miller 2005: 194). Put another way, Miller's objection is that freedom of international movement does not protect interests sufficiently vital for it to be the object of a human right. Miller reaches this view, according to Cole, only because he misunderstands how rights are justified. One cannot appreciate the moral significance of the objects of rights (for example, freedom of movement, food, and so on) merely by appeal to their instrumental value, understood in isolation from one another. Cole says, "Basic human rights are connected with each other in ways that make it misguided to seek to justify them in isolation from each other . . . To take a particular right and seek its justification in isolation from other rights is therefore a mistake" (Wellman and Cole 2011: 295–6). The moral significance of the objects of rights (in particular, freedom of movement)—what makes them objects of rights—can be fully appreciated only by taking an holistic perspective that recognizes the interconnected nature of rights, and that understands their value in non-instrumental terms:

If we see the right to movement in this holistic way, it is not simply that it is instrumentally valuable to other human rights, but that it is an essential component of human agency, such that it is a part of the ability of people to be free and equal choosers, doers, and participators in their local, national, and global communities. (Wellman and Cole 2011: 296–7)

Cole's final argument is, in other words, that freedom of international movement is required for human agency, and that, therefore, equal

human agency globally demands recognition of a universal human right to freedom of international movement.

Why? In Miller's view, freedom of movement within the boundaries of a nation-state affords persons a morally adequate range of options necessary to protect basic interests. There is no basis, according to Miller, for expanding the scope of the right of free movement to the international level (Miller 2005: 195). However, Cole argues, people have "interests at the international level" that can be protected only by recognition of a right to international mobility: "International constraints may serve to create conditions of oppression, domination, and inequality, especially when we recognize that border controls . . . function mainly to prevent movement of the global poor" (Wellman and Cole 2011: 298).

Emphasizing the non-instrumental aspect of the value of freedom of international movement, Cole defends the right of international mobility, both generally and against Miller's critique, by appeal to "the value of freedom itself." According to Cole, "border controls interfere with significant freedoms: people's liberty to escape oppression; the freedom to buy and sell labor; and the freedom to associate with others" (Wellman and Cole 2011: 300). Underscoring the importance of an holistic perspective on the value of the objects of rights, Cole quotes Kukathas (Kukathas 2005: 211), who argues that: "'To say to . . . people that they are forbidden to cross a border in order to improve their condition is to say to them that it is justified that they be denied the opportunity to get out of poverty, or even destitution'" (Wellman and Cole 2011: 300).

What examination of these arguments makes apparent is that, despite rhetorical appeals to understanding freedom of international movement "holistically" (rather than in isolation from other freedoms) and "as a central component of human agency" (rather than as merely instrumentally valuable), the success of Cole's defense of the human right to international mobility depends almost entirely on the alleged egalitarian economic effects of open borders. Cole's argument is, in essence, that recognition of a universal right of free international movement will remove constraints on the ability of the global poor to seek economic opportunities, reducing global economic inequalities. I have already shown, however, that this view is untenable. While greater freedom of international movement may very well reduce economic inequalities between the average citizen of wealthy, liberal democracies

and the internationally mobile global middle class, it will, for reasons given above (see subsection 3.2.1), intensify inequalities between both of these groups and the mostly internationally immobile global poor. In the absence of an argument for privileging the (surely significant, but nevertheless non-vital) interests of the global middle class over the (vital) interests of the global poor, Cole's argument from human agency cannot succeed, on its own terms.⁸

Cole acknowledges that the mere recognition of a universal human right to freedom of international movement will not make the global poor mobile, and therefore may exacerbate the relative economic inequality of the worst-off. Therefore, he argues, freedom of international movement "has to be embedded in a wider approach to issues of global inequality and injustice" (Wellman and Cole 2011: 299). Cole does not say, however, what this "wider approach" might be, or what could be done to address the immobility of the global poor. Similarly, Cole appears to allow that the emigration of professionals, particularly in health-care fields, is harmful to "the human rights of those who need health care in the sending country" (Wellman and Cole 2011: 257). However, rejecting programs by which wealthy receiving countries would compensate sending countries for human development prospects lost through emigration as being potentially exploitative (Wellman and Cole 2011: 257), Cole argues instead that an "association of legitimate states has to take an international and multilateral approach to these questions" (Wellman and Cole 2011: 258).⁹ In both of these instances, Cole's reply is unsatisfactory. Having rejected what are perhaps the two most immediately apparent strategies by which wealthy receiving countries might mitigate the economic inequalities that greater freedom of international movement seems likely to bring about (restrictions on skilled immigration and compensation programs), it is incumbent upon Cole to provide alternative strategies. It is inadequate for Cole to propose an international association that will (by unknown means) address the moral harms to which his central policy recommendation may give rise.¹⁰

3.2.3 Rawlsian Arguments

One might think that Rawls' theory of justice has little to say about immigration on account of the fact that he constructs his theory of justice on the artificial assumption that immigration and emigration

do not occur. Rawls writes, “a democratic society . . . is to be viewed as a . . . closed social system . . . in that entry into it is only by birth and exit from it is only by death” (Rawls 1993: 41). Moreover, in a realistic utopia,¹¹ Rawls’ methodological starting point, the causes of migration (all of which Rawls attributes to human rights violations by non-liberal and non-decent regimes) would no longer exist: “the problem of immigration is . . . eliminated as a serious problem in a realistic utopia” (Rawls 1999: 9).

Nonetheless, some philosophers have attempted to extend Rawls’ theory of justice to questions regarding immigration policy. Carens argues that freedom of international movement is a basic liberty protected under Rawls’ Liberty Principle (each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all) (Carens 1987: 258).¹² According to Carens, parties in the Rawls’ thought experiment the original position, choosing principles of justice from behind a veil of ignorance (which, as Rawls formulates it, precludes knowledge of one’s social position, comprehensive doctrine, social group memberships, and native endowments), would include freedom of international movement as a basic liberty to be equally guaranteed to all. This claim requires, Carens notes, that the veil of ignorance also preclude knowledge of one’s citizenship:

Whether one is a citizen of a rich nation or a poor one, whether one is already a citizen of a particular state or an alien who wishes to become a citizen—this is the sort of specific contingency that could set people at odds. A fair procedure for choosing principles of justice must therefore exclude knowledge of these circumstances. (Carens 1987: 256)

Carens reasons that parties in the so-modified original position would treat freedom of international movement as a basic liberty: “In the original position, then, one would insist that the right to migrate be included in the system of basic liberties for the same reasons that one would insist that the right to religious freedom be included: it might prove essential to one’s life plans” (Carens 1987: 372). How might freedom of international movement be essential to one’s life plans? That is, in what way is the freedom of international movement a basic liberty? Carens gives a few examples:

Economic opportunities for particular individuals might vary greatly from one state to another even if economic inequalities among states were reduced by an international difference principle. One might fall in love with a citizen from another land, one might belong to a religion which has few followers in one's native land and many in another, one might seek cultural opportunities that are only available in another society. (Carens 1987: 258)

Carens reasons on this basis that liberal states must eliminate most (although not all) limits on immigration.¹³

There are three reasons to doubt, however, that Rawls' Liberty Principle requires liberal states to eliminate restrictions on immigration. First, it is unlikely that freedom of international movement is a basic liberty. Rawls certainly never gives any indication that he considers freedom of international movement to be a basic liberty; to the contrary, Rawls endorses the sovereignty of states to restrict immigration in a footnote in *The Law of Peoples*: "a people has at least a qualified right to limit immigration." In Rawls' view, one "reason for limiting immigration is to protect a people's political culture and its constitutional principles" (Rawls 1999: 39).

Perhaps Rawls fails to see the implications of his own theory for immigration. On Carens' view, freedom of international movement is a basic liberty because "it might prove essential to one's life plans." However, none of Carens' examples are cases in which freedom of international movement seems clearly essential to a person's life plans; rather, Carens' examples merely describe cases in which freedom of international movement would enhance a person's welfare. (Recall, furthermore, that those for whom residence in a wealthy, liberal society might prove essential to their life plans—the severely poor—typically lack the resources transnational migration requires.) Moreover, that some freedom is essential to one's life plans does not make it a basic liberty. Rawls characterizes the basic liberties as providing "the political and social conditions essential for the adequate development of the two moral powers of free and equal persons," (Rawls 2001: 45) the capacity for a sense of justice and the capacity for a conception of the good. Rawls describes the role the basic liberties he specifies play in developing the two moral powers:

the equal political liberties and freedom of thought enable citizens to develop and to exercise these powers in judging the justice of the basic structure of society and its social policies; . . . liberty of conscience and freedom of association enable citizens to develop and exercise their moral powers in forming and revising and rationally pursuing . . . their conceptions of the good. (Rawls 2001: 45)

On the face of it, freedom of international movement does not seem necessary to provide the political and social conditions essential for the development of the two moral powers.

The second reason it is doubtful that the Liberty Principle protects freedom of international movement, thus requiring liberal states to eliminate restrictions on immigration, is (as I argued against Cole) that freedom of international movement contributes to global social and economic inequalities, and thereby diminishes the positive freedom of most citizens of poor countries, whose lack of resources would prevent them from exercising the formal, negative liberty. To put this point into Rawlsian terms: freedom of international movement is contrary to the fair value of basic liberties, political liberties included. Rawls comments: "social and economic inequalities in background institutions are ordinarily so large that those with greater wealth and position usually control political life and enact legislation and social policies that advance their interests" (Rawls 2001: 148). To the extent that freedom of international movement exacerbates existing inequalities, it violates Rawls' proviso of the fair value of political liberties, which requires that "the worth of the political liberties to all citizens, whatever their economic or social position, must be sufficiently equal in the sense that all have a fair opportunity to hold public office and to affect the outcome of elections, and the like" (Rawls 2001: 149).

Finally, Rawls' Liberty Principle cannot justify the requirement that liberal states eliminate immigration restrictions because, as Carens himself notes, "under nonideal conditions it can sometimes be justifiable to restrict liberty for the sake of economic gains, if that will improve the position of the worst-off and speed the creation of conditions in which all will enjoy equal and full liberties" (Carens 1987: 261). This follows from Rawls' distinction between the general (non-ideal) and the special (ideal) conceptions of justice. Rawls argues:

It is only when social conditions do not allow the effective establishment of these rights that one can concede their limitation; and these restrictions can be granted only to the extent that they are necessary to prepare the way for a free society. The denial of equal liberty can be defended only if it is necessary to raise the level of civilization so that in due course these freedoms can be enjoyed. (Rawls 1971: 152)

As Cole comments, on questions of immigration policy, "Rawls could always argue that, when it comes to international affairs, the general conception of justice applies" (Cole 2000: 162).¹⁴

Frederick Whelan argues, however, that both components of Rawls' second principle enjoin liberal states to open their borders.¹⁵ The Equality of Opportunity Principle (social and economic inequalities are to be attached to offices and positions open to all under conditions of fair equality of opportunity) appears to support freedom of international movement since, Whelan argues, "equality of opportunity and freedom of movement have of course gone closely together in the liberal world" (Whelan 1988: 8). Additionally, the Difference Principle (inequalities are to be to the greatest benefit of the least advantaged) may require the elimination of immigration restrictions: "If the would-be immigrants are the worst-off group . . . then the application of the difference principle would dictate their admission to the extent of the economic-absorption limits of the receiving country" (Whelan 1988: 9).

However, Whelan fails to consider that Rawls' Equality of Opportunity Principle demands fair equality of opportunity: "fair equality of opportunity is said to require not merely that public offices and social positions be open in the formal sense but that all should have a fair chance to attain them" (Rawls 2001: 43). Freedom of international movement undermines fair equality of opportunity by contributing to global social and economic inequalities in the ways I have enumerated. As Rawls argues, "A free market system must be set within a framework of political and legal institutions that adjust the long-run trend of economic forces so as to prevent excessive concentrations of property and wealth" (Rawls 2001: 44). This thought also explains why the Difference Principle would not support the elimination of immigration restrictions. It is not clear, in any case, what the Difference Principle has to say about prospective migrants since it applies only to "those belonging to the income class with the lowest expectations" (Rawls

2001: 59). However, prospective migrants are generally not among the world's poorest. If the Difference Principle has implications for the immigration policies of wealthy, liberal states, my arguments above (subsection 3.2.1) suggest, *contra* Whelan, that it would oppose an open borders immigration regime.

3.2.4 *The Argument From Democracy*

Most arguments for the elimination of formal barriers to immigration have, as this chapter reveals, a specifically liberal character, appealing in defense of open borders to traditional liberal values such as moral equality and individual freedom. Other arguments for open borders invoke the liberal commitment to democracy.¹⁶ John Exdell, for example, argues that the right of democratic participation enjoins wealthy, powerful liberal states to open their borders (Exdell 2009: 138). Exdell's argument relies on Carol Gould's (Gould 2004) defense of the "right of persons affected by political decisions to have an equal opportunity to influence the making of those decisions" (Exdell 2009: 138). According to Gould, "'People at a distance are to be regarded as affected by a decision if their human rights are affected,' including most broadly the right to freedom as self-development" (Exdell 2009: 138).

Exdell holds that the adoption of open admissions policies facilitates the universal fulfillment of the right to democratic participation in two ways. First, "a policy of closed borders will deny the neediest segment of humanity access to resources necessary for [quoting Gould] 'self-development or self-transformation as a process over time.' A border is in this case clearly a denial of positive freedom" (Exdell 2009: 138). Second, economically and militarily powerful countries enact policies that affect (often negatively) a great many people beyond their borders. Given this, the demand for open borders follows from acceptance of Gould's principle that all parties affected by a decision have a right to influence its outcome. According to Exdell,

In a world where differing racial, ethnic, and cultural identities correspond to great inequality in access to resources, and where these inequalities are both created and compounded by economic and political actions of powerful states in whose councils the poor of other lands have entirely no say, advocates of human rights should support the entrance of downtrodden immigrant popula-

tions into the wealthier communities and the creation of multiethnic, multicultural, and multiracial nationalities. Scrambling people up will make it easier to represent the interests of all humanity in the policy-making forums where their fate is effectively determined, and thus make it politically more difficult for the privileged to prey upon the weak in faraway lands. (Exdell 2009: 139)

Exdell's second argument makes clear why his position must be that, in addition to not preventing the entrance of foreigners, liberal states must also grant citizenship (or at least voting rights) to foreigners. The right of democratic participation would not be fulfilled if liberal states admitted foreigners but left them disenfranchised.

Exdell justifies his defense of open borders in terms of Gould's conception of the human right to democratic participation. While Gould holds that immigrants, having been admitted, must be granted access to citizenship, she denies that the right of democratic participation necessarily requires that liberal states open their borders:

all those resident in a given territory need to be recognized as citizens, with rights of democratic participation. Racist exclusions or denigrations are eliminated on the view. Certainly, full civil, social, and economic rights for immigrants are implied, while for illegal immigrants a range of hard issues would center on whether one could show them to be residents within the polity. Yet the question of fully open borders is not yet addressed by such an account, and it seems evident that the inclusiveness of a democratic community does not necessarily require that there exist no borders or that it be extended worldwide. (Gould 2004: 114–15)

This passage reveals the central mistake in Exdell's argument for open borders. Exdell assumes (incorrectly, I will argue) that the elimination of immigration restrictions by liberal states is an effective (if not the best or a necessary) means for promoting the ability of those currently excluded from citizenship in liberal states to engage in self-development and self-transformation, and, therefore, for fulfilling their rights to democratic participation.

However, opening the borders of liberal states is not only an ineffective means of fulfilling rights of democratic participation, but it is also counterproductive with respect to this worthy goal. For reasons

articulated above, the elimination of immigration restrictions by wealthy countries expands the negative freedom of foreigners (by reducing interference at the border) at the expense of the positive freedom of the most disadvantaged (see subsection 3.2.1). The vast majority of the global poor would be unable to migrate to wealthy countries even if border controls were eliminated. Only those foreigners least in need of effective democratic participation in globally influential societies are in a position to take advantage of the immigration policies Exdell advocates; for those whose human rights are most vulnerable, the emigration of their better-off compatriots will ensure that their opportunities for self-development are further compromised.

Even setting these concerns aside, there are several reasons to think that opening the borders of liberal states would only trivially improve the fulfillment of the right to democratic participation worldwide. First, opening the borders of liberal states would provide those who subsequently migrated with rights of democratic participation in only one additional country. Even this assumes, second, that both the sending and receiving countries permit dual citizenship; in the case that one country or the other does not, the migrant will lose her right of democratic participation in the sending country as soon as she gains it in the receiving country. Third, opening the borders of liberal states will improve the fulfillment of the right to democratic participation only for those prospective migrants who are willing to take up residence in a foreign country. Fourth: even among those who are willing to move to another country, the country a migrant chooses to settle in is influenced by a long list of factors, and the extent to which a country's policies affect her is only one of these factors (see Chapter 1).

Recall that Exdell gives two reasons that liberal states ought to open their borders: first, that exclusion from residence and citizenship in wealthy societies denies many people access to resources that are necessary for self-development and self-transformation, and second, that the human right to participate in decisions by which one is affected is abridged by exclusionary immigration policies. Exdell's defense of open borders is undercut by the fact that there are better ways to bring about a world in which these rights are maximally fulfilled. Effectively targeted resource transfers from the Global North to the Global South and/or reform of global economic institutions that cause extreme poverty would do far more to promote the capabilities of self-development and self-transformation than the elimination of

immigration restrictions by liberal states. (This would be true even if my criticisms of open borders in subsection 3.2.1 were unsuccessful.) National and global decision-making institutions could be reformed to allow meaningful participation by all affected, regardless of citizenship. Exdell argues, in defense of his own open borders proposal, that alternative mechanisms for improving the worldwide fulfillment of the rights Gould defends are utopian:

the all-affected principle of democratic participation may be more effectively realized on the ground, through the migration of oppressed peoples into the countries of privilege, than through the representational reform of global institutions . . . We may propose that the marginalized majority of humanity whose human rights are put at risk by actions and policies of powerful states be represented in the chambers of multinational or transnational institutions where world-regulating decisions decide their fate. But there seems little prospect of this at the present time. (Exdell 2009: 145)

Exdell is probably correct. However, as Pogge comments, “with the political effort it would take to pressure some Western government to admit an extra hundred needy foreigners, we could alternatively pressure this same government to allocate a few extra million dollars to global poverty eradication” (Pogge 1997: 17). Sadly, the political will necessary to pursue any of these strategies for improving the fulfillment of human rights globally—resource transfers, the reform of poverty-causing economic institutions, globally inclusive decision-making bodies, and open borders—is virtually non-existent. While determining which of these strategies is most politically realistic is an empirical endeavor, unlikely to be correctly ascertained by armchair speculation, each is on an order of political unpopularity of such significance that comparisons seem futile.¹⁷ Thus, the appeal to political feasibility does not salvage the democratic defense of open borders.

3.2.5 *The Libertarian Argument*

Libertarians’ views on the regulation of immigration vary significantly, but careful application of the theory’s tenets to immigration policy reveals that the most consistent position for a libertarian on this

question is (qualifiedly) inclusive and cosmopolitan.¹⁸ That is, consistent libertarians will defend the elimination of restrictions on immigration by all states. In this sense, the libertarian view on immigration is like Cole's; it is also like Cole's in that libertarians' views about the regulation of immigration follow directly from their fundamental principles, and do not (on the face of it) depend on contingent empirical matters, or consequentialist calculations.

Libertarians' views on the regulation of immigration follow from their conception of the state. For libertarians, the authority of the state requires, and is limited to, the protection of individuals' property and contractual rights. Hillel Steiner comments that immigration restrictions are not justified from a libertarian perspective since "such restrictions are seen as defending neither contractual agreements nor property rights" (Steiner 1992: 90). Although some may argue that restrictions on immigration are necessary to protect the value of individuals' property, Steiner argues that a consistent libertarian does not have access to this argument:

Nor would [libertarians] easily be persuaded that migration restrictions protect property rights. Though they are more than ready to believe that many legislated restrictions do, and are designed to, enhance the *value* of some people's rights at the cost of devaluing others' rights, if not of violating them outright. This is certainly the standard libertarian analysis of most restrictive migration policies. Since the role of the libertarian state is strictly confined to the enforcement of individuals' moral rights which consist exclusively of property and contractual rights, migration restrictions aimed at protecting the *value* of property rights—let alone broader cultural values—are entirely beyond its rightful authority. (Steiner 1992: 91, emphasis in original)

As this passage indicates, libertarians are committed to "open borders" on account of their conception of the state as minimal—as existing solely for the purposes of protecting individuals' rights to hold property and to enter into voluntary transactions. The libertarian conception of states thus does not authorize the state to control crossings of its border.

Carens also interprets the libertarian position on immigration restrictions in this way, applying Robert Nozick's articulation of the theory

(Nozick 1974) to the question. Carens explains that, on Nozick's view, "all individuals have the same natural rights—that is the assumption about moral equality that underlies this tradition . . . The 'inconveniences' of the state of nature justify the creation of a minimal state whose sole task is to protect people within a given territory against violations of their rights" (Carens 1987: 253). Moreover,

Citizenship gives rise to no distinctive claim. The state is obliged to protect the rights of citizens and noncitizens equally because it enjoys a *de facto* monopoly over the enforcement of rights within its territory. Individuals have the right to enter into voluntary exchanges with other individuals. They possess this right as individuals, not as citizens. (Carens 1987: 253)

Thus, with respect to immigration, Nozick's view implies that states that restrict it violate individuals' rights, as Carens explains: "To prevent the Mexicans from coming [to the US] would violate the rights of both the American farmer [who wishes to hire migrant labor] and the Mexican workers to engage in voluntary transactions" (Carens 1987: 253). Although one might argue that allowing for freedom of immigration might disadvantage certain American workers, "Nozick explicitly denies that anyone has a right to be protected against competitive disadvantage. (To count that sort of thing as a harm would undermine the foundations of individual property rights)" (Carens 1987: 253).

In spite of libertarianism's opposition to state interference in the attempts of individuals to move about the globe, freedom of movement (domestic or international) might be highly constrained in a libertarian utopia, in which all land is privately owned, and individual property owners are legally entitled to control as they see fit the freedom of others to pass through their property. Onora O'Neill comments that for libertarians:

the only legitimate restrictions on movement and association are those imposed by individual owners on access to their property or their company. These, of course, may be legion; in a world without public provision or public spaces, they could be infinitely more restrictive than immigration and emigration constraints now imposed by states. (O'Neill 1992: 117)

Most liberal defenders of open borders ought, therefore, be wary of turning to libertarianism in search of support for their view. Libertarianism is incapable of providing a justification for the sort of freedom of international movement envisioned by most liberal defenders of open borders.

What this observation reveals is that libertarianism is in a crucial respect distinct from the other views I examine in this chapter. Libertarianism is not for freedom of international movement so much as it is against the control of international migration by any actor other than the individual property owner. In this way, libertarianism does not present a substantive moral position on the justice of immigration policies; instead, it constitutes a rejection of what I call the legal sovereignty of states view. The legal sovereignty of states view, which I discuss in greater detail in Chapter 5, holds that the political authority to regulate migration ought to rest with states; it takes no view, in itself, on what migration policies states ought to enact (that is, on what migration policies are just). By rejecting the legal sovereignty of states and maintaining instead that the legitimate legal authority to regulate migration ought to rest with individual property owners, libertarians thereby say nothing about what migration policies individual property owners morally ought to enact. Libertarianism entails merely that individual property owners are the rightful actors in the domain of migration policy; it entails nothing in regard to what migration policies are just. For this reason, libertarianism is not incompatible with my principle, the PDP. One could hold consistently that individual property owners are legally entitled to say who may and who may not enter their land and that their decisions with respect to this are unjust if they avoidably harm social groups that are already unjustly disadvantaged.

Moreover, the absence of state regulation of international migration is rendered less problematic, by the lights of the PDP, in circumstances in which libertarian principles are fully and consistently enacted, on account of libertarianism's commitment to rectification of historical injustices. Nozick argues that violations of the principles of justice in original acquisition and transfer of property give rise to rectificatory obligations on the part of those who violate them (Nozick 1974: 152–3). Steiner notes that both original acquisitions and transfers of property are encumbered by the Lockean proviso that each person is entitled "to an equal portion of the value of natural resources"; this gives rise to "a correlative obligation in owners of such resources to surrender

that amount" (Steiner 1992: 89). Furthermore, "there are no grounds for denying the *global scope* of this entitlement," which, Steiner argues "generates each person's entitlement to an equal share of their [natural resources'] value" (Steiner 1992: 89, emphasis in original). This entitlement, Steiner argues, mandates the imposition of redistributive tax by which those harmed by the appropriations of others (in excess of an equal share of the value of natural resources) are compensated.

According to Steiner, "Since average per capita land values in [affluent] societies are more likely to be higher than in poorer societies, the global application of the single tax should result in an on-balance redistribution of wealth from the former to the latter" (Steiner 1992: 89–90). If Steiner is correct, the administration of this tax may considerably (though not wholly) allay my reservations about open borders immigration regimes (each of which stems from concern regarding how the absence of formal barriers to international movement would interact with existing social and economic inequalities). Under such circumstances, there may be much less reason remaining for opposing open borders regimes. Steiner's argument, in this way, highlights that bringing about a world in which liberal defenses of open borders may succeed will require radical transformation of global economic arrangements and circumstances.

3.3 EXCLUSIVE COSMOPOLITANISM

Exclusive cosmopolitan approaches to immigration justice hold that states must adopt immigration policies that are consistent with the equal moral status of foreigners and citizens. In contrast to inclusive cosmopolitan approaches, they hold that this cosmopolitan commitment requires states to restrict immigration non-trivially. Here I consider four exclusive cosmopolitan approaches: the argument from environmental impacts, the Egalitarian Ownership argument, the political burden of immigration argument, and the global harm argument.

3.3.1 *The Argument from Environmental Impacts*

Human-caused environmental degradation and immigrants' rights both elicit special moral concern in progressive politics. Might these concerns be unexpectedly in conflict with each other? Robert Chapman, among others,¹⁹ defends severe immigration restrictions by appeal to

concerns for the natural environment; his argument holds that states should restrict immigration substantially in order to prevent environmental degradation caused by population growth (Chapman 2000). Chapman's reasoning is cosmopolitan (or, at least, the position could be construed as cosmopolitan), since he defends immigration restrictions in order to prevent environmental harms that affect all human beings. Since Chapman's argument uses US immigration policy as a primary example, I will initially describe his argument in these terms as well.

Chapman's first premise is that human overpopulation causes environmental degradation. This claim seems, on the face of it, true.²⁰ Unfortunately, Chapman points out, the United States' population already exceeds its "carrying capacity": "Given current consumption levels and availability of renewable resources, the optimal U.S. population is set at 85 million" (Chapman 2000: 192). Moreover, Chapman notes, the US population is growing at a rate of three million per year, 40 percent of which is due to immigration (documented and undocumented) (Chapman 2000: 191). In order to ensure the universal enjoyment of the basic right to a livable environment, Chapman argues that immigration to the US should be severely restricted. Chapman does not specify what amount of immigration he believes is acceptable, but his arguments, if correct, suggest that very little, and perhaps no immigration should be permitted (with the exception of the admission of refugees).

As he presents it, Chapman's argument is only applicable to US immigration policy. Presumably, however, Chapman's arguments, if correct, should apply to the immigration policies of all states in which human population exceeds carrying capacity. More precisely, Chapman's reasoning seems to support a prohibition on the immigration of persons to countries in which carrying capacity is exceeded to a greater extent than it is in the country of their birth.

This observation suggests a number of problems for Chapman's argument, however. First, it shows that Chapman's argument do not necessarily support restrictive immigration policies for the United States and other countries in excess of their carrying capacity. Rather, Chapman's view suggests that states whose population exceeds their carrying capacity ought to admit migrants from other states where population exceeds carrying capacity to a greater extent. Many immigrants to the United States come from countries that exceed their

carrying capacity (that is, are “overpopulated”) to a greater extent and that are more densely populated than the United States. Contrary to the conclusion he draws, Chapman’s argument may entail that the United States ought perhaps admit more immigrants.

Second, it is not immediately apparent how it is that immigration causes environmental harms. The admission of immigrants increases the population of the receiving country only by decreasing the population of the sending country. Immigration does not, in itself, increase the global human population. In fact, insofar as the population density of the sending country is greater than the population density of the receiving country, immigration appears to be good for the environment. Chapman’s environmental argument for immigration restrictions is cosmopolitan at first glance, but this observation reveals that Chapman could maintain his conclusion, as he articulates it, only by modifying the argument to rely on particularist nationalist premises of an especially chauvinist sort, on which environmental degradation is a moral concern only if it occurs in the United States. Immigration restrictions seem to privilege the “environmental luxuries” of wilderness and open space in the United States over ecosystems in other countries, as well as the welfare of prospective immigrants.²¹ So understood, Chapman’s environmental argument is not only pernicious in itself, but it also is internally conflicted: environmental degradation cannot be contained within national boundaries.

The cosmopolitanism of Chapman’s argument might be rehabilitated by adding an empirical premise: that migrants consume substantially more resources in the receiving country than they do in the sending country. Immigration-driven population growth may be harmful to the global environment if migrants increase their consumption of resources following admission. Vindication of the missing premise would require empirical study; it cannot be assessed from the armchair.²² However, even from that perspective, its intuitive plausibility is limited to the case of South–North migrants, who constitute only 35 percent of migrants worldwide. (See Chapter 1.) There are, moreover, reasons for thinking the missing premise is false. First, those who consume the least resources in their countries of birth (those for whom the greatest increase in resource consumption is possible) are least likely to migrate (they lack the means). Those who are most likely to migrate from poor countries to wealthy countries are generally middle class in their countries of birth, and thus likely to have access to a relatively high

level of resources for consumption already. Moreover, if Chapman is correct, most new immigrants tend to adhere to traditional reproductive patterns (Chapman 2000: 192). The fact that birth rates are negatively correlated with economic status (Murdoch and Oaten 2001: 366) suggests, therefore, that many immigrants do not obtain an economic status that allows them to substantially increase their consumption of resources. When they do, they are likely to have smaller families, in which case the environmental consequences of their increased resource consumption are considerably mitigated, if not reversed. Finally, insofar as Chapman defends the missing empirical premise on which his argument seemingly depends, his opposition can no longer truly be understood as against immigration *per se*, which is (putatively) correlated with improvement in the standard of living of migrants only incidentally. What Chapman's concern requires he oppose is improving the standard of living of the poor, regardless of the location of their residence.²³ The environmental argument for immigration restrictions is, therefore, suspect on empirical and moral grounds.

3.3.2 *The Egalitarian Ownership Argument*

Appeals to the use and distribution of natural resources and the impact this has on the natural environment appear in multiple guises in debates on immigration justice. Some environmentalists oppose immigration on grounds of its alleged harmful environmental consequences. Libertarians may invoke the redistributive implications of the Lockean proviso on appropriation of natural resources in defense of their opposition to state regulation of international migration. Michael Blake and Mathias Risse call upon similar considerations in defense of a view whose policy implications lie between the extremes of the environmental and the libertarian arguments. Blake and Risse propose a view on which the obligations of states to admit foreigners as immigrants is a function of the value of natural resources within their territory (Risse 2008; Blake and Risse 2009).²⁴ Blake and Risse term the view underlying their approach to immigration justice "Egalitarian Ownership." Egalitarian Ownership, in relation to immigration, is both cosmopolitan and exclusive. From the point of view of Egalitarian Ownership, distinctions between citizens and foreigners are of no intrinsic moral significance (Risse 2008: 25). Egalitarian Ownership entails, in Blake and Risse's view, that immigrant admissions are largely governed by

principles of justice rather than principles of humanitarianism or of charity (Blake and Risse 2009: 138). Nevertheless, the view does not require (and may forbid) open borders.

Egalitarian Ownership is the view that “the existence of the resources of the earth is nobody’s accomplishment, whereas they are needed for any human activities to unfold” (Blake and Risse 2009: 139). Therefore, the natural resources of the earth belong to humanity in common: “all human beings, no matter when and where they were born, are in some sense symmetrically located with regard to the earth’s resources and cannot be arbitrarily excluded from them by accidents of space and time” (Risse 2008: 28). Egalitarian Ownership is applicable, Blake and Risse caution, to “natural” resources, that is to say, to “raw materials only, not to what human beings have made of them” or, in other words, “what exists without human interference” (Blake and Risse 2009: 139).

What is the implication of this view for immigration? Most broadly, Egalitarian Ownership imposes constraints on the moral sovereignty of states: “One important way in which sovereignty should be constrained emerges from the idea that humanity as a whole owns the earth and its resources in common” (Risse 2008: 27). In particular, Egalitarian Ownership forbids states from excluding prospective immigrants if (in the relevant sense) they are undercrowded or too sparsely populated: “one implication of the best understanding of Egalitarian Ownership is that organized groups of people are justified in excluding others from the space they occupy *only if* that space is populated by sufficiently many people” (Risse 2008: 29, emphasis in original).

In respect to what is the territory of a state under-populated on this view? The physical extent of the national territory does not matter in itself on Blake and Risse’s view. Rather, what is important is the value for human purposes of the natural resources within the territory. For example, Blake and Risse explain:

areas with the same population density may differ dramatically otherwise: one may consist of arable land (with an evenly spread population), another mostly of desert (with the population crowded in a small fertile area); one may come with lots of minerals, another be depleted of them; one may be adjacent to the sea and include many navigable rivers, another landlocked. Such a measure would have to include not merely the size of the land, but also resources like minerals and water, and the quality of the

location as captured by a range of biophysical factors. (Blake and Risse 2009: 149)

Blake and Risse add to this point that the value of the territory's resources for human purposes may vary over time in accordance with changes in technological conditions (affecting, for example, the accessibility of resources). Egalitarian Ownership, as Blake and Risse articulate it, takes account of resources in terms of their availability, not in terms of their use. Thus, unused but available resources increase the value of the territory for human purposes on their view (Risse 2008: 29).

Measuring the value for human purposes of a territory requires aggregating the values of a variety of different resources, and therefore, that these resources be valued in terms commensurable with each other. For this reason, Blake and Risse propose that natural resources be assigned values in terms of aggregated world market prices (Blake and Risse 2009: 149). Using this measure, Blake and Risse argue that a national territory is underused if the per capita value for human purposes of resources within it is above the current average among states. States that are undercrowded in this sense morally must admit more immigrants. On the other hand, if the per capita value for human purposes of resources within the territory is below the current average among states worldwide, the territory is overused, and the state may exclude prospective immigrants (Blake and Risse 2009: 151).

Adjudicating immigrant admissions according to Egalitarian Ownership is a requirement of and promotes global justice, in Blake and Risse's view. Affluent countries can reduce the global economic inequalities that have resulted from their own unjust, inequitable appropriation of the earth's resources by relaxing their immigration restrictions:

Immigration can plausibly be regarded as one way of satisfying duties toward the global poor . . . Immigration—permanent or temporary—can serve this function partly because it allows some people access to greener pastures, and partly because of the remittances sent back by immigrants to their countries of origin. (Risse 2008: 26)

In particular, Egalitarian Ownership will require that "given that by global standards the population of the United States is too small relative to the amount of space to which it claims exclusive control, illegal

immigrants should be naturalized and more widespread immigration should be permitted" (Risse 2008: 25).

There are multiple respects in which Egalitarian Ownership does not have the implications Blake and Risse claim, however. First, "under-use" is determined by dividing the value of resources for human purposes within the state's territory by its human population. This means that a state may achieve a level of use equal to the present average among states in two general ways, in principle: by increasing population (by, for example, allowing more immigration) or by reducing the value of resources within the territory. Thus, states may achieve a level of resource use equal to the international average by, for example, transferring or giving up claims to resources. Nothing in the Egalitarian Ownership view, in principle, requires states whose territories are underused to admit more immigrants. Moreover, while Egalitarian Ownership permits both options, as well as combinations of them, immigrant admissions seems to be the least direct and least effective of them, given the moral purpose of invoking Egalitarian Ownership in this context.

This is because, next, Blake and Risse's proposal is inappropriate to address the problems that motivate it. Those most harmed by inequitable appropriations of natural resources—the global poor—are the least likely to benefit from this proposal, since they almost always lack the material means to migrate to, and establish even a minimally adequate standard of living in, wealthy countries in North America and Western Europe. Even if the universal adoption of immigration regimes in accordance with what, according to Blake and Risse, Egalitarian Ownership requires could achieve parity among states worldwide in terms of resource use, this would happen only as the effect of the internationally mobile (that is, not absolutely poor) residents of some countries moving about. The poor would be left where they already were, with (in the best-case scenario) no change in their circumstances—except that the *per capita* value of resources within their country, which is of no consequence for them, will have increased. (As this reveals, Blake and Risse's proposal can achieve, at best, *per capita* resource parity between countries, not within them. It, for this additional reason, may do little to diminish the rate of global poverty.) In fact, the poor may be made worse off insofar as the emigration of their relatively privileged compatriots diminishes human development prospects locally. (The appeal to remittances, for reasons articulated

above, will not help the argument.) What underlies this problem is that Blake and Risse's proposal seems implicitly to rely on the (misguided, explanatorily nationalist) idea that people are poor because they live in societies that lack natural resources.

This point illuminates a third problem. It is rare that a person is poor simply because the territory of the country in which she lives lacks (relative to other countries) natural resources. Many of the world's poorest countries (for example those in sub-Saharan Africa) are relatively resource-rich. Egalitarian Ownership, as Blake and Risse deploy it, may entail that these countries have significant duties to admit more immigrants. In contrast, some of the world's wealthiest countries are relatively resource-poor (for example, some European countries and Japan). Thomas Pogge notes, along these lines, that there is sometimes a significant negative correlation (known as the "Dutch Disease") between the size of countries' resource sectors and their rates of economic growth (Pogge 2002: 114). Thus, on Egalitarian Ownership, these wealthy countries may justly refuse immigrants. Most strangely of all, given that Blake and Risse assign value to resources in terms of world market prices, Egalitarian Ownership appears to entail that Middle-Eastern countries bear the heaviest immigration-related burdens among countries worldwide. Blake and Risse may be able to defend their application of Egalitarian Ownership to immigration policy against some of these counterexamples (or revise it accordingly). However, I believe the counterexamples (in addition to my previous criticisms) suggest that Egalitarian Ownership itself misunderstands the reasons for treating immigration policy as a matter of justice.

3.3.3 *The Political Burden of Immigration Argument*

Egalitarian Ownership entails that states whose *per capita* value for human purposes of natural resources within their territory is greater than the present international average must admit more immigrants. While Egalitarian Ownership does specify how many immigrants such states must admit (the number that would make its *per capita* value of resources equal to the international average), it does not, in itself, provide guidance on the question of how "undercrowded" states should select amongst prospective immigrants.²⁵

In relation to this question, Blake defends a distinct but complementary view that, like Egalitarian Ownership, is an exclusivist position on

immigrant admissions. It is also cosmopolitan, in the sense that it does not depend on according special weight to the interests of citizens in relation to those of foreigners (Blake 2006). Blake's view is that some, but not all, prospective immigrants have a right of immigration. States, Blake argues, assume a burden in admitting immigrants; therefore, only those prospective immigrants who have strong reason to be admitted have a right of admission. What kind of burden do immigrants impose on receiving countries? International migration, Blake points out, involves not only a change in geographical location, but also a change in political relationships. Receiving countries acquire duties to those they admit as residents and, potentially, as citizens. According to Blake, "The state, for instance, acquires a duty to protect the persons and properties of all residents within the community—a duty it does not extend to all persons around the world" (Blake 2006: 2). In virtue of the burden that the admission of foreigners involves for receiving states, only some foreigners will have claims strong enough to justify their admission: "something must be shown for a given state to have an obligation to let a would-be immigrant enter. This means, in the end, that a reason has to be provided by the prospective immigrant; the fact of her desire is not enough" (Blake 2006: 3).

What kinds of reasons are weighty enough that a state must admit a foreigner in spite of the burdens immigration imposes? Blake describes three similar cases. When a prospective migrant is a resident of a failed state, an oppressive state, or a state that otherwise fails to provide for the basic needs of its residents, then she has a right of immigration and her admission cannot be refused by other countries (Blake 2006: 3). In general, "Where a foreign government does not provide the political goods we think individuals deserve, other governments have an obligation to provide such goods themselves, through immigration and therefore through admission to a political relationship" (Blake 2006: 3).²⁶ With respect to other (better-off) prospective immigrants, Blake argues, states "may accept, or refuse, as they see fit" (Blake 2006: 4).²⁷ Understood in this way, Blake's view seems impartial between the interests of citizens and those of foreigners; one need not accord special weight to the interests of citizens (or the receiving state) in order to accept that admission should require that foreigners demonstrate reasonably weighty interests in immigration, if one also accepts Blake's view on the burden immigrants impose on the receiving state.²⁸

However, while it seems correct that (as Blake says) immigration

imposes the burden upon receiving countries to protect the persons and property of those they admit, my analysis of the economic impact of immigration on receiving countries in Chapter 2 shows that, all things considered, immigrants constitute a benefit to the countries that admit them. If this is correct, it would seem to show that Blake has overestimated the weightiness of interests that prospective migrants must demonstrate in order for potential receiving countries to have a duty to admit them (insofar as the scope of one's moral concern is limited to receiving countries and prospective migrants). Indeed—given Blake's own way of reasoning about the political morality of immigrant admissions—it appears that states morally must admit any prospective migrant who can demonstrate a non-trivial interest in admission: both the receiving country and (let us assume) the immigrant herself benefit, all things considered. In fact, the very foreigners over whose admission, Blake holds, states have discretion (those who are better-off) are those whom states typically perceive themselves to have the greatest interest in admitting.

In response, Blake may argue that what is important for his argument is not the net impact of immigration on the receiving country, but the mere fact that states must assume the duty of protecting the rights of persons they admit. Simply because the state assumes this burden in admitting foreigners, Blake might say, it has a defeasible right to grant or refuse admission as it will (a right that is overridden in the case of prospective migrants suffering basic needs deficiencies), even if the impact of immigration is on balance positive for the receiving country. This response would address my first objection, but at the cost of transforming Blake's argument from a cosmopolitan moral position on the political morality of immigration policy to a defense of the moral sovereignty of states, the view that states are morally free (subject perhaps to qualification) to select whatever immigration policies they like. Were Blake to respond to my first objection by arguing that, in virtue of the burden states assume in admitting immigrants (and regardless of the net impact of immigration), states have a defeasible right to admit or exclude foreigners as they see fit, then Blake owes us a defense of the moral sovereignty of states view (arguments for which I consider in Chapter 5). After all, if A's action would impose a burden on B, this would normally be thought to entail that B's interests must be given due weight in deciding the permissibility of A's action—not that B has a (qualified) right to decide whether A may undertake the action or not.

Blake's view encounters a further problem, even if my first objection is unsuccessful. In virtue of the burden that immigrants, on Blake's view, impose on receiving countries, Blake reasons that states "may accept, or refuse, as they see fit" prospective migrants whose countries of origin provide for their basic needs. Insofar as this position seems reasonable, I argue that it is only because Blake reasons about the political morality of immigration policy on the assumption that the state's selection of immigration policies affects the interests of only two sets of parties: receiving countries (and their citizens) and prospective migrants. Since (first) the vital interests of prospective migrants whose countries of origin provide for citizens' basic needs are not affected, and (second) no other parties' interests, besides those of receiving countries, are significantly affected, Blake appears to infer that admissions decisions regarding these better-off prospective migrants are receiving countries' to make (that is, that receiving countries' decisions are not subject to moral constraints). Blake does not consider the consequences of states' admissions policy decisions for non-migrating foreigners, a group that includes most of the world's poorest, most disadvantaged people. As I argue above (subsection 3.2.1), states' immigration policies can affect the basic interests of non-migrating foreigners in grave ways. (Particularly worrisome are those policies that admit highly educated, professional, and "skilled" migrants from countries of the Global South in large numbers.) Recognition of this renders implausible (in the absence of an independent defense of the moral sovereignty of states with respect to immigration policy) the view that states have moral discretion with respect to the admission of better-off prospective migrants; these admissions decisions are also subject to moral constraints.²⁹

Contrastingly, Blake holds that in some cases the admission of prospective migrants is obligatory for potential receiving countries, as I mention above. Blake's view in regard to precisely which foreigners must be admitted is unclear in one respect, however. For example:

There are, I think, many circumstances that would give rise to a legitimate demand [for immigration]. The most central of these, I think, would be the failure of the current state of residency to provide the goods that legitimate government coercive force. Failed states, oppressive states, states which fail to provide adequate basic needs—all of these, I think, fail to provide the

sorts of political relationship we think appropriate for individual moral agents. Under these circumstances, I suggest, the right of countries such as the United States to keep would-be immigrants out is severely restricted. Where a foreign government does not provide the political goods we think individuals deserve, other governments have an obligation to provide such goods themselves, through immigration and therefore through admission to a political relationship. (Blake 2006: 3)

Blake's passage suggests a conception on which states either provide for basic needs or do not, on which states either are oppressive or are not. On such a conception, it would be reasonable to think (if one accepts Blake's view that "other governments have an obligation to provide such goods themselves") that other states (at least, wealthy, liberal ones) have a duty to grant admission to all residents of states that fail to provide the goods that legitimate their coercion. However, there is no state that fails to provide for the basic needs of or (*pace* anarchism) oppresses all residents. There is, moreover, probably no state that provides for the basic needs of all residents or that does not contribute (either by action or culpable omission) to the oppression of some residents, along some dimension of social identity. Were (wealthy, liberal) states to offer admission to all residents of states that (say) for the most part fail to provide the basic goods that legitimate their coercion, two problems would arise. First, the internationally immobile residents of such countries (those most deprived of basic goods) would be made worse-off as their better-off compatriots emigrate, depleting human development prospects. Second, oppressed residents of states that for the most part provide for the basic goods that legitimate their coercion (but that nevertheless contribute to the oppression of minority classes) will be excluded. To avoid these problems, Blake's view must be made more precise. In particular, the obligation of (wealthy, liberal) states to provide "the political goods we think individuals deserve" should be taken specifically to dictate the admission of individuals whose country of origin fails to provide these goods for them (whether or not the state does so generally). Since individuals whose country of origin fails to provide these political goods to them are, in almost all cases, members of social groups that are unjustly disadvantaged, Blake's proposal (understood as I have suggested) aligns with my principle, the PDP.³⁰

3.3.4 *The Global Harm Argument*

Blake seemingly posits a positive duty on the part of liberal states to aid foreigners whose governments fail to provide the political goods that legitimate their use of coercive force against citizens. In some cases, however, citizens of foreign states are deprived of basic (political) goods not on account of the failures of their own governments, but rather due to the foreign policies and military actions of affluent liberal states. In such circumstances, the duty of a liberal state whose own foreign policies or military actions have deprived foreigners of basic human goods is not a positive duty of assistance but a negative duty of redress. Shelley Wilcox argues that these duties ought, in some cases, be discharged via the liberal state's immigration policies.

Wilcox defends the Global Harm Principle as a basis for determining which immigrants ought to receive priority in admission to certain countries (Wilcox 2007). This makes Wilcox's position exclusivist: an argument for prioritizing the admission of some prospective immigrants over others implies that not all will be admitted. Indeed, Wilcox holds that the open borders proposal "may be plausible at the level of ideal theory," but that it "fails to provide adequate normative guidance concerning immigration in the world as it is today" (Wilcox 2007: 274).³¹ Wilcox's position is also, in the relevant sense, cosmopolitan: she argues that "The inclusion of foreigners . . . in the category of individuals whom societies should not harm is easily justified on egalitarian grounds: since all persons deserve equal moral respect, there are no legitimate grounds for claiming that harm to non-citizens is any less morally problematic than harm to citizens" (Wilcox 2007: 277–8).

Wilcox's Global Harm Principle (GHP) holds that "societies should not harm foreigners; and societies that violate this duty must: (1) stop harming these foreigners immediately; and (2) compensate their victims for the harm they have already caused them" (Wilcox 2007: 277). Having explicated both the notion of "harm" implicit in the principle (as causing a human rights deficit) and the conditions under which a society is collectively responsible for producing a human rights deficit in another country, Wilcox applies the GHP to immigration policy. When a society has violated the primary duty of the GHP, it must discharge the derivative duties entailed by the GHP. In some cases, immigrant admissions, Wilcox argues, will be an appropriate means of discharging them. In those cases in which human rights

deficits cannot be remedied quickly, easily, or at all (locally), harming societies must compensate their victims by offering them admission as immigrants. Wilcox's central examples of cases in which immigrant admissions are obligatory under the GHP involve human rights deficits produced by destructive military activity (for example, US military herbicide operations in the Vietnam War that rendered areas of Southeast Asia not safely inhabitable (Wilcox 2007: 285), and destruction of basic infrastructure by the US military and private military contractors more recently in Iraq (Wilcox 2007: 286)). Wilcox also suggests that affluent Western countries may be collectively responsible for severe poverty in the Global South as a result of global economic institutions they have created and imposed, and that those countries may, therefore, be obligated to admit certain foreigners in order to discharge their GHP-related duties (Wilcox 2007: 283–4).

There is much to like in Wilcox's proposal. The GHP itself seems uncontroversial; in particular, in regard to the relation between the GHP and immigration policy, it is clear that states must not adopt immigration policies that themselves cause avoidable human rights deficits. However, I wish to argue that in most cases, immigrant admissions are a clumsy tool for rectifying human rights deficits that states have imposed on foreigners. Unless the harm in question has been caused by an immigration policy, it is unclear why the relevant normative philosophical injunctions should be put in terms of immigration policy. I agree with Wilcox that an offer of admission "will be mandatory if the resettlement of victims or potential victims is the only means by which [GHP] duties can be fulfilled" (Wilcox 2007: 285), such as when the wrongdoing state's activities have made a decent human life impossible in the victims' home community. Wilcox also argues that immigrant admissions are morally optimal and perhaps obligatory in other cases in which resettlement is not necessary for compensation:

in cases in which immigrant admissions is one of several possible means of discharging either derivative duty, it would be desirable, even if not obligatory, for societies to give special consideration to foreigners' preferences regarding which course of action should be chosen. If they would prefer immigrant admissions to other strategies (e.g., institutional reconstruction or monetary compensation), then societies should honor these preferences. (Wilcox 2007: 287)

For example, Wilcox calls for the expansion of “the category of need-based admissions to include individuals suffering from persecution, war, and serious subsistence deprivations, thereby enabling greater numbers of desperately needy immigrants to immigrate legally” (Wilcox 2007: 288). However, except in cases in which the human rights deficit is a direct function of the victim’s location of residence, admission to the wrongdoing society is, as a form of compensation, inappropriate, irrelevant to the harm, and therefore, likely, inadequate. For example, if the United States were to offer admission to people whose severe poverty is—stipulating for the sake of argument—caused by its dominant influence in global economic institutions, this would not (even if the offer were acted upon) alleviate their poverty. Evacuating poor areas of the world, through immigrant admissions, will not eradicate poverty (since the location of the poverty is not an intrinsic part of its cause). Wilcox could certainly argue in response that her proposal endorses immigrant admissions as compensation only in cases in which admission would adequately compensate. However, this would make it the case that the implications of the GHP for immigration policy are highly circumscribed: first, countries may not adopt immigration policies that avoidably produce human rights deficits; second, immigrant admissions are, as compensation, obligatory if and only if the harm the state has imposed on foreigners is causally related to their location of residence in such a way that it cannot be compensated for by means other than resettlement. This, I suspect, will be a very small range of cases.

Wilcox’s proposal faces some additional worries as well. A mere offer of admission will do little to compensate foreigners upon whom the state has imposed human rights deficits if those to whom compensation is owed lack the material means transnational migration requires (whether this lack is due to the state’s wrongdoing or not). Wilcox does not, but could (and should) argue that states owing compensation must also subsidize the resettlement costs of foreigners they have harmed. Her proposal ought also require that the state provide (as much as and for as long as is appropriate) for the living expenses of foreigners they admit in accordance with the GHP.³² These amendments would enhance Wilcox’s proposal, but they do not address a further harm it may cause. Some, perhaps many, foreigners whom the state has harmed will not wish to leave their home country or community. These foreigners (even if the state finds other ways to compensate fully for the initial human rights deficit it has imposed) will be harmed by the

state's method of compensating others. Immigrant admissions as a form of compensation for violations of the GHP may, in some cases, set in motion a cycle of underdevelopment in countries from which large-scale emigration occurs as a result, harming the human rights of those who remain, including parties who may not have been affected initially. It is true (and Wilcox could argue) that the state must, in these circumstances, compensate for further harms brought about by its initial compensation efforts. However, the prospect that states may, morally, have to compensate for further harms their initial compensation efforts engender calls into question the appropriateness of the initial method of compensation, immigrant admissions. While I am persuaded that states must give special moral consideration to those upon whom they have imposed human rights deficits in the selection of immigration policies, I am therefore skeptical that in all or even most cases this will entail the obligatoriness of their admission.

3.4 CONCLUSION

As in Chapter 2, I have attempted in this chapter to demonstrate the shortcomings of existing philosophical approaches to immigration justice, with a view to clearing the way for my own approach. To this end, I have examined five distinct cosmopolitan defenses of the "open borders" view as well as four different positions on which states may or must restrict immigration for cosmopolitan reasons. I have criticized each of these positions for a variety of reasons. However, most share a common flaw, relying in one way or another both in the formulation of guiding principles and in the application of these principles to policy, on faulty empirical assumptions about the global economic order and prospective migrants. In many cases, these faulty empirical assumptions, in combination with the cosmopolitan principles of political morality applied to them, have resulted in policy proposals that would avoidably harm members of social groups that are already unjustly disadvantaged.

However, I do not reject cosmopolitan approaches to immigration justice in principle. In the next chapter, I propose a cosmopolitan principle for evaluating the justice of states' immigration policies. That principle, the Priority of Disadvantage Principle (PDP), holds that just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged. Chapter 4 provides a detailed critical

explication of this principle, organized in terms of the following four questions: What is a social group? Under what conditions is a social group disadvantaged? When is social group disadvantage unjust? And, what does it mean to say that an immigration policy avoidably harms a social group? This principle enjoins states to consider equally the effects of their immigration policies on disadvantaged social groups, whether those groups are entirely domestic, entirely foreign, or transnational. My principle is, thus, cosmopolitan. In contrast to most other cosmopolitan approaches, however, I argue (in Chapter 6) that the PDP implies that what immigration policies are just in any particular state is context-sensitive; while perhaps some states ought to open their borders, others may be required to substantially restrict immigration in order to prevent avoidable harm to social groups that are already unjustly disadvantaged.

Chapter 4

THE PRIORITY OF DISADVANTAGE PRINCIPLE

4.1 INTRODUCTION

The central goal of this book is to show that an immigrant admissions policy is unjust if it avoidably harms a social group that is already unjustly disadvantaged. I defend this principle, the Priority of Disadvantage Principle (PDP), as a universally applicable necessary condition of the justice of nation-states' immigration policies. The PDP is not the claim that states must prioritize the admission of members of unjustly disadvantaged social groups, though it may sometimes have this implication; instead, the PDP enjoins states to regard the effects their immigrant admissions policies have on social groups that are already unjustly disadvantaged as especially morally salient. The PDP applies to policies that stipulate the criteria of first admission to a sovereign state for permanent residents. Thus, I do not endorse this principle as a way to apprehend the justice of policies for admitting other kinds of foreigners, including refugees and asylum-seekers, temporary workers or other non-immigrants. I also do not propose this principle as a standard for measuring the justice of the criteria that a state may adopt to determine which legal residents may become citizens. Finally, this principle is not meant as a condition of the justice of policies regarding the treatment and legal benefits and rights of legal residents, permanent or temporary.

In this chapter I offer a detailed theoretical explication of the PDP, which I defend in Chapter 5 and apply in Chapter 6. These are the questions I hope to answer in this chapter: (1) What is a "social group"? (2) Under what conditions is a social group disadvantaged? (3) When is a social group unjustly disadvantaged? (4) What is it to "avoidably harm" a social group? I answer these complex questions in a fair

amount of depth. However, some controversies may be left unresolved unproblematically because they do not bear on my application of the PDP in Chapter 6.

4.2 WHAT IS A SOCIAL GROUP?

While it is evident that each person is a member of many different sets of individual human beings (since each person possesses certain characteristics that she has in common with others, such as eye color), most of these sets are not social groups. Many ways of grouping individual human beings are, for the purpose of morally evaluating social policies, arbitrary; social policies do not affect green-eyed people as such (at least in any known society), for example. These arbitrary collections of individuals are what Iris Marion Young calls “aggregates” (Young 2000: 89). Aggregates are groups of individuals who have in common one or more attributes. Aggregates considered as such have no social significance.

4.2.1 Social Groups and Social Institutions

Other groupings of human beings are salient for the evaluation of social policies since those policies tend to affect members of those groups as such. Groups based on gender, race, economic class, sexual preference, age, ability, citizenship status, and religion (to name a few) all tend to be salient in this respect. These collections of individuals are social groups rather than mere aggregates. How are social groups distinct from aggregates, and why are the effects of policies on social groups (as opposed to aggregates) salient in this way?

Unlike aggregates, social groups are not constituted, and thus differentiated from other groups, by some common, arbitrary attribute(s) shared by members. Rather, what members of a social group share is a relation. Social groups are constituted and differentiated from one another by members’ relation to social institutions, which condition the opportunities of the members of a social group in similar ways. Describing social groups in contrast to aggregates, Young says:

A structural social group is a collection of persons who are similarly positioned in interactive and institutional relations that condition their opportunities and life prospects. This conditioning

occurs because of the way that actions and interactions conditioning that position in one situation reinforce the rules and resources available for other actions and interactions involving people in the structural positions. (Young 2000: 97)

That is to say, social institutions create social groups by conditioning the lives of some people in one way, other people in other ways.

Like Young, Ann Cudd characterizes social groups in terms of members' relation to social institutions. Cudd defines "social groups" as "collections of individuals who face common constraints that are structured by social institutions" (Cudd 2006: 51).¹ This is the account of social groups I adopt for this and subsequent chapters.

Both Young's and Cudd's accounts of social groups rely on the notion of "social institutions" or "social structures." Both of these concepts, which I take to be interchangeable with one another, refer generally to various kinds of norms, both formal and informal, that make available (or not) actions, choices, and opportunities for individuals within a given society. More specifically, Cudd defines a social institution as an entity that "sets constraints that specify behavior in specific recurrent situations, that are tacitly known by some nontrivial subset of society, and that are either self-policed or policed by some external authority" (Cudd 2006: 51). The constraints to which Cudd refers include, for example, "legal rights, obligations, and burdens, stereotypical expectations, wealth, income, social status, conventions, norms, and practices" (Cudd 2006: 50). These constraints are put in place by social institutions, some of the most important of which are "government, legal systems, schools, banks, gender rules and norms, rules of etiquette, media outlets, stereotypical beliefs, class, caste systems, and racial classification systems" (Cudd 2006: 50).

It is important to take note of significant respects in which this account departs from some ways of conceiving of social groups. First, on this account, social groups are not typified by shared culture, customs, or ways of life. Social groups are, as Young puts it, structural groups, defined by their relation to social structures or institutions. While it would not be surprising to find shared cultural elements among the members of some social groups, this is not a necessary feature of social grouphood. Second, membership in a social group is not a matter of self-identification. For example, this account denies that a male who is transgender is a woman simply in virtue of identifying (however

deeply) as a woman. Rather, a person is a woman (that is, a member of the social group “woman”), on this account, if and only if, she or he experiences the relevant institutionally structured constraints on action. Thus, on this account of social groups, a male who is transgender may be a woman if he passes as female (and is, in virtue of passing, treated by others as a woman), but probably not otherwise. Third, just as self-identification is not sufficient for social group membership, neither is it necessary. One can be a member of a social group without recognizing that one is a member. One may fail to realize that the group of which one is a member exists (as a social group), or one may recognize the existence of the group but lack an awareness of one’s membership in it.

4.2.2 *Implications*

Which collections of individuals are social groups varies over time; a collection of people may constitute a social group under a particular set of social institutions, but as those institutions diminish in their significance, the group will cease to exist (Cudd 2006: 45). The Irish once constituted a social group in the United States, but now no longer do. (Irish-Americans are now a mere aggregate.) Moreover, some collection of individuals may constitute a social group in one society but would not in another. This is because social institutions vary significantly over time and across societies. For example, while one’s gender and economic class will condition one’s opportunities in most societies (that is to say, most contemporary societies contain social groups differentiated from one another based on gender and class), one’s race, sexual preferences, and religion may condition one’s opportunities in some societies, but not in others (that is, some societies contain social groups differentiated from one another on the basis of race, sexual preference, and religion, and others do not; further, even among those that do, classification schemes may vary from one society to the next).

What social groups exist varies from society to society, but some social groups are transnational. Since the government and legal systems are both social institutions, some social groups will not cross national boundaries. In order for a social group to be unique to a national context, it must be the case that the constraints experienced by the members of a social group are partially structured by the government or legal systems, and that those governmental or legally structured constraints are unique to that national context. Native Americans may

exemplify a nationally contained social group, insofar as their opportunities have been substantially conditioned by formal social institutions (the US government and its policies) that are relatively unique to their national context.

Many social groups are defined by institutional constraints that are not formal or are defined by formal institutional constraints that are not unique. In these cases, it is quite likely that the social group is transnational. Collections comprised of individuals from different countries may be members of the same social group, as long as they experience similar institutionally structured constraints. Though the intensity and form of constraints they experience vary to some extent, women and men, as well as collections defined in terms of economic class, are transnational social groups. (Note that the claim that a social group is transnational (that is, exists in more than one nation-state) is not the same as the claim that a social group is universal (that is, exists in every society)). However, in some cases, two or more sets of people each located in different countries that are actually distinct social groups may go by the same name; for example, Muslims in the US are a distinct social group from Muslims in Indonesia, despite shared elements of religious faith.²

4.2.3 *Objections*

I am concerned in this chapter to provide a principled way of delineating certain collections of individuals that I believe immigration policies should not avoidably harm, and distinguishing these collections of individuals from other possible collections of individuals. It is important to note that whether or not a person is a member of a particular social group is not a purely empirical fact. This fact relies on normative judgments about what the most useful way of gathering individuals into groups is, given certain purposes. Such normative judgments are necessary since, in principle, individuals could be gathered into infinitely many different groups, and combinations of groups, based on their shared features. For example, one could group people based on purely physical features: hair texture, eye color, index finger length, and so on. But this would not be useful for many purposes. A plausible account of social groups, then, must have a goal in mind when selecting criteria for how to “carve up” society. In my case this goal is to “carve up” society in a way that best facilitates moral evaluation of social poli-

cies, including immigration policies. This requires grouping individuals according to how they tend to be affected by social policies.

Although one may argue that the term “social group” refers, or ought to refer, to some other types of collections of individuals, I intend this definition to be stipulative at the least. Should someone contend that “social group” identifies something other than collections of individuals whose opportunities are similarly constrained by social institutions, I would happily call these collections by some other name—for example, an institutional group, or a structural group. My point here is that external objections to this account of social groups (objections that hold that social groups are some other type of collection of individuals) need not present a concern. The only sorts of objections to this account of social groups that demand attention are internal objections—those that challenge the coherence or the usefulness of the account.

One objection that is motivated by the account of social groups I have adopted is premised on the observation that different forces of social stratification (that is to say, privilege and disadvantage) intersect with each other. In a given social context, a person will have a gender, a race, an economic class, a sexuality, and so on. Women, men, black people and white people are not mutually exclusive categories of social identity; gendered people are raced and raced people are gendered. This objection, what I call the “radical intersectionality” objection, asserts that how gender (privilege or disadvantage) is experienced is determined by one’s race and is different for members of each racialized group (as well as each economic class group, each sexuality group, and so on). Black women and white women do not, according to this view, have the same gender, the misleading imprecision of our language notwithstanding. (Likewise, the radical intersectionality objection entails that how race (privilege or disadvantage) is experienced varies radically with gender, class, and sexuality—that white women and white men do not have the same race, for example.)

The claims I have described as “radical intersectionality” are defended by Elizabeth Spelman (1988, 1995); Maria Lugones and Elizabeth Spelman (1983); Judith Butler (1999); Jane Flax (1995); and Maxine Baca Zinn and Bonnie Thornton Dill (1996). Spelman writes, for example, that “it would be quite misleading to say simply that black women and white women both are oppressed as women” (Spelman 1995: 356), implying the view that black women and white women have different genders. She argues that black women do not, in comparison to white

women, experience “a further burden,” but rather, “a different burden” (Spelman 1988: 123).

How, precisely, is radical intersectionality an objection to my views in this book? The objection with which I am concerned is not directly an objection to the account of social groups I adopt; rather, it is an objection to my application of this account. I argue that (in the United States, for example) women and men, black people, Native Americans, Asian-Americans, Latinos and white people, straight people and sexual minorities, and the poor, the middle class, and the wealthy are all social groups. This list (admittedly partial, for it does not consider disability, religion, citizenship status, age, and so forth) of twelve social groups is far too short, however, according to radical intersectionality, given the account of social groups I employ. As I noted above, radical intersectionality holds, for example, that black women and white women have a different gender. Put more generally, radical intersectionality holds that each collection of people for whom the same set of different forces of social stratification intersect constitute a distinct social group. If a social group is a collection of people whose opportunities are similarly conditioned by social institutions, and if the intersection of different forces of social stratification produces radically distinct experiences of privilege and/or disadvantage for people who occupy respective intersections, then each intersection of forces produces a distinct social group. Thus, according to radical intersectionality, middle-class white gay men are not members of four overlapping social groups, but members of a single discrete social group. In other words, the radical intersectionality objection holds that I am wrong about what social groups exist.

The basic insight of intersectionality—that experiences of privilege or disadvantage vary to some extent for members of the same social group, depending on what other social groups they simultaneously belong to (hooks 1984; Crenshaw 1989, 1991)—is surely correct; bell hooks convincingly demonstrates this when she points out, contra many second-wave white feminists, that women of color and poor white women have not primarily experienced gender oppression as confinement to the domestic sphere (hooks 1984: 1). However, what I have called radical intersectionality—the view that members of the same social group who are simultaneously members of other, different social groups experience privilege or disadvantage in radically different ways, so much so that it is incorrect to say in the first place that they are

members of the same social group—is both empirically implausible and pragmatically pernicious.

Radical intersectionality is empirically implausible because members of the same social group share many of the same experiences of disadvantage (or privilege) even when their other social group memberships vary. Women, for example, of different social groups share some experiences of oppression. Although the oppression of the majority of women has not been primarily characterized by confinement to the domestic sphere, most women experience social disadvantages as a result of being culturally assigned disproportionate responsibility for unpaid domestic labor (or, at least, the expectation, by employers, for example, that they have such responsibilities), as Susan Moller Okin has demonstrated (Okin 1989). Women of different social groups experience, *qua* women, elevated vulnerability to domestic violence and sexual assault, as Sally Haslanger observes:

the practices in question are oppressive to all members of the group, but of course to different degrees and in different ways, depending on what other social positions they occupy. For example, a wealthy woman who can afford to take a taxi whenever she is anxious about her security on the street is not oppressed by the prevalence of violence against women to the same extent as a poor woman who must use public transportation and walk several blocks home from the bus stop after her shift is over at midnight. But that women are at greater risk of rape, domestic violence, and sexual harassment than men is an injustice that affects all women . . . (Haslanger 2004: 113)

Similarly, as Cudd notes, women experience economic deprivation relative to men of the same race, and black people experience economic deprivation relative to white people of the same gender: “with respect to the wage rate constraint, at least, there are interactive effects between race and gender, but these effects do not reverse the direction of the constraint” (Cudd 2006: 48). Men, on average, earn more than women of the same race (though the wage gap between white men and white women is greater than the wage gap between black men and black women), and white people, on average, earn more than black people of the same gender (though the wage gap is larger between white men and black men than it is between white women and black women).

(Note that my claim is not that these examples of gender oppression are universal (that all women have these experiences); rather, it is that many women who are members of other, different social groups have these experiences in common.)

Radical intersectionality denies these considerable similarities. Indeed, the best way to make sense of the fact that differently raced women have some divergent and some common experiences of gender oppression is to say that “women” names a social group, one that overlaps with other social groups based on race—the view I have articulated.

Moreover, radical intersectionality entails an exponential proliferation of social groups, and for this reason, it is pragmatically pernicious. Recall that radical intersectionality holds that each collection of people for whom the same set of different forces of social stratification intersect constitute a distinct social group. Thus, according to radical intersectionality, middle-class white gay men are not members of four overlapping social groups; instead, they constitute a distinct social group unto themselves. Indeed, even this is too simple, because middle-class white gay men vary in terms of age, religion, ability, and citizenship status.

Suppose that a society contains eight dimensions of social identity relevant to immigration policy: gender, race, class, sexuality, age, ability, religion, and citizenship status. Suppose, moreover, that there are two gender categories, five race categories, three economic classes, three categories of sexuality, three age categories, five socially salient religious categories, three broad categories of ability and disability, and four citizenship status categories.

According to the view of social group ontology I have advanced, this society contains twenty-eight social groups, eight privileged and twenty disadvantaged.³ In other words, this society contains twenty groups the effects of an immigration policy on which must be considered, according to the PDP. In contrast, radical intersectionality entails that this society contains 16,200 groups, one privileged and 16,199 disadvantaged.⁴ It is quite clear that the progressive political project of morally assessing social policies for their effects on disadvantaged social groups is, on radical intersectionality, a Sisyphean task. If one accepts radical intersectionality, then one cannot reasonably maintain that evaluating social policies for their effects on disadvantage social groups is something that ought to be done. I take this pragmatic implication of radical intersectionality as a legitimate reason to abandon the view.

4.3 WHAT DOES IT MEAN FOR A SOCIAL GROUP TO BE DISADVANTAGED?

In order to determine the scope of the principle I defend in this book, it is necessary to say what it means for a social group to be disadvantaged. A social group is disadvantaged when its members (on average) lack some socially and morally significant good (G) relative to some standard (S). In this section, I discuss some ways G and S might be understood, and argue that a social group is disadvantaged when its members tend to lack central human capabilities, relative to the members of the corollary privileged group.

Whether or not a social group is disadvantaged is not an entirely empirical question. Its answer depends on how “disadvantage” is conceived. Since there are many ways in which one might define “disadvantage,” the selection of a definition must be informed by the goals of the person selecting it. One can judge the adequacy of a definition both by how successfully it meets these goals, as well as by the worthiness of the goals themselves. I take for granted that a good definition of disadvantage will have as a goal the inclusion under the extension of the term social groups whose members tend to lack some important human good. While I will raise multiple criticisms of those ways of conceiving of disadvantage that I reject, a central concern of mine is that an adequate account of the goods and standard in terms of which social group disadvantage is understood must not obscure the existence of or underestimate the disadvantage faced by certain paradigmatically disadvantaged social groups.

4.3.1 *The Metric of Disadvantage*

There are three broad ways in which the good (G) that members of a social group lack, such that that group is disadvantaged, might be conceived. First, one might argue that a social group is disadvantaged if its members tend to lack welfare, understood subjectively (for example, in terms of preference satisfaction), relative to some standard.

A subjective welfare account of social group disadvantage is, however, simultaneously too broad and too narrow. It is too narrow because it risks excluding some groups that would very much seem to be disadvantaged. For example, the disabled are a paradigmatic example of a disadvantaged social group. However, a subjective welfare

account would deny that the disabled are disadvantaged because members of this group experience the same range of happiness as the abled (Anderson 1999: 333). In this way, the subjective welfare account of group disadvantage tends to obscure the existence of certain disadvantaged social groups by conflating disadvantage with low levels of subjective welfare.

Subjective welfare accounts would wrongly exclude other groups as well. In some cases it appears that members of disadvantaged groups become so accustomed to their impoverished circumstances that they no longer find them dissatisfying. In other cases, members of disadvantaged groups seem to internalize the myth of natural inferiority upon which their disadvantage is premised (Bartky 1990: 23). Believing that their lesser life prospects are inevitable or deserved, members of such groups no longer register dissatisfaction with their circumstances. Accusations of deformed desires and false consciousness are controversial, but what matters here is that if such groups exist, subjective welfare accounts will incorrectly deny that they are disadvantaged.

That some social groups tend to have relatively high levels of subjective welfare does not entail that those groups are not disadvantaged. Likewise, a group is not disadvantaged simply because its members experience low levels of subjective welfare on average. Subjective welfare conceptions of social group disadvantage risk including, inappropriately, groups whose privilege has fostered malaise, ennui, or depression. It is sometimes noted that people who are members of privileged groups fail to recognize the ways in which they are privileged. As a result, when their relative privilege diminishes (either because their advantages have eroded or because the prospects of the groups with respect to whom they are privileged have improved), some members of privileged groups begin to feel that they are disadvantaged and may even become agitated. It would clearly be a mistake to count such groups as disadvantaged even if their average levels of subjective welfare were quite low.

These counterexamples point to a deeper problem for subjective welfare accounts. While one might reasonably hold that happiness or even the good ought to be understood in terms of subjective welfare, I argue that the concept of disadvantage clearly refers to some objective condition, much like the concept of "poverty." Even if one holds that poverty is not morally significant in itself (but only insofar as it is detrimental to happiness, understood as the satisfaction of informed

preferences, for example), one need not think that poverty itself should be taken to mean “unsatisfied preferences.” Similarly, social group disadvantage must be understood as an objective condition, even if it is morally significant only because it tends to undermine subjective welfare.⁵

Resourcist accounts of social group disadvantage rectify this problem by conceiving of disadvantage as an objective condition. According to the resourcist view, a social group is disadvantaged if its members experience a relative lack of certain material resources, such as income, wealth, health care, or education.

Like subjective welfare accounts of social group disadvantage, however, resourcist understandings of group disadvantage tend to obscure the existence of or underestimate the disadvantage of certain social groups. Gay people in the United States, for example, are stereotyped as having high personal incomes and above average levels of education. If this is true, resourcist accounts of social group disadvantage would entail that gay men and lesbians are not, *qua* gay, a disadvantaged social group. This seems counterintuitive, however, since gay men and lesbians alike lack both formal equality with heterosexuals, as well as the ability to publicly reveal their identities without fear of moral condemnation or violence. The resourcist account will face many similar counterexamples since it eliminates the possibility that any social group whose members are (on average) materially well off are disadvantaged. Asian-Americans are the subject of pernicious stereotypes that engender various forms of discrimination and sometimes even racist violence, but may not count as disadvantaged on a resourcist conception. As these examples indicate, people can be disadvantaged in ways other than lack of material resources.

Resourcist accounts of social group disadvantage are not only too narrow; they are too broad as well. A resourcist conception will count as disadvantaged groups that lack material resources by choice. Some religious groups (for example, the Amish) are relatively poor by moral conviction. Since their relative poverty is voluntary, and not imposed on them by external forces (that is to say, they do not lack the opportunity for greater wealth), it seems counterintuitive to count them among the disadvantaged, as a resourcist account would.

While a relative lack of important material resources (income, wealth, health resources, or education) is *prima facie* evidence that a social group is disadvantaged, it is not what is constitutive of social group

disadvantage. The most important fault of resourcist accounts is that some people are better able to make use of the same set of resources than others in virtue of how they are positioned in society (that is, in virtue of what social groups they belong to). For example, as Amartya Sen comments, “commodity ownership is not the right focus since it does not tell us what the person can, in fact, do. I may not be able to use the bike if—say—I happen to be handicapped” (Sen 1983: 160). In others words, because societies design physical spaces in accordance with the abilities and disabilities of the supposed average person, a wheelchair-bound person will typically require more resources for mobility than a person who has the use of her legs. Similarly, as Martha Nussbaum notes, “in a nation where women are traditionally discouraged from pursuing an education, it will usually take more resources to produce female literacy than male literacy” (Nussbaum 2003: 35). What both of these examples indicate is that members of disadvantaged social groups typically cannot accomplish as much with the same quantity of resources as people who are (in the relevant respects) privileged, as a result of the very social obstacles in virtue of which they are disadvantaged. What this means is that resourcist accounts will tend to systematically undercount disadvantage, denying that groups are disadvantaged because members’ average resources exceed a specified threshold, despite the fact that members’ capacity to use the resources they formally possess is diminished.

These criticisms of alternative conceptions of social group disadvantage suggest a way in which social group disadvantage may be more appropriately understood. I wish to argue that a social group is disadvantaged when its members (on average) experience a relative lack of central human capabilities, or positive freedoms.⁶ In other words, a social group will count as disadvantaged on this view if members of that group are (on average) less able to do certain things or achieve certain ends (that is, to function in certain ways), relative to some standard (which I will specify later). A social group’s status as disadvantaged or privileged is, in this way, a function of the capabilities, or positive freedoms, of its individual members.⁷ “A person’s capabilities,” Elizabeth Anderson explains,

consist of the sets of functionings she can achieve, given the personal, material, and social resources available to her. Capabilities measure not actually achieved functionings, but a person’s freedom

to achieve valued functionings. A person enjoys more freedom the greater the range of effectively accessible, significantly different opportunities she has for functioning . . . (Anderson 1999: 316)

As Anderson's comment indicates, what capabilities, or opportunities, a person has is determined by three factors. The first two are features of the individual herself: her personal, or internal, resources (for example, talents and skills), and her material, or external, resources (for example, income, wealth, and other less tangible resources, such as family and community support). In addition, an individual's capabilities are also significantly determined by social institutions. Jonathan Wolff and Avner de-Shalit note:

it is not possible to read off an individual's opportunities from their resources alone. It is also necessary to know how they can use those resources, and hence to know facts about the structures operating within that society: laws and customs, the influence of tradition, informal and formal power relations, religion, language, culture and other social norms, as well as the configuration of the material and natural environment . . . In short, your resources are what you have to play with; the structure provides the rules of the game. (Wolff and de-Shalit 2007: 172)

Wolff and de-Shalit's concern is for individual disadvantage. With respect to the capabilities of social groups, the third factor is the most significant. Internal resources vary widely from person to person, but variations in the way social structures condition the opportunities of individuals define social groups. Thus, social institutions play a far more important role in explaining why some groups are privileged and others are disadvantaged than the internal and external resources of individuals. (Indeed, the social structure will explain why certain groups tend to lack external resources relative to others.)

For this reason, it is important to clarify that, despite the perhaps misleading language of the present question (What goods (G) do members of a disadvantaged group lack?), capabilities are not simply a good possessed by individual social group members; they are also a reflection of how social institutions operate to create social groups through their disparate effects. Unlike welfarist and resourcist accounts of disadvantage, then, conceiving of disadvantage in terms of (relative

lack of) capabilities, or opportunities, involves an analysis of the functioning of dominant social institutions more so than of the well-being of individuals.

The faults of the subjective welfare and resource accounts of social group disadvantage are the virtues of the capabilities conception. By conceiving of disadvantage as an objective condition rather than as a mental state of some sort, the capabilities account of social group disadvantage rightly excludes groups whose members are, on average, displeased with their life circumstances despite the fact that social institutions afford them a wider range of significant opportunities than they afford many other groups. More importantly, the capabilities account acknowledges the disadvantage of groups whose members' opportunities are circumscribed in comparison to members of other groups but who nevertheless experience relatively high subjective welfare, for any reason.

At the same time, the capabilities account is formulated on an understanding of why material resources are morally significant. Thus, it allows us to say that groups whose members are relatively poor by choice, such as the Amish, are not disadvantaged (in virtue of their relative poverty); while the Amish lack material resources in comparison to some other groups, they do not lack capabilities. (Indeed, that they choose relative poverty is evidence that their capabilities are reasonably intact.) More importantly, the capabilities account acknowledges the disadvantage of groups who are materially well off but whose positive freedom is undercut by stereotypical expectations, discrimination, and violence, as well as that of groups whose relative inability to function, as a consequence of other social obstacles, is obscured by their material equality with other groups.

One might object to this conception of social group disadvantage that freedom should be understood negatively rather than positively. On this view, freedom consists merely in the legal right to do certain things, and the absence of interference from others; one need not possess the personal, material, and social resources to do certain things in order to have freedom in those respects. On this account, a social group is disadvantaged if and only if its members, on average, experience a relative lack of certain negative freedoms.

While this view may be useful in other contexts, it is implausible as an understanding of social group disadvantage. Much more so than subjective welfare and resourcist definitions of social group disadvantage,

the negative freedom model of social group disadvantage would entail that, in social contexts such as modern liberal states, there are almost no disadvantaged social groups. (Perhaps the only social groups that defenders of this model might recognize as disadvantaged are sexual minorities—lesbians, gay men, bisexuals, and transgender persons—since each lacks formal, legal equality with heterosexuals.) I believe that the fact that this model of social group disadvantage denies that women, people of color, the poor, and the disabled are disadvantaged is a sufficient reason to reject it. (Indeed, defenders of this view must hold, bizarrely, that the poor have not been disadvantaged since the elimination of feudalism as an economic system and the extension of suffrage to the non-propertied.) This view is, additionally, explanatorily unimpressive. The negative freedom model of social group disadvantage has no resources to explain, if such groups are not disadvantaged, why members of these groups often lack, relative to others, access to and command over basic material resources.⁸

Just as different institutions create distinct social groups in different societies, different social groups will be disadvantaged in different societies. In one society a social group may be disadvantaged, while in another a superficially similar group is privileged (while in a third, the same collection of individuals would not comprise a social group). What sets of people constitute social groups, and which social groups are disadvantaged are matters that can only be determined after empirical investigation of different social contexts.

4.3.2 *The Baseline of Disadvantage*

In terms of what standard (S) can one say that a social group lacks relevant capabilities? On first approximation, one might suggest that a social group is disadvantaged if its members lack, on average, the ability to function in relevant ways relative to the current average within a given society. However, conceiving of S in terms of the current average of the society is too conservative; it accepts the current distribution of relevant capabilities within the society among different social groups as adequate for determining whether or not any particular group is disadvantaged. For example, in any society in which there is a small, but wealthy class of elites, and a vast set of severely poor individuals, the average ability to function relevantly within the society will be fairly low. Certain social groups' average set of capabilities may be slightly

higher than the meager average of the society, yet that group may nevertheless seem to be disadvantaged. In apartheid South Africa, for example, it seems correct to say that the Coloured were disadvantaged, despite the fact that their average capacity for functioning in the relevant ways may have been somewhat higher than the meager average of the society, on account of the presence of the significantly more disadvantaged group of Blacks.⁹ Another way of putting this criticism is that identifying the standard (S) against which it is determined that a social group lacks relevant capabilities as the average ability to function relevantly within the society obscures the existence of some disadvantaged social groups (particularly in especially inegalitarian societies).

What this criticism suggests is that we ought to conceive of S in terms of the average set of capabilities of the corollary privileged group, where privilege, like disadvantage, is measured in terms of capabilities. The corollary privileged group is the social group within the same dimension of social identity (such as race) whose members, on average, experience the greatest range of relevant capabilities. A social group is disadvantaged, then, if its members, on average, lack relevant capabilities relative to the members of the corollary privileged group.

If one understands S as the average capabilities of the corollary privileged group, then any society in which there is inequality of capabilities among different social groups within the same dimension of social identity will contain some disadvantaged social groups. This would perhaps be controversial if one were to mistake what I've said for a characterization of individual disadvantage (or if I had claimed that all disadvantage is unjust). As a way of thinking of social group disadvantage, however, I think this implication of my account is a strength. Any society in which there is inequality of relevant capabilities among social groups constituted by the same social institutions must be thought to contain some disadvantaged social groups.¹⁰

4.3.3 *Ambiguous Cases*

In some cases it can be difficult to tell whether a group is privileged or disadvantaged, either because there is a wide variation in the capabilities of group members, or because the group seems to do well in some contexts but poorly in others. In cases such as these, is the group in question privileged, disadvantaged, both or neither?

Which of these is the correct answer depends on the type of case

at hand. Suppose there is wide variation in the capabilities of group members. There are at least two (mutually exclusive) explanations for this. One is that the group in question is not a social group, but an aggregate. There is, presumably, wide variation in the capabilities of brown-haired people. This is not because social institutions condition the life circumstances of brown-haired people, considered as such, in such a way that they are both privileged and disadvantaged; it is because social institutions do not affect brown-haired people as such. That is, brown-haired people are not a social group. (Of course, brown-haired people are members of other, unrelated social groups, in virtue of which they are either privileged or disadvantaged; this explains why there is such variation, I assume, in the capabilities of brown-haired people.)

A second explanation of there being wide variation in the capabilities of group members is that the group is intersected by other social groups that are variously privileged or disadvantaged. For example, there is wide variation in the capabilities of men. This fact may seem to be incompatible with the claim, which I endorse, that men are a privileged social group. One might think that if it is true that a social group is privileged, then it must be the case that group members have uniformly high capabilities. However, some members of a privileged group may be disadvantaged *vis-à-vis* their simultaneous membership in other groups. For example, of those individuals who belong to the social group "men," some belong to the social group "citizens," while others belong to the social group "undocumented immigrants." Men who are undocumented immigrants are, *qua* men, privileged; *qua* undocumented immigrants, they are disadvantaged. This example highlights the fact that a group member's capabilities are, by themselves, not indicative of whether the person, considered as a member of that group, is privileged or disadvantaged. Whether the group member is privileged or disadvantaged, considered as a member of that group, can be determined only by comparison to the capabilities of people who belong to the same set of social groups, save the one in question. For example, to determine whether undocumented immigrant men are disadvantaged, *qua* men, their capabilities must be compared to women who are undocumented immigrants.

In other cases, it may be difficult to tell whether a group is privileged or disadvantaged because members of the group seem to do well in some contexts but poorly in others. Some such instances are explained

by the fact that the collection of people in question is a social group (either privileged or disadvantaged) in some societies, but would not be a social group in others (for example, gypsies). In other cases, there are two distinct social groups going by the same name. For example, Muslims in Saudi Arabia are, *qua* Muslims, privileged, while Muslims in Belgium are disadvantaged. In this case, “Muslims” does not reference a social group, but a collection of (as concerns social structure) superficially similar social groups, despite the shared attribute of common religious faith.

Some collections of people who very much appear to be members of the same social group are privileged in some contexts but disadvantaged in others, within the same society. For example, Christians appear to be a salient social group in the United States today. The members of this group, understood as such, seem to be privileged, generally speaking. However, some Christians claim to be disadvantaged in some smaller, sub-national contexts (for example, within public universities). Suppose this is true. What, then, can one say as regards Christians being a privileged or disadvantaged social group?

It would be a contradiction to say, without further qualification, that Christians are both privileged and disadvantaged, given the way I’ve defined these terms. One might say that Christians are privileged in one context but disadvantaged in another, but this overlooks the fact that the institutions that privilege Christians in the general, national context are different from the institutions that, I’ve supposed for the sake of argument, disadvantage Christians in public universities. In other words, given that adherents of this faith are, in different contexts, affected by different institutions, it follows that there are two distinct social groups here (one whose membership is contained within the membership of the other). The smaller group, “Christians in American public universities,” are (given the operating assumption) disadvantaged, while the larger group that contains it, “Christians in the US,” are privileged.¹¹

4.4 WHEN IS SOCIAL GROUP DISADVANTAGE UNJUST?

From the perspective of my principle, the PDP, an immigration policy that avoidably harms a disadvantaged social group is unjust only if the group is disadvantaged unjustly. That is, such policies are just (as far as the PDP is concerned) if the social group in question is justly disadvan-

taged. In what follows, I argue that the conditions under which social group disadvantage is unjust vary with the voluntariness of the social group.

4.4.1 Voluntary and Non-voluntary Social Groups

All social groups are defined by shared constraints on action set by social institutions. However, membership in a social group can be more or less voluntary. The difference between voluntary and non-voluntary social groups is in the degree of control individuals have over their accession to the group. I follow Cudd in characterizing voluntary social groups as collections of people who “share constraints that result from their decisions and actions to join together, against a backdrop of social constraints consequent on others’ decisions” (Cudd 2006: 44). In other words, one’s willingness to be a member of a social group is a necessary condition of being assigned to the group (the set of people who share the same social constraints) for voluntary social groups. Individuals are motivated to form or to join voluntary social groups because they share commitments or projects with others (Cudd 2006: 41).

With respect to how non-voluntary social group membership is assigned, I partially diverge from Cudd’s account. On Cudd’s view, “members of non-voluntary social groups share the same social constraints as a result of others’ decisions” (Cudd 2006: 44). More specifically, Cudd argues, individuals become members of non-voluntary social groups as a result of being “assigned by others through default assumptions that go into effect when they recognize or think they recognize some typical trait or behavior that is very salient in the culture for grouping” (Cudd 2006: 45). So, as Cudd notes, “skin color, hair length, dress, voice pitch, word choice, size, walking or sitting style are all well known signals of race, gender, class, and sexual orientation” (Cudd 2006: 45) in the United States. It is important to observe that although an individual may become a member of a non-voluntary social group as a result of being so assigned by others on the basis of her perceived possession of some culturally salient characteristic, neither her possession of this characteristic, nor the perception that she possesses it, are the membership-making criterion. After all, she may or may not possess that characteristic, and while some may perceive that she possesses it, others may not. Instead, what determines whether or not a person is a member of a particular social group is that

her opportunities are conditioned in a certain way by social institutions. In other words, there is a distinction between what makes a person a member of a social group and how a person gets assigned to a social group.

I agree with Cudd that individuals become members of non-voluntary social groups in this way. Reflection on some cases, however, suggests to me that individuals may get assigned to social groups non-voluntarily in one other way as well. In some cases, social institutions will position a person within some group as a consequence of some fact about herself (a fact that may have little or no social significance in the absence of so-configured social institutions). In other words, for some non-voluntary social groups, individuals come to share common constraints (that is, they become members of the group) in virtue of how social institutions respond to what would otherwise be an arbitrary fact about them.

Social groups defined by economic class are an example of the latter mode of non-voluntary group assignment. Social institutions (in this case, the prevailing economic system) position persons in a group on the basis of a fact about them (in this case, the extent of their material wealth), a fact that takes on significance under a certain set of social institutions.¹² Although the default assumptions of others sometimes engender the application of constraints on individuals perceived to possess traits supposed to be indicative of economic class (for example, shunning of people who take the bus, deference for people wearing designer clothes), the most significant constraints people experience as members of economic class groups are engendered by the extent of their material wealth, given the prevailing economic system (for example, whether they lack the material necessities for satisfying basic human needs, or possess them securely and in abundance).¹³

The assignment of people to “races” is the clearest example of the former mode of group assignment. Individuals get assigned to race groups on the basis of default assumptions regarding phenotypical traits (such as skin color, hair texture and facial features) they are perceived to possess, just as Cudd describes. With respect to race and other social groups to which people are assigned by default assumptions, whether or not a person actually possesses the trait that is culturally salient for grouping is incidental. This point highlights a key distinction between the two modes of group assignment I have discussed. For groups that are in this way like race groups, the traits of individuals are indirectly

relevant to group assignment, at best. For economic class groups and the like, certain actual (not merely perceived) traits are integral to group assignment.

For most social groups, assignment to them can occur by both modes, and in many instances, is over-determined. People are clearly assigned to gender groups by default assumptions (concerning perceived or imagined phenotypical traits, dress, voice pitch, gait, and so on), but certain facts about persons (centrally, the biological capacity to become pregnant) engender differential constraints for persons given the particular configuration of social institutions. An even clearer example of mixed modes of group assignment is that of "sexual orientation" groups. Many people experience constraints as a consequence of their primary erotic preference for the biological sex and/or gender of their romantic or sexual partners (that is, being, in fact, homosexual or heterosexual). For example, in many societies, homosexuality may be a crime; in others, homosexuals may not be permitted to marry their chosen partners, may not be permitted to adopt children, or may not be legally protected from employment or housing discrimination. However, people also experience constraints as a result of being coded as gay or straight by default assumptions largely involving perceptions of a person's conformity to traditional gender roles (at least in the United States).¹⁴ Individuals perceived-to-be-homosexual (that is, in the sense I am using the term, "gay people") are daily targeted for ridicule, ostracism, moral condemnation, and (threats of) physical violence.¹⁵

All non-voluntary social group disadvantage is, by its nature, unjust.¹⁶ An individual is assigned to a non-voluntary social group either through the default assumptions of others or by the response of social institutions to some fact about her. Thus, for members of disadvantaged social groups that are non-voluntary, their disadvantage is neither deserved (given the liberal commitment to the moral equality of individuals) nor avoidable (by any reasonable standard). The injustice of non-voluntary social group disadvantage is all the more apparent when one considers that society constructs these groups as disadvantaged. That is, these groups and their members, considered as such, are brought into existence as disadvantaged.

Voluntary social group disadvantage is unjust when individuals have a moral right to voluntary participation in the group. It is morally inappropriate for social institutions to deprive individuals of their capacities

for human functioning for voluntarily participating in a group in which they have a moral right to participate voluntarily. If social institutions penalize or would penalize people for voluntarily participating in such a group, then these social institutions fail to respect fully this right. The claim that it is morally legitimate for social institutions to penalize members of a voluntary social group (simply because membership in it is voluntary) implies that individuals do not in fact have a moral right to voluntary participation in the group.

It follows from what I have argued so far that social group disadvantage is just only when (1) the social group is voluntary and (2) individuals have no moral right to participation in the group. What this means is that it will often be unnecessary to resolve controversies about whether a group is voluntary or not, since, in many cases, even if the group is voluntary, individuals will have a moral right to voluntary participation in the group. Thus, showing that the group's disadvantage is unjust will not require showing that membership in it is non-voluntary. For many groups likely to be affected by immigration policies, there is no controversy; groups distinguished by gender, race, sexuality, ability and age cannot reasonably be thought to be voluntary (in the way that is relevant). Social groups distinguished by religion might seem to be voluntary, depending both on what the social group-making criterion of religious social groups is thought to be, as well as on the extent to which doxastic voluntarism is accepted. These questions need not be resolved, however, as there is a moral right of religious freedom. Thus, if religious social groups experience diminished capabilities, it is unjust.

Social groups defined by economic class are non-voluntary on the account of social groups I adopt, as I explain above. Groups distinguished by citizenship status are in the same way non-voluntary. Each country admits foreigners within certain categories, under specific conditions that constitute group-defining constraints. Since categories of admission and the conditions associated with them are set for each country by its own immigration bureaucracy, and foreigners who apply for admission are placed within these categories by the receiving country's immigration authorities, social groups delineated by citizenship status are non-voluntary.¹⁷ In the United States, for example, citizens, legal permanent residents, documented immigrants who are not legal permanent residents, and undocumented immigrants, are four distinct non-voluntary social groups.

4.4.2 *Objections*

My account of the conditions under which social group disadvantage is unjust may seem to be immune to some counterexamples. One set of apparent counterexamples is intended to show that my account includes social groups whose disadvantage is justified: convicts and minors. Convicts and minors are both social groups; both collections consist of individuals whose opportunities are similarly conditioned by social institutions. They both experience a relative deprivation of capabilities, and so are disadvantaged. Membership in both groups seems non-voluntary, as both “convicts” and “minors” reference socially defined categories, membership in which is (coercively) imposed by social institutions (in particular, the state). This means that, on my view, convicts and minors both are unjustly disadvantaged social groups, and that immigration policies that avoidably harm either are unjust.

Some reflection shows that this is not counterintuitive, however. This is more obvious in the case of minors; it would be bizarre to think that there is nothing (morally) wrong with immigration policies that avoidably harm minors. I believe it is also true that immigration policies should not avoidably harm convicts, since, in principle, convicts have already received just punishments for their legal violations according to legitimate judicial procedures. It would be unjust for convicts’ punishments to be compounded by immigration policies that avoidably harmed them.¹⁸

A second objection disputes the conditions under which I claim that social group disadvantage is unjust by arguing that they fail to account for the historical dimension of injustice. On my account, a social group is unjustly disadvantaged if (1) its members, on average, experience a relative lack of opportunities, and either (2) membership in the group is non-voluntary or (3) individuals have a moral right to voluntary participation in the group. Therefore, the objection notes, my account entails that the injustice of non-voluntary social group disadvantage can be ascertained simply by observing group members’ well-being (understood in terms of opportunities or capabilities), in comparison to other groups, at any given time. In contrast, according to an historical conception of justice, the justice of a state of affairs is determined by its relation to past states of affairs. Defending historical principles of justice in the context of distributive justice, Robert Nozick characterizes historical principles of justice as those which hold that “whether

a distribution is just depends upon how it came about" (Nozick 1974: 153), and that "past circumstances or actions of people can create differential entitlements or differential deserts to things" (Nozick 1974: 155). For this reason, my account of when social group disadvantage is unjust may allow that certain groups are unjustly disadvantaged even though their disadvantage was not unjustly caused.

This objection is based in a confusion, but responding to it allows me to clarify some aspects of my view. If this objection seems to point out a flaw in my account of unjust disadvantage, it is either because the fact that the account applies to social groups rather than to individuals is not being considered, or because the terms in which I define "social groups" are not being appreciated. This objection would be valid (that is, would apply to my account), and might be persuasive, if I had presented (1), (2), and (3) above (revised in the relevant ways) as conditions of individual disadvantage, or if I had defined social groups in terms of common attributes. Had either been the case, it would be true that my account of unjust disadvantage did not consider how instances of disadvantage came about.

While it is true that historical criteria are not built into my account of the injustice of disadvantage, an historical criterion is implicit in the unit of analysis to which my account of unjust disadvantage is applied—social groups. Recall that on the account of social groups I defend, groups are not constituted by common attributes, but rather by shared social constraints. A social group is a collection of individuals whose opportunities are similarly conditioned by social institutions. What I mean to emphasize here is that social group disadvantage (for both voluntary and non-voluntary social groups) is caused by social institutions, necessarily. If a social group is disadvantaged, then its disadvantage is imposed by social institutions. (If a collection of people lacks capabilities, but social institutions are not among the causes of this lack, then it is not a social group.) This is why the claim that social group disadvantage is an injustice when membership is non-voluntary or when members have a moral right to voluntary participation in the group is so powerful. Social institutions construct disadvantaged social groups as disadvantaged.

My response to this misplaced objection provides an opportunity to clarify a crucial aspect of my principle. I have argued that the PDP is amenable to an historical conception of justice. However, I do not understand the PDP as an historical or backward-looking principle.

That is, the PDP, as I conceive it, does not assert a duty of rectification owed to unjustly disadvantaged social groups on account of the unjust disadvantage they have experienced. Rather, I conceive of the PDP as forward-looking or consequentialist. In other words, states must adopt immigration policies that do not avoidably harm unjustly disadvantaged social groups because, in my view, doing so brings about the morally best states of affairs (that can be achieved by the manipulation of immigration policy).

The most important consequence of understanding the PDP as forward-looking rather than as backward-looking is in the principle's application. Suppose a state, *C*, adopts an immigration policy, *P*, that avoidably harms an unjustly disadvantaged social group, *R*. On a backward-looking PDP, where the duty of states is one of redress owed to wronged parties, *P* is unjust only if *C* is part of the cause (or is in some other way morally responsible for the occurrence) of *R*'s unjust disadvantage. If *R*'s unjust disadvantage is caused by another state or is informal (non-state), then *C* has no obligation (by the PDP) to avoid imposing avoidable harms on *R*. In contrast, on a forward-looking PDP, *P* is unjust whether or not *C* is part of the cause (or is in some other way morally responsible for the occurrence) of *R*'s unjust disadvantage. What this illustration demonstrates is that the social groups that may not be avoidably harmed by *C*'s immigration policies according to a backward-looking PDP are a subset of the social groups that may not be avoidably harmed by *C*'s immigration policies on a forward-looking PDP.

Defending the PDP as forward-looking (rather than as backward-looking) would require a general defense of forward-looking conceptions of justice over those that are backward-looking, a task that is well beyond the scope of this book. For this reason, despite my inclination to conceive of the PDP as forward-looking, I do not insist that it be understood in this way. Readers are free to take the PDP as forward-looking or as backward-looking, in accordance with their own convictions in regard to this distinction. The defense I give of the PDP in the next chapter will not depend on the principle's having been conceived as forward-looking or as backward-looking.¹⁹

Despite the potential, in principle, for the backward-looking and the forward-looking PDPs to diverge in their implications in ways just explained, I believe it is the case that, given the nature of contemporary patterns of migration in our world, the implications of the

two understandings of the principle will converge in practice more often than not. This is because, with respect to the sorts of immigration policies states in our world are apt to contemplate, in any case in which a state's immigration policies are likely to harm some unjustly disadvantaged social group (which must be the case for a forward-looking version of the principle to apply), this is likely to be so because of ongoing or past relations (often of an unjust sort) between that state and the group in question. This is corroborated by Castles and Miller's analysis of the causes of migration in the contemporary world, which I noted in Chapter 1. As Castles and Miller point out, the most significant of contemporary migration flows arise largely from historical and ongoing relations between sending and receiving countries based in colonization, military involvement, political influence, and trade agreements (Castles and Miller 2009). For this reason, it is reasonable to think that, for practical purposes, it will make a difference whether one understands the PDP as forward-looking or as backward-looking in exceptional cases only.

One might wonder why, if I understand the PDP as forward-looking, I have formulated it in terms of disadvantaged social groups rather than in terms of the least well-off individuals. It would seem that the salience of disadvantaged social groups for the moral evaluation of immigration policies lies in the fact that they have been wronged, in a way that (moreover) requires rectification. Thus, my articulation of the PDP appears to suggest that the principle is a backward-looking one. If my principle is forward-looking (that is to say, has as its goal producing good states of affairs, as opposed to rectifying injustice), then it would be more appropriate, one might think, to take the least well-off individuals as my unit of analysis.

However, social policies such as those regulating immigration affect people not as (idiosyncratic) individuals but as members of social groups. It would, therefore, be inappropriate to take individuals rather than members of social groups as my unit of analysis. To evaluate immigration policies in terms of their consequences for individuals, *qua* individuals, would, fundamentally misunderstand how immigration policies distribute benefits and burdens. Moreover, social groups are never merely doing well or doing poorly. If a social group is doing well, it is (at least in part) because that group is privileged by social institutions; if a social group is doing poorly, it is (at least in part) because the group is disadvantaged by social institutions. As I have argued, if social

institutions are not a cause of the fact that the average capabilities of a collection of people are relatively low (or relatively high), then that collection of people is not a social group, as I use the term. Therefore, it would be misleading to articulate my principle in terms of the “least well-off social groups”; such language has the potential to obscure (perhaps perniciously) the social origins of some social groups’ lesser life prospects.

Finally, there is a related pragmatic reason, from a forward-looking perspective, to assess immigration policies in terms of how they affect disadvantaged social groups rather than the least well off individuals. The application of forward-looking principles often, even usually, requires knowledge of the causes of past or ongoing injustice. As Leif Wenar points out, “forward-looking reasoning may rely on historical information to diagnose what is needed in the current situation, but when it turns to history this is in the spirit of the adage that to find a cure it helps to know what bit you” (Wenar 2006: 397). To take the least well off or individuals as the unit of analysis is, in other words, not only misleading (as I have argued), but also likely to inspire morally non-optimal policy proposals. (Indeed, this point is a recurring theme in my criticisms of extant philosophical proposals, both nationalist and cosmopolitan, in the previous two chapters.)

4.5 WHEN DOES AN IMMIGRATION POLICY AVOIDABLY HARM A SOCIAL GROUP?

Immigration policies, like all national policies, inevitably have benefits and burdens that are borne differentially by (members of) different social groups. The adoption of a particular immigration policy by a state inevitably tends to benefit some social groups while it inevitably tends to harm others (including both foreign and domestic, as well as transnational, social groups). As a matter of justice, I claim that immigration policies may not avoidably harm social groups that are already unjustly disadvantaged.

We can come to understand what it means to say that an immigration policy “harms” a social group in much the same way that we proceeded in defining social group disadvantage. An immigration policy harms a social group by making its members worse off (on average). This suggests two questions. First, in terms of what does the policy make the social group worse off? Harm to social groups should be understood

in the same terms as social group disadvantage—in terms of central human capabilities. An immigration policy harms a social group if it diminishes the capabilities or opportunities of its members (on average).²⁰ The second question is: relative to what standard does the policy make the social group worse off?

4.5.1 *The Baseline of Harm*

There are a variety of ways in which the second question can be answered. The most immediately obvious involves a diachronic comparison: on this view, an immigration policy harms a social group if it makes that group worse off than it was just prior to the adoption of that policy. While it is true, I believe, that an immigration policy harms a social group if it makes that group worse off than it was prior to the adoption of that policy, this minimal standard is too weak. It accepts uncritically past immigration policies as a morally neutral baseline for making judgments of harm. Intuitively, it seems incorrect to say that justice in immigration policy may be achieved merely by repealing all recent changes to immigration policy that diminished the capabilities of unjustly disadvantaged social groups. This seems incorrect because it may be the case, presumably, that the most recent past immigration policies also harmed unjustly disadvantaged social groups. Since this judgment (that the most recent past immigration policies harmed unjustly disadvantaged social groups) cannot be made on this view, it should be rejected.

A second possible answer is that an immigration policy harms a social group if it makes that group worse off than it would be in the absence of regulation of international migration. In one sense, this proposal seems to be the most principled, least arbitrary, and most neutral standard by which to determine if a social group has been made worse off by some immigration policy; it asks, in effect, if a group is better or worse off than it would be in an immigration policy state of nature. As a standard for determining whether or not a group has been harmed, this proposal has a serious limitation, however. Since it treats the absence of immigration regulations as the baseline of harm, it entails that cosmopolitan (and neoliberal) “open borders” proposals are just—by definition. This is a concern for two reasons: first, the definitions of terms should not entail that certain substantive proposals are just; second, I criticize the “open borders” proposal (in Chapter 3) for harming

certain unjustly disadvantaged social groups. While it is possible that these criticisms are unsuccessful, they are certainly not incoherent. We need some independent standard by which to evaluate the defense of “open borders” along with other philosophical proposals for regulating immigration. For this reason, this standard should be rejected as well.

One might suggest, third, that an immigration policy harms a social group if it causes that group’s capabilities to fall below some threshold specified directly in terms of capabilities. While this view is appealing, it suffers from three problems. First, whether the threshold is modest or robust, it will always be arbitrary. Second, this standard requires cardinal measures of the capabilities of group members. This means that group members’ capabilities must be quantified to determine whether or not they fall below the threshold, a task that makes the implementation of this standard extremely difficult. Finally, this standard requires a complicated causal analysis of the influence that immigration policies have on group members’ capabilities. For any group whose capabilities are below the threshold, a variety of factors may be causally responsible; extant immigration policies may or may not be among those causal factors.

Instead, I argue that an immigration policy harms a social group if there is a mutually exclusive immigration policy under which that group would be better off. On this view, an immigration policy is unjust if there is a mutually exclusive immigration policy under which the capabilities of social groups that are already unjustly disadvantaged would be more expansive. This standard captures the virtues of the previously discussed standards since any policy that satisfies it will satisfy those standards as well; this standard requires states to adopt immigration policies that are best for the capabilities of unjustly disadvantaged social groups, which means that policies that satisfy this standard will be at least as good as past immigration policies (the first standard), at least as good as an immigration state-of-nature (the second standard), and will exceed any achievable capabilities-defined threshold (the third standard). This standard is preferable to the first standard since it does not define justice in immigration policy in terms of what has been achieved by past immigration policies; it is also preferable to the second standard since it provides a way to evaluate “open borders” proposals. Finally, this standard improves on a capabilities-defined threshold since it is non-arbitrary, does not require cardinal measures of group members’ capabilities (only ordinal comparisons), and does not require

a causal analysis of the influence of an immigration policy on group members' capabilities (it only requires that we ask "Is there some other immigration policy under which unjustly disadvantaged social groups' capabilities would be more expansive?").

This standard may seem too demanding. Since it enjoins states to adopt the immigration policies under which the capabilities of social groups that are already unjustly disadvantaged are most expansive, it may seem to leave states no room to pursue other goals through their immigration policies. What are the other goals that states may wish to pursue through their immigration policies? These goals vary widely, but they all have one thing in common: any immigration policy that does not satisfy the standard of harm set out here will, as a consequence, serve the interests of privileged social groups at the expense of social groups that are already unjustly disadvantaged. Viewed in this light, the demandingness objection amounts to an odious prioritization of the interests of privileged groups at the expense of social groups that are already unjustly disadvantaged.

Moreover, this objection assumes too much. First, it assumes an answer to a question that requires empirical investigation: how many immigration policies are compatible with the most expansive set of capabilities for unjustly disadvantaged social groups? There is no reason to suppose, as this objection does, that only one set of immigration policies will satisfy the standard of harm set out here. If multiple sets of immigration policies satisfy this standard, then states will be free to choose among them in service of whatever other goals they wish to pursue. Second, this objection assumes that promoting the capabilities of unjustly disadvantaged social groups is incompatible with other national goals. Absent some additional analysis, there is no reason to suppose this either.

4.5.2 *Avoidability*

Up to now within this section, I've spoken of unjustly disadvantaged social groups somewhat misleadingly, as if the members of all unjustly disadvantaged social groups form a single large aggregate that is either harmed or not by immigration policies. To the contrary, however, each national society contains many distinct social groups, each uniquely constituted by the influence of social institutions on members' lives. Any given immigration policy may harm one of these groups, while all

relevant alternatives to it would harm another. How can these conflict cases be adjudicated?

In cases such as this, some harm to unjustly disadvantaged social groups is unavoidable. How such conflict cases are resolved will depend on whether the PDP is conceived as forward-looking or as backward-looking. From the perspective of a forward-looking PDP, what is most salient is the magnitude of the disadvantage experienced by a social group. Thus, on a forward-looking PDP, priority should be given to the group, among the groups whose interests are in conflict, that is, worst-off in terms of capabilities (that is, the group that is most disadvantaged). That is to say, if the PDP is understood as forward-looking, an immigration policy harms a disadvantaged social group avoidably if there is at least one alternative to that policy that (1) harms that group less, and (2) does not harm a more disadvantaged social group. An immigration policy harms a disadvantaged social group unavoidably (and thus, justly) if all alternatives to that policy (that would harm that group less) would harm a more disadvantaged social group.

Consider the following case: suppose that an extant immigration policy, *P*, harms *A*, an extremely disadvantaged social group. The repeal of this policy would harm *B*, a moderately disadvantaged social group. In this case, *P* is unjust (by a forward-looking PDP) because, though both *P* and its repeal would harm disadvantaged social groups, the repeal of *P* is better for the group that is more disadvantaged. *P* harms *A* avoidably, and though the repeal of *P* harms *B*, this harm is unavoidable in the sense in which I use the term.²¹

Conflict cases will be more rare (though, I believe, only slightly) for a backward-looking understanding of the PDP, mainly because there will be fewer unjustly disadvantaged social groups the effects of their immigration policies on which states morally must concern themselves with. If the PDP is construed as backward-looking, the principle demands that the state show moral concern for the effects of its immigration policies only on the unjustly disadvantaged social groups whose disadvantage it has caused, or for which it is in some other way morally responsible. When adjudicating cases in which two or more unjustly disadvantaged social groups' interests conflict (both of whose disadvantage has been caused by the state in question), a backward-looking PDP will regard the extent of the injustice (as distinct from the magnitude of the disadvantage) as most salient.

How can it be determined which social group disadvantages are most

unjust? Pogge maintains, for example, that institutionally avoidable shortfalls of basic goods experienced by groups are most unjust when they are officially mandated by law. Such shortfalls are somewhat less unjust when they arise from the legally authorized conduct of private individuals, and less unjust still when social institutions foreseeably and avoidably engender them (by, say, bringing about severe poverty among certain groups). Institutionally avoidable shortfalls of basic goods are least unjust, according to Pogge, when they result from the poor enforcement of laws prohibiting private conduct that causes them (Pogge 2002: 41–2). Some controversy will likely attend any attempt to rank social group disadvantages in terms of how unjust they are. I offer Pogge’s account as a model, but do not defend it (or any other account) here, since, as I have indicated, I prefer to conceive of the PDP as forward-looking.

Therefore, if the PDP is understood as backward-looking, an immigration policy harms an unjustly disadvantaged social group avoidably if there is at least one alternative to that policy that (1) harms that group less, and (2) does not harm another social group whose disadvantage is more unjust. An immigration policy harms an unjustly disadvantaged social group unavoidably (and thus, justly) if all alternatives to that policy (that would harm that group less) would harm a social group whose disadvantage is more unjust.

Consider once again the case above, but suppose now that the disadvantage of A (the more disadvantaged group) is the result of social institutions that foreseeably and avoidably diminish the capabilities of A. Suppose, in contrast, that the disadvantage of B (the less disadvantaged group) is the result of private conduct that is legally authorized. Recall that immigration policy P harms A, but that its repeal would harm B. On Pogge’s account of the relative gravity of injustices, a backward-looking PDP would demand the maintenance of P, even though B’s disadvantage is less severe than A’s.²²

It is necessary to say that not all harm to unjustly disadvantaged social groups is unjust. In many cases, it may not be possible for a state to avoid adopting immigration policies that harm some unjustly disadvantaged social group, since any policy that did not harm that group may harm some other unjustly disadvantaged social group. (This sad circumstance is attributable to the existence of many unjust national and global economic and political institutions.) For example, restrictions that make it extremely difficult for “unskilled” migrants

from poor countries to gain admission to affluent countries harm those individuals, but eliminating those restrictions might harm the domestic working class in affluent countries. For this reason, we can only require that states not adopt immigration policies that avoidably harm unjustly disadvantaged social groups.

4.6 CONCLUSION

In this chapter, I've provided a comprehensive explication of the principle I defend positively in the following chapter: just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged. Social groups are collections of individuals who experience similar institutionally structured constraints; they are disadvantaged when their members, on average, lack central human capabilities relative to the members, on average, of the corollary privileged group. This is unjust if membership in the disadvantaged social group is non-voluntary or if individuals have a moral right to voluntary participation in the group. An immigration policy harms a social group when there is some alternative to that policy under which the average capabilities of the group's members would be more expansive. This harm is unavoidable (not unjust) only when the alternatives to that policy that would harm that group less would harm a group that is more disadvantaged (on the forward-looking understanding of the PDP that I endorse).²³

With its meaning in place, I defend this principle positively in the following chapter. I argue first (contrary to the moral sovereignty of states view) that states' immigration policies are subject to principles of justice; states do not have the moral prerogative to choose whichever immigration policies they wish. Second, I argue that nationalist principles of political morality are inappropriate as criteria for evaluating states' immigration policies. Having established that states' immigration policies are subject to cosmopolitan principles of justice, I argue, third, that the capabilities of those who are members of unjustly disadvantaged social groups command special moral priority for the state in its selection of immigration policies.

My own view, following from the principle I have proposed in this chapter, is that the set of admission policies states may choose is context sensitive. One cannot determine, prior to empirical investigation of the morally salient features of different national contexts, what immigration policies are just for different states; what immigration policies are

just (whether permissive or restrictive, and among criteria used to set admissions priorities) will vary substantially from one nation-state to the next, depending on the morally salient features of different national contexts.

Chapter 5

IMMIGRATION JUSTICE: IN DEFENSE OF THE PRIORITY OF DISADVANTAGE PRINCIPLE

5.1 INTRODUCTION

Existing nationalist and cosmopolitan approaches to the regulation of immigration falter on a variety of grounds, but one flaw that most share is a failure to treat the fact that all national societies are constituted by institutions that create distinct groups of individuals, privileging some and disadvantaging others, as morally salient. By contrast, the moral principle for evaluating policy proposals for regulating immigration that I developed in the previous chapter, the Priority of Disadvantage Principle (PDP), foregrounds these social divisions, holding that immigration policies that avoidably harm social groups that are already unjustly disadvantaged are unjust.

The purpose of the present chapter is to defend the PDP against competing views on immigration justice. In the following section (section 5.2), I confront the most basic of challenges to my principle: that states ought to be regarded as having moral (as opposed to mere legal) sovereignty over immigration. This view, which I call the moral sovereignty of states view, holds that states are entitled to grant and to refuse admission to foreigners as they will, free of the constraints of alleged principles of justice. The moral sovereignty of states view does not uniquely challenge the PDP; it challenges all views on which the state's selection of immigration policies is subject to principles of political morality, whether cosmopolitan or nationalist.

In section 5.3, I consider in a general way the view that the justice of immigration policies ought to be evaluated according to nationalist principles of political morality (that is, principles on which the state ought to show greater concern for the effects of its immigration policies on citizens than on foreigners). (This section contrasts with Chapter 2, in

which I criticized specific nationalist approaches to immigration justice.) This view, prescriptive nationalism with respect to immigration policy, is a challenge to all cosmopolitan approaches to immigration justice, including my own, which regards the nationality of members of unjustly disadvantaged social groups as morally irrelevant in itself.

I take my arguments in sections 5.2 and 5.3 to establish that (1) it is not the case that states' selection of immigration policies is morally unconstrained and (2) nationalist principles of political morality are inappropriate for evaluating the justice of states' immigration policies. Section 5.4 begins from the observation that all national policies inevitably benefit some groups while harming others. If a policy's distribution of benefits and burdens is morally significant, then we must develop principles for determining which distributions are just and which are not. I consider a handful of candidate principles in this regard, and conclude that, in terms of justice, the best distributions are those under which unjustly disadvantaged social groups have the most expansive sets of capabilities (that is, are not avoidably harmed).

5.2 THE MORAL SOVEREIGNTY OF STATES

One assumption underlying my view that it is unjust for states to adopt immigration policies that avoidably harm social groups that are already unjustly disadvantaged is that states' immigration policies may be just or unjust—that is, that states' immigration policies should be subject to principle of justice. This assumption is rejected by those who advocate what I call the moral sovereignty of states view.

In order to make sense of what this view holds, it is useful to contrast it with one with which it might easily be confused. In contrast to the moral sovereignty of states view, the legal sovereignty of states view holds that the legal authority to control the global movement of people should rest with states. In other words, according to this view, states ought to be legally (not necessarily morally) free to regulate immigration as they wish. This is not a descriptive but a normative claim, and it can in principle be given moral justification.¹ The legal sovereignty of states view does not by itself have any implications for how states should regulate immigration, or for whether they should do so at all. (Thus, a defense of a moral principle for evaluating states' immigration policies, such as the PDP, need not overcome the legal sovereignty of states view; one could without contradiction hold that states' selection

of immigration policies is constrained by principles of justice yet think that states ought to have the legal or political authority to set immigration policy.) The rejection of the legal sovereignty of states with respect to immigration policy entails that states ought not legally regulate immigration, although it is compatible with the idea that someone else (whether an supra-national institution, sub-national units, or individual property owners) should.²

For the most part, philosophers discussing immigration have been substantially more interested in the moral sovereignty of states view. The moral sovereignty of states view, as I have already articulated it, is that states' selection of immigration policies is not constrained by principles of morality or justice. (Different defenders of this view, as this chapter demonstrates, may argue for various qualifications on this position.) In other words, states have moral discretion with respect to their choice of immigration policies; they are morally (not merely legally) free to do as they like. The moral sovereignty of states view is incompatible (except insofar as the view is qualified) with any suggestion as to what kinds of immigration policies morally ought to adopt. Thus, this view permits states to choose in accordance with "the national interest," but it does not (and cannot consistently) morally require this. One aspect of the moral sovereignty of states view that is often misunderstood is that its rejection does not entail, in contrast to the legal sovereignty view, that states abandon restrictions on immigration. Rather, rejecting the moral sovereignty view entails that states' selection of immigration policies is subject to principles of morality or justice. Depending on what these principles are (whether they are nationalist or cosmopolitan, and what their content is) and the contingent features of our world that are relevant to their application, states may be morally required to open their borders—or not.

There is surely something morally anomalous about the claim that states' selection of immigration policies is morally unconstrained. What initial plausibility this claim seems to have rests, Phillip Cole comments, with an analogy between states and individuals (Cole 2000: 181). Liberals believe that individuals ought to be free from legal and moral interference in the private sphere. Insofar as individuals and states are analogous actors, states similarly ought to be free from external legal and moral interference in the selection of domestic policies. However, as Cole argues, this analogy is clearly untenable, since there

is by definition no private sphere for states; state action is always public, in the sense that it always has consequences for others—citizens as well as foreigners. It is perhaps inevitable that when states adopt new immigration policies or repeal extant ones some groups will benefit and others will be harmed. What, then, can justify the claim that states morally need take no account of principles of justice in the selection of immigration policies? In this section, I consider four attempts to supply this justification.

5.2.1 *The International Order as a State of Nature*

The first attempt to justify the moral sovereignty of states with respect to immigration policies explicitly relies on an analogy between states and individuals. This view, the Hobbesian theory of state sovereignty, holds that states, in the absence of a sovereign power to which they are subject, like individuals in a pre-social state of nature, are in a constant state of war with one another, in virtue of which they are morally free to enact policies that best promote the national interest. John Scanlan and O.T. Kent, who qualifiedly defend the Hobbesian theory of state sovereignty specifically with respect to immigration policy, invoke Hobbes' view that:

during the time men live without a common power to keep them all in awe, they are in that condition which is called war . . . For WAR consisteth not in battle only, or the act of fighting, but in a tract of time wherein the will to contend by battle is sufficiently known . . . For as the nature of foul weather lieth not in a shower or two of rain, but in an inclination thereto of many days together, so the nature of war consisteth not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary. (Hobbes [1668] 1994: 76)

For individuals, the threat of war in the state of nature is eliminated by the creation of a state, brought into being by the consent of its subjects, who, seeking security, endow it with a monopoly on the legitimate use of force within a given territory.

According to Hobbes, the same exchange of freedom for security is not possible for states themselves. Scanlan and Kent again invoke Hobbes, who argues that:

in all times kings and persons of sovereign authority, because of their independency, are in continual jealousies and in the state and posture of gladiators, having their weapons pointing and their eyes fixed on one another, that is, their forts, garrisons, and guns upon the frontiers of their kingdom, and continual spies upon their neighbours, which is a posture of war. (Hobbes [1668] 1994: 78)

Prior to the creation of the state, individuals in the state of nature, under constant threat of attack, are therefore entitled, in Hobbes' view, to "the liberty each man hath to use his own power, as he will himself, for the preservation of his own nature, that is to say, of his own life, and consequently of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto" (Hobbes [1668] 1994: 79). Individuals have this liberty because in the state of nature, Hobbes asserts, "nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law; where no law, no injustice" (Hobbes [1668] 1994: 78).

States, perpetually in a state of nature with respect to each other, are similarly free to adopt whatever policies best promote the national interest, says Hobbes: "in states and commonwealths not dependent on one another every commonwealth . . . has an absolute liberty to do what it shall judge (that is to say, what that man or assembly that representeth it shall judge) most conducing to their benefit" (Hobbes [1668] 1994: 76). The selection of immigration policies in particular must be within a state's moral discretion, Scanlan and Kent argue, in consideration of the catastrophic consequences that may ensue from the failure of a state to control immigration:

In Hobbesian terms, immigration of aliens, particularly in large numbers, simultaneously poses internal and external threats to the stability of the receiving state. Both the external and the internal threat derive from Hobbes' identification of a "place to live" as one of the necessities of life that the individual cannot be obligated to relinquish in his or her "covenant" with the state. Hobbes appears to anticipate Thomas Malthus by more than a century in recognizing that increasing population threatens the wealth, well-being, and governability of particular nations. (Scanlan and Kent 1988: 73–4)

Thus, according to the Hobbesian argument, as Scanlan and Kent articulate it, the prospect that failing to restrict immigration will hasten the destruction of the state entails that states have absolute moral discretion in regard to the selection of immigration policies.

The Hobbesian defense of the moral sovereignty of states with respect to immigration policy faces several difficulties. The first concerns the normative assumption underlying it: that when an agent's survival is under threat, that agent may do whatever it pleases, in relation to that threat, in service of its self-interest. The normative assumption of the Hobbesian argument is hardly uncontroversial even for individuals, let alone for states. For states, it is explicitly challenged by traditional principles of just war theory, on which, for example, "the damage to be inflicted and the costs incurred by the war must be proportionate to the good expected by taking up arms,"³ and on which "the lives of innocent persons may never be taken directly, regardless of the purpose alleged for doing so" (Holmes 1992: 213). Like deontological advocates of just war theory, consequentialists will also challenge the principle that agents under serious threat are morally free to do what they deem necessary to promote their own interests, since, first, the utility of one's own survival may be outweighed by the utility of the survival of one's competitors, and second, some means of promoting one's interests may involve great costs to third parties. In other words, the inference from "the international order is a state of nature" to "principles of justice do not constrain states' conduct" rests on a normative assumption that is widely regarded as false.

Second, even if one accepts the normative assumption on which the Hobbesian argument relies, there is good reason for thinking that the argument is not applicable in the case of immigration policy. The relevance to immigration policy of the Hobbesian argument presumes that adhering to principles of justice in the selection of immigration policies will hasten the destruction of the state. However, while it is conceivable that the adoption of certain immigration policies by certain states might hasten their destruction, there is no reason to think that it is true, in general, that principles of justice will require all states to adopt immigration policies that (non-trivially) increase their vulnerability to annihilation. It is worth noting that Scanlan and Kent's articulation of the Hobbesian argument predicts catastrophe only as a consequence of open borders; thus, Scanlan and Kent themselves provide no reason to think that the Hobbesian argument is applicable to immigration

policy except against those who hold that justice requires the elimination of restrictions on immigration. In defense of the relevance of the Hobbesian argument to immigration policy, one might argue that there are other policies that states might (be required by principles of justice to) adopt, besides open borders, which might hasten their destruction. This rejoinder could not be denied in principle, but the mere possibility of a case in which principles of justice require a state to adopt an immigration policy that hastens its destruction does not support the conclusion that all states may select immigration policies without regard for principles of justice. At the least, the burden of proof must surely be thought to rest with the state to show that it is exempt from principles of justice because respecting them, in a particular instance, would hasten its destruction.

Finally, the Hobbesian defense of the moral sovereignty of states is anachronistic. The contemporary international order does not satisfy the conditions Hobbes specifies for it to be properly characterized as a state of nature. Scanlan and Kent seem to mistake the role that the state plays in bringing an end to the state of nature; they treat the existence of the state as a condition that must be met for the state of nature to cease. However, it does not follow from Hobbes' argument that the creation of the state is itself strictly necessary for the cessation of the state of nature; it is, rather, one means for bring about the cessation of the state of nature. What is necessary to eradicate the state of nature, at the individual level, is that individuals become mutually dependent on one another for the satisfaction of their interests. Under these circumstances, it is no longer rational, in Hobbes' sense, for individuals to quarrel with or to threaten one another; individuals cannot satisfy their own interests without cooperating with others to some degree. At the individual level, Hobbes surmises, the best way to institutionalize this mutual dependency of interests is to create a state. Conflicts of interest similarly put states at odds with one another at the international level: according to Hobbes, states are in a continual state of war with one another "because of their independency," and this condition of war will persist so long as states are "not dependent on one another." Scanlan and Kent (and perhaps Hobbes too) assume that at the international level, a sovereign global authority is similarly necessary to bring about an end to the international state of nature. Since there is no sovereign global authority, states are at war with one another, in Hobbes' sense; thus the conditions of individual states' moral sovereignty obtain.

However, despite the absence of a sovereign global authority, it would be descriptively inaccurate to characterize contemporary states as inhabiting a state of nature with respect to each other. This is chiefly because, as Charles Beitz argues, states are not the only actors in international relations (as individual persons are in Hobbes' interpersonal state of nature). Rather, states share the world with a variety of international and transnational organizations and institutions that are capable of reshaping the circumstances that characterize states' relations with one another in ways that suspend the state of war. For example, Beitz argues that such institutions have the capacity to mediate conflict, coordinate collective action, insulate states from competition, enable the sharing of risks, and encourage the formation of less competitive attitudes on the part of states (Beitz 2008: 30). In addition, these institutions have arisen in response to and have further entrenched and systematized the interdependence of states, making it instrumentally rational for states to cooperate with one another—thus dissolving the state of war—even in the absence of a unified, effective global authority. For example, Beitz notes that “meeting domestic economic goals (such as full employment, control of inflation, balanced economic growth) requires substantially higher levels of cooperation among governments than has been the case in the past” (Beitz 2008: 33). Moreover, Beitz argues, these institutions include stable associations and coalitions involving “rules of cooperation” with “reliable expectations of reciprocal compliance” that contemporary states have established for addressing common problems. These rules ensure that states become somewhat dependent on one another for the satisfaction of their interests despite “the absence of a superior power capable of enforcing [them]” (Beitz 2008: 34–5).⁴

Examples abound of international, transnational, and global organizations and institutions that mediate conflicts of interest, systematize interdependence, and make reliable inter-state cooperation possible. These include regional political and economic organizations (for example, the EU, NAFTA, and the presently expanding Trans-Pacific Strategic Economic Partnership), global economic institutions (for example, the WTO, the IMF, and the World Bank), the UN, NATO, international criminal courts, international covenants on human rights, the international postal system. The observance of these institutions demonstrate that states are not in a state of nature with respect to each other; thus, the conditions under which the Hobbesian argument supports the moral sovereignty of states do not obtain.

5.2.2 The Communitarian Argument for the Moral Sovereignty of States

A communitarian perspective will reject the notion that there are universal principles of justice, such as the PDP, by which states' immigration policies may be morally evaluated. Instead, the moral success of a state's immigration policy is determined, communitarians hold, by how well it coheres with the understandings of justice shared within the political community. On this basis, Michael Walzer argues that states are morally free to grant or refuse admission to foreigners at their discretion, unconstrained by alleged universal principles of justice. Walzer, as I observed in Chapter 2, also argues that states morally ought to restrict immigration in order to preserve cultural distinctiveness and to protect domestic cohesiveness. Walzer's primary contention, however, is that "the distribution of membership is not pervasively subject to the constraints of justice. Across a considerable range of the decisions that are made, states are simply free to take in strangers (or not)" (Walzer 1983: 61). The moral sovereignty of states with respect to immigration policy is constrained in two ways for Walzer: (1) admissions policies must cohere with the conception of justice shared by members of the political community, and (2) admissions policies must conform to the principle of mutual aid, which requires, in the context of immigration, that political communities admit "necessitous strangers" when doing so would not significantly harm current members (Walzer 1983: 32–3).

Walzer's view that the selection of immigration policies is at the discretion of each state is part of his commitment to communitarianism. On Walzer's view, legitimate conceptions of justice are those that are shared by members of particular political communities. For example, Walzer comments:

Even if they are committed to impartiality, the question most likely to arise in the minds of the members of a political community is not, What would rational individuals choose under universalizing conditions of such-and-such sort? But rather, What would individuals like us choose, who are situated as we are, who share a culture and are determined to go on sharing it? . . . What understandings do we (really) share? (Walzer 1983: 4–5)

Thus, the immigration policies that are just, according to Walzer, are the ones that accord with the understandings of justice that are shared

by the members of the political community whose immigration policies are in question. There are no principles of justice external to or above the community's understanding (save the principle of mutual aid) that may provide a basis for challenging the admissions criteria they choose.

Walzer provides two ancillary arguments to support his defense of the moral sovereignty of states. First, he proposes an argument by analogy: "we might . . . think of countries as national clubs or families" (Walzer 1983: 42), he says. Clubs, like states, may restrict membership, but cannot prevent current members from leaving. And, "like clubs, countries have admissions committees. In the United States, Congress functions as such a committee, though it rarely makes individual selections" (Walzer 1983: 40). As with states,

In clubs, only the founders choose themselves (or one another); all other members have been chosen by those who were members before them. Individuals may be able to give good reasons why they should be selected, but no one on the outside has a right to be inside. The members decide freely on their future associates, and the decisions they make are authoritative and final. (Walzer 1983: 41)

However, unlike clubs, members of a political community sometimes feel morally obligated to include certain outsiders, Walzer observes. In this respect, countries are more like families than they are like clubs, Walzer says; their citizens feel bound:

not to anyone who wants to come in, perhaps, but to a particular group of outsiders, recognized as national or ethnic "relatives." In this sense, states are like families rather than clubs, for it is a feature of families that their members are morally connected to people they have not chosen, who live outside the household. In time of trouble, the household is also a refuge. (Walzer 1983: 41)

For this reason, many states also acknowledge "what we can call the 'kinship principle' when it gives priority in immigration to the relatives of citizens" (Walzer 1983: 41). Yet, as with clubs, household decisions about who may enter are not subject to appeal or external challenge, Walzer claims. Thus, to the extent that clubs and families are relevantly

analogous to the state, the state may also admit and exclude according to criteria of its own choosing.

Walzer's second ancillary argument for the moral sovereignty of states over admissions draws on considerations similar to those used in his cultural distinctiveness argument, examined in Chapter 2. This argument, the argument from self-determination, does not demand immigration restrictions, however. Here, Walzer claims:

At stake here is the shape of the community that acts in the world, exercises sovereignty, and so on. Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life. (Walzer 1983: 61–2, emphasis in original)

On this argument, political communities must have admissions control unconstrained by alleged universal principles of justice in order to be independent and self-determining.⁵ If sound, this argument, like Walzer's argument from analogy, and unlike his domestic cohesiveness and cultural distinctiveness arguments, supports the view that states may admit or exclude foreigners at their own discretion. The arguments I considered in Chapter 2 do not support the moral sovereignty of states view because the considerations they invoke, given Walzer's empirical assumptions, demand that states adopt restrictive immigration policies; this demand is incompatible with the view that the choice of admissions criteria is within states' moral discretion. In contrast, the arguments of Walzer that I presently consider do not require states to adopt any particular immigration policies; they are compatible, for example, with the state choosing a policy of open borders.

It is not certain that Walzer intends his analogies to clubs and to the family to be arguments, strictly speaking, for the moral sovereignty of states over immigration. Nevertheless, if one interprets the analogies in this way, the argument might be represented in the following way:

1. States are analogous to clubs and families in relevant respects.
2. Clubs and families have moral discretion in regard to their membership.

3. Therefore, states should also be regarded as having moral discretion in regard to their membership.

However, the premises of this argument are not entirely true, and together, they do not entail the conclusion. Although clubs and families are similar to states in a few respects, as Walzer mentions, they are distinct in important and morally significant ways. Clubs and families, as Walzer himself notes, do not possess territorial jurisdiction; states may also provide for a much wider range of basic goods than do clubs or families. Moreover, Walzer is wrong to think that clubs' and families' membership decisions are beyond moral reproach. In liberal democracies, for example, clubs morally may not exclude prospective members on the basis of race or sex (and usually may not do so legally either); families that reject their gay children are legitimately subject to external moral criticism. Even if the premises of Walzer's argument from analogy were entirely correct, Walzer still provides no reason to think that the conclusion follows. The fact that there are some similarities between clubs, families and states does not entail that they are (or should be) alike in all respects. Walzer's argument is, therefore, invalid.

Walzer's self-determination argument is similarly unsuccessful. Like his argument from analogy, the conclusion of the self-determination argument might be thought to follow from two premises as follows:

1. National self-determination is a significant moral good.
2. National self-determination requires that states have moral sovereignty with respect to immigration policy.
3. Therefore, states ought to have moral sovereignty with respect to immigration policy.

As with Walzer's argument from analogy, neither premise of this argument is unqualifiedly true, and together they do not entail the conclusion. National self-determination may cease to be morally valuable if not exercised within certain moral constraints. For example, even Walzer rejects the racially discriminatory "White Australia" policy (Walzer 1983: 46–8). Additionally, it seems an exaggeration to say that states cannot be self-determining in the absence of absolute moral sovereignty over admissions, since states possess sovereign authority

within their borders even if their moral discretion to choose immigration policies is circumscribed by principles of justice. (Walzer himself argues that the moral sovereignty of states with respect to immigration policy is delimited by the principle of mutual aid, but does not seem to regard this as a threat to states' self-determination.) Finally, even if Walzer's premises were true, they do not, by themselves, support the conclusion. That is because Walzer does not provide any analysis that might be used to weigh the value of national self-determination against competing values. The validity of the inference to the conclusion implicitly depends on an unacknowledged and undefended premise: that national self-determination is more morally weighty than the interests of those negatively affected by a state's immigration policies.⁶

Walzer's ancillary arguments for morally unconstrained state control of admissions are unsuccessful. Nonetheless, Walzer may still claim that there are no legitimate universal principles of justice from which immigration policies may be deduced. States, therefore, have no alternative other than to choose admissions criteria according to the conceptions of justice shared by their own citizens. However, in this chapter my very purpose is to show that a universally applicable principle by which the justice of different states' immigration policies may be assessed obtains. Moreover, for reasons I noted in Chapter 2, a communitarian approach to immigration policy is unlikely to be productive. First, although the members of "political communities" (that is, nations) may share understandings of justice that can form the basis for a comprehensive national membership policy, the modern state is not a political community in Walzer's sense. Thus, while Walzer's communitarianism may support the conclusion that political communities, where they exist, morally may regulate informal membership according to principles of their own choosing (supposing that Walzer's arguments are otherwise correct), it has no implications for states' selection of immigration policies. Second, Walzer's conception of political communities, especially insofar as he identifies the modern state as a political community, is romanticized and ahistorical. It erases internal dissent and disregards social group differentiation in order to give the appearance of unanimity to what is merely the conception of justice held by dominant groups. For these reasons, the moral sovereignty of states with respect to immigration policy remains in need of justification.

5.2.3 *The Freedom of Association Argument for the Moral Sovereignty of States*

The idea that the moral sovereignty of states derives from political self-determination arises again in the work of Christopher Heath Wellman.⁷ Wellman's argument is distinguished from Walzer's by the fact that Wellman does not reason straight from political self-determination to states' right to control immigration. Instead, Wellman argues that political self-determination includes the freedom of association, and that it is freedom of association that permits states to grant and refuse admission at will.

Wellman's argument has three premises:

1. Legitimate states are entitled to political self-determination,
2. Freedom of association is an integral component of self-determination, and
3. Freedom of association entitles one to *not* associate with others. (Wellman and Cole 2011: 13, emphasis in original)

Wellman argues that it follows from these premises that legitimate states have "moral dominion" (Wellman and Cole 2011: 15) over their own immigration policies.

Wellman subjects his argument to two salient qualifications. First, much depends on how Wellman conceives of the "legitimacy" of states. If the criteria of legitimacy were too minimal, then Wellman's view would have implications that make it morally implausible. On the other hand, if the criteria of legitimacy are too demanding, then political self-determination becomes meaningless. Wellman asserts, "a regime is legitimate only if it adequately protects the human rights of its constituents and respects the rights of all others" (Wellman and Cole 2011: 16). Second, in defense of the first premise of his argument, Wellman reveals his view that political self-determination is applicable only with respect to self-regarding matters: "A state is thought to be entitled to a sphere of group autonomy that includes all self-regarding matters. In other words, as long as a state's conduct does not wrongfully impact any other country, it has full discretion to order its affairs however it sees fit" (Wellman and Cole 2011: 15).

These qualifications are crucial for the moral plausibility of Wellman's position. Without them, his position would be equivalent to the

Hobbesian conclusion that any de facto state may adopt any policy it likes, including with respect to foreign policy, totally without regard for moral constraints. However, each of these qualifications in a different way presents a problem for the tenability of Wellman's argument. First, consider Wellman's criterion of the legitimacy of states: in order to be entitled to self-determination, states must, on Wellman's view, adequately protect the rights of residents and respect the rights of foreigners. It is noteworthy that Wellman's standard example of a legitimate state, through which he tests the implications of and defends his view, is Norway (Wellman and Cole 2011: 17), a country that is routinely at the very top of the UN's Human Development Index. Wellman chooses Norway as his standard example of a legitimate state, presumably, because its exceptional record on human development allows him to avoid certain questions and controversies that would arise had he tested the implications of his view in thought experiments involving a country whose legitimacy, in his terms, is more suspect. I do not mean to suggest that Wellman's choice of example is itself proof that very few states in our world today meet his criterion of legitimacy; of course it is not. However, the choice of example naturally leads to the question, how many states in our world presently satisfy Wellman's criterion of legitimacy? Or, to put it another way, to what extent is Wellman's view applicable to states in our world, as opposed to states in some other possible world?

The fact that Norway does very well (relative to other countries, at least) in terms of human development is only evidence of its internal justice. Even if one supposes that many countries in our world today, like Norway, satisfy the first aspect of Wellman's criterion of legitimacy (adequately protecting the human rights of constituents), one must wonder how many (and which) satisfy the second aspect of Wellman's criterion (respecting the human rights of non-residents). In Chapter 2, I invoked Pogge's arguments for the thesis that the imposition of certain global economic institutions by countries of the Global North actively harms residents of the Global South by foreseeably exacerbating extreme poverty and thus bringing about avoidable poverty-related suffering, disease, and death. Without repeating his arguments, I mention Pogge's thesis here because it is reasonable to think that the imposition of these global economic institutions by countries of the Global North, in virtue of the grave harms it causes, constitutes a failure to respect the human rights of many residents of the Global South,

even on a very traditional conception of human rights. If this is so, then the legitimacy of many, if not all, countries of the Global North (all those that participate in the design and imposition of, for example, the WTO, the IMF, and the World Bank) is doubtful.

Indeed, Wellman seems nearly to concede this point in response to the objection that his view callously privileges the self-determination of wealthy countries over the basic needs of the global poor:

I have not at any point necessarily defended the sovereignty of existing states (European or otherwise) as they all currently operate. On the contrary, I have repeatedly stressed that I mean to defend the rights of self-determination not of all states but only of *legitimate* states . . . Thus, if the peril of Africans is a human rights issue (and one would be hard-pressed to deny that it is), then it very well may have implications for the legitimacy of European (among other) states who do relatively little while Africans are dying en masse from starvation brought on (in large part, at least) by political corruption. Thus, my position is perfectly compatible with concluding that only those European countries that do enough to help the imperiled Africans are morally entitled to be self-determining. (Wellman and Cole 2011: 113–14, emphasis in original)

One especially noteworthy aspect of this passage is that Wellman reveals his belief that severe poverty in countries of the Global South is largely caused by factors internal to those countries. Pogge gives us ample reason to doubt that this is the whole story (for example, corruption in poor countries is often itself the result of external factors such as the international borrowing privilege). Nevertheless, the adherence to explanatory nationalism Wellman evinces here reveals a further view on his part—that the poor in Africa have positive human rights of assistance (not merely negative human rights not to be harmed). Thus, even if there were good reason to doubt Pogge’s thesis that wealthy countries of the Global North actively cause severe poverty through their imposition of certain global economic institutions, the applicability of Wellman’s view to our world would still be in serious doubt as he himself concedes that the mere failure “to help the imperiled Africans” is by itself a human rights violation. Insofar as immigration policies and their effects on prospective migrants, non-migrating foreigners and residents of receiving countries are matters of moral urgency, I take

the limited applicability of Wellman's argument to nation-states in our world to be quite devastating for his view.

Wellman's second qualification, that the moral dominion of legitimate states is limited to self-regarding matters, is perhaps more damaging to the conclusion of his argument from freedom of association than the first. Although the qualification is necessary for the argument to have plausibility from a moral perspective, it renders the argument inapplicable to states' selection of immigration policies, a matter that, on the face of it, is plainly not merely self-regarding.⁸ As Sarah Fine points out, "the very act of excluding people may thwart their interests, either making them worse off than they are at present, or making them worse off than they would be otherwise, if they were left to act on their own plans and the group did not act to exclude them" (Fine 2010: 347). In other words, prospective migrants are quite clearly affected, potentially significantly harmed, by the selection of immigration policies by receiving countries. What is more, the immigration policies of receiving countries may also, as I argued in Chapter 3, have a substantial impact on other, non-migrating foreigners. These points having been acknowledged, it seems that what Wellman argues is the implication of freedom of association is rendered moot by the limits of political self-determination.

Wellman may be able to rehabilitate the argument from freedom of association by the way in which he conceives of the self-regardingness of behaviors or matters. Having stated that political self-determination is limited to self-regarding matters, Wellman suggests a definition of self-regardingness: "as long as a state's conduct does not wrongfully impact any other country, it has full discretion to order its affairs however it sees fit" (Wellman and Cole 2011: 15). In other words, Wellman may conceive of self-regarding conduct as that which does not wrongfully impact others. However, this way of understanding what is and what is not self-regarding is not helpful, for it leads to a vicious circularity. Precisely what is in question, when we ask about the self-regardingness of conduct, is whether or not it wrongfully impacts others. One cannot determine if conduct wrongfully impacts others prior to knowing whether or not it is self-regarding. This explains why it would be more helpful to understand self-regarding behavior as that which is not harmful to others.⁹ One can determine if behavior harms others prior to knowing whether or not it is self-regarding. Once we understand self-regardingness in terms of harm to others, however, it is clear that immigration policy is not a purely self-regarding matter.

Apart from problems that arise for Wellman's argument in the qualifications to which he subjects it, I wish to press one further objection. As we have seen, Wellman's argument for the moral sovereignty of states appeals to the value of political self-determination. What distinguishes Wellman's argument from Walzer's appeal to political self-determination is Wellman's appeal to freedom of association. Wellman argues that legitimate states are entitled to freedom of association, as part of their self-determination, and that freedom of association permits those who have it to not associate with others. In virtue of this, "legitimate political states may permissibly refuse to associate with any and all potential immigrants who would like to enter their political communities" (Wellman and Cole 2011: 36–7). In the present argument, I want to challenge Wellman's inference from the third premise of his argument to the conclusion.

Specifically, I question why the right of legitimate states to not associate with others entails the right to exclude foreigners from the territory of the nation-state. It is not obvious why states need to be able to control immigration in order to preserve their freedom of association. After all, the modern liberal state, which is the entity to which Wellman's argument is applicable, is neither an intimate nor an expressive association, which Wellman acknowledges (Wellman and Cole 2011: 34). In what sense precisely would freedom of association be compromised by the obligatory admission of foreigners? Miller also resists the argument for the moral sovereignty of states from freedom of association, arguing that the reasons that freedom of association is valuable in intimate and expressive contexts do not obtain in "political communities of the size of contemporary nation-states" (Miller 2007: 211). Similarly, Fine argues:

The mere presence of immigrants within the state's borders cannot be a serious problem with regard to the associational rights of individual citizens—it is certainly compatible with their individual rights to associate freely within civil society, where they remain free to choose to associate, or not associate, with newcomers and other citizens in their private lives. (Fine 2010: 343)

To put the point forcefully, the idea that the admission of immigrants constitutes a kind of association is tenuous at best, perhaps a marginal case, and merely metaphorical at worst. At the very least, even if one

were to grant to Wellman that the admission of immigrants counts as a kind of association, its moral significance seems trivial in comparison to cases of association in intimate or expressive contexts.

What reason do we have, then, for thinking that the admission of immigrants counts as a morally non-trivial kind of association for the receiving country and its citizens? In response to this question, Wellman presents the following reply: freedom of association is valuable, even in the non-intimate context of the state, because citizens have reasons to care about the membership rules of their political community. As Wellman says:

There is nothing curious about people caring so much about the rules governing who may enter their political communities, even though a citizen will typically never meet, let alone have anything approaching intimate relations with, the vast majority of her compatriots . . . People's lives are obviously affected by substantial changes in population density . . . A substantial influx of foreigners will almost invariably also affect the host state's cultural make-up, the way its economy functions, and/or how its political system operates. (Wellman and Cole 2011: 39)

Wellman emphasizes that he does not assume that the impact of (even substantial levels of) immigration for the receiving country will be negative.

The first thing to notice about Wellman's defense of his position is that freedom of association appears to have dropped out of the argument. Wellman's argument here is that states may set their own immigration policies because of the potential for "substantial influxes of foreigners" to affect the interests of citizens in significant ways. In other words, Wellman appears to be reasoning directly from the first premise of his argument to the conclusion, the second and third premises no longer playing an essential justificatory role.

Second, as just noted, Wellman's argument is now that states have moral discretion to select their own immigration policies because "the numbers and types of constituents have an obvious and direct effect on what it is like to be a member" of the political community (Wellman and Cole 2011: 40). This would not seem unreasonable except that, of course, other people's interests are at stake as well, namely, those of prospective migrants and those of other, non-migrating, foreigners.

In the absence of an argument for why the interests of citizens should have priority over those of foreigners—which Wellman does not offer—Wellman’s argument cannot succeed in establishing the moral sovereignty of states with respect to immigration policy.¹⁰

5.2.4 *The Associative Ownership Argument for the Moral Sovereignty of States*

The appeal to political self-determination fails to justify the moral sovereignty of states in the work of both Walzer and Wellman. The idea of political self-determination also features in a fourth defense of the moral sovereignty of states: Ryan Pevnick’s associative ownership argument. Pevnick’s position is that citizens have ownership in the institutions of their state in virtue of the contributions they make to them (for example, paying taxes and participating in political decision-making), without which those institutions would not exist.

The associative ownership view insists that the citizenry constitutes an association extending through time that comes to have a claim over state institutions as a result of the efforts—from physical labor and tax payments to obeying the law—that make such institutions possible. In this sense, the citizenry has a special ownership relation with state institutions that distinguishes their position from that of foreigners. (Pevnick 2011: 11)

Ownership of the institutions of the state gives citizens a *prima facie* right of self-determination with respect to the shape and direction those institutions take. This right of self-determination entails, Pevnick argues, that citizens morally may grant or refuse admission to prospective immigrants at will (subject to some qualifications).

Pevnick rejects an unqualified version of the moral sovereignty view (which he calls “statism”) grounded in a Hobbesian understanding of the international order as a state of nature primarily because of the heinous policies it would permit states to enact in pursuit of national self-interest (Pevnick 2011: 20–7). However, Pevnick’s associative ownership position is not itself a rejection of the moral sovereignty view, but rather a distinct justification for it, one that, he argues, allows claims of self-determination to be outweighed in some cases by competing moral considerations. For instance, Pevnick holds that liberal

moral equality outweighs the ownership claims of citizens in the cases of asylum-seekers and the children of undocumented immigrants, both of whom must therefore be admitted and given access to citizenship (Pevnick 2011: 65–6). Pevnick also argues that there is a moral right to subsistence in virtue of which we should recognize, for instrumental reasons, a legal right to free movement internationally for residents of “non-compliant” territories (those in which the vast majority of individuals earn less than \$2 per day), when international migration would permit them to satisfy their subsistence needs (Pevnick 2011: 87).¹¹

Pevnick rejects defenses of the moral sovereignty of states based in claims of common national identity and protection of culture (Pevnick 2011: 133–62). However, Pevnick argues that ownership of the institutions of the state permits citizens to invoke such appeals in order to refuse admission to prospective migrants “who wish to resist integrating” and to limit the annual rate of immigration (Pevnick 2011: 144). Pevnick also concludes: “there are valid arguments regarding local environmental conditions that could speak in favor of the restriction of immigration” (Pevnick 2011: 153). Finally, he advocates certain types of guest-worker programs (Pevnick 2011: 178–9), as well as “recruitment of highly skilled workers when it can be done without harming developing economies” (Pevnick 2011: 16).

A theory of immigration justice that rests on the claim that citizens own the institutions of the state (and therefore have a right of self-determination by which they may admit or exclude prospective members at their discretion) must by its nature be concerned with the conditions under which such claims of ownership are legitimate—as well as when they are illegitimate. I wish to argue, first, that the occurrence of historical injustices such as colonialism, imperialism, transnational slave trades, genocide and conquest make an approach to the topic of immigration justice such as Pevnick’s associative ownership inappropriate. My concern in pressing this objection is not to establish that events of this sort took place, that they are injustices, that they require rectification of some sort, or that they may in some cases invalidate the ownership claims of states. I believe these claims are true, but I will not argue for them here because Pevnick concedes all of them. For example: “Our world is without clean slates or immaculate conceptions; as David Schmidtz rightly notes, ‘we are fated to live in a world of background injustice, all of us descended from both victims and victimizers’” [(Schmidtz 2006: 209)] (Pevnick 2011: 41). And similarly:

“All claims in our world lie on a bed of injustices of this sort” (Pevnick 2011: 42). Conceding that the history of states is ridden with profound injustices, Pevnick responds to the objection that the occurrence of such injustices challenges claims of ownership by other strategies.

Pevnick begins his response by drawing a distinction between a weak and a strong version of the objection. The weak version of the objection asserts that all states have been complicit in injustices in ways that require rectification. Pevnick concedes this version of the objection, but argues that it does not challenge his view:

Of course, there are particular holdings of states that may be unjust . . . , and states may have a responsibility to rectify such injustices . . . [However,] the associative ownership position suggests that it is possible for a group to have legitimate claims of collective ownership over the institutions they construct . . . [Nevertheless,] states do not necessarily have valid entitlement to *everything* they claim. In other words, certain kinds of historical injustices require rectification and, so, impose constraints on the claims that states can legitimately advance. (Pevnick 2011: 41, emphasis on original)

There are two ways of understanding Pevnick’s response to the weak version of the objection. On the first understanding, Pevnick is claiming that states may indeed have duties of rectification for historical injustice, but that this does not undermine the validity of their ownership claims (perhaps so long as they make good-faith efforts to discharge their rectificatory duties). In other words, historical injustice merely generates duties of rectification on the part of those who committed (or perhaps simply benefited from) it; it does not invalidate their ownership claims.

This response would be inadequate, for two reasons. First, if a state comes to possess something by force, fraud, or some other kind of injustice, it is implausible that it may merely compensate the victims of its injustice while retaining ownership of that which it came to possess by the injustice. Surely, beyond whatever other compensation is owed, the state’s ownership claims would also be invalidated. Reflection on the individual-level analogue makes this evident: If G takes M’s car without M’s consent, then it is the case that (at least) (1) G lacks a valid ownership claim over the car, and therefore must return it to M, and (2) G must compensate M for whatever consequent harms M incurred

during the period in which she was deprived of her car (subject perhaps to some qualification). G cannot simply retain ownership in the car, but transfer to M something equivalent to the value of the car and the losses she incurred while deprived but prior to compensation (unless M freely consents to this).

Second, in cases in which (1) the injustice committed was pervasive in its effects (both for the victim and the agent of the injustice) and (2) a significant length of time has passed between the end of the period during which the unjust practice took place and the present, it will be virtually impossible (although not necessarily impossible in principle) to determine the value of the harm to the victim (or the value of the benefit to the agent of the injustice) as separate from the victim's (or agent's) current condition. Conditions (1) and (2) seem to hold in the case of historical instances of colonialism, imperialism, transnational slave trades, genocide and conquest in our world. My purpose in making this point is not to draw some implication about the extent of duties of rectification in our world. Rather, my purpose is twofold: it is, first, to show that the claim that historical injustice merely generates duties of rectification (but does not dissolve present ownership claims) is inadequate as it suggests that determining the extent of the duty of rectification is (not simply in principle) possible; it is, second, to cast doubt on the usefulness or appropriateness for our world of any theory of immigration justice that rests on the validity of states' ownership claims.

On the second understanding of Pevnick's response to the weak version of the objection, he is claiming that, while indeed it is the case that historical injustice would invalidate a state's ownership claims (as opposed to merely giving rise to duties of rectification), this does not undermine the general legitimacy of the associative ownership view; it merely shows that, contingently, there are some cases in which it does not apply. Evidence that this is the correct understanding of Pevnick's response appears later: "Although there are surely particular claims made by states that ought to be rejected as a result of identifiable historical injustices, concerns regarding such injustices do not cast doubt on the position as a whole" (Pevnick 2011: 43).

This response will seem unsatisfying from the perspective of those who regard immigration justice as a matter of moral urgency in our world. Given that Pevnick concedes that the history of states is pervasively characterized by injustice, it seems inadequate to say that this

injustice is contingent and that (perhaps), at least, there are possible worlds in which associative ownership is a useful theory for determining whether or not states' immigration policies are just. To underscore, my point here is not that the principle of associative ownership is necessarily false; it is that, in consideration of the profound injustices that mark the history of states, associative ownership is not appropriate as a theory of immigration justice for our world.

I mentioned above that Pevnick distinguishes between a weak and a strong version of the objection at hand. The strong version of the objection is that:

The history of states is so riddled with injustice that rectification is hopeless. On this view, all claims of states are illegitimate such that any attempt at rectification cannot avoid being hopelessly inadequate. (Pevnick 2011: 41, emphasis in original)¹²

Although Pevnick argues that this position unacceptable, it is worth noting that Pevnick does not deny the "descriptive" aspect of the objection (that the history of states is pervasively characterized by injustice); he merely denies that we ought to accept what the objection holds is the normative implication of this—that all claims of states are illegitimate.

Pevnick provides a pragmatic reason for rejecting the normative implication of the strong version of the objection. According to Pevnick:

Discounting all ownership claims advanced by states on account of historical injustice would force us to do away with *all* claims of ownership . . . Our history is too unavoidably inundated with injustice for any claim to be purely innocent. However, the rejection of *all* claims of ownership is surely a medicine worse than the symptom. (Pevnick 2011: 42, emphasis in original)

I have two responses to this argument. First, for whom is the "medicine worse than the symptom"? It is by no means obvious that the rejection of all present claims of ownership would make circumstances worse for those most harmed by major historical injustices (including descendants of the original victims). Instead, administration of "the medicine" would mainly seem to be "worse than the symptom" for the beneficiaries of major historical injustices (including descendants of the perpetrators).

Second, while I do not necessarily mean to suggest that we ought to cease to recognize all present claims of ownership (a thesis on which I take no position here), it does seem to me that, in light of the histories of injustice in which states are implicated, it would be best to avoid quite possibly compounding those injustices by premising theories of (immigration) justice on claims of state ownership that are very likely illegitimate. As Pevnick says (quoting Schmidtz), “our task, then, ‘is to live constructively in a world that we acknowledge is profoundly marred’ [Schmidtz 2006: 214]” (Pevnick 2011: 42). Yet, this is precisely why a theory of immigration justice based on the historical entitlements of states does not seem like a promising approach for our world.

A second major objection to the associative ownership view is motivated by considerations similar to those that motivated the historical injustice objection but is nevertheless distinct. In Chapter 2, I made use of Thomas Pogge’s arguments against explanatorily nationalist accounts of poverty in the Global South in order to criticize some rationales for restricting immigration based on nationalist principles of political morality. One of Pogge’s central theses, which I accept, is that wealthy countries of the Global North impose international economic structures (consisting of and through the WTO, the IMF, and the World Bank, among others) through which they derive substantial economic benefits, often at a severe cost to poorer countries of the Global South. These economic gains accruing to wealthy countries of the Global North make a significant contribution to the relative flourishing of their own societies and state institutions. For this reason, I wish to argue that the economic rewards wealthy countries of the Global North reap through their imposition of certain global economic structures ought to be understood as ownership-claim-generating contributions on the part of residents of the Global South in the state institutions of the Global North.¹³

Thus, the objection I am now pursuing does not seek to undermine the associative ownership view, but rather challenges Pevnick’s application of it. Pevnick mentions four ways in which citizens come to have ownership claims in their own states: (1) paying taxes (Pevnick 2011: 35), (2) performing physical labor (Pevnick 2011: 11), (3) contributing to collective political decisions (Pevnick 2011: 11), and (4) obeying the law (Pevnick 2011: 11). My argument will be that there is no morally relevant way to distinguish the contributions that residents of the Global South make to the economies in the Global North from the sorts of

contributions, which Pevnick argues are ownership-claim-generating, that citizens of the Global North make to their own state institutions.

One of the contributions that citizens make to the institutions of their state, that Pevnick argues generates an ownership claim, is tax revenue. Tax payments do seem to generate ownership claims on the part of citizens in state institutions (setting aside other potential challenges to the associative ownership view). However, since wealthy countries of the Global North also obtain substantial economic revenue (albeit in a more indirect way) from the imposition of certain global economic institutions that harm residents of the Global South (Pogge's thesis), the fact that citizens provide economic revenue for the state through formal systems of taxation does not seem to provide a justification for citizens' unique ownership claims.¹⁴ The notion that contributions made by residents of the Global South to the economies of the Global North do not count, or count for less than those of citizens (in terms of generating ownership claims), seemingly depends on an overly formal conception of what constitutes a "contribution" that arbitrarily privileges the contributions of citizens (and, in our world, those of the Global North) and that arbitrarily discounts the contributions of foreigners (and, in our world, those of the Global South).¹⁵

For similar reasons, it is unclear why the second contribution of citizens that Pevnick highlights (performing physical labor) should serve to uniquely justify citizens' claims of ownership in state institutions. To the extent that performing physical labor is morally significant with respect to associative ownership because it contributes, directly and indirectly, to the functioning of the society and the flourishing of state institutions, Pogge's thesis, coupled with the arguments I have already made, explain why a distinction between citizens of the Global North and residents of the Global South, with respect to ownership in the state institutions of the former, cannot be maintained.

For the first two types of contributions Pevnick invokes to explain citizens' ownership claims (paying taxes and performing physical labor), I have argued that a justifiable distinction between citizens' and foreigners' contributions cannot be drawn. With respect to the third and fourth sorts of contributions of citizens Pevnick invokes (participating in political decision making and obeying the law), I argue that, while a distinction between citizens and foreigners can be drawn, that distinction cannot serve as a justification for excluding people from ownership in foreign states.

That citizens of state S participate in the political decision making procedures of S (while non-citizens of S do not) seems an unreasonable distinction to draw for the purpose of determining who shall have ownership in the institutions of S. After all, non-citizens of S are (presumably) prevented by S's own law from participating in its political decision-making procedures. Non-citizens of S have not simply declined the opportunity to participate in S's political decision making procedures, nor is it the case that the opportunity was merely never welcomingly advertised to them (despite its formal availability). If a group of people is prevented by law from X-ing, then the fact they do not X cannot reasonably be invoked as a ground to exclude them from some benefit or right.

The fact that non-citizens of S do not obey the laws of S (while citizens of S in principle do) also seems unreasonable as a way to distinguish foreigners from citizens for the purpose of justifying the ownership rights in S of its citizens but not of foreigners. For foreigners are bound on pain of punishment to a different set of laws. One might argue, furthermore, that it is impossible in principle for a person to "obey" laws to which they are not presently subject. Moreover, both "obeys the laws of S" and "participates in the political decision making procedures of S," as criteria for excluding non-citizens of S from ownership claims in S, suffer from a circularity problem. Non-citizens of S do not have an ownership claim in S, Pevnick argues, because they (among other things) do not obey S's laws or participate in S's political decision making procedures; but they do not obey S's laws or participate in S's political decision making procedures because S excludes them from their scope by law; thus, the present exclusion of non-citizens from ownership in S seems to depend on the legitimacy of their already having been excluded.

In challenging the four grounds on which Pevnick argues that citizens have ownership claims in the state as criteria for excluding foreigners from the same, my purpose is neither of the following: (1) to show that some or all foreigners should be admitted on grounds of associative ownership; (2) to show that some or all foreigners should be enfranchised, at least with respect to the selection of immigration policies, on grounds of associative ownership. I take these arguments merely to show that associative ownership does not provide states with defensible grounds on which to discount the interests of foreigners relative to those of citizens in the selection of immigration policies.

Pevnick does not consider the precise objection I am pressing. However, Pevnick does consider two other, somewhat similar, objections, to which his responses may be relevant here. One of these objections arises from Pevnick's response to the objection that the associative ownership view entails that sub-national political units (for example, California) ought to be able to control migration across their borders from within the national political unit (for example, the US). Pevnick replies, reasonably, that California derives a great portion of the public goods it provides to residents from contributions made by citizens of the rest of the US (mediated by the federal government), who therefore have an ownership stake in California's institutions, and cannot be denied entry. Pevnick is sensitive to the fact that this response makes him vulnerable to another objection: that international institutions provide goods to countries, such as the US, in virtue of which their members' citizens should, by the same reasoning, also have an ownership stake in the countries to which such goods are provided.

Pevnick's response to this objection does not quite engage the argument I am making. Pevnick's reply seems to be that if it were the case that the goods provided by the political community to its citizens were not largely internally generated (as opposed to having a substantial extra-national source, which is what I have contended), then there would be no explanation for the high value people seem to place on migrating to countries like the US:

Recall that crucial to the associative ownership argument was that the value of migrating to the territory was in very large part the result of the goods provided by the political community. The density of the goods provided by the federal government gives the value to residence in the territory. (Pevnick 2011: 62)

However, Pevnick focuses on the wrong issue. The argument against excluding foreigners from ownership in the state allows that the federal government of the state may provide tremendous benefits to people who live in the territory: what it questions is the source of the wealth by which the government is able to provide the goods that give value to residing in the territory. Much of this wealth is indeed internally derived, but (1) much of it is not, as Pogge argues, and (2) the capacity to generate wealth internally is, perhaps inestimably, facilitated

by various aspects of economic globalization that disproportionately benefit countries of the Global North.

Pevnick denies that international institutions supply the goods to political communities such as the US in virtue of which residence in them becomes so valuable:

While goods provided by the federal government (from national defense and basic public health/sanitation to basic infrastructure and protection of property rights) can be seen as crucial to any decent life, the same does not seem to be true of the above associations [the UN, NAFTA, NATO, and the WTO] which—instead—generally provide goods that improve life on the margins. (Pevnick 2011: 62–3)

In evidence of this, Pevnick cites the annual budget of the UN (“just over \$4 billion”), and compares it to the annual budget of the US federal government (“nearly \$3 trillion”) (Pevnick 2011: 63). However, Pevnick’s argument still does not seem to engage the point I am making. My argument is not that these institutions themselves directly fund the provision of public goods in countries of the Global North. (That this is the point Pevnick is disputing is strongly suggested by his comparison of the budgets of the UN and the US, which otherwise seems irrelevant.) Rather, the argument is that the rules of the global economy that these institutions constitute (I would focus on global economic institutions, such as the WTO, the IMF, and the World Bank, as opposed to political institutions, such as the UN and NATO) facilitate a vast accumulation of wealth by the countries that create and control them, at the expense of the residents of the Global South (not at the expense of the institutions).¹⁶

Pevnick might object that what really matters, with respect to establishing ownership claims in the state, is not paying taxes, performing physical labor, participating in political decision making, obeying the law, or any such specific activities *per se*. These activities, Pevnick may argue, are mere examples of ways in which compatriots share a scheme of social cooperation, and it is this fact about compatriots—that they share a scheme of social cooperation—that justifies uniquely their ownership in the institutions of their state. In the context of a reply to a second distinct objection to his view, Pevnick suggests that this is what may ground the distinction between citizens and foreigners for

him: “Our relationship with foreigners is also unlike—in the relevant respects—our relationship with fellow citizens in the *extent* to which our relationships are marked by these kinds of non-consensual mutually beneficial interaction” (Pevnick 2011: 125, emphasis in original). Similarly, Pevnick says, “The cooperative venture of the state—imposed on us by fellow citizens—makes possible all of the wealth that we enjoy above a very grim baseline. The same cannot be said for the kind of cooperative ventures that we share willy-nilly with subjects of other states” (Pevnick 2011: 125). Thus, Pevnick may argue in reply to my objection, because the relationships of cooperation between citizens of different states are so much more limited in extent than the relationships of cooperation that obtain between compatriots, citizens have a unique basis for ownership claims in the institutions of their state.

This hypothetical reply faces a few problems. First, in challenging the four specific ways compatriots are said to participate in a system of social cooperation as distinct from foreigners, I have argued that two of them do not ground tenable distinctions, while the other two ground distinctions that are unfair as bases to exclude foreigners. Even if the four sorts of contributions made by citizens to their state that Pevnick mentions do not exhaust what he has in mind when he discusses participating in a scheme of social cooperation, it is surely of more significance to the argument at hand that the four (apparently) most notable ways in which citizens contribute fail to ground a morally justifiable distinction between citizens and foreigners than that there may be other, unspecified and nebulous ways in which citizens uniquely contribute to the institutions of their state.

In addition, it is unclear what it is that is being measured such that we can conclude that relationships of cooperation between compatriots are more “extensive” than those between citizens of different states. Perhaps what is being measured is the frequency or duration of cooperative interactions. This interpretation would seemingly support Pevnick’s judgment, but is of highly doubtful moral significance. If instead what are being measured for extensiveness are the consequences of cooperative interactions, then arguments I have already made in regard to economic globalization, following Pogge, cast suspicion on any distinction between citizens and foreigners. Similarly, Pevnick might claim that what is being measured for extensiveness is vulnerability to the effects of others’ decisions: co-members, he might argue, are more vulnerable to the effects of each other’s decisions than

are non-members. Perhaps this is true in some cases. But with respect to the nation-state in our globalized world, it seems like a Westphalian dogma. I elaborate on this thought below.

5.3 THE ALLEGED MORAL DEMANDS OF NATIONALITY

While we may therefore conclude that principles of justice limit the moral discretion of states to admit and to exclude foreigners, the content of these principles is not yet determined. One might think that there are universal principles of justice that states' immigration policies must satisfy, and yet hold that these principles require policymakers to show special concern for the effects that immigration policies have on citizens, especially when the interests of citizens and foreigners diverge. This is the view I call prescriptive nationalism with respect to immigration policy.

It is important to note preliminarily that the prescriptively nationalist position on immigration policy is distinct from the moral sovereignty of states view. Defenders of the moral sovereignty of states with respect to immigration policy deny the applicability or relevance of moral principles in shaping states' immigration policies. (Recall Hobbes' claim that individuals and states may do whatever they judge best promotes their own interests in the state of nature because "the notions of right and wrong, justice and injustice, have there no place," and Walzer's claim that "the distribution of membership is not pervasively subject to the constraints of justice.") Those who are prescriptive nationalists on the subject of immigration policy, however, must, on pain of consistency, say that it would be unjust for a state to adopt certain kinds of immigration policies (for example, those that benefit foreigners at the expense of citizens). Thus, prescriptive nationalists necessarily deny that states' moral sovereignty is unlimited with respect to immigration policy. Prescriptive nationalism with respect to immigration policy is a substantive moral position.

What I wish to underscore is that it would be inconsistent for someone to say that states ought to have absolute moral discretion about what foreigners to admit and to exclude, but then to argue that it would be unjust for a state to adopt certain immigration policies. The way I conceive of the relationship between the concepts of prescriptive nationalism and moral sovereignty about immigration policy is, therefore, distinct from the way the relationship has usually been

understood. Typically, philosophers seeking to justify state-imposed restrictions on immigration have thought it necessary to first prove (or stipulate for the sake of argument) that states have moral sovereignty with respect to immigration policy, on the assumption that if states do not have the moral authority to control immigration, then they must open their borders. However, this assumption confuses the moral sovereignty of states view with the legal sovereignty of states view, distinguished above. Indeed, in order to show that states could be morally justified in enacting controls over immigration, one would need to show (or assume) that states have legal sovereignty in this domain, that is, that states are legitimate actors with respect to the regulation of transnational migration. However, a defense of the moral sovereignty of states in this domain—that states' selection of immigration policies is not subject to principles of justice—is incompatible with any view on which there are certain immigration policies states morally ought or ought not adopt. In other words, any moral argument for any immigration policy (restrictive or not) must begin with the claim that the moral sovereignty of states over immigration policy is limited. If states have unlimited moral discretion in this area, then they may adopt any policy they like, from open borders to zero immigration, for any reason at all. Thus, if one were to say that nationalist principles of political morality demand that the state restrict immigration in certain ways, then one would be committed to the view that the state's moral sovereignty over immigration policy is not absolute.

In Chapter 2, I examined several different arguments that prescriptive nationalists have made in support of different kinds of immigration policies. While I believe that the responses I made to those arguments in that chapter demonstrated decisively that extant nationalist approaches to the regulation of immigration are unsound, it is possible that nationalist principles of political morality are nevertheless appropriate in principle for evaluating states' immigration policies. My goal in this section is to show that this is not the case: nationalist principles of political morality are inappropriate for the moral assessment of states' immigration policies. Given this goal, my arguments in the present section are general, in the sense that they challenge assumptions to which all or most prescriptive nationalists are typically committed. While some of these arguments are distillations of objections I presented against specific prescriptively nationalist approaches in Chapter 2, what follows here is not intended as a general summary

of the faults I have found in existing nationalist approaches. Rather, the five arguments I now present are meant to highlight some possibly insuperable difficulties facing any future prescriptively nationalist approaches to immigration justice. Since I have already shown that there is no tenable defense of the moral sovereignty of states view, if my arguments in this section are successful, then it follows that states' immigration policies are subject to cosmopolitan principles of political morality (that is, principles that regard nationality as morally irrelevant in itself).

5.3.1 *Arbitrariness*

Prescriptive nationalism with respect to immigration policy faces the challenge, first, of establishing the moral significance of shared nationality. Many prescriptive nationalists are particularists in the sense that they hold that affiliations among particular groups of human beings generate special moral obligations for members of those groups to each other that override moral commitments to human beings as such. However, on a scale of moral obligations ranging from the most general (say, to all human beings) to the most particular (only extending to those with whom one has personal contact and for whom one has feelings of affection), obligations of nationality occupy a precarious spot in the middle. If one is inclined toward moral particularism generally, it is not clear what could justify assigning special moral status to relations defined by shared nationality. Whatever can be said in defense of the moral significance of shared nationality (such that the obligations it generates override those to human beings as such) will support the moral significance of more particular levels of affiliation to an even greater extent. In other words, arguments intended to show the moral significance of shared nationality tend to defeat themselves, because they ultimately justify, if otherwise correct, the greater moral significance of other, even more particular, relationships (for example, those inhabited by co-members of local communities, voluntary associations, and families). Thus, as Phillip Cole argues,

the nation itself is a watered-down version of community compared with more local levels, and so the principle it generates ought to be outweighed by those more local principles. It may be that the consistent communitarian is happy with this implication,

but then it may be that nationalists are inconsistent communitarians. (Cole 2000: 89)

Another way of putting the argument I am making here is this: prescriptive nationalism requires some argument for the view that shared nationality generates special moral obligations that override general obligations to humanity as such. But the truth of this view seemingly derives from the more general theory of moral particularism, on which affiliations among particular groups of human beings generate special moral obligations for members of those groups to each other that override moral commitments to human beings as such. However, if moral particularism is true, then prescriptive nationalism is arbitrary; prescriptive nationalists fail to appreciate the logical implications of their commitment to moral particularism.

Suppose that one accepts the truth of moral particularism but agrees that a commitment to moral particularism undermines arguments for the moral significance of shared nationality. What implications does moral particularism have in the context of immigration policy? There are none; moral particularism is simply inapplicable to the question of what immigration policies states, morally, ought to adopt. Moral particularism is applicable to the evaluation of the informal norms (including the membership norms) of small communities in which the sorts of relationships that particularists cite as morally significant obtain. However, the state necessarily acts in a (non-particularist) context in which the principle of moral particularism is irrelevant.

5.3.2 *Descriptive Inadequacy*

A recurrent problem for prescriptively nationalist approaches to the justice of states' immigration policies (borne out by my examination of them in Chapter 2) is that all appear to rely, in one way or another, on a tacit acceptance of explanatory nationalism. Explanatory nationalism, at its most general, is the descriptive theory on which intra-country phenomena have entirely domestic causes. In Chapter 2, I reviewed Pogge's reasons for rejecting explanatorily nationalist accounts of severe poverty in the Global South. Without repeating Pogge's arguments here, I invoke his critique of explanatory nationalism in order to press a more profound objection to prescriptive nationalism. Specifically, I wish to argue (as a second general objection to prescriptive national-

ism) that the moral plausibility of prescriptively nationalist approaches to immigration policy, generally, is built on an (at least implicit) adherence to untenable explanatorily nationalist accounts of morally significant phenomena (such as severe poverty).¹⁷

My view on the relation between prescriptive and explanatory nationalism departs from Pogge's, which is that they are independent theses. Pogge holds that one can consistently maintain prescriptive nationalism, but nonetheless deny the nationalist explanation of severe poverty in the Global South. (Thus, Pogge argues that it is permissible to give moral priority to the interests of compatriots, under the proviso that one does not unduly harm foreigners (Pogge 2002: 132).) In contrast, I argue that prescriptive and explanatory nationalism are not wholly independent theses. In particular, prescriptive nationalism gains credibility by presuming an idealized notion of the imperviousness of states to external forces, on which states are largely able to control domestic matters as they wish, regardless of the conduct of other states, except in extraordinary circumstances (such as during times of military conflict). Put another way, prescriptive nationalism seems to have mistaken the sovereignty prescribed for states by the 1648 Peace of Westphalia for a description of actual state sovereignty; they have treated the aspirations of those treaties as a fact.

If states were impervious to external influence in this way, it would make sense of the plausibility of prescriptive nationalism: there would be no compelling moral reason for states to consider the effects of their policies on anyone except their own citizens, since their policies could not significantly affect, for better or for worse, the citizens of other states. Individuals would experience an acute vulnerability to the decisions of their own state, while remaining mostly unsusceptible to the conduct of foreign states. It seems clear, from his frequent tendency to refer to foreigners as "strangers" that Walzer's nationalist arguments for immigration restrictions rest on this kind of Westphalian sociology. That Miller assumes this conception of state sovereignty and inter-state interactions is evident in his discussion of international obligations, in which he explicitly posits the assumption that "international obligations . . . arise in the absence of any ongoing scheme of co-operation between the national communities in question" (Miller 1995: 76). To clarify, my claim is not that all defenses of prescriptive nationalism logically depend on explanatorily nationalist accounts of morally significant phenomena, although this is a major problem for some of them. Rather, I am making

the distinct, perhaps more modest, claim that prescriptive nationalism would seem substantially less plausible without the tacit assumption of the Westphalian sociology I have described.

Evidence of the untenability of Westphalian sociology mounts as forces of globalization proliferate and deepen. Pogge's critique of nationalist explanations of poverty in the Global South itself provides a powerful counterexample to the notion that individuals are immune to the decisions of foreign states. Alison Jaggar argues, "contemporary processes of economic globalization, regulated by the Western-inspired and Western-imposed principles and policies of neoliberalism, have significantly affected the situation of many poor women in poor countries" (Jaggar 2005: 62–3). Particularly notable in this regard has been the impact of the expansion of export agriculture, mandated by structural adjustment policies imposed by the IMF and World Bank, on the viability of subsistence agriculture, formerly a traditional form of livelihood for women in South America and Southeast Asia, many of whom have consequently been driven to unregulated work in the informal economy: prostitution, sweatshops and emigration for the purpose of domestic work in economies of the Global North. Structural adjustment programs have additionally mandated cutbacks in the public provision of social services, which "have affected women's economic status even more adversely than men's, because women's responsibility for caring for children and other family members makes them more reliant on such programs" (Jaggar 2005: 64). Moreover, "it is indisputable that many supposed cultural traditions in Asia, Latin America, and Africa have been strongly influenced by encounters with Western colonialism" (Jaggar 2005: 65). As Cole argues, the conception of state sovereignty inspired by the Peace of Westphalia relies on an imaginative understanding of the international order that has long been obsolete. Indeed, this picture of the international order—in which states, the only actors, have had absolute internal sovereignty—has never been descriptively accurate. Rather, the Westphalian model of states and their relations to each other within the international order has always been (nothing more than) a nationalist aspiration: "Violations of Westphalian sovereignty have been almost routine in international politics even though observers have been blinded to their frequency by the assumption that the Westphalian model has been operative" (Krasner 1999: 28). Particularly for residents of the poorest, least politically and militarily influential states, the notion that individuals are, all

things considered, profoundly more vulnerable to the decisions of their own state than they are to the conduct of foreign states can no longer be entertained. However, once it is acknowledged that states' policies will often affect foreigners as much as and sometimes more than they affect citizens (as is especially the case for immigration policies), prescriptive nationalism appears noticeably less compelling.¹⁸

5.3.3 *Equivocation*

Arguments I have made so far in this section cast doubt on a view that prescriptive nationalism with respect to immigration policy usually requires—that shared nationality gives rise to special moral obligations that override obligations to humanity as such. I wish to argue, as a third general objection to prescriptive nationalism, that even if shared nationality has great moral significance, this typically has little or no relevance for issues of immigration justice. I argued in Chapter 2 that both Walzer's and Miller's nationalist arguments for immigration restrictions rest on a conflation of nations and states. I won't repeat those arguments here, except to note that this is a problem faced by all prescriptively nationalist arguments about the policies that states should adopt. "Nation" and "state" are distinct concepts that, in our world, frequently do not have the same referents. Thus, while arguments for the moral significance of shared nationality may, if otherwise successful, justify the members of national groups in adopting and informally enforcing certain norms (including membership norms), they are not relevant to what laws (including immigration policies) states ought to adopt. State boundaries typically contain members of multiple national groups; thus, state policies premised on appeals to shared national identity often involve privileging the interests of the dominant national group at the expense of the interests of national minorities. For this reason, nationalist principles of political morality are inapplicable in the context of immigration policy, even if they can be successfully defended in themselves.

5.3.4 *False Unity*

The next challenge to prescriptive nationalism builds on the equivocation problem I just described. At their most general, prescriptively nationalist approaches to the regulation of immigration hold that states

morally ought to adopt immigration policies that promote “the national interest.” In this respect, prescriptive nationalism faces the problem that the very idea that there is ever a single, univocal national interest is not only fictitious, but is moreover a fiction that in typical cases functions to solidify the dominance of already privileged groups within the state, while entrenching the marginalization of groups that are already disadvantaged. As Scanlan and Kent argue, quoting David Truman (Truman 1963: 50–1), claims of national interest “do not describe any actual or possible political situation within a complex nation state” (Scanlan and Kent 1988: 78), because the interests of different groups within the state are often too divergent to yield a single “national interest.” Moreover, the assertion that some policy is in the national interest often reflects merely that the policy is in the interests of already privileged groups: “National interest thus tends to become identified with a particular ideology” (Scanlan and Kent 1988: 79), because (again quoting Truman) “such claims are a tremendously useful device by means of which a particular group or league of groups tries to reduce or eliminate opposing interests” (Scanlan and Kent 1988: 78). In other words, prescriptive nationalism flounders on its tendency to tacitly regard that nation either as an individual rather than as a composite, or as comprised by socially and politically undifferentiated individuals with a unified and mutually consistent set of interests.

It is true that no philosophical defenses of prescriptive nationalism appeal so generally to “the national interest.” Nevertheless, most appeal to some more particular value (for example, cultural distinctiveness or national identity) that is, in their view, to be promoted or protected by the state’s immigration policies. However, appeal to a value more concrete than “national interest” does not help prescriptive nationalism with respect to the problem at hand. Immigration policies designed to protect, preserve, or simply shield from rapid and allegedly destructive changes the distinctiveness of a culture or the national identity necessarily presuppose some non-neutral conception of the significant aspects of the culture (and what makes it distinctive) and the identity of the nation. I maintain that a similar problem would arise irrespective of what more specific national value is identified to guide the state’s selection of immigration policies.

A prescriptive nationalist might decline to specify any particular values that immigration policies should promote, but argue instead that there are a wide range of values that might be implicated in the

state's selection of immigration policies (cultural, political, economic, religious, and so on) that cannot be exhaustively determined in advance by philosophers, and that, whatever these values are, the selection of immigration policies should be guided by them. However, this strategy does not evade the objection I am pressing. This pluralist and unassuming form of prescriptive nationalism still supposes that, whatever the national values to be promoted by immigration policy are, all (or at least the great majority of) constituents conceive of them in the same way and are affected in the respects they designate (economically, for example) in the same way by the state's choice of immigration policy. In other words, regardless of their idiosyncratic details, prescriptively nationalist approaches are, by their nature, useful for selecting immigration policies only on false and likely oppressive assumptions about national unity.

One attempt to reply to the false unity objection comes from Miller, who argues that even though it is indeed false that there is "a homogeneous national culture in which all participants share the same goals" (Miller 2007: 224), it nevertheless is in the interest of all members of the nation-state that these goals be set through majoritarian democratic procedures. For example, while I may find myself in the minority on some questions, "it is to my advantage nonetheless that the policy is the subject of a democratic process that takes my concerns into account, and that on other occasions will generate policies that I favor" (Miller 2007: 224). However, Miller's reply depends on the empirical assumption that democratic procedures will fairly maximize the satisfaction of citizens' divergent interests. To the extent that this assumption seems plausible, it is because Miller appears to regard "minorities" as transient interest groups whose individual members are likely to be part of the majority on a variety of other questions. However, members of unjustly disadvantaged social groups are likely, by the very nature of social groups and social group disadvantage, to find that their interests are systematically chosen against by majoritarian democratic procedures.¹⁹ For this reason, Miller's appeal to democracy does not ease the false unity problem for prescriptive nationalism.

5.3.5 *Universalism and Nationalism*

Finally, I argue that even if nationalist principles of political morality are relevant to states' selection of immigration policies, they are applicable

only under ideal circumstances that do not currently obtain. For this argument I follow Yael Tamir, who argues that states may not justly pursue national goals through their immigration policies in global circumstances marked by significant global poverty and international economic inequality:

Restricting immigration in order to retain the national character of a certain territory, is only justified if all nations have an equal chance of establishing a national entity, in which its members will be given a fair chance of pursuing their personal and collective goals. The right to preserve cultural homogeneity is therefore contingent on the welfare of other nations. Liberal nationalism thus implies that it is justified for a nation to seek homogeneity by restricting immigration only if it has fulfilled its global obligation to assure equality among nations. (Tamir 1993a: 161)

Demonstrating the relevance of this argument to my purpose requires some clarification. First, although Tamir argues that a “nation” may restrict immigration only if it has fulfilled its obligation to ensure that other national groups have an equal chance to establish a national entity, I think it is correct to understand Tamir as referring rather to states in this instance since she is clearly speaking of an entity with legal sovereignty over territorial admissions. Second, Tamir frames her argument in terms of whether or not states may restrict immigration, apparently assuming that wealthy countries can alleviate global poverty by adopting permissive immigration policies. Because this assumption is in most cases false (as I argue in Chapter 3), I believe it is therefore appropriate to take this argument as a point, more generally, about what immigration policies (restrictive or not) states may adopt under circumstances characterized by extreme international inequality. Third, Tamir asks whether states may restrict immigration to preserve cultural homogeneity, but there does not seem to be any reason to think that this is the only national goal that it might be unjust for states to pursue under conditions of vast international inequality. For these reasons, I think we may adopt a more expansive understanding of Tamir’s condition: that states may not pursue exclusively nationalist goals through their admissions criteria under circumstances in which other national groups are unable, owing to extreme poverty, to establish a viable national entity.

Extreme poverty afflicts many national groups (even some that have nominally attained statehood) so severely that it is not contentious to say that their members have no reasonable opportunity to pursue personal and collective goals. Thus, the condition under which the selection of immigration policies according to nationalist criteria is permissible is not yet satisfied. Why should defenders of such nationalist criteria accept Tamir's condition?

Prescriptive nationalism, as I argue in Chapter 2, is a moral position only when it is universalist. Universalist nationalists hold that all national communities can be morally valuable, worthy of protection and preservation; universalist nationalists also maintain that each person (regardless of nationality) is entitled to share in the goods that national communities provide. Universalist nationalism contrasts with particularist nationalism, on which, according to Pogge "nationalist commitments are valuable only when they are commitments to some specific nation" (Pogge 2002: 119). In other words, particularist nationalists believe that only their own nation's success is a morally worthy pursuit. To reject Tamir's condition on the applicability of prescriptive nationalism with respect to immigration policy—to hold, for example, that wealthy states may pursue exclusively national goals despite the fact that, owing to extreme international inequality, many national groups cannot establish a viable state—makes one's nationalism particularist. The rejection of Tamir's condition is incompatible with universalist nationalism because it implies it is not the case that all individuals are entitled to basic social goods that functioning national communities provide. As I argue in Chapter 2, particularist nationalism is not a legitimately moral position, however. Prescriptive nationalists therefore face a dilemma: they must either concede that nationalist principles of political morality are inapplicable under present international circumstances (and for the foreseeable future), or they must acknowledge that the view they defend is not a moral position (in which case it does not compete with the PDP).

5.4 PRIORITY FOR DISADVANTAGED GROUPS

If the arguments of the previous two major sections of this chapter have been successful, then (1) states' selection of immigration policies is constrained by principles of justice (that is, the moral sovereignty of states view is false), and (2) these principles are cosmopolitan in the

sense that they reject the notion that states may show favor for citizens over foreigners in the selection of immigration policies (that is, prescriptive nationalism about immigration policy is untenable). My goal in this section is to defend the PDP against competing cosmopolitan principles of political morality.

The criteria that states adopt to determine which foreigners to admit for permanent residence and which to exclude often systematically benefit members of some groups while burdening members of others. It is my contention that the justice of states' admissions criteria is in part determined by how they distribute these benefits and burdens. In particular, I argue that these benefits and burdens must be distributed in a way that does not avoidably harm social groups that are already unjustly disadvantaged, irrespective of the nationality of groups' members. In what immediately follows, I examine two views on which the distribution of benefits and burdens that an immigration policy engenders is not relevant to its moral evaluation. After that, I address three views that accept that this distribution is morally relevant, but that deny the moral salience of avoidable harm to unjustly disadvantaged social groups.

5.4.1 Does it Matter, Morally, how an Immigration Policy Distributes Benefits and Burdens?

One may agree that states' immigration policies should be constrained by cosmopolitan principles of justice, but still deny that policy makers should be morally concerned with the distribution of benefits and burdens that an immigration policy engenders. I consider two views of this sort in this subsection. The first maintains that the political morality of immigration is governed by rights, and so denies the moral significance of an immigration policy's consequences altogether. The second view comes from the opposite direction: it holds that the aggregate consequences of an immigration policy (as opposed to their distribution) are all that is relevant to its moral evaluation.

5.4.1.1 Immigration policy and rights

There are two ways in which the justice of an immigration policy may be determined by rights, such that the distribution of benefits and burdens that an immigration policy brings about is not morally significant. One is to claim that states have a right, based in their moral sover-

eignty, to grant or to refuse admission to foreigners at their discretion. The other is to claim that individuals have a moral right of immigration. However, I have already shown (earlier in this chapter, and in Chapter 3, respectively) why no defenses of these claims succeed, so will not consider them again now.

It seems, therefore, that the view that the justice of an immigration policy is in part a function of how it distributes benefits and burdens cannot be rejected by appeal to the rights of states or of individuals. However, there is an objection to the PDP that might vindicate the alleged moral right of individuals to immigrate. This objection observes that human rights of non-refoulement (prohibiting the forced return of refugees to their countries of origin), emigration, non-expatriation, freedom of domestic movement, and entry (for citizens) are all well established in both international law and liberal political philosophy. This objection warns that evaluating states' policies on the admission of prospective immigrants according to their consequences (as the PDP does), rather than maintaining that individuals have a moral right of immigration, may undermine the present political acceptance of and the moral basis for these important human rights.

Insofar as this objection attempts to show that the consequentialist aspect of my principle of immigration justice will undermine political support for the five freedom-of-movement rights listed above, it seems entirely unfounded. These rights are already widely accepted despite the fact that no state currently acknowledges an individual moral right of immigration. This objection has more initial plausibility when understood as the warning that the PDP rests on a consequentialist moral framework that is incompatible with, and thus risks calling into question, the non-consequentialist human rights framework on which the individual moral rights to non-refoulement, emigration, non-expatriation, freedom of domestic movement, and citizen-return are grounded.

This objection ultimately amounts to a rejection of consequentialism, since, if its reasoning is correct, evaluating any policy or action in consequentialist terms might similarly undermine the moral basis of any alleged human right. However, even if one accepts that there are human rights that are justified in non-consequentialist terms, there is no reason to suppose that all domains of human action and state policy are governed by rights; no list of human rights, even the most expansive, will determine what a person, or a state, ought or ought

not do in every situation. At the same time, there is also no reason to suppose that actions and policies whose permissibility, impermissibility, or obligatoriness is not determined by rights and their correlative duties are therefore morally un-evaluable; for example, an action or a policy may be morally wrong or unjust even if it does not violate anyone's rights. Therefore, it seems unproblematic to say that some state policies (for example, those on immigration) ought to be evaluated according to their consequences (because, for example, there is no individual moral right of immigration), but that other policies (for example, on non-refoulement, emigration, non-expatriation, domestic movement, and citizen-return) should not be evaluated according to their consequences because the freedoms they govern are guaranteed by certain moral rights.

Additionally, one might think that rights to non-refoulement, emigration, non-expatriation, freedom of domestic movement, and citizen-return are *prima facie* or defeasible, rather than absolute, and that they presently obtain because, under current circumstances, their observance is instrumentally necessary to protect fundamental human interests. That is, one may hold that these rights are justified in terms that are, at base, consequentialist, and that, under extraordinary circumstances, they could justifiably be abridged. I offered this analysis of the right of emigration in Chapter 3, in response to Cole's argument that the right of emigration implies a right of immigration. One could contend that there is similarly a *prima facie* right of immigration, defeasible in circumstances in which its observance would be contrary to the protection of fundamental human interests, such as those that presently obtain (as I argued in Chapter 3). If one understands the five freedom-of-movement rights to be listed as *prima facie* rather than as absolute, then there is no necessary conflict between the moral basis of my principle and the moral basis of those rights because both are, ultimately, consequentialist. For these reasons, the objection to evaluating immigration policies in terms that are (partially or wholly) consequentialist presents no reason to reconsider arguments for an individual moral right of immigration.

5.4.1.2 *Immigration and the Principle of Utility*

The PDP (both forward-looking and backward-looking versions of it) is consequentialist in the sense that it judges the justice of immigration policies according to (some of) their consequences (namely, those for

unjustly disadvantaged social groups). However, some consequentialists, utilitarians in particular, will reject my principle because they think that policies should be morally evaluated according to their aggregate consequences. Utilitarians will argue that the distribution of benefits and burdens that a policy brings about is not morally significant in its own right; morally, policies ought to maximize utility (giving everyone's like interests equal weight).

In response, let me note, first, that I think that cases in which my principle and the Principle of Utility (or whatever standard consequentialist variant of this principle you like) will diverge on the moral evaluation of a particular immigration policy will be rare, for reasons utilitarians commonly acknowledge. Given the terms in which I define "harm" and "disadvantage," the PDP will promote equality of opportunity, a good that utilitarians widely accept as instrumentally useful for maximizing utility. There are two reasons that equality of opportunity is instrumentally valuable in utilitarian terms, and utilitarians, seeking to distance themselves from some of the ugly conclusions to which their theory is often alleged to commit them, are typically the first to point them out. First, social inequality provokes resentment, civil unrest and political conflict—all bad in utilitarian terms. Second, and more importantly, most goods yield diminishing marginal utility: the utility one derives from the first unit is greater than the utility one derives from the second, and so on. For this reason, expanding the opportunities (and, in consequence, presumably, the resources) of the disadvantaged by some increment will have a greater positive effect on aggregate utility than increasing the opportunities of the privileged by the same increment. This explains why utilitarians (derivatively) value roughly egalitarian distributions of important social goods, and why my equality-of-opportunity-promoting principle will rarely find utility-maximizing immigration policies unjust.

Nevertheless, my principle will not endorse the same immigration policies as would be endorsed by the Principle of Utility in all cases; there are conceivable worlds in which the two principles will diverge on the justice of a particular immigration policy. For this reason, I cannot hope to satisfy a committed utilitarian; the content of my principle and of hers are distinct, and my principle is not a derivation of the Principle of Utility. Still, I think my principle satisfies a standard in virtue of which most utilitarians should find it minimally acceptable: in worlds reasonably similar to our own, any policy that the PDP rejects as unjust will

also be rejected by the Principle of Utility, and any policy the Principle of Utility endorses will not be rejected as unjust by the PDP. In reasonably similar worlds, three facts will hold: first, social inequality will provoke resentment and conflict; second, marginal utility will diminish; and third, international resource and opportunity inequalities will be so great that significantly improving the welfare of the disadvantaged will come at a relatively trivial cost for the privileged.

Ultimately, it is not clear to me that the fact that the judgments of my principle may diverge from the judgments of the Principle of Utility in some conceivable worlds is a reason to reject the PDP, even for utilitarians; surely there is some burden of proof on utilitarians—a decisive justification of the Principle of Utility is still forthcoming, after all. Therefore, my principle is as much an objection to utilitarianism as the Principle of Utility is to the PDP.

5.4.2 How Should the Benefits and Burdens of an Immigration Policy be Distributed?

The foregoing arguments suggest that, indeed, the distribution of benefits and burdens an immigration policy produces is morally significant. How must immigration policies distribute benefits and burdens if they are to be just? In this subsection I defend my view that just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged by critically examining the most plausible alternative principles of distribution. Some possible principles of distribution (for example, that immigration policies must maximize the wealth of groups that are already privileged) can be rejected out of hand for obvious moral reasons. If my arguments in this subsection are successful, I will have completed my defense of the PDP.

5.4.2.1 Pareto optimality

An allocation of goods is Pareto-optimal if there is no means by which to make some better off without making others worse off. Thus, the adoption of an immigration policy is Pareto-optimal if it would make some better off and make no one else worse off. One might hold that Pareto optimality is a necessary condition of the justice of an immigration policy (that is to say, that changes to immigration policy are unjust if they make some worse off).²⁰ However, this would be unacceptable for moral and practical reasons.

The baseline against which judgments of “better off” and “worse off” are made on Pareto optimality is necessarily diachronic; that is, according to Pareto optimality, an immigration policy has made someone “worse off” if, under it, she is doing less well (however that is conceived) than she was just prior to the adoption of that policy. This makes Pareto optimality an inherently conservative standard for judging distributions, for reasons I mentioned in subsection 4.5.1. Pareto optimality treats present distributions as just (no matter how badly off some are under them) and refuses to permit deviations from these distributions if anyone (no matter how well off) is made slightly worse off under available alternatives. For this reason, Pareto optimality is unacceptable as a standard for judging the justice of immigration policies.

Pareto optimality makes for an impracticable standard as well. It is hard to believe that any significant policy changes can ever constitute Pareto-improvements (making some better off without causing anyone to be worse off). While some may benefit from a change to existing policies, it seems virtually inevitable that others will be harmed, even if only minimally. Thus, adopting Pareto optimality as the standard that an immigration policy’s distribution of benefits and burdens must satisfy to be just would ensure that present immigration policies are never changed. One could argue that Pareto inefficiency is a sufficient condition of the injustice of an immigration policy; it would be reasonable to think that an immigration policy is unjust if there is a way to change it whereby some are made better off and no one is made worse off. However, Pareto optimality could not be seriously entertained as a necessary condition of the justice of an immigration policy.

5.4.2.2 Proportionality

One might hold that just immigration policies may not disproportionately burden (or benefit) any social group; states should adopt immigration policies whose consequences, positive and negative, are equally distributed across affected social groups. (One might add that, insofar as it is difficult to design policies that satisfy this principle, those who gain more or lose less must compensate those who gain less or lose more.) This view would appear to derive from a commitment to egalitarian principles of political morality.

This principle of proportionate distribution seems reasonable as a standard for judging the justice of immigration policies in ideal

circumstances, in which there is no pre-existing inequality among social groups. However, given this principle's egalitarian inspiration, it is otherwise inadequate by its own lights. The principle of proportionate distribution would preserve social group inequalities in circumstances in which they already obtain (such as, for example, in our world). To its credit, the principle of proportionate distribution forbids policies that would exacerbate extant inequalities.²¹ However, if one merely requires that the benefits and costs that an immigration policy brings about be equally shared among social groups, then already disadvantaged groups will perpetually remain opportunity-deprived relative to already privileged groups.

One might worry, in reply to my objection to the principle of proportionate distribution, that my own principle, the PDP, seems no better than the principle of proportionate distribution in the terms invoked by my objection. The PDP merely requires that immigration policies not avoidably harm social groups that are already unjustly disadvantaged (it does not require that immigration policies benefit them relative to privileged groups), and so will also fail to mitigate existing inequalities. However, this worry is considerably assuaged by recalling my rather maximalist conception of harm. In Chapter 4, I argued that an immigration policy should be understood to "harm" a social group if there is a mutually exclusive immigration policy under which that group would be better off. Thus, the PDP is unlikely to suffer the same shortcoming as I have noted in the principle of proportionate distribution. (See section 4.5 for my defense of this maximalist conception of harm.) Moreover, even if one wished to conceive of the baseline of harm more conservatively (say, diachronically), the PDP would still be preferable to the principle of proportionate distribution in the terms set out by my objection. By forbidding avoidable harm to unjustly disadvantaged social groups, the PDP permits, among immigration policies that harm social groups, only those that harm social groups that are not unjustly disadvantaged. Thus, even on a conservative conception of the baseline of harm, adherence to the PDP will mitigate inequalities between social groups merely by virtue of forbidding avoidable harm to social groups that are unjustly disadvantaged.

The principle of proportionate distribution could be modified to hold that just immigration policies may not (1) disproportionately burden social groups that are already unjustly disadvantaged or (2) disproportionately benefit privileged social groups. This modification permits

immigration policies that disproportionately burden privileged social groups, as well as those that disproportionately benefit unjustly disadvantaged social groups. By so modifying the principle of proportionate distribution, my concern that the original version of the principle would preserve existing inequalities may be allayed. However, I believe that, given the moral concern for unjustly disadvantaged social groups that presumably inspires this modification of the principle of proportionate distribution, the PDP is still morally preferable to it. This is because, first, the modified principle of proportionate distribution permits avoidable harm to social groups that are already unjustly disadvantaged, just so long as privileged social groups are harmed to an equal or greater extent. In this respect, the more demanding PDP will be more attractive to those concerned for the (relative and absolute) well-being of unjustly disadvantaged social groups than the still weaker modified principle of proportionate distribution. Further, while the second aspect of the modified principle of proportionate distribution is compelling at first glance, there is seemingly no moral reason why one would prefer immigration policies that benefit privileged groups less to those that benefit them more, among immigration policies that do not avoidably harm social groups that are already unjustly disadvantaged. In other words, under policy arrangements in which the PDP is satisfied, it seems morally unimportant whether privileged groups are benefiting disproportionately or not. While it is true that inequality may sometimes itself be harmful to the disadvantaged (or may make disadvantaged groups more susceptible to further harm)—and one might argue that this provides a reason to ensure that the privileged do not benefit disproportionately—to the extent that inequalities are harmful to the disadvantaged, the PDP would itself prohibit policies that disproportionately benefit those already privileged by prevailing social institutions. For these reasons, I conclude that the principle of proportionate distribution, in both forms, should be rejected in favor of the PDP.

5.4.2.3 Priority for the “least well off”

One might hold, finally, that states should prioritize the interests of the “least well off” when selecting immigration policies. In contrast to the PDP, such a view would hold that just immigration policies may not avoidably harm the least well off. Whereas my principle’s concern is for members of social groups whose capabilities are constrained by

social institutions relative to the members other groups, this alternative principle attends instead to the least well off (in whatever terms that is measured) without regard for the cause of their deprivation. The least well off are thus similar to the “least advantaged” of Rawls’ Difference Principle (that is, “those belonging to the income class with the lowest expectations” (Rawls 2001: 59)).

Most everyone who is among the least well off is also a member of an unjustly disadvantaged social group. On the face of it, those who are among the least well off but are not also a member of an unjustly disadvantaged social group are of two kinds: those who are badly off as a result of imprudent choices, and those who are badly off as a result of bad luck. However, many of the people who appear to be among the least well off because of imprudent choice making or because of bad luck are in fact members of social groups that are unjustly disadvantaged. For example, consider persons born with physical disabilities. At first glance, it may seem that the congenitally disabled are simply victims of bad luck, whom my focus on social group disadvantage would exclude from the scope of moral concern. But, to the contrary, the physically disabled are disadvantaged by social institutions designed for the convenience of certain human bodies. Elizabeth Anderson comments, for example, that “what the Deaf find objectionable is not that they can’t hear, but that everyone else has rigged the means of communication in ways that leave them out of the conversation” (Anderson 1999: 334). Similarly, those who are worst afflicted by “natural” disasters are typically members of social groups that are already disadvantaged; their weather-related deprivation is not merely a case of bad luck.

Many cases of apparent imprudent decision making may also be explainable in this way. A poor person may accept dangerous forms of employment and be injured as a result; an hourly wage-worker whose employer does not provide health insurance may forgo purchasing private insurance in order to provide for more immediate needs, and then find later, after becoming sick, that she cannot afford basic medical treatments. These individuals may appear, superficially, to be victims of their own imprudent choices. On the contrary, their initial choices were rational given their class-based disadvantages. Even more generally, Anderson argues, “among wage workers, most of the [economic class] differences are due to the fact that society has invested far more in developing some people’s talents than others,” and this “calls

into question the very idea that inferior native endowments have much to do with observed income inequalities" (Anderson 1999: 325).

Cases in which the least well off do not belong to unjustly disadvantaged social groups are relatively rare in real life (though, as Anderson notes, common in philosophical discussions of inequality (Anderson 1999: 288)). Examples of individuals whose opportunities are extremely limited but not on account of membership in a social group systematically disadvantaged by social institutions might include kidnapped billionaires, middle-class alcoholics and gambling addicts, and beach bums, to name a few. To exclude the effects of immigration policies on these sorts of individuals from the scope of justice does not seem problematic, however; while some of these deprivations warrant moral concern, they are not instances in injustice, *per se*.

What these examples highlight is that a major distinction between my view and "priority for the least well off" is that my principle requires that deprivation have certain causes (namely, membership in a social group defined and systematically disadvantaged by social institutions) for it to fall within the concern of justice. The "priority for the least well off" view, in failing to specify causal conditions for deprivation, includes cases of deprivation that do not engage, I argue, the concerns of justice.

Inequalities are not, in themselves, necessarily unjust (though they may provide ground for moral concern). Iris Marion Young argues, for example, that "judgments of injustice, then, are not about the distributive patterns [alone]. Each distributive pattern only offers a piece of a puzzle, a clue to an account of generalized social processes which restrict the opportunities of some . . . while they enhance those of others" (Young 2001: 16). For this reason, Young says, "the purpose of equality theory is less to identify unlucky sources of inequality than to identify how institutions and social relationships differentially conspire to restrict the opportunities of some" (Young 2001: 16).

Inequalities are unjust (as opposed, possibly, to merely morally troubling) only if they are caused by the functioning of social institutions. Again, Young argues:

To complete the analysis and evaluation, we must explain how institutional rules and policies, individual actions and interactions, and the cumulative collective and often unintended material effects of these relations reinforce one another in ways that restrict the opportunities of some to achieve well-being in the respects

measured, while it does not so restrict that of others to whom they are compared, or even enlarge their opportunities. (Young 2001: 16)

For this reason, “priority for the least well off” will identify some cases of deprivation as unjust that are not. Even if “priority for the least well off” were not too broad in this sense, it would still fail to specify the appropriate conditions for calling an instance of deprivation unjust.

That judgments of injustice require that deprivation be the product of social institutions explains my concern for the effects of immigration policies on social groups (rather than on individuals). Social institutions create social groups by the way in which they differentially distribute opportunities. Deprivations caused by social institutions affect individuals as members of social groups, not as individuals *simpliciter*. For this reason, Young maintains, “assessment of inequality solely by comparing the situation of individuals provides little or no basis for making claims about justice” (Young 2001: 2). Instead:

in making some of the most important judgments of justice and injustice we must compare social groups such as women, African Americans, migrants, or people with disabilities. Categories such as these name groups are positioned by social structures that constrain and enable individual lives in ways largely beyond their individual control. (Young 2001: 6)

Morally, my concern (and Young’s) is for the individual members of social groups, of course. However, making judgments of injustice, out of a concern for the welfare of individuals, requires comparing the status of social groups. Focusing on the status of individuals obscures the causes of opportunity deprivation.

My principle focuses its concern on social groups, but “priority for the least well-off” is necessarily individualistic. No social group will be opportunity-deprived relative to other social groups for reasons unrelated to the functioning of social institutions. There is no social group whose relative deprivation of opportunities can plausibly be explained in terms of a chance mass imprudence on the part of members, group-wide coincidental bad luck, or biological inferiority.²² Defenders of “priority for the least well off” cannot argue that social groups, rather than individuals, are the object of their concern (by, for example,

modifying their principle to read that just immigration policies may not avoidably harm the least well-off social groups) without eliminating the distinction between their account and mine. The least well-off social groups are necessarily disadvantaged, unjustly so except in the case of social groups for which membership is voluntary and there is no individual moral right of voluntary participation. As a standard for what distribution of benefits and burdens states' immigration policies should satisfy, then, "priority for the least well off" is misguided. Instead, states' immigration policies should distribute benefits and burdens in accordance with the moral priority that justice requires for social groups that are already unjustly disadvantaged.

5.5 CONCLUSION

My arguments in the previous section have shown that states should be morally concerned with the distribution of benefits and burdens that their immigration policies engender, and that these distributions should favor social groups that are already unjustly disadvantaged. Having demonstrated in the two major sections prior to this that states' immigration policies are constrained by principles of justice, and that these principles regard individuals' nationality as morally irrelevant in itself, I take myself to have now established the principle I developed in Chapter 4: just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged (whether these groups are domestic, foreign, or transnational). This principle, the PDP, is a necessary condition that states' immigration policies must satisfy in order to be just. For this reason, the PDP principle will not necessarily, by itself, tell us what immigration policies are just. Nonetheless, it will entail that many immigration policies are unjust.

Most extant philosophical approaches to the justice of states' immigration policies have defended the same specific type of immigration policy as just for all countries. My review of particular philosophical proposals in Chapters 2 and 3 confirms this. The PDP entails, to the contrary, that for each country, a different set of immigration policies will be unjust (and thus, that a different set of policies will be just). This is due to salient empirical differences between states that bear on the application of the PDP in each national context. In general, the most important morally salient empirical difference between states, given my principle, concerns what disadvantaged groups are most likely to be

affected (and how) by a state's immigration policies. But this factor is influenced by a number of others, including: the overall level and kinds of economic development in each state; what disadvantaged groups exist in each state, and how they are affected by different quantities and kinds of immigration; and the patterns of migration into and out of each state (and, particularly, how this affects foreign disadvantaged groups). The latter is itself determined by factors that vary significantly from state to state, including: historical patterns of immigration and emigration; historical relations between a state and other states; contemporary trade relations and agreements between states; the state's geographic location relative to other states; and how a state is positioned relative to others, economically, in the region. (I have inevitably omitted some important factors in this list, moreover.)

What this long and likely incomplete list suggests is that one cannot determine with any great specificity or confidence what immigration policies are unjust for any given state (and thus, what policies it should adopt) prior to extensive empirical investigation. Nevertheless, in the following chapter, I will attempt to give some indication of what implications the PDP has in loosely and somewhat abstractly defined contexts for the sorts of criteria of admission and exclusion states commonly adopt, as well as for a few other "admissions-related" policies that are especially noteworthy in regard to the topic of global economic and human development. However, as I will underscore, conclusions I draw in relation to the application of the PDP in Chapter 6 are tentative, provisional, and subject to revision. Ultimately, it seems to me, a coordinated and cooperative effort involving philosophers and social scientists in a variety of specific disciplines will be necessary to determine which immigration policies, for each country, are just, and which are unjust.

Chapter 6

ADMISSION, EXCLUSION AND BEYOND: WHICH IMMIGRATION POLICIES ARE JUST?

6.1 INTRODUCTION

This chapter critically applies the principle I have developed and defended in the foregoing chapters to common types of immigration policies as a test of their justice. The Priority of Disadvantage Principle holds that just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged. Since the PDP is merely a necessary condition of the justice of immigration policies, it will tell us which ones are unjust, but cannot by itself tell us which are just. Still, certain types of policies are recommended by the spirit of my principle.

The PDP does not necessarily require that states accord priority in admission to members of unjustly disadvantaged social groups. This is because a state's immigration policies can harm a social group that is unjustly disadvantaged in more ways than simply by refusing admission to its members. The immigration policies that states adopt engender certain patterns of global migration, and these patterns may have consequences for many social groups that are unjustly disadvantaged, whether their members are prospective migrants or not. The PDP enjoins states to consider all the harms their immigration policies may bring about for social groups that are unjustly disadvantaged, whether that group is comprised by its own residents, prospective migrants, or the non-migrating residents of foreign countries. Moreover, the refusal of admission is often but not necessarily a harm to those excluded; an immigration policy that excludes a certain class of persons may harm them or not, depending on the value of an immigration visa to them.

I distinguished in Chapter 4 between forward-looking and backward-looking understandings of the PDP, declining to defend one over

the other, but indicating my preference for the former. Since I favor the forward-looking conception of the PDP, I reason about the justice of immigration policies in this chapter in terms of it, only noting in general here the two ways in which the two versions of the PDP may, in principle, diverge. First, the forward-looking PDP will find more immigration policies unjust than will the backward-looking PDP. This is because (as I pointed out in Chapter 4) the social groups that the state may not avoidably harm on the backward-looking understanding of the PDP are a subset of those whom the state may not avoidably harm on the forward-looking understanding of the principle: on the backward-looking understanding of the PDP, an immigration policy that avoidably harms an unjustly disadvantaged social group is not unjust if the state that enacts it is not responsible for the social group's unjust disadvantage. Second, the two versions of the principle will resolve "conflict cases" differently. In some cases, the adoption of a certain immigration policy will harm one unjustly disadvantaged social group, but the failure to adopt that policy will harm a different unjustly disadvantaged social group. As I mentioned in Chapter 4: understood as forward-looking, the PDP will forbid the policy option that harms the group that is more disadvantaged; understood as backward-looking, the PDP will forbid the policy option that harms the group whose disadvantage is more unjust.¹ Assuming that the injustice of a disadvantage is measured in terms distinct from its magnitude, the two versions of the PDP will, in such cases, arrive at divergent conclusions if the group that is more disadvantaged is less unjustly disadvantaged.

However, it is plausible that, more often than not, the social group whose disadvantage is most unjust is also the more disadvantaged social group. Thus, conflict cases in which the two understandings of the PDP will reach divergent conclusions will be exceptional. Moreover, as I argued in Chapter 4, the explanation of why a state's immigration policy harms a particular social group will frequently involve past or ongoing relations of injustice between the state and that social group. For this reason, in cases in which the forward-looking version of the PDP applies, the backward-looking version will apply as well. And, in cases in which the two versions of the principle agree on which social group must not be harmed, they will have the same implication for the justice of the immigration policy in question. Thus, while there is potential for backward-looking and forward-looking conceptions of the PDP to reach divergent conclusions in principle, they will for the

most part converge in their assessments of the justice of immigration policies in practice.

This chapter has four major sections. In the next two, I apply the PDP to the criteria by which states deny (section 6.2) or approve (section 6.3) foreigners' applications for admission. Section 6.4 defends the PDP against an objection that arises in response to some applications of it in sections 6.2 and 6.3. The fifth section of this chapter examines some admissions-related immigration policies that affect migrants (beyond whether or not their application for admission is successful) or that directly influence the rates, patterns, and effects of global migration.

One general implication of the PDP is that different immigration policies will be just for different countries; in other words, the same immigration policy may be just (as far as the PDP is concerned) for one country but unjust for another, as a consequence of morally salient empirical differences between the national social contexts in which the policy may be adopted. Since I take the PDP to hold universally, in this chapter I examine the justice of immigration policies with respect to countries differently positioned in the global economic and political orders. A thoroughgoing, complete application of the PDP about which one could have a high degree of confidence would require comprehensive country-specific analyses. I shall not attempt this social scientific task here, in large part because I believe that I lack, as a philosopher, the competence to undertake it successfully. For this reason, and because I wish to illustrate the practical implications of the PDP in more than just one or two precisely defined contexts, some degree of abstraction is necessary. For example, I may speak of the implications of the PDP for low-HDI² countries in sub-Saharan Africa, rather than for, say, Malawi. This kind of abstraction can be objectionable if it is done in a way that obscures or (implicitly) denies morally salient aspects of the cases in which the PDP is applied. However, insofar as it is possible to abstract from particular contexts in a way that does not obscure or deny their morally salient aspects, then the sort of abstraction I partake of in this chapter should not be objectionable in itself. However, I concede the possibility that in some cases I may (inadvertently) over-generalize; should that occur, I underscore here that the problem this presents is for my application of the PDP, not for the principle itself.

Given the nature of the principle in terms of which I reason about the justice of different immigration policies, the defensibility of the practical normative conclusions I draw in this chapter clearly depends on the

accuracy and completeness of certain empirical claims I invoke. For this reason, I caution that my conclusions in this chapter are provisional and subject to revision. Should the empirical claims on which my policy prescriptions rest turn out to be false or incomplete, I would willingly revise my conclusions as appropriate. As a philosopher, I must rely on the empirical data and data collection methods of social scientists and practitioners. Nevertheless, I believe my conclusions are well grounded in the empirical realities of contemporary global migration.

6.2 CRITERIA OF EXCLUSION

All countries employ criteria of exclusion that function as sufficient conditions of the denial of an application for immigration. In this section, I consider seven grounds on which states commonly have denied admission: poverty or financial need, cultural dissimilarity, national origin, social group membership, medical condition, criminal history, and national security. I also examine the justice of annual quotas from the perspective of the PDP.

6.2.1 Poverty or Financial Need

Most countries, wealthy and poor ones alike, deny admission to prospective migrants if immigration authorities in the receiving country believe that they are poor (by the standards of the receiving country) or have great financial need. The rationale behind such exclusions is often that poor foreigners, if admitted, would diminish the economic welfare of current residents by disproportionately consuming the public resources of the receiving country. It is worth observing that the popular belief that immigration (generally or of the relatively poor specifically) is economically harmful for wealthier receiving societies has not been substantiated; on the contrary, a great deal of empirical research supports the view that the net impact of immigration (even of the “unskilled”) for the economies of relatively wealthy receiving countries is positive in the aggregate.³ The pervasiveness and persistence of the belief that immigration is economically harmful in the face of compelling evidence to the contrary is a testament to the power of xenophobia and racism.⁴

It is also important to keep in mind in reflecting on this criterion that the poorest people in the world (those the World Bank defines as

severely or extremely poor) rarely attempt transnational migration for the simple reason that they cannot afford it, unless they are forced by civil or environmental disruptions at home to cross into a neighboring, but equally poor, country.

In other words, “poor” migrants are, for the most part, relatively but not absolutely poor: they are poor by the conventions of the wealthier receiving society, but usually do not lack the material necessities of a minimally decent human life. Only in rare instances (in comparison to the total magnitude of global migration) are severely poor people able to accomplish travel to relatively wealthy societies, occurring mainly when a wealthy society is geographically proximate to a poor one. For example, sometimes Haitians poor by World Bank standards can, in spite of their poverty, reach the United States.

If the rationale for excluding prospective immigrants who are poor by the standards of the receiving country is that doing so is necessary to preserve the economic welfare of current residents, then the use of poverty as a criterion of exclusion likely has its moral basis in nationalist principles of political morality according to which states morally may and perhaps must exclude foreigners whose admission would harm the economic interests of current residents. I have already shown (in Chapters 2 and 5) why principles of this sort are untenable in the domain of immigration justice.

In terms of my principle, poverty and financial need are highly suspect on face as grounds for exclusion. With respect to the PDP, whether countries may permissibly exclude the poor or not depends on two factors: (1) the present economic condition of the receiving country, and (2) how poor the prospective migrant is. Wealthy societies (for example, OECD members) may not exclude prospective migrants who are poor by absolute standards or by the standards of the sending country (even if not in an absolute sense) without violating my principle: denial of admission to wealthy societies harms the poor (even if many of the poor lack international mobility), who, I argued in Chapter 4, constitute an unjustly disadvantaged social group.⁵ However, it follows from the PDP that wealthy societies may in many cases justly exclude prospective migrants who are poor merely by their own standards (not absolutely or by the standards of the sending country), although not on grounds of their (relative) poverty *per se*. The admission of those who are poor merely by the standards of the receiving country may often harm a group that is more disadvantaged; in other words, their

exclusion does not harm them avoidably, and therefore is not unjust. (I will discuss this point at significantly more length in section 6.3.)

Some empirical research claims that the immigration of the poor or “unskilled” may in some respects be economically detrimental to the working class of wealthy receiving countries. (This research is contested. See subsection 2.4.2.) If true, it may seem to present a challenge to my claim that the PDP forbids wealthy countries to exclude those who are poor (either in an absolute sense or by the standards of the sending country), since the working class of wealthy countries are themselves an unjustly disadvantaged social group. However, the empirical basis of this objection is questionable; even if immigration of the poor harms the domestic working class in some respects, it may also produce countervailing benefits for the same group (Castles and Miller 2009: 230–3). Moreover, and more importantly, the domestic working class of wealthy countries is quite clearly less disadvantaged than the poor of other societies, and so economic setbacks that immigration of the poor may cause them would not constitute an avoidable harm, in my sense of the term.

Poor and middle-income countries are, in general, as likely as wealthy countries to face substantial immigration demand from the poor on account of their geographical proximity to other poor countries, although much of this migration is for the purpose of asylum. Poor and middle-income countries have a much stronger *prima facie* case for excluding prospective (non-refugee) migrants who are poor (whether by relative or absolute standards) than do wealthy countries: insofar as they exclude the poor in order to protect the economic interests of current residents, poor and middle-income countries need not appeal to the sorts of nationalist principles of political morality I have argued are inapplicable to immigration justice. Such exclusions would be impartially justified for countries that themselves already experience a notable incidence of severe poverty.⁶ However, a defense of the exclusion of the poor by poor and middle-income countries in terms of the PDP faces two doubts. First, the claim that the admission of poor foreigners harms the economic interests of the domestic poor is, at least with respect to wealthy societies, not only unsubstantiated but also subject to some contrary evidence. Whether this claim is more plausible or not in the case of poor and middle-income countries requires empirical confirmation. Second, the enforcement of immigration restrictions designed to exclude the poor may be more costly to a society than the

admission of the poor would allegedly be. If this is so, then even poor and middle-income countries cannot, by the PDP, justifiably deny admission on grounds of poverty or financial need.

6.2.2 *Cultural Dissimilarity*

Some countries may refuse admission to a prospective migrant on grounds that she is a member of a culture that is, in its view, unacceptably dissimilar from that of the receiving society. Historically, cultural dissimilarity has been used by wealthier states as a subterfuge for racist and xenophobic exclusions of people from poorer parts of the world. Exclusions of this sort are straightforwardly contrary to the PDP.

In contrast, sincere uses of cultural dissimilarity to exclude prospective migrants do not obviously engage the concerns of my principle. Those who are excluded on cultural grounds may or may not be unjustly disadvantaged, and even if they are, they may or may not constitute a social group. Suppose, for example, that Japan refuses admission to a white American citizen on grounds of dissimilar cultural background. This does not immediately appear to violate the PDP (since white American citizens are not, considered as such, unjustly disadvantaged), although it may be unjust by the lights of other (compatible) principles of political morality (for example, the basic principles of liberalism).

However, exclusions on the basis of cultural dissimilarity are contrary to the PDP in another sense. Immigrant exclusions based in cultural dissimilarity implicitly but inevitably invoke a particular ideal of the receiving state's cultural identity. A state cannot refuse admission to a prospective migrant on grounds of the dissimilarity of her cultural background without stipulating a cultural identity for itself by which to make such comparisons. For reasons I articulated in Chapters 2 and 5, the promulgation of such notions of the cultural identity of the nation is invariably fictitious. Given that all societies are culturally heterogeneous, and that the elements of "the" culture picked out by immigration authorities to determine whom to admit and whom to exclude almost invariably represent dominant groups' cultural perspectives exclusively, the use of "cultural dissimilarity" to select amongst applicants for admission is bound to marginalize the cultural perspectives of unjustly disadvantaged groups within the receiving society. It is a form of what Young calls "cultural imperialism" (Young 1990: 58–61). In setting out what elements of "the" culture acceptable immigrants must

share, immigration authorities privilege the cultural understandings of already dominant groups while rendering the cultural understandings of disadvantaged groups deviant or inferior. (For this reason, the argument I am making does not require that the group whose members are denied admission also have members in the receiving society. That is, cultural exclusions commit cultural imperialism for cultural minorities in the receiving society even if there are no members of the specifically excluded cultural group already present in the receiving society.) Such policies will thus tend to foster racism, religious prejudice, ethnic prejudice, and even homophobia and heterosexism in the receiving country. They are, therefore, impermissible on my principle.

6.2.3 *National Origin*

An historically common basis for excluding prospective migrants is national origin. Past uses of national-origins quotas by wealthy Western states were, like exclusions based in cultural dissimilarity, thinly veiled institutional manifestations of racism and xenophobia. Immigration policies such as the historical national-origins quotas of wealthy Western countries are unjust on a variety of moral grounds, including on my own principle.

The exclusion of prospective migrants on grounds of their nationality does not necessarily violate the PDP, however; the national group whose members are excluded may not be unjustly disadvantaged. Indeed, conformity to my principle may in some cases require receiving countries to adopt somewhat different admissions criteria for prospective migrants from different sending countries. Just as achieving equality domestically sometimes requires deviations from formal neutrality and attention to social difference, I believe that some sensitivity to national origin is called for by the PDP. The same immigration policy may affect different sending countries in disparate ways. For example, if the United States grants preference in admission to foreign medical doctors, this is unlikely to have any measurable impact on access to health services in France, but may have deleterious consequences for Niger. Similarly, the extent to which a country is affected by the loss of skilled, middle-class, educated professionals varies somewhat even among poorer countries: the largest among poorer countries (for example, India, China, and Indonesia) do not seem to be harmed by “brain drain” (in fact, the Indian, Chinese, and Indonesian

diasporas have positively benefited those who have remained (Kapur and McHale 2005: 178–9)); in contrast, the loss of the middle class in, most prominently, African countries but also in Latin American ones has had devastating effects on the prospects of human development there. Thus, my principle may permit, or even in some cases require, that prospective migrants from certain countries be refused admission to wealthier societies in part due to their nationality.

One hasty objection to this conclusion is that admissions policies that use national origin as a ground for exclusion are inherently wrong. This well-intentioned but shortsighted objection derives its plausibility from the fact that in the past many wealthy societies, such as the US, unjustly enforced national-origins quotas in order to maintain the (alleged) existing racial composition of the society. Thus, a proponent of this objection might say, immigration policies ought to be “nationality-blind.” However, as feminists have long observed, achieving social justice requires in some cases that we specifically attend to socially created differences, rather than be “blind” to them (Young 1990: 157; MacKinnon 1987: 32). The demand of formal neutrality has a tendency, in contexts of severe inequality, to reproduce and even exaggerate extant inequalities. Thus, just as it would be misguided to insist that social institutions must be “color-blind” or “gender-neutral,” because past institutions that were not discriminated invidiously against women of color, men of color, and white women, I believe it is equally a mistake to insist on immigration laws that are formally neutral as regards national origin, simply because past immigration laws that were not “nationality-blind” imposed unjust harms on certain national groups.

6.2.4 *Social Group Membership*

States sometimes, more frequently in the past than now, exclude prospective migrants on the basis of their membership in a disfavored social group, such as those whose members purportedly share a race, a religion, or a sexual preference (among other things). States that engage in such exclusions generally have not recognized the classes of persons to whom they have refused admission as social groups *per se*; rather, such groups have been (and are) understood as natural kinds, united by common possession of biological attributes (attributes that have been or are regarded as constitutive of or as evidence of their natural inferiority).

Virtually all past or ongoing exclusions on the basis of (imagined) race, religion, and sexual preference are plainly unjust in terms of the PDP. Excluded groups have usually been unjustly disadvantaged, and the denial of their admission has avoidably harmed them. From the perspective of my principle, exclusions of this sort should, in general, be regarded by default with suspicion, not only for the avoidable harm they likely impose on the unjustly disadvantaged social group whose members' admission is refused, but also for members of the same or similar groups already present in the receiving country. Such policies intimate an official belief in the inferiority of members of excluded groups, and thereby make domestic members of excluded groups (more) vulnerable to discrimination and oppression.

However, exclusions on the basis of social group membership are not necessarily unjust by the PDP and may in some instances be required by it. In some cases, the excluded social group may not be unjustly disadvantaged. In others, the failure to exclude members of one social group that is unjustly disadvantaged would harm another social group that is unjustly disadvantaged to a greater extent. This makes sense of what I argue above: that the members of a social group who share an economic class (that is, a relation to economic institutions) may in some cases be excluded justly. Whether any particular exclusion on the basis of social group membership is justified from the perspective of the PDP is something that can be ascertained only by context-specific analysis.

6.2.5 Medical Condition

Most countries have provisions for excluding prospective migrants with certain medical conditions.⁷ In practice, exclusions of this sort have often been a subterfuge for denying admission to members of disfavored social groups with whom the medical condition is culturally associated; in such cases, the immigration policy is, other things being equal, unjust in terms of the PDP. When the exclusion of prospective migrants on medical criteria is sincere (that is, not a covert way to deny admission to members of associated social groups), it may in some cases be just. If the medical condition is contagious (that is, easily transmitted by casual contact), restrictions on the freedom of international movement (by receiving and sending countries) of the person infected seem easy to justify, both in general and from the perspective of my principle.

In cases in which the medical condition is not contagious, medical exclusions appear to rely for their justification on nationalist principles of political morality. The putative rationale for medical exclusions is that the admission of those with proscribed conditions would place an undue burden on the health services of the receiving country, which may therefore decline to admit them (even if the burden on the sending country is as great or greater than the burden to the receiving country would be). However (as I have argued), nationalist principles are untenable in the domain of immigration justice; from a general cosmopolitan perspective, medical exclusions of this sort seem hard to justify. The task of morally justifying the exclusion of sick migrants seems even more insurmountable for countries that give preference in admission to or actively recruit medical professionals from other countries.

Sincere medical exclusions do not, at first glance, engage the concern of the PDP since those with proscribed conditions do not constitute a social group (except in the trivial sense that the immigration laws excluding them make them into one). However, in some cases, even sincere medical exclusions violate the PDP by avoidably harming others in the sending country who constitute an unjustly disadvantaged social group. If medical resources are scarce in the sending country but are (relatively) plentiful in the receiving country, the denial of admission to prospective migrants with proscribed medical conditions may deprive the poor of the former of access to essential health services, which surely harms them, likely avoidably.⁸ It is true that the admission of those with proscribed medical conditions from countries in which medical resources are scarce may diminish access to health services in the wealthier receiving country, particularly among unjustly disadvantaged social groups. However, this deprivation would be relative rather than absolute; in addition, the harm it imposes is unavoidable (that is to say, not unjust) insofar as those relatively deprived of access to health services in the receiving country are less disadvantaged than the medically underserved poor of sending countries.⁹

6.2.6 *Criminal History*

Most if not all countries exclude prospective migrants with a serious criminal history.¹⁰ Criminal exclusions, like medical exclusions, are easily abused in practice in ways that may avoidably harm social groups that are already unjustly disadvantaged. Some social groups may be

disproportionately refused admission, due to criminal exclusions, if law enforcement or prosecution in sending countries is carried out in invidiously discriminatory ways or if the laws of sending countries discriminate, overtly or covertly, against disfavored social groups. In order to assess the justice of criminal exclusions in principle, I will assume that: (1) the prospective migrant's crimes are serious rather than petty; (2) the process for adjudicating criminal violations in the sending country is reliable and fair (and so the receiving country can have confidence in the judgment that the prospective migrant is truly a criminal); and (3) the prospective migrant's law-breaking behavior is truly immoral. (For example, if the prospective migrant's crime is homosexuality, then the fact that he has a criminal record should not affect his application for admission.) In cases in which these assumptions do not hold, there does not seem to be a reasonable basis for denying admission to a prospective migrant with a criminal history.¹¹

Even in cases in which these assumptions hold, the moral basis of criminal exclusions is questionable. The exclusion of prospective migrants who have a criminal record is not a punishment for past wrongful behavior. Rather, the putative rationale for criminal exclusions is forward looking: a person with a criminal record is more likely than others to commit crimes in the future (it is assumed), and receiving countries seek to prevent these anticipated future crimes from occurring within their borders. The rationale for criminal exclusions is, therefore, nationalist. However, nationalist principles of political morality are inapplicable in the domain of immigration justice (as I have argued). From a cosmopolitan perspective, there appears to be no moral basis for criminal exclusions.¹²

6.2.7 National Security

States routinely exclude prospective migrants they consider threats to national security.¹³ In some cases, radical political activists are denied admission on grounds of national security. In other cases, people for whom there is evidence of involvement in terrorist organizations are excluded for this reason. As with medical and criminal exclusions, exclusions on grounds of national security may often be abused in practice, the appeal to national security covertly operating as a method for excluding disfavored social groups. In such cases, security exclusions are, other things being equal, contrary to the PDP. It is, moreover, dif-

difficult to see how the exclusion of radical but peaceful political activists can be justified on any reasonable moral grounds (for liberal states in particular), even in principle.

One problem with discussing the permissibility of preventing the immigration of suspected terrorists is that the very discussion is based on the assumption that foreigners have, in comparison to citizens, a significantly greater likelihood of being terrorists. This assumption is at least xenophobic, often racist, and false. Violent activity targeted at non-combatants for political purposes is much less often labeled as “terrorism” when committed by citizens than when committed by foreigners (even less so when the actors are members of the dominant racialized group in the society). In addition, even when terrorist activity on the part of citizens is recognized for what it is, it is regarded as aberrant; in contrast, for many people, the same types of actions committed by foreigners confirms their moral inferiority and violent nature. Thus, foreign-led terrorism comes to be seen as common and domestic terrorism is perceived as rare, even when they occur at the same rate. This is not to mention the fact that many practices common to Western societies that are arguably terrorist are simply not conventionally regarded as such, in part although certainly not only because they are routinely performed by citizens: rape, domestic abuse, gay bashing, and hate crimes generally.

These concerns notwithstanding, if the exclusion of suspected terrorists is based on a principled, transparent, and just conception of “national security,” and the evidence in virtue of which individuals are denied admission for this reason is reliable and compelling, then security exclusions would not seem, in principle, to violate the PDP. On the assumption that a prospective migrant who intends to engage in terrorist activity if admitted would not do so should he remain in his country of origin, security exclusions also seem, in principle, justifiable from a general cosmopolitan perspective.¹⁴

6.2.8 *Annual Quotas*

States usually exclude immigrants beyond a certain annual ceiling (which varies considerably from one country to the next), even among those who are eligible for admission (that is, who do not satisfy any criteria of exclusion) and are found (in terms of the country’s criteria of admission) to be desirable. The putative rationale behind annual

quotas is that (even among “desirable” foreigners) too high a rate of immigration would be harmful for the receiving country. Typically, the harm of “excessive” rates of immigration is put in terms of strain on the provision of public goods; state agencies (for example, police, hospitals, schools, and so on) would, it is claimed, have difficulty coping with too rapid an increase in demand for the goods they provide.

It is not implausible that a rapid increase in a country’s population (regardless of its cause) would compromise the ability of state institutions to function effectively and fairly. Since the members of domestic disadvantaged social groups are usually more reliant than other citizens on state provision of services, there is a good *prima facie* case for reasonable annual limits to immigration. (The annual ceilings currently in place in many countries are probably much lower than is necessary for this purpose, however, largely owing to tacit xenophobia, even when the ceilings are defended in terms that are neutral at first glance.) Nevertheless, disadvantaged groups in receiving societies are more often than not considerably less disadvantaged than most prospective non-refugee migrants. Therefore, limits on the total number of visas issued by a country each year can be justified, in terms of the PDP, if and only if (1) additional immigration would make domestic disadvantaged groups worse off than prospective migrants would be in the sending country (should they have been denied admission), (2) additional immigration would compromise the provision of public goods so much so that prospective immigrants themselves would be made worse off upon arrival in the receiving country, or (3) additional immigration would harm others (besides domestic disadvantaged groups and prospective migrants) who are already (or would be made) worse off than domestic disadvantaged groups and prospective migrants.

It may be that a country does not set a limit on the total number of immigrants it will admit each year, but instead sets different ceilings for each category of admission (for example work, family reunification, diversity, and so on). Whether and to what extent this is permissible by the PDP depends on the justice of the category of admission itself. If the utter exclusion of some class of prospective migrants cannot be justified in terms of the PDP, then annual limits on how many immigrants of that sort may enter each year are likely impermissible as well (subject to the three conditions above). If the admission of immigrants under some category is generally permissible from the perspective of the PDP, then imposing annual limits on how many may be admitted

in that category is justified only under conditions (1), (2), or (3) above. Finally, with respect to some categories of immigration, the admission of foreigners is just in terms of my principle only if conservative limits on how many may enter each year are in place. For example, the admission of middle-class professionals from small and medium-sized countries of the Global South avoidably harms non-migrating members of unjustly disadvantaged social groups in sending country unless cautiously circumscribed. I will say more in defense of this claim in section 6.3.

6.3 CRITERIA OF ADMISSION

Especially, but not only, because most countries receive visa applications in excess of the number of foreigners they are willing to admit each year (even once many applicants have been found ineligible by the country's criteria of exclusion), countries also employ criteria of admission, satisfaction of which enhances migrants' chances of receiving a visa. In this section, I consider two criteria of admission: economic potential and family relationships.¹⁵

6.3.1 Economic Potential

Prospective migrants are more likely to be granted admission if they are judged by authorities in the receiving country, on the basis of present wealth, tertiary education, or skill possession, to be capable of making a positive economic contribution (directly or indirectly) to the host society upon immigration. A prospective migrant is considered "skilled" when she is educated and trained in a field of work that is regarded as economically productive in the receiving country. For this reason, the notion of "skilled migrants" is normatively laden, and is often attended by gender, race, and cultural bias.

On the face of it, it seems reasonable to think that, for the most part, what receiving countries gain by admitting wealthy, well-educated, or highly skilled foreigners is similar to what sending countries lose as a consequence. The adoption of admissions criteria that give preference to prospective migrants who are wealthy, educated, or skilled may justifiable in impartial, cosmopolitan terms when the receiving country suffers a low level of human development in comparison to the sending country.¹⁶ However, if the receiving country enjoys a level

of human development that is considerably greater than that of the sending country, it is difficult to see how policies that accord preference in admission to the wealthy, educated, or skilled can be justified except by appeal to nationalist principles of political morality—principles that are inapplicable in the domain of immigration justice.

I argued in Chapter 3, in response to some cosmopolitan arguments for open borders, that the admission of wealthy, educated, or skilled migrants often has destructive consequences for human development prospects in sending countries. From the perspective of the PDP, these consequences give rise to concerns of injustice when the receiving country enjoys a level of human development that is notably greater than that of the sending country. If the sending country is poor by comparison to the receiving country, then the adoption of immigration policies that prioritize the admission of the wealthy, educated, or skilled harms an unjustly disadvantaged social group—residents of the sending country who are poor by its standards or absolutely. (More morally egregious is the practice of many wealthy countries of the Global North to actively recruit “talent” from poor countries of the Global South. Many of the wealthiest countries in the world prioritize the admission of medical doctors and nurses to fill domestic “shortages” that are the result of their own failure to adequately allot domestic educational resources. The term “shortage” is relative, since migrants’ countries of origin are often substantially less well equipped to provide adequate medical services to residents.) Thus, policies of this sort are unjust by my principle, even if prospective migrants (in spite of their education or marketable skills) are poor by the standards of the receiving country. Educated or skilled prospective migrants who are poor merely by the standards of the receiving country (not by the standards of the sending country or absolutely) are themselves, considered as such, members of economic class-based social groups that are unjustly disadvantaged. However, their disadvantage is (as the willingness of receiving countries to admit them attests) less severe than that of their compatriots whose poverty renders them internationally immobile; thus, the rejection of policies that prioritize their admission does not harm them avoidably.

In some (exceptional) cases, relatively wealthy receiving countries may admit wealthy, educated or skilled citizens of relatively poor sending countries without violating the PDP. If the sending country is large by population, receiving countries may be able to prioritize

the admission of their wealthy, educated, or skilled citizens without bringing about a pernicious brain drain, on the condition that receiving countries set reasonable limits on how many immigrants may enter annually within the relevant category of admission. In some cases, moreover, the prospective migrant's area of education and professional training may be one for which the sending country does not experience a shortage. In such a case, her admission would not seem to violate my principle. These observations corroborate what I argue above: that justice may sometimes require that states adopt distinct immigration policies with respect to different sending countries.

6.3.2 *Family Relationships*

Many countries give preference in admission to prospective migrants who are considered by the receiving country to have an appropriate family relationship with someone who is a citizen or legal permanent resident of the receiving country. For most such countries, this means preference in admission for (heterosexual) spouses and minor children.¹⁷ Some (although weaker) preference may be given in some cases to aged parents, non-minor children, and siblings.

The policy of many countries not to recognize same-sex partners as "family members" is impermissible on a variety of moral grounds,¹⁸ as well as in terms of my principle. Lesbians and gay men are, worldwide, members of an unjustly disadvantaged social group, and the refusal of some countries to extend family-based immigration benefits to them harms them avoidably, in my sense of the term. It is additionally morally problematic that most Western countries' family reunification policies are based on a culturally specific model of the family (male husband, female wife, and minor children) and do not recognize family relationships that may be equally or more personally significant in other cultural contexts as grounds for (weighty) preference in admission. On the assumption that the moral purpose of family reunification policies is to protect individuals' basic interests in maintaining intimate relationships, family reunification policies that define legitimate family relationships according to the dominant conception of the family in the receiving society are contrary to their own purposes.¹⁹

The wholesome appearance of the United States' family reunification policy is belied by its historical origin. The US, which, among wealthy states admits the highest proportion of migrants on family reunification

grounds, began giving preference to family members of citizens and legal permanent residents in the 1960s, at the same time that it abolished its national-origins quotas. The adoption of family reunification criteria was motivated less by a recognition of the moral and personal value of family relationships than by a continuing desire to maintain covertly the (imagined) existing racial composition of American society (Carens 2003: 107). Up to the 1960s, the vast majority of immigrants to the US were European in origin. Thus, by favoring family members of current residents, and establishing an overall annual ceiling on admissions, it could be ensured (or so it seemed) that most new immigrants would also be from Europe. Since the vast majority of visas issued were to be given to family members of current residents, the chances of admissions for Africans would be substantially diminished, as well as for any other national, ethnic, or race group that, up to that point, has not immigrated to the US in large numbers. (Distant relatives of citizens whose ancestors were forcibly brought to America as slaves generations earlier did not count as “family members.”) American family reunification policies have mostly not succeeded in their initial goals, however. Europeans’ desire to migrate to the US waned substantially as Europe recovered from the Second World War. As a result, the largest proportion of applicants for admission on family reunification grounds have been from Latin America and East Asia.

Reflection on the historical origin of family reunification policies in the US sheds light on the implications of my principle for this basis of admission. As I have observed, most migrants to wealthier countries are themselves relatively privileged, globally speaking; they are part of the global middle class. It is highly probable that immigrants’ family members are themselves relatively privileged on a global comparison. Matthew Lister notes, “family-based immigration will often, though of course not always, favor those who are already better off materially over those who are worse off” (Lister 2007: 757–8). The migration of people from relatively poor to relatively wealthy countries on the basis of family reunification may thus contribute indirectly to “human capital flight,” or brain drain.

For this reason, family reunification policies appear to be presumptively impermissible in terms of the PDP, for the same reason that policies that accord priority in admission to the wealthy, educated, and skilled often are. This conclusion, which will seem insensitive and perhaps callous to some, is not one that I am eager to embrace.

However, insofar as it is true that family reunification policies indirectly contribute to emigration flows from already poor countries that intensify poverty and/or diminish the chances of its being alleviated, then there appears to be a conflict of values. It does not seem obvious to me that it is less insensitive or less callous to approve of policies that exacerbate severe global poverty in service of the (admittedly important) interests of others who are, by global measures, relatively well off.²⁰

That said, two considerations suggest that family reunification policies can be maintained to some extent without imposing avoidable harms on unjustly disadvantaged groups. First, the migration of relatives of current citizens and residents may not contribute perniciously to brain drain in many cases. If the relatives of current citizens and residents were to come from countries that are not poor in comparison to the receiving society, or that are relatively poor but are large in population, there is little or no reason for thinking that their emigration would damage human development prospects in the sending country. Even if the relatives of current citizens and residents were to come from small or medium-sized countries that are poor by comparison to the receiving country, their migration would likely not diminish human development prospects in the sending country if the prospective migrants themselves would not otherwise qualify for immigration in their own right on grounds of wealth, education, or the possession of marketable skills. Second, family-based migration at moderate rates need not have devastating consequences for human development in poor countries. If wealthy countries ceased to admit so many migrants on the basis of marketable skills, tertiary education, wealth and similar factors alone (as my principle demands), then admitting some foreigners (who happen to be skilled, educated, or relatively wealthy) for family reunification purposes would not necessarily cause brain drain. There is no objection to family reunification policies, in principle, from the perspective of the PDP. Family reunification policies offend my principle only contingently, as a result of the unjust circumstances of our world, due to their indirect consequences for human development in already poor countries. Should migration patterns change, as a result of the implementation of my recommendations, then, insofar as members of the same family belong to the same social groups as well (setting aside gender), family reunification policies will decreasingly favor the immigration of people whose emigration might impose avoidable harms on disadvantaged social groups in sending countries.

6.4 AN OBJECTION

Let me offer a coarse summary of the policy implications of the PDP I have discussed so far. My critical observations in Chapter 3 make clear that my principle rejects as unjust the proposal that (wealthy, liberal) states eliminate restrictions on immigration altogether or mostly (that is, “open borders”). However, as this chapter has demonstrated, the PDP is equally critical of many ways of restricting immigration. States may not, consistent with my principle, exclude prospective migrants on grounds of cultural dissimilarity (nor may they accord them preference in admission for displaying cultural affinity). Medical, criminal, and security exclusions are morally justified in principle, but only in a narrow range of cases more circumscribed than is typically supposed.

The PDP also regards with great suspicion economic criteria of admission and exclusion. Policies that exclude prospective migrants on grounds of their poverty or perceived financial need are usually incompatible with my principle. At the same time, relatively wealthy receiving countries may not adopt policies that prioritize the admission of foreigners from relatively poor, small and medium-sized sending countries who, in their judgment, possess exceptional economic potential. As the foreign relatives of citizens and residents of relatively wealthy receiving countries are often themselves materially privileged (by global standards), limits on immigration for the purpose of family reunification may sometimes be justified from the perspective of my principle. The elaboration of these implications of the PDP explains why I do not reject in principle criteria of admission and exclusion that attend to national origin and social group membership.

Finally, since exclusion of the poor and the “unskilled” is itself generally unjustified, receiving countries (especially relatively wealthy ones) may not adopt annual quotas that limit how many poor or “unskilled” foreigners may enter (subject to qualifications that will likely be met in practice only rarely). However, if the receiving country is wealthy by comparison to the sending country, it must cautiously circumscribe the rate of immigration for relatively wealthy, well educated, and highly skilled foreigners. In general, the smaller the sending country, the more “skilled” immigration from it must be limited in order to prevent avoidable harm to unjustly disadvantaged social groups.

A major objection to this last implication of the PDP is that it amounts to “blaming the victim,” or, more perhaps more accurately,

“penalizing the victim.” The prospective migrants I propose be denied entry—those who are relatively wealthy, highly educated, or in possession of some skill thought economically valuable in the receiving country—only seek immigration because they lack opportunities in their countries of origin for what residents of wealthy societies consider a decent life. It may seem heartless to assign the burden of shielding the global poor from further harm to people who themselves may be poor by the standards of the societies to which they seek admission. This burden should fall entirely on wealthy countries.

It is not without hesitation and genuine regret that I propose that some people in the world’s poorest countries be prevented from immigrating for the benefit of even poorer people in their country of origin. I agree that the burden of alleviating global poverty should fall largely on the world’s wealthiest countries. Ideally, the world’s wealthiest societies will make efforts to eradicate global poverty, whether their efforts take the form of aid or involve reform of the global economic institutions that arguably cause it. But if they do either, then maintaining present levels of immigration for the relatively wealthy, the educated, and the skilled (or allowing more, such as is defended by many cosmopolitan liberal advocates of “open borders”) will, in current global economic circumstances, frustrate poverty alleviation efforts. If they do neither, which seems more likely, such immigration policies will exacerbate global poverty.

If global economic justice were achieved (supposing that this involves, at a minimum, the absence of extreme international disparities in economic opportunities) through poverty alleviation efforts by wealthy countries, then the sorts of immigration restrictions I defend would, in terms of my own principle, no longer be justified. Countries could prioritize the admission of skilled, wealthy, or highly educated foreigners (they could even attempt to recruit them), but their efforts would largely be in vain, both because people would have adequate opportunities at home, and because every country would be in a decent position with respect to others to attract the most “desirable” foreigners. In ideally just circumstances, then, the world’s wealthiest countries would have immigration policies that were more permissive than those they currently have and than those I have recommended. But in our non-ideal world, in which injustice is often structural and therefore systematic and normal (as opposed to isolated and anomalous), the immigration policy options of wealthy countries sadly consist of a

menu of morally sub-optimal choices.²¹ In present global economic circumstances, the immigration policies of wealthy countries cannot bring about global justice; they can only impede it to greater or lesser degrees.²²

Nothing I've said so far in response to this objection depends upon accepting the view that many of the world's wealthiest countries are causally responsible for severe poverty and the present lack of economic opportunities in the Global South. Suppose, though, that it is true that severe poverty and lack of opportunity in Africa, South Asia, and Latin America were in large part caused by European colonialism and the slave trade, and is now foreseeably maintained and intensified by global economic institutions controlled by countries of the Global North.²³ Under this assumption, the liberal insistence on freedom of immigration begins to ring hollow, playing directly into the hands of neocolonialism. Coopted by neoliberalism, the liberal demand for open borders becomes one more example of the way in which formally neutral principles of classical liberal morality applied blindly, without regard for social structures that privilege some at the expense of others, have a tendency to reinforce and exaggerate pre-existing inequalities. Just as neoliberal principles of "free" trade have a tendency to funnel wealth into the hands of the already-wealthy at the expense of the poor, liberal opposition to restrictions on the movement of people funnels poor countries' "most valuable" human "resources" into already wealthy countries, leaving those whose lack of resources prevents their emigration with yet fewer opportunities for escaping poverty. The appearance of fairness in the liberal advocacy of freedom of international movement is just that. Seen in this light, liberal opposition to the sorts of restrictions on the movement of "human capital" I defend would begin to seem positively odious, were it not so naïve.

Wellman presents a closely related objection to the policy position I have argued follows from the PDP (that wealthier receiving countries should conservatively limit the immigration of skilled professionals from poorer sending countries). Wellman articulates his objection as follows:

A developed country should no more assist in an unjust act than an individual should serve as an accomplice to a crime, but it is not clear that a doctor who emigrates from Ghana, for instance, acts

impermissibly. It certainly seems as though such a doctor should be free to leave medicine in order to pursue a career in journalism if she would like to, for instance, so why would it be any less permissible for her to emigrate from Ghana in order to pursue a career as a doctor in Canada? After all, whether as a journalist in Ghana or a doctor in Canada, she will equally be leaving Ghana's medical work force. (Wellman and Cole 2011: 152)

Wellman's objection, put more generally, is this: if it is not morally impermissible for a medical doctor in an impoverished society to leave medicine for some other professional pursuit, then it cannot be the case that it is morally impermissible for much wealthier countries to recruit her or give her preference in admission. Since the former is (putatively) permissible, the latter is as well.

Certain aspects of Wellman's objection, and his example in particular, are misleading in respects that grant greater plausibility to his conclusion than it merits. First, journalists contribute to human development in poor countries in many ways that, although distinct from the contributions of medical doctors, are nevertheless significant. Wellman's example would more adequately mirror the impact of professional emigration on poor countries if he had instead imagined that the doctor in his example left medicine in order to become a beach bum or a socialite. However, it does not seem to me utterly implausible to hold that it may be morally impermissible for a person in a position to alleviate significant suffering (as a medical doctor is) to refuse to do so in favor of some other option through which she alleviates little or no comparable suffering (for example, by becoming a beach bum). One might even think that it is morally worse (than becoming a beach bum) for a Ghanaian medical doctor to provide medical services to an already very healthy population instead of one that is drastically medically underserved in order to improve her own material standard of living, which was already above average by global standards.

Second, Wellman's analysis errs by conceiving of Canada's alleged wrong as merely assisting in the commission of an injustice perpetrated by the prospective migrant herself. However, immigration policies that recruit medical doctors from poor countries to wealthy ones, or that give medical doctors admissions preference, are unjust in their own right. Wealthy countries bring about health deficits in the Global South that would likely not occur otherwise, through their immigration

policies. (Most Ghanaian doctors would not become journalists or beach bums if Canada did not admit them.) Wellman's mistake is to treat migration flows of professionals from the Global South to the Global North as naturally occurring phenomena, when in fact (as the analysis of Castles and Miller shows), such flows are brought about by the (immigration) policies of the world's wealthiest and most powerful states. (See Chapter 1.)

Finally, as Wellman himself concedes, "there nonetheless seems to be something seriously wrong with knowingly contributing to an avoidable human rights deficit among the world's poor" (Wellman and Cole 2011: 152). In order to maintain his position that legitimate states have moral dominion with respect to their immigration policies (see Chapter 5), Wellman argues that legitimate states may nevertheless continue to admit "passively" and recruit professionals on the condition that they adequately compensate poorer sending countries. Whether or not adequate compensation is possible (and whether or not a practicable scheme of compensation is available) is subject to some doubt, however. I examine some proposals of this sort in terms of the PDP in the following section.

6.5 ADMISSIONS-RELATED IMMIGRATION POLICIES

Most philosophical thought on immigrant admissions has focused on the question, "Under what circumstances may (liberal) states justly restrict immigration?" An unfortunate implication of focusing narrowly on the moral justifiability of immigration restrictions is that present rates and patterns of global migration may come to be regarded as natural, fixed, or inevitable. However, trends in international migration and their effects are in large part caused by the domestic policies of both sending and receiving countries (including their policies governing migration), bilateral and multilateral agreements, and policies of global political and economic institutions. In other words, receiving countries do not simply respond passively to "naturally occurring" migration flows; they are part of their cause. In this section, I examine "admissions-related" immigration policies that influence the rates, patterns, and effects of global migration. The proposals I consider share a concern to diminish the deleterious effects of large-scale emigration on poor countries and to make diasporas economically beneficial to the countries from which they originate.

6.5.1 *Emigration Compensation*

One scheme for alleviating the effects of brain drain is for wealthy receiving countries to pay the governments of poor sending countries when their relatively wealthy, highly educated, or skilled nationals are admitted. Even better, Devesh Kapur and John McHale argue, is for wealthy receiving countries to compensate directly the institutions (for example, hospitals, universities, and so on) losing staff as a result of emigration (Kapur and McHale 2005: 181). Compensation programs need not take the form of cash transfers, but may be implemented in a number of ways, including, as Gillian Brock notes, “technological, technical, or financial assistance, the setting up of training programmes, or instituting (and helping to enforce) compulsory service before departure is permitted” (Brock 2009: 202).

If adequate programs of compensation were in place, then it would be unnecessary (for the purpose of preventing brain drain) for wealthy receiving countries to limit skilled immigration from poor sending countries. If wealthy receiving countries were to limit skilled immigration from poor sending countries to levels at which brain drain does not occur, then programs of compensation would be unnecessary. Programs of compensation are, therefore, at cross-purposes with the sorts of immigration restrictions that, I argue above, the PDP would otherwise favor. Which of these options is preferable from the perspective of the PDP? That is, under which of these alternatives would the capabilities of the poor, internationally immobile residents of the Global South be most expansive?²⁴ Whether programs of compensation are superior to skilled-immigration restrictions in terms of the PDP depends on several factors. One of the most important is the rate at which wealthy receiving countries might pay compensation to poor sending countries. Kapur and McHale suggest that “the government or private [hiring] agency could be asked to pay a fee similar to that charged by ‘headhunters’ in rich countries, equivalent to a few months’ pay” (Kapur and McHale 2005: 181). However, at this rate of compensation, the PDP would surely favor skilled-immigration restrictions, as a few months of an immigrant’s pay in the receiving country would, in most cases, certainly fail to restore the human development prospects lost by the sending country as a result of her emigration. This suggests that, first, in order for programs of compensation to match skilled-immigration restrictions in terms of the PDP, wealthy receiving

countries must compensate at a rate that is roughly equivalent to the value of the human development prospects lost by the sending country through emigration. Although it seems unlikely that wealthy receiving countries would be willing to compensate poor sending countries at this presumably very high rate, it seems fair, for the philosophical purpose of comparing the justice of this proposal to skilled-immigration restrictions, to stipulate that they would do so.

Equally significant is the sending country's use of compensation payments. Some will worry that funds will be misused, for example, by incompetent or corrupt bureaucrats in countries of the Global South. Even in the absence of worries about incompetence and corruption, it is still the case that poor sending countries must "convert" compensation payments received into human development, which is surely a complex, difficult task even when undertaken thoughtfully and sincerely. Indeed, compensation programs may exacerbate brain drain by incentivizing sending countries to encourage emigration (de Mesquita and Gordon 2005: 48). Moreover, even thoughtful and sincere efforts to make use of compensation payments by sending countries will restore human development prospects lost through emigration only after many years. These concerns tip the scales of the PDP in favor of skilled-immigration restrictions.

It could be argued that one respect in which compensation programs are superior to skilled-immigration restrictions in terms of human development in the Global South is that many residents of poor countries are motivated to pursue advanced education by the prospect of migration to a wealthy country. Some, in spite of their original motivations, elect to remain in their country of origin or return after a period abroad, thereby contributing to human development in their home countries in ways they would not have, had wealthy countries adopted immigration policies that foreclosed to them the option of migration (Kapur and McHale 2005: 184). To what extent this sort of thing happens is an empirical question; it seems no less likely that there are some people in poor countries who would have pursued an advanced education with or without the option of international migration, but eventually chose to leave their country of origin for a wealthier one when the opportunity became available. Moreover, it seems unlikely that many people who pursue advanced education motivated by the prospect of international migration would forgo advanced education in the absence of the option of international migration: if one's goal is

to improve the material standard of living of oneself and one's family (which seems plausible), one would presumably pursue advanced education with or without the option of international migration. In fact, among the residents of poor countries who pursue advanced education partially motivated by the prospect of international migration, those who elect ultimately to remain are perhaps the least likely to have forgone advanced education in the absence of the option to migrate to a wealthy country.

There is little doubt that programs of emigration compensation would, on balance, serve the interests of prospective migrants who are educated and skilled better than restrictions on their immigration to wealthy countries. Their education and marketable skills notwithstanding, these prospective migrants are disproportionately members of social groups that are unjustly disadvantaged. Thus, their interests engage the concern of the PDP, which would therefore favor compensation programs over skilled-immigration restrictions if compensation payments by wealthy receiving countries were adequate and poor sending countries were able to convert these payments into human development effectively. However, prospective migrants from poor countries who are educated or skilled, to the extent that they are disadvantaged, are less disadvantaged than their poor, internationally immobile compatriots, whose interests command greater priority on the PDP.²⁵ Even if one assumes that wealthy receiving countries will pay adequate compensation, there are significant grounds on which to doubt that poor sending countries will be able to make use of these payments to restore fully what they lose through emigration in terms of human development prospects. I believe that the interests of prospective migrants supply an urgent reason for scholars and policy makers to investigate how compensation schemes might be most effectively designed and implemented; and, insofar as wealthy countries continue to admit and recruit skilled professionals from poor sending countries, they certainly ought, in my view, to pay compensation. Nevertheless, I am skeptical that the PDP would favor emigration compensation programs over the skilled-immigration restrictions with which they compete.

6.5.2 Emigration Restrictions

While a scheme of emigration compensation requires significant action on the part of wealthy receiving countries, in this subsection and the

next I discuss some of the policy options of poor sending countries. Considering the policy options of poor sending countries is uniquely fruitful because these countries, unlike wealthy receiving countries, are self-interestedly motivated to reduce the harms of South–North migration.

The most blunt measure poor sending countries might attempt is restricting emigration. Given the nature of the PDP, I cannot consistently oppose emigration restrictions on principle. Whether emigration restrictions are something my principle can recommend in a particular case depends on whether, given the capacity of the sending country to enforce emigration restrictions, it would truly be effective (in comparison to mutually exclusive policy alternatives) as a means for reducing avoidable harms to disadvantaged groups. Lea Ypi defends emigration restrictions on grounds that overlap with the concerns of my principle:

fairness in emigration requires that freedom of movement be restricted when it results in harm being done to citizens of the sending society. This implies that emigration may be legitimately restricted when allowing for the outflow of particular categories of emigrants leads to a reduction in the general welfare of the sending society. The principles according to which such restrictions may be placed must take into account how much the productive contribution of prospective emigrants affects the institutions of the source state. Again, such principles rely on skill-specific considerations. Justice in emigration requires limiting the outflow of more productive groups since it is precisely their exit which will most likely affect negatively sending societies. (Ypi 2008: 409)

If it were the case that emigration restrictions were both helpful, on balance, in preventing losses to human development prospects caused by emigration and not incompatible with other, more effective methods of achieving the same goal, the PDP would endorse them as well.

Emigration restrictions do not necessarily violate liberal principles. Traditionally, liberals have regarded the right of emigration as *prima facie* rather than as absolute, and have therefore thought it defeasible in extraordinary circumstances.²⁶ The typical circumstance in which liberals have allowed the right of emigration to be abridged (for persons generally, rather than for specific persons) are those in which “national security” might be seriously compromised by emigration, such as

during times of war. Largely, I would speculate, because most liberal political theory has concerned itself with the internal justice of at least moderately wealthy societies (societies in which no significant segment of the population routinely experiences basic resource deprivations), other circumstances in which societies might justly restrict emigration have not been considered. In no circumstance—not even war—does it seem less potentially unreasonable for a state to restrict emigration when the country is so under-developed that half or more of the population lives below the World Bank's severe poverty line and many of the country's middle-class professionals emigrate at their earliest opportunity, such as is the case for many sub-Saharan African countries. For these countries, I argue, it would not violate liberal norms to restrict emigration.

However, while I cannot consistently oppose emigration restrictions on principle, it does not seem to me that coercively preventing citizens from leaving ultimately is justifiable in terms of the PDP. With the exception of remote island states, coercive control of borders is extremely costly. The poorest countries in our world today (the countries, I have argued, for which emigration restrictions ought to be regarded as justified in liberal terms) hardly have the resources to prevent their citizens from leaving; indeed, they have a difficult time enforcing immigration restrictions, which, for most is a much easier task (few want to get in), unless they have a much poorer neighbor. These countries could successfully restrict emigration only by allocating already scarce public resources to the task. In terms of my principle, they would be much better served by allocating the same resources to human development projects, which would, over time, if well conceived and executed, reduce citizens' desire to leave.

6.5.3 Emigrant Taxation

As an alternative to restricting emigration, poor sending countries might impose a tax or fee on emigration. Many countries already impose emigration taxes, but most of those currently in place are designed merely to prevent wealthy citizens from escaping capital gains or estate taxation. Kapur and McHale defend a more general levy on skilled or highly educated emigrants, paid either by emigrants themselves or by hiring firms (Kapur and McHale 2005: 193). This proposal is attractive for the reason, among others, that it need not require the cooperation

of receiving countries, which might be difficult to secure insofar as they perceive that an emigration tax would diminish the flow of “resources” in their direction.

One difficulty facing this proposal (if the tax is to be paid by the migrant herself rather than by the hiring firm) is that many prospective migrants lack the financial liquidity at the time of emigration to pay anything more than a very modest tax. However, the more modest the tax, the less effective it will be in mitigating the harmful effects of emigration. One way to overcome this challenge is to allow emigrants to pay over time, after the act of emigration. Most migrants’ income increases substantially over time after arriving in the wealthier receiving country. The tax, under this variation, is administered by the hiring firm or institution as a payroll deduction, possibly in combination with partial tax forbearance on the part of the receiving country (Kapur and McHale 2005: 194). A disadvantage of this scheme, then, is that enforcement would likely require the cooperation of the receiving country. Fortunately, sending countries have some leverage here: receiving countries that refuse to cooperate in the enforcement of emigrant taxation would experience a sharp decline in the flow of skilled labor from abroad as many potential migrants could not afford to pay the tax in its entirety prior to migration.

One aspect of this proposal that merits exploration is what an appropriate rate of taxation for emigrants is. Given that higher tax rates would prevent emigration for some, one option is to fix the level of taxation at a rate that would maximize revenue for the sending country. (A lower rate of taxation might generate more revenue than a higher, more cost-prohibitive one.) Since the tax is not meant to prevent people from emigrating, an alternative to this is to set the rate of taxation at the highest possible level consistent with its affordability for the preponderance of people who would emigrate in the absence of the tax. These two options would have philosophically distinct rationales, but would probably align closely on the appropriate rate of taxation.

Since emigrant taxation is a policy option for sending countries, it does not directly compete with the recommendations I defend above in regard to the admissions policies of receiving countries. (Poor sending countries can tax emigrants whether wealthy receiving countries restrict skilled immigration or not.) Emigrant taxation (assuming the revenue generated is used thoughtfully) would minimize harm to the poor remaining behind in sending countries, and (since most

migrants are middle class in their country of origin) need not burden prospective migrants unduly. As long as the rate of taxation is not set prohibitively high (and receiving countries assist sending countries and migrants by enforcing measures that allow migrants to pay over time), emigrant taxation should not offend liberal sensibilities about freedom of movement. For these reasons, I believe emigrant taxation is strongly recommended by the PDP.²⁷

6.6 CONCLUSION

Immigration policies can harm three sets of people: the residents of receiving countries, prospective migrants, and the non-migrating residents of sending countries. Philosophical defenders of nationalist principles of political morality (as well as participants in popular and political discourses) display preponderant concern for the possible harmful consequences of immigration policies for the residents of receiving countries. Advocates of liberal and cosmopolitan principles, noting that the tendency to conceive of immigration generally as a harm to receiving countries is based on false (if not xenophobic) assumptions, have sought to balance the interests of residents of receiving countries with the interests of prospective migrants. However, few philosophers have worried for the consequences of immigration policies for non-migrating foreigners, and none have treated these effects of immigration policies as their primary concern.²⁸ This aspect of philosophical debates on immigration justice is disconcerting since the most disadvantaged social groups worldwide are disproportionately represented among the non-migrating residents of sending countries.

Perhaps what explains the neglect of non-migrating foreigners in debates on the justice of immigration policies is the apparent tendency among some philosophers to conceive implicitly of global migration flows as wholly causally prior to receiving countries' immigration policies; that is, to think of immigration policies merely as responding passively to rates and patterns of global migration that are, if not naturally occurring, then caused by other factors. If it were the case that receiving countries' immigration policies merely responded passively to global migration flows, then it may seem plausible that the only way an immigration policy could harm a foreigner is by refusing admission to her. Thus, there would be no need to consider, in assessing the justice of an

immigration policy, its effects on the interests of anyone besides the residents of receiving countries and prospective migrants.

However, the admissions and admissions-related policies of receiving countries (along with other “domestic” policies, bilateral and multilateral agreements, and the policies of international economic and political institutions) can and do substantially influence global flows of migrants, in ways (moreover) that can harm non-migrating foreigners. The most significant of these harms is the loss of human development prospects sending countries experience as a consequence of the emigration of educated, skilled citizens. The emigration of educated, skilled citizens does not always give rise to moral concerns. If the sending country already enjoys a high level of human development, the rate of educated, skilled emigration will tend to be so slow (even in the absence of strict immigration controls) that any harm it might cause will be negligible. If the sending country is extremely large by population, even if relatively poor in the aggregate, the emigration of educated, skilled professionals may not harm human development prospects since its rate will be made small by the country’s large population. The emigration of educated, skilled professionals threatens human development prospects, however, for small and medium-sized countries in which a significant proportion of residents are internationally immobile as a result of severe or extreme poverty.

Immigration policies whose philosophical rationale does not treat their global human development consequences as morally salient will (except by sheer coincidence) be unjust in terms of the principle I defend in this book, the Priority of Disadvantage Principle. The PDP holds that just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged. Concluding this chapter and the book itself, I wish to underscore three especially notable aspects of this principle and of my approach to immigration justice generally. First, different immigration policies are just for different countries. This claim does not evince a moral relativism on my part, but rather indicates my view that factors that vary among national social contexts influence whether or not a specific immigration policy is, by reference to universal principles of political morality (such as the PDP), just for a particular country. From the perspective of my principle, context-variant factors that are likely to be relevant to the determination of the justice of an immigration policy for a specific country include its state of human development (in relation to other countries), its position in

the international economic and political orders, contemporary trade relations and agreements, its historical relations with other countries (in particular, those with which it shares ongoing immigration and emigration links), what disadvantaged groups are most likely to be affected by its immigration policies (among current residents, prospective migrants, and non-migrating foreigners), its population size and geographical location, and economic and political conditions in nearby countries. Since these morally relevant features vary widely among countries, it is the case not only that different immigration policies are just for different countries, but also that justice may enjoin countries to adopt distinct immigration policies with respect to different countries. While certain kinds of criteria of admission and exclusion are almost always morally unjustifiable (for example, those based in assessments of cultural affinity), the moral appropriateness of others (such as economic criteria) depends on features of the sending country in relation to the receiving country. For example, there is probably little reason, as regards the PDP, for the United States to restrict substantially skilled immigration from France, India, or China. On the other hand, my principle would direct the US to limit cautiously skilled immigration from, for example, the DRC and Guatemala.

This first general implication of my principle and approach to immigration justice illuminates the second: the justice of an immigration policy cannot be ascertained in the absence of thorough investigation of the empirical circumstances in which it may be enacted. I have attempted to say in this chapter what sorts of immigration policies the PDP endorses or rejects as unjust with respect to fairly broad categories of countries. However, these applications of my principle are (as I cautioned initially) tentative and provisional. The formulation of policy prescriptions about which one can have a high degree of confidence will require methodical country-specific analyses; cavalier speculation about the consequences of an immigration policy is likely to produce recommendations with respect to it that aggravate the moral harms it is intended to ameliorate (even more so if based in ahistorical or anachronistic assumptions about the nature of global migration, migrants, or states). For this reason, it seems to me, a coordinated and cooperative effort involving philosophers and social scientists in a variety of specific disciplines is necessary to determine with greater specificity and certainty than I have attempted here which immigration policies, for each country, are just.

Last, immigration policies affect people mainly in virtue of their memberships in social groups, less so in terms of idiosyncratic aspects of their life circumstances. Those that entrench, intensify, or exacerbate severe global poverty harm unjustly disadvantaged social groups, among them the poor, but also women and disadvantaged racialized groups (both of whom are disproportionately over-represented among the poor worldwide). The potential for wealthy countries' immigration policies to harm human development prospects in countries of the Global South is perhaps the most significant, but nevertheless only one of many ways in which receiving countries' immigration policies can avoidably harm social groups that are already unjustly disadvantaged (as this chapter has revealed). This makes sense of my contention that social categories defined by gender, race, economic class, sexuality, ability, age, religion, caste, and citizenship status are especially salient for analyses of the justice of states' immigration policies: neglect of these categories makes it likely that major burdens imposed by immigration policies will be utterly overlooked or that their causes will be understood in a way that confounds attempts to rectify them. This is why efforts to construct just immigration policies must fix their attention on the social institutions that create these groups and condition the life circumstances of their members through the inequalities of opportunity they produce.

NOTES

CHAPTER 1

- 1 In this quotation, Castles and Miller are describing what they call the “historical–structural” approach, a theory of the causes of global migration they distinguish from their preferred view, migration systems theory. However, as Castles and Miller explain it, migration systems theory does not reject (or, is not incompatible with) the historical–structural approach; rather, migration systems theory merely regards the set of causes of global migration articulated by the historical–structural approach as incomplete by itself (not false).
- 2 See Martin 1997 for a critical discussion of the limitations of international law relating to refugees.
- 3 Rawls’ conception of “oppression” is narrow, and has to do with political tyranny; his example of oppression is the conscription of peasants by monarchs for dynastic wars.
- 4 Thanks to Alison Jaggar for such an eloquent expression of this thought.
- 5 I do not attempt here to argue more generally against the use of ideal theory in political philosophy. For persuasive critiques of the usefulness of ideal theory as philosophical methodology, see Jaggar 2009a, Mills 2005, and O’Neill 1996.
- 6 Matthew Lister also criticizes Rawls’ brief comments on immigration in *The Law of Peoples* for failing to consider that family-based migration would continue in a realistic utopia (Lister 2007: 759).
- 7 Carens is discussing this argument, not endorsing it.
- 8 As this quote indicates, what Pogge rejects is not immigration policy as topic for political philosophy *per se*, but rather the political advocacy of permissive immigration policies for the purpose of alleviating global poverty. Pogge’s actual objection does not necessarily attach to my positive arguments in this book, though a version of it does, and I believe it is therefore worth discussing.

- 9 There are several categories under which a foreigner may be admitted to the United States as a non-immigrant. Such travelers include foreign government officials, visitors for business and for pleasure, “aliens in transit” through the United States, treaty traders and investors, students, international representatives, temporary workers and trainees, representatives of foreign information media, exchange visitors, fiancé(e)s of US citizens, intra-company transferees, NATO officials, religious workers, and some others. See the US Citizenship and Immigration Services website (www.uscis.gov/portal/site/uscis, last accessed 8 July 2012) for delineation of these categories.

CHAPTER 2

- 1 I use the term “prescriptive nationalism” to distinguish this general position from Pogge’s concept of “explanatory nationalism,” which I mentioned in Chapter 1 and call upon again in this chapter.
- 2 Howard Chang presents a similar criticism, along with several others, of the two arguments of Walzer I examine here (Chang 2007: 30–1).
- 3 Joseph Heath provides a straightforward defense of the claim that states may limit immigration to guard against cultural “disruption” (Heath 1997: 350). Stephen Perry defends immigration restrictions on grounds of cultural stability (Perry 1995: 115). Both of these arguments suffer the objections I pose against Walzer and Miller. Chaim Gans also defends selective immigration policies premised (implicitly) on the threat that culturally dissimilar immigrants pose for receiving countries, although he denies that his argument depends on nationalist principles of political morality (Gans 1998). See Chapter 6 for criticisms of admissions priorities based in “cultural affinity,” such as those of Gans.
- 4 Miller defends what is essentially the same view in Miller 2005.
- 5 See, in particular, Cole 2000 (Chapters 5 and 6) and Pevnick 2009.
- 6 One could add that Miller’s condemnation of rulers of poor countries for failing to instate publicly funded welfare schemes is somewhat misplaced. In response to the massive debts poor countries of the Global South have accumulated (facilitated by the international borrowing privilege), wealthy countries of the Global North have, acting through the IMF and World Bank, imposed structural adjustment programs on debtor countries, whose purpose is “to orient local economies away from production intended to satisfy the needs of local people and toward producing goods for export” (Jaggar 2002: 120). Structural adjustment programs have increased the incidence of poverty (quantitatively and qualitatively) in the Global South and have mandated severe reductions in government provision of social services, which disproportionately harms women, who are already

substantially overrepresented among the poor globally (Jaggar 2002: 125–6).

- 7 Pogge is quoting from Rawls 1999, pp. 56 and 77.
- 8 One might also argue, drawing specifically on Pogge's critique of nationalist explanations of poverty in the Global South, that wealthy countries of the Global North responsible for severe poverty have rectificatory duties to alleviate it. Owing to their nature, these rectificatory duties would override state's positive duties to their own citizens (for example, to preserve the national identity), to the extent that they conflict. While I think it would be misguided to think (for reasons I give in Chapter 3) that wealthy countries should attempt to discharge their duties to alleviate global poverty through their immigration policies, it would be reasonable to hold that wealthy countries should not adopt immigration policies that contravene the fulfillment of their rectificatory duties to alleviate global poverty. This argument provides a distinct route, by appeal to backward-looking moral considerations, to the view that the moral claims of foreigners affected by the state's selection of immigration policies are weighty claims of justice, not mere appeals for beneficence.
- 9 One exception to my claim that economic nationalist arguments for restrictive immigration policies have not been given philosophical defense is Heath 1997. Heath argues that liberal states may restrict immigration to limit the extent to which immigrants consume public goods for which they have not adequately contributed (Heath 1997: 347–8).
- 10 Prescriptive economic nationalists defend in particular a variety of different changes to wealthy states' immigration policies that would make them less restrictive than they presently are; none defend "open borders" in the sense that some cosmopolitans do. Some argue that affluent states should eliminate quotas, such as the cap for H1B visas in the US, for highly educated foreigners (*Economist* 2008d); many argue for more permissive temporary worker programs (*Economist* 2005b, 2004); others argue for more permissive criteria for "unskilled" migrants (*Economist* 2008a, 2002b).
- 11 Also see *The Economist* 2008a, 2008b, 2008c, 2006, and 2004 for corroborating evidence.
- 12 I argue in Chapter 3 that perhaps the single most morally significant effect of the adoption of permissive immigration policies by wealthy countries is the deleterious effect on human development prospects in poor countries that it would have.
- 13 Macedo's argument focuses specifically on what sort of immigration policy the US should have, given these concerns. However, it seems to me that the essential aspects of Macedo's argument would apply to wealthy receiving countries generally, not just the US.
- 14 Perry asserts a similar view in relation to the political morality of

immigration policy (Perry 1995: 105). Michael Blake develops a view, in response to Carens' defense of open borders (see Chapter 3) that is similar to Macedo's as well (Blake 2006: 4–5; Blake 2003: 227–8). My final criticism of Macedo's view applies, *mutatis mutandis*, to the view of Blake's I mention here. However, Blake's view of the moral significance of national borders does not crucially factor into his positive view on immigration justice, which I discuss critically in Chapter 3.

- 15 This suggests that poor countries of the Global South, lacking international causal efficacy in comparison to wealthy countries of the Global North, may have weaker or less extensive duties of distributive justice. This suggestion is sensible, since in general causal efficacy is a condition of moral responsibility. ("Ought" implies "can.") Indeed, this reveals that it is redundant to accord moral priority to those over whom one has the greatest causal efficacy. One will have more extensive and more demanding duties to those with respect to whom one has the greatest causal efficacy (simply in virtue of having great causal efficacy with respect to them) than one will have to those in relation to whom one has more limited causal efficacy. Assigning special moral status to those with respect to whom one (already) has the greatest causal efficacy is a kind of "double-counting."

CHAPTER 3

- 1 Even more defend this claim not as their primary argument for open borders, but against objections to the distinct, facially non-consequentialist arguments for open borders they make. This is true of all the theorists I cite in subsequent portions of section 3.2.
- 2 See Cole 2000, Chapters 4–7.
- 3 I will not attempt to refute the libertarian understanding of the space of equality. Libertarians, then, will be unmoved by the argument that immediately follows. Cole's third argument for the right to freedom of international movement makes clear that he himself does not in fact accept this conception of the space of equality, despite his first argument's dependence on it.
- 4 Similarly, Ann Dummett argues, "Logically, it is an absurdity to assert a right of emigration without a complementary right of immigration unless there exist in fact ... a number of states which permit free entry" (Dummett 1992: 173).
- 5 One might charge that this reply to Cole's second argument stands in tension with my first reply to Cole's first argument. However, there is nothing inconsistent in rejecting libertarian conceptions of political morality in general while holding that some rights are nevertheless merely negative. Still, even though I believe that conceiving of the object of the

right of emigration as forbearance on the part of the country of origin defeats Cole's second argument, it is not one I enthusiastically endorse. My own view of the nature of the right of emigration is better captured in my second response to Cole's second argument.

- 6 Cole confirms my suspicion in more recent work on immigration justice (Wellman and Cole 2011), where he argues that present immigration regimes of powerful liberal states are unjust, in part, because they mirror historical systems of European colonialism: "We should realize that a group of powerful nations used their power to determine the shape and direction of global movements of people and resources, and this played a role in enabling them to dominate and exploit others in deeply immoral ways, ... and the current global migration regime operates in the same way" (Wellman and Cole 2011: 221–2). Cole may be right about the current global migration regime; however, his own proposal (if my arguments in subsection 3.2.1 succeed) not only mirrors the injustices of the colonial period, but aggravates them as well. Cole's proposal would maintain and, in fact, expand the massive flow of resources (by including human beings) from the Global South to the Global North that it was the project of European colonialism to effect—under the guise of individual liberty.
- 7 Cole is referencing the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (United Nations Commission on Human Rights 1984).
- 8 Admittedly, the argument from human agency does not appeal solely to the alleged egalitarian economic consequences of freedom of international movement. For example, Cole also mentions freedom of international movement as necessary for allowing people to escape oppression. However, enabling people to escape oppression does not require a universal right of immigration, merely that liberal states enact fair refugee policies. The freedoms to buy and sell labor and of association, to which Cole also appeals, may require more expansive freedom of movement, but Cole gives no reasons, *contra* Miller, to think that these freedoms should be understood as absolute (therefore requiring international mobility) (Miller 2007: 211–13).
- 9 I examine compensation programs in terms of my own principle in Chapter 6.
- 10 Cole also argues that in an ideal global political community in which citizenship is disconnected from nationality and territory, free international mobility is required for equal membership (Wellman and Cole 2011: 301). This is not implausible. However, as Cole himself acknowledges, political communities are not presently so ordered. In other words, this argument, if otherwise correct, would justify a right to freedom of international

movement only in ideal global political circumstances very distinct from those that currently obtain.

- 11 See Chapter 1 for a discussion of this concept.
- 12 Frederick Whelan presents a similar defense of freedom of international movement as a Rawlsian basic liberty (Whelan 1988: 8). Michael Dummett also gives a qualified defense of freedom of international movement on grounds of liberty, although his argument is not specifically Rawlsian. Dummett's argument, which seems to have its basis in Mill, is that states must not restrict individual liberty (including freedom of movement), except when the exercise of that liberty would seriously harm others (Dummett 2001). Dummett considers and rejects a number of common assertions made about the alleged harms of immigration, concluding that states may limit immigration on a large scale in only two circumstances: first, when there is "genuine danger of overpopulation"; second, when there is "danger of being submerged by the entry of a large number a people with a more robust culture" (Dummett 2004: 119). Dummett distances his second condition from popular, xenophobic fears about immigrants "swamping" native culture by specifying that it is fulfilled only in circumstances resembling European colonialism. I address a worry similar to Dummett's concern about overpopulation below, in subsection 3.3.1. My central objection to Dummett's view is that he considers only a narrow range of harms that migration might cause, and all those that he considers are harms to receiving societies. Thus, he does not address harms of international migration of the sort I enumerate in subsection 3.2.1.
- 13 In Carens' view, "restrictions may sometimes be justified because they will promote liberty and equality in the long run" (Carens 1992: 25). In particular, Carens holds that liberal states may restrict immigration for the sake of national security and in order to preempt a xenophobic backlash, maintain public order, and protect liberal institutions (Carens 1992: 28–32). (The last of these is also invoked as a ground for immigration restrictions in Whelan 1988 and Christiano 2008.) Carens insists that these four grounds justify exclusion only at minor rates. However, Cole argues plausibly that Carens cannot, consistent with the liberal principles to which he is committed, permit exclusion for these reasons (Cole 2000: 142–8). Veit Bader defends a view on immigration policy that is in many respects similar to Carens', given the ways Carens qualifies his defense of open borders. Bader endorses several nationalist grounds for opposing completely open borders (his list overlapping significantly with Carens'), grounds which he, unlike Carens, holds justify exclusion at non-trivial rates. However, Bader also maintains that affluent countries have a moral duty to assist the global poor, which they may partially discharge through immigrant admissions. He concludes in favor of "fairly open borders," by which he means that

- affluent countries ought to admit many more immigrants than they currently do. Bader suggests immigration quotas of 1.5 percent of the total population annually (Bader 1997, 2005).
- 14 My reply explains why Carens is incorrect to say that the argument that “we should actually try to keep people from emigrating (by denying them a place to go) because they represent a valuable resource to their country of origin would be a dramatic departure from the liberal tradition in general and from the specific priority that Rawls attaches to liberty.” (Carens 1987: 261) As I have argued, freedom of international movement is not a basic liberty protected under Rawls’ Liberty Principle. Moreover, Carens’ response reflects, and is implicitly justified by, his dismissive view about the negative effects of freedom of international movement on human development in poor countries. He claims that “more open immigration would help some of the worst-off, not hurt them,” and that “at the least, those who immigrate...often send money back home.” (Carens 1987: 261) For reasons given above, neither of these claims withstands empirical scrutiny.
 - 15 Bruce Ackerman makes a similar argument, based on equality of material opportunities, for relatively open borders (Ackerman 1980).
 - 16 Arash Abizadeh appeals to principles of democracy to argue that states lack a right to unilaterally control their own borders. I examine Abizadeh’s view in Chapter 5, rather than in this chapter, because it does not reflect a substantive moral position. Instead, it is an argument against the legal sovereignty of states. In Abizadeh’s view, cosmopolitan democratic institutions should have legal authority to determine states’ admissions policies (Abizadeh 2008).
 - 17 One might also argue against Exdell that rejecting other options for bringing about worldwide fulfillment of the right to democratic participation in favor of open borders violates the “right to stay” of the democratically excluded (see Oberman 2011).
 - 18 See Cole’s discussion of the libertarian argument that the state, like owners of private property, may prevent people from “trespassing.” Cole rightly concludes that so-called libertarian arguments that justify state control over immigration, as well as restrictive immigration policies, are not supported by a consistent application of libertarian principles (Cole 2000: 154–8).
 - 19 Garrett Hardin famously defends a version of the environmental argument for immigration restriction in affluent countries: “...unrestricted migration moves people to the food, thus speeding up the destruction of the environment in rich countries” (Hardin 2001: 362). Philip Cafaro and Winthrop Staples III defend what is essentially the same position as Chapman’s (Cafaro and Staples 2009). Michael Dummett and David Miller briefly

- articulate similar arguments as well (Dummett 2004: 119; Miller 2005: 201).
- 20 What counts as “overpopulation” depends on the purpose for which population is being measured (for example, to assess crowding, natural resource consumption, pollution generated, and so on). If the claim is, for example, that a given human population is “too high” given available natural resources, then its truth depends on assumptions about appropriate rates of use.
 - 21 Cafaro and Staples explicitly frame their argument in particularist nationalist terms: “Since a growing population undermines the right of future Americans to enjoy a safe, clean environment and to know and explore wild nature, we must reject a general right to freely immigrate into the United States” (Cafaro and Staples 2009: 20). Similarly: “we plead guilty to a special concern for America’s wildlife and wildlands. But we don’t apologize for it. Environmentalism necessarily involves love, connection and efforts to protect particular places” (Cafaro and Staples 2009: 25).
 - 22 Cafaro and Staples assert that migrants increase their consumption of resources after admission to the US (Cafaro and Staples 2009: 25), despite having claimed (earlier in the same article) that “there are apparently no good figures comparing immigrants’ and native-born Americans’ consumption patterns” (Cafaro and Staples 2009: 23). What is needed, in addition, are data on the alleged increase in consumption rates by South–North migrants. The only evidence that Cafaro and Staples present compares the average ecological footprint of residents of major source countries of immigration to the US with the average ecological footprint of residents of the US. This, however, reveals nothing about the ecological footprint of migrants, which is likely already higher than average in the sending country and lower than average in the receiving country.
 - 23 This explains why Cafaro and Staples must abandon their claim that, rather than admitting relatively poor foreigners, wealthy countries ought instead to “rework trade agreements, and increase and better target development aid, to help people live better lives in their own countries” (Cafaro and Staples 2009: 16). Wealthy countries should do none of these things, if the environmental argument is accepted. To be consistent, Chapman and Cafaro and Staples must adopt a position more closely resembling Hardin’s “lifeboat ethics” (Hardin 2001).
 - 24 This view is defended in two articles, one authored by Risse alone (Risse 2008) and one co-authored (Blake and Risse 2009). I reference and quote from both articles in this subsection, but attribute the view to both Blake and Risse throughout.
 - 25 Blake and Risse contend that states which, by Egalitarian Ownership, must admit more immigrants may use their discretion in selecting among them,

choosing (if they like) on the basis of national interest (however they conceive of it) (Blake and Risse 2009: 160). However, this is ad hoc; it does not follow from Egalitarian Ownership. It is also inconsistent with the views of Blake I examine in this section.

- 26 In his conclusion, Blake argues that states may provide aid to the residents of states that fail to provide for basic needs, rather than admitting them as immigrants (Blake 2006: 6).
- 27 This aspect of Blake's view yields a plausible reason that one might classify Blake's view as, fundamentally, a defense of the state's *prima facie* moral sovereignty over immigrant admissions (which is annulled or overridden in the case of foreigners whose country of origin does not provide for their basic needs). Blake's view on the political morality of immigration policies is more difficult to categorize than others I consider; plausible reasons could also be given to classify it as prescriptively nationalist (see the following note). What is most important, however, is the success of my substantive criticisms of Blake's argument, not the appropriateness of my categorization of his view. One reason I interpret Blake's (2006 and 2003) view as a cosmopolitan moral position is that this way of understanding it makes it consistent with the view he defends with Mathias Risse (Blake and Risse 2009). (See subsection 3.3.2.)
- 28 One could also classify Blake's view as prescriptively nationalist in virtue of arguments he makes against defenses of an unqualified, universal right of immigration. For example, in response to the argument that the location of one's birth is morally irrelevant on account of the arbitrary nature of state borders, Blake argues that the state's borders are also "the borders of its legal and political jurisdiction; individuals within that jurisdiction are jointly responsible for the administration of political justice. This fact binds those individuals together into a group of people with a shared project; this shared relationship gives them unique obligations to one another" (Blake 2006: 4). Similarly, in response to the argument that the reasons states must allow freedom of domestic movement apply equally in the case of freedom of international movement, Blake counters that states owe their citizens certain rights (such as a right of free movement) that they do not owe foreigners in exchange for the coercion they impose only on the former (Blake 2006: 5; Blake 2003: 227–8). While I accept Blake's conclusion (that there is no universal right of immigration), I find these arguments multiply problematic. Ryan Pevnick, who reads Blake as a defender of the moral sovereignty of states, offers a compelling critique of these arguments (Pevnick 2011: 66–76). However, *contra* Pevnick, Blake's arguments would not (if successful) support a moral sovereignty of states position; rather, they would constitute grounds for a nationalist moral position on immigration justice. (See Chapter 5 for more on this distinction.)

- 29 My first and second objections to Blake's view may appear to be in tension with each other, but they are not. My first objection points out that Blake's view has—given how he reasons about the issue—different implications from those he claims, in virtue of faulty empirical assumptions about the effects of immigration on receiving countries. My second objection holds that Blake's way of reasoning about the political morality of immigration is itself faulty, and that once this fault is corrected for, yet different implications follow from those Blake claims.
- 30 In a review article, Jonathan Seglow defends an exclusivist cosmopolitan position that bears some resemblance to Blake's. Seglow does not specifically articulate the principle underlying his view, but his conclusion is that "Citizens—especially citizens in rich states—have powerful duties to help build a just global order, one in which all persons are able to lead decent lives. Once achieved, this need not include completely open borders, although there are good reasons—not least to encourage the spread of cosmopolitan sentiment—for borders to be more open than they currently are. Until we realise that ideal, and perhaps even if we do, rich states have substantial duties to admit poor outsiders" (Seglow 2005: 329).
- 31 For example, Wilcox cites Carens' claim that, given certain empirical conditions, immigration restrictions may be necessary to "maintain public order, protect liberal institutions, or preserve a distinct culture or way of life" (Wilcox 2007: 276).
- 32 Although she does not include this provision in the initial description of her proposal, Wilcox briefly suggests support of it when discussing an example: "If preventing these additional deficits requires resettling Iraqis in a territory in which their subsistence needs can be safely met, then the United States must offer admission to these individuals and provide for their basic needs within the United States" (Wilcox 2007: 286).

CHAPTER 4

- 1 By "constraint," Cudd does not mean limitation, but rather "facts that one does or ought to rationally consider in deciding how to act or how to plan one's life, or facts that shape beliefs and attitudes about other persons" (Cudd 2006: 41).
- 2 This account also provides a way to identify the level of grouping at which a social group exists. How can one determine whether some collection of individuals is a social group, as opposed to a subset of a social group, or a collection of similar social groups? For example, are Episcopalians a social group in themselves, distinct from Presbyterians, or are they a subset of the social group Protestants? Are Protestants a social group in themselves, distinct from Catholics, or are they a subset of the social group Christians?

Are Christians a social group in themselves, distinct from Muslims, or are they both subsets of the social group Theists?

The answers to these questions, as concerns national social policy, is implicit in Cudd's definition of "social groups." Cudd defines social groups in terms of the institutionally structured constraints faced by individuals; individuals are members of the same social group insofar as they face similar institutionally structured constraints on their opportunities, choices, and actions. Thus, while two or more different sets of individuals may name themselves differently, they may still all belong to the same social group.

In the contemporary United States, Episcopalians are not a distinct social group from Presbyterians; Episcopalians and Presbyterians do not face non-trivially different institutionally structured constraints. In this social context, furthermore, Protestants and Catholics are not distinct social groups either, for the same reason (although this probably was not true in the United States fifty years ago). However, Christians and Muslims are clearly distinct social groups in themselves in the social context of the contemporary United States. "Theists," therefore, refers to a collection of similar social groups, not a social group in itself.

- 3 This figure is determined just by adding the number of categories in each dimension of social identity. One group in each dimension is privileged; the others are each disadvantaged to a greater or lesser extent.
- 4 This figure is the product, rather than the sum, of the number of categories in each dimension of social identity. Every group, save that whose members are privileged in each one of the eight dimensions of social identity, is disadvantaged in some respect.
- 5 In fact, to conceive of poverty or disadvantage in this way would simply make these concepts superfluous; there would be no point in speaking of "poverty" or "disadvantage" if they had the same meaning as "unhappiness." For this reason, furthermore, it would make no sense to say that wealth and privilege are instrumentally valuable for happiness if they were defined in the same terms—they would be constitutive of happiness. In other words, even if one believes that disadvantage is only instrumentally morally significant for some intrinsic good that consists in subjective welfare, this does not entail that disadvantage itself should be understood in terms of subjective welfare.
- 6 Following Sen's use of the term (Sen 1999).
- 7 Which capabilities are central human capabilities? I take Nussbaum's list (Nussbaum 2000: 78–80) as a good, provisional starting point. This list includes the capabilities for (1) Life, (2) Bodily Health, (3) Bodily Integrity, (4) Senses, Imagination, and Thought, (5) Emotions, (6) Practical Reason, (7) Affiliation, (8) living "with concern for and in relation to animals,

plants, and the world of nature" (Nussbaum 2000: 80), (9) Play, and (10) Control over One's Political and Material Environment. (Note: I do not endorse this list, as Nussbaum does, as part of a comprehensive theory of the good or as part of a theory of global justice; I endorse this list only as a rough guide to the central human capabilities that disadvantaged social groups lack.)

- 8 I take for granted that explanations of, for example, the fact the black people are substantially overrepresented among the poor in the US, in terms of biological essentialism and individual choice-making are both factually implausible and morally unacceptable.
- 9 In South Africa, the term "Coloured" refers to an ethnic group of people who possess some degree of sub-Saharan ancestry, but not enough to be considered Black under South African apartheid law. In addition to sub-Saharan, their ancestry is most often Dutch, British, or Malay.
- 10 While one might object that virtually everyone is disadvantaged relative to certain groups, such as, for example, billionaires, I would deny that billionaires constitute a social group in themselves, distinct from the wealthy (those whose access to the material conditions of decent human life is abundant and secure) more generally.
- 11 My resolution of this case may give rise to a worry about the feasibility of morally evaluating immigration policies for their effects on social groups, given the number of social groups the analysis of this case implies may exist. However, we can safely assume for many social groups, such as "Christians in American public universities," that immigration policies will not affect them as such, unless *prima facie* evidence to the contrary is brought forward by advocates of those groups.
- 12 One might argue that the extent of a person's material wealth is intrinsically significant, regardless of the social institutions under which one lives. However, a libertarian minimal state would engender constraints very different from those produced by an egalitarian welfare state for people who have very little personal material wealth, for example.
- 13 One might object that though the poor have no direct control over the social institutions that give their lack of material wealth social significance, they are nonetheless a voluntary social group because they have voluntary control over the extent of their material wealth. However, this view fails to consider the cyclical nature of poverty. In virtue of their poverty, the poor lack the resources that improving their economic status usually requires. This is confirmed by the fact that most adults belong to the same economic class as their parents, as Young notes:

People are born into a particular class position, and this accident of birth has enormous consequences for the opportunities and privileges they have for

the rest of their lives. Without a doubt, some born to wealthy-owner families die paupers, and others born poor die rich. Nevertheless, a massive empirical literature shows that the most consistent predictor of adult income level, educational attainment, occupation, and ownership of assets is the class situation of one's parents. (Young 2000: 96)

Moreover, the claim that the poor are a voluntary social group assumes that the poor have opportunities to improve their economic prospects, but this assumption overlooks the fact that the vast majority of the poor in the world today live under social institutions under which they cannot amass wealth no matter how hard they work.

- 14 Sometimes this is called "gaydar."
- 15 As this analysis implies, cisgendered homosexuals are marginal members of this group.
- 16 With respect to the conditions of injustice for both voluntary and non-voluntary social group disadvantage, I follow Cudd's view on when harm to voluntary and non-voluntary social groups is unjust (Cudd 2006: 52–3).
- 17 One might object that groups defined by citizenship status are voluntary because, although categories of admission are not under the control of immigrants, people choose to take up residence in countries where they lack citizenship. It is clear that this argument cannot be entertained in the case of refugees. I also believe it is implausible in the case of non-refugee immigrants, as it seems to assume that the reasons people migrate are frivolous. On the contrary, few people would move to a foreign country if it seemed to them that it was possible to make a comfortable life in their country of origin. Most migrants move only because they feel compelled to do so.
- 18 I recognize that my response to this objection is not entirely satisfying, since, although I believe it is not counterintuitive to say that immigration policies should not avoidably harm convicts or minors, it does seem counterintuitive to say that convicts and minors are, in principle, unjustly disadvantaged social groups. Nonetheless, I believe my above response to these counterexamples defeats the challenge they pose for my central thesis; at best, these counterexamples continue to challenge my criteria of the injustice of social group disadvantage. This suggests that non-voluntariness of membership is not by itself sufficient for social group disadvantage to be unjust, and that some other condition must be added, one that would exclude convicts and minors.
- 19 Thanks to David Boonin for suggesting this strategy to me.
- 20 My discussion of harm to social groups may appear to assume that an immigration policy will affect all members of a social group in the same way. Let me clarify that it is not my view (nor does the successful applica-

tion of my principle require) that an immigration policy will engender the same precisely specified consequences for all members of a social group. However, I would claim that members of a social group tend, for the most part, to be affected similarly by policies in the broad sense of either being harmed or not (assuming the group is affected at all). As this suggests, I would grant that in many, if not most, cases, a few members of the group will be affected in a way that differs from the rest of the group in virtue of exceptional, idiosyncratic life circumstances. I do not take these trivial exceptions to be a problem for my view. In cases in which a significant portion of the group is harmed but another significant portion is not, what is most likely is that the individuals who make up the group are not being affected in their capacity as group members, but for some other reason. (It may be that some members of the group are experiencing effects of the policy consequent on other, overlapping social group memberships.)

- 21 On this understanding of avoidable harm, this size of the groups whose interests conflict is not morally relevant. Moreover, the principle of priority to the most disadvantaged group is recursive in the sense that, if the repeal of P makes B worse off than A currently is (under P), then the repeal of P (rather than its maintenance) is unjust.
- 22 It seems to me that the case I have described abstractly here is an exceptional one. It is plausible that, other things being equal, the group whose disadvantage is most unjust will also experience the most intense disadvantage when the injustice of a social group disadvantage is measured according to Pogge's model. This means that the two versions of the PDP will reach divergent conclusions in conflict cases only in somewhat peculiar circumstances.
- 23 Eric Cavallero has proposed a principle of immigration justice that shares the spirit of mine, being motivated by concern for groups that are "systematically disadvantaged by law" (Cavallero 2006: 98). It is that "richer countries should admit the number of immigrants that optimizes long-term human development projections in the worst-off countries" (Cavallero 2006: 109). I would qualifiedly endorse Cavallero's principle, which is, except perhaps in some cases, compatible with the PDP. There are several differences between Cavallero's principle and my own. First, Cavallero's principle is attuned solely to the issue of human development in poor countries, which is a major, but not the only, concern of the PDP. Cavallero's principle would have no implications for immigration policies that harm disadvantaged social groups beyond the global poor. Second, Cavallero's principle has no implications for the justice of poor and middle-income countries' immigration policies, unlike the PDP, which I defend as universally applicable. Third, although Cavallero is explicit

that his principle does not necessarily recommend open borders (“For a given number of visas granted, it may be that granting a larger or a smaller number would yield superior development projections” (Cavallero 2006: 109)), he does not otherwise say what admissions policies his principle might endorse, either in regard to how many immigrants affluent countries ought to admit, or what categories of immigration affluent countries ought or ought not allow. Finally, while my principle seeks to protect the capabilities of members of disadvantaged social groups, Cavallero’s principle is concerned for the Human Development Index (HDI) of poor countries. This aspect of Cavallero’s principle is, in my view, its chief weakness. HDI is an aggregated measure of quality of life within a country that incorporates by a specified function measures of nutrition, life expectancy, literacy, and GDP per capita. On account of its aggregative nature, HDI cannot detect systematic inequalities within countries.

CHAPTER 5

- 1 Miller (2007: 214–21) provides a utilitarian argument for the legal sovereignty of states. See subsection 5.2.3 (note 6) in this chapter.
- 2 Arash Abizadeh (2008: 37–65) interrogates the legal sovereignty of states view. His argument is that the democratic theory of political legitimation requires that state coercion be justified to all those over whom it is exercised. Since border controls subject both citizens and non-citizens to coercion, principles of democracy require that border controls be justified to both citizens and non-citizens in order to be politically legitimate (Abizadeh 2008: 44–5). Abizadeh’s rejection of the legal sovereignty of states view does not by itself entail open borders, since he argues that the legal or political authority to select immigration policies should rest with another entity: “cosmopolitan democratic institutions that have jurisdiction either to determine entry policy or legitimately to delegate jurisdiction over entry policy to particular states (or other institutions) (Abizadeh 2008: 48). Since Abizadeh rejects the legal sovereignty of states with respect to immigration policy, he must also reject the moral sovereignty of states with respect to immigration policy. Thus, Abizadeh’s arguments are amenable to my own, since I also reject the moral sovereignty of states with respect to immigration policy.
- 3 Martín Chamorro invokes just war theory’s requirement of proportionality specifically against the moral sovereignty of states with respect to immigration policy (Chamorro 2012).
- 4 Scanlan and Kent acknowledge this objection, but their response is not satisfactory. They claim that in the absence of a sovereign global authority, the mutual dependence of states may be transitory, and that, therefore, a

state of war may resurface at any time. However, mutual dependence of interests can never be guaranteed, even in the simple case of individuals within the nation-state, and so this argument, if true, proves too much. Moreover, Scanlan and Kent seem to regard the present mutual dependence of states cited by Beitz as anomalous, when in fact it is an aspect of a pattern of globalization that involves increasingly pervasive institutionalized relations of mutual dependence.

- 5 Perry also appeals to the political self-determination of states to justify their moral sovereignty with respect to immigration policy (Perry 1995: 105). Like Walzer, Perry also makes arguments (based in “cultural stability”) for immigration restrictions (Perry 1995: 113–15), which stand in tension with his advocacy of the moral sovereignty of states.
- 6 In work more recent than that which I examined in Chapter 2, David Miller also appeals to political self-determination in defense of the moral sovereignty of states. Miller’s argument is that states have moral sovereignty over admissions on account of the potential for immigration to affect the receiving country in a variety of profound ways, both positive and negative (Miller 2007: 222–3). Miller addresses the final objection I raise against Walzer by invoking arguments he makes (in Chapter 2 of Miller 2007) “in favour of recognizing special obligations to one’s compatriots” (Miller 2007: 223). Miller’s argument is, in this way, an improvement on Walzer’s. However, Miller’s appeal to nationalism is at odds with, rather than in support of, the moral sovereignty of states he seeks to defend here. (See section 2.1 or section 5.3.) In addition, Miller’s strategy makes his defense of the moral sovereignty of states dependent on the success of nationalism, which I challenge below.

Miller presents three other arguments for state sovereignty over admissions, a utilitarian argument (Miller 2007: 214–15), (what could be called) the “value-added” argument, and the “symbolic value” argument (Miller 2007: 216–19). However, Miller’s arguments have no obvious implications for immigration policy; these arguments only establish a general right of states to territorial authority. Moreover, even if Miller’s arguments have implications for immigration policy, they are only arguments for states’ legal sovereignty over admission, which he acknowledges: although these arguments “may establish that states can have the right to control entry, they do not show that states *ought* to exercise that right, or *how* they should exercise it, if they do” (Miller 2007: 222, emphasis in original).

- 7 My explication of Wellman’s position is based on Wellman and Cole 2011. Wellman also defends this view in Wellman 2008.
- 8 It may be that Wellman’s view is that political self-determination extends to all matters that regard the self, irrespective of whether they are other-regarding as well. However, if one understood Wellman’s view in this

way, it would make Wellman's position morally implausible. There is also textual evidence that Wellman means to limit political self-determination to purely self-regarding matters; discussing an example, Wellman uses "self-regarding" and "wholly internal" interchangeably (Wellman and Cole 2011: 27).

- 9 This appears to be how Wellman previously conceived of self-regardingness, as Fine notes (Fine 2010: 345): "It is not always clear when any given action is purely self-regarding," but "many people believe that we should be allowed to choose freely when our behavior is not harmful to others" (Wellman 2003: 265).
- 10 Miller does offer such an argument as part of his own appeal to political self-determination in defense of the moral sovereignty of states. (See note 6 in this chapter.)
- 11 Pevnick subjects this qualification on his view to its own qualification, arguing that we should "allow economic refugees (those from severely impoverished areas) until it begins to have an important effect on the political community's standard of living" (Pevnick 2011: 103). The interests of poor prospective migrants no longer outweigh citizens' claims of associative ownership, Pevnick argues, if their admission "imposes risks or constraints on our lifestyle" (Pevnick 2011: 103).
- 12 This statement by Pevnick of the strong version of the objection suggests that my first interpretation of his response to the weak version of the objection is the correct one.
- 13 My argument is not premised on the weak claim that residents of Global South are affected by policies enacted by countries of the Global North. Such a premise would be easier to defend, but would require me to argue for a moral premise that Pevnick does not accept. Thus, it would not accomplish my purpose, which is to provide an immanent critique of Pevnick's view.
- 14 One might argue that it is much easier to calculate the contributions of citizens through tax payments than it is to quantify the extent to which residents of the Global South contribute to the economies of the Global North as a result of global economic institutions imposed by the latter. Certainly, calculating this amount with any precision would be enormously difficult, as it would rest on a variety of controversial counterfactual assumptions, empirical speculation, and philosophical judgments. However, there can be no doubt that the contribution is significant, and the fact of our ignorance about its precise extent would surely be an unconvincing and self-serving rationale for disregarding it.
- 15 This point echoes the argument made by Alison Jaggar that "the global accounting system [for calculating the alleged "Southern Debt"] disregards many of the economic values produced by the global South and

many of the economic burdens imposed by the global North" (Jaggar 2002: 129–34).

- 16 Pevnick makes one other reply to the objection he considers: he argues that even if the US were dependent on international institutions in the same way that California is dependent on the federal government, it would still not be the case that the US would have no right to control immigration. This is because California gave up its right to control immigration in order to join the union, but the US has done no such thing. However, this is beside the point. The question is: should the US give up control over immigration? If California asserted the right to control immigration, despite its dependence on the federal government, the associative ownership view would entail that California had acted wrongly.
- 17 The truth of explanatory nationalism depends on what phenomena are being explained. Explanatory nationalism may be accurate for some phenomena, but inadequate for others. I argue here that prescriptive nationalism with respect to immigration policy typically depends on nationalist explanations of particular phenomena that are false.
- 18 On a backward-looking conception of the PDP, there is a further objection to prescriptive nationalism available from considerations of the descriptive inadequacy of explanatory nationalism. A backward-looking PDP would demand that the state not adopt immigration policies that avoidably harm social groups whose unjust disadvantage the state is causally (or in some other respect morally) responsible for. When the state is responsible (causally or otherwise) for a social group's unjust disadvantage, it will, therefore, have stringent duties of rectification with respect to that group, whether the group consists of citizens or foreigners (or both); the nationality of the group's members makes no moral difference in such circumstances. While in most cases there will likely be little reason for thinking that the state must discharge these duties through its immigration policy choices, it is nevertheless the case that the state must not select immigration policies that contravene its rectificatory obligations by entrenching or exacerbating the group's disadvantage. Rectificatory obligations are conventionally held to be equally stringent with respect to both citizens and foreigners; foreign nationality does not weaken rectificatory obligations. These rectificatory obligations circumscribe the range of immigration policies from amongst which states may select in service of national interest, even if prescriptive nationalism is otherwise true. Prescriptive nationalists who adhere to explanatory nationalism (even if only tacitly) are likely to overlook this point on account of their assumption that the unjust disadvantage of a social group cannot have been caused by a foreign state. The availability of this response to prescriptive nationalism speaks in favor of a backward-looking understanding of the PDP, but I nevertheless resist this way of conceiving it.

- 19 To clarify, my reply to Miller should not be construed as an argument against the use of democratic procedures to set immigration policies. While the political legitimacy of an immigration policy may depend on its having been determined by proper democratic procedures I would deny that an immigration policy's having been selected by a proper democratic procedure is a sufficient condition of its being just. As my advocacy of the PDP indicates, I believe there are substantive moral conditions on the justice of an immigration policy.
- 20 To my knowledge, no one has ever suggested this, but it is nevertheless worthwhile to explain the likely reasons for this, as part of my defense of the PDP.
- 21 One might wonder, in virtue of this, why I don't simply supplement the principle of proportionate distribution with the PDP (rather than rejecting the principle of proportionate distribution). The reason is that, if immigration policies were required to satisfy both principles, then the only immigration policies that would be just would be those that harmed no social groups. I assume that there are no immigration policies of this kind.
- 22 I maintain this claim as empirically true, but it is also analytically true. To the extent that chance mass imprudence on the part of members, group-wide coincidental bad luck, or biological inferiority could, conceivably, explain the relative deprivation of a certain group, then the group in question would not be a "social group," as I define the term. It should be noted, moreover, that even if one were to argue that a social group (for example, women) is opportunity-deprived relative to another (for example, men) because (even if only in part) of biological differences between the two, such alleged biological differences would only appear to explain inequalities between the groups on the assumption that the social institutions that respond to these differences are natural, immutable, and therefore, inevitable.

CHAPTER 6

- 1 Note that a conflict only arises, on a backward-looking understanding of the principle, if the state in question is responsible for the disadvantage of both groups.
- 2 "HDI" refers to the United Nations Development Programme's Human Development Index, which seeks to measure human well-being in countries worldwide by reference to life expectancy at birth, education, and income. (See UNDP 2011.)
- 3 See section 2.4 for a review of recent data on the economic effects of immigration on wealthy receiving countries.
- 4 See Wilcox 2005.

- 5 The absolutely poor are a different social group from those who are poor by the conventions of their society, although these groups have partially overlapping memberships.
- 6 The distribution of wealth in many middle-income countries is highly inequalitarian; thus, despite the fact that they are not poor by global standards in the aggregate, they nevertheless contain a considerable number of severely poor residents. This is true for many Latin American countries.
- 7 See also Carens 2003: 105–6 for a discussion of the permissibility of medical exclusions.
- 8 Note that I am not arguing that wealthy countries should begin to admit the sick residents of the Global South as a strategy for alleviating the global burden of disease. This would plainly be an ineffective strategy. My claim is merely that medical exclusions of the sort I have described are unjust in the circumstances I have specified.
- 9 The disabled are, considered as such, a social group, not simply a collection of people with similar medical conditions. Nevertheless, I would give the same analysis in terms of the PDP of immigration policies that exclude the disabled, which presumably have the same nationalist rationale as medical exclusions.
- 10 See also Carens 2003: 104 for a discussion of criminal exclusions.
- 11 This assessment is independent of the PDP. Moreover, as Cole argues, it is doubtful whether a liberal state, committed in principle to the moral equality of all persons, may permissibly deny admission to a foreigner with a criminal record, given that it would be regarded as illiberal to expel citizens with a similar criminal record (Cole 2000: 142–3).
- 12 It does not seem to me that criminal exclusions, in principle, engage the concerns of the PDP specifically.
- 13 See also Carens 2003: 104 for a discussion of security exclusions.
- 14 I assume for simplicity's sake that the terrorist's cause and planned action itself are unjust. Other conclusions may follow in the absence of this assumption.
- 15 Many states give preference in admission to prospective migrants who in certain ways display affinity for the culture of the receiving country. Cultural affinity on the part of the prospective migrant may be indicated by speaking the official language, a reasonable awareness of the country's history, practicing the society's dominant religion, ethnic ties, or expressed approval for the political or moral values of the society, perhaps among other things. I do not consider the justice of cultural affinity as a criterion of admission in the main text because I would reject it as unjust, in terms of the PDP, for the same reasons that I reject cultural dissimilarity as a ground of exclusion.
- 16 The likelihood that this claim is true is complicated by the fact that the

immigration of relatively wealthy foreigners may have destabilizing and on-balance negative effects on human development in already poor countries, as sometimes appears to be the case when, for example, middle-class and wealthy retirees from the US move to Latin America. Retirement migration may cause inflation (due to the rapid influxes of capital that come with it) and tends to make real estate unaffordable for local residents (Dixon et al. 2006).

- 17 The US does not recognize marriages occurring in other countries of people of the same sex for immigration purposes. Canada and the EU do (Lister 2007: 762).
- 18 See Lister 2007 for a Rawlsian argument against restricting family-based immigration benefits to heterosexual married couples.
- 19 For other aspects of the injustices of extant (US) family reunification-related immigration law, see Narayan 1995.
- 20 For an alternative assessment, see Lister 2010. Lister defends the right of current citizens and residents to have their close relatives admitted as immigrants against (what I call) the moral sovereignty of states view. For this reason, his arguments are not directly applicable to my analysis of family reunification policies in terms of the PDP.
- 21 I owe the phrasing and inspiration for this pessimistic, but nevertheless sober thought to Uma Narayan (personal correspondence).
- 22 The distinction I am drawing between “ideal” and “non-ideal” is different from Carens’ distinction between “idealistic” and “realistic” (Carens 1996: 156). Carens’ distinction concerns practical political feasibility; so-called realistic approaches possess it, but only because morally they are second- or third-best compromises. “Idealistic” approaches, in Carens’ sense, are morally optimal, but unlikely to be adopted given political realities. In contrast, an approach is ideal, as I am using the term, if it reasons about what is morally justified in circumstances already characterized by justice; an approach is non-ideal if it reasons about what is morally justified in actual, unjust circumstances. Thus, the policy recommendations I argue follow from the PDP are probably idealistic, in Carens’ sense, but non-ideal in my sense. Carens’ advocacy of open borders (see Chapter 3) is idealistic in his sense and (given my criticisms of it) ideal in my sense.
- 23 See Pogge 2002 and Jaggard 2002 for sustained defenses of these claims.
- 24 I consider emigration compensation only in outline, to the extent necessary to answer this question. I defer discussion of many concerns that would have to be addressed in far more detail than I afford them here for the purpose of implementation. These include: What, precisely, are wealthy receiving countries compensating for? (How is this to be measured?) Should compensation vary by category of immigration? Which countries must be compensated for emigration? Which countries ought

- to be regarded as owing compensation? Who, precisely, in the sending country should be compensated? Does continued eligibility for emigration compensation depend on effective use of funds already received? (How is this to be measured?)
- 25 One might also worry that wealthy receiving countries might finance compensation programs in ways that are disproportionately harmful to domestic disadvantaged groups (for example, by cutting domestic social spending).
- 26 See my discussion of Cole's view in Chapter 3.
- 27 Brock also defends emigrant taxation (Brock 2009: 211). Ypi objects to emigrant taxation as unfairly doubly burdening migrants: "Migrants, for example, would in fact be burdened twice, having to contribute both in sending societies to compensate for old citizenship benefits *and* in receiving ones to acquire the new ones" (Ypi 2008: 414, emphasis in original). However (insofar as fairness is one's main moral concern), Ypi's objection, as she states it, seems to assuage itself: migrants are taxed twice, but in exchange for benefits acquired from both societies. Moreover, from the perspective of the PDP, the rationale for emigrant taxation is not backward-looking (that migrants owe their countries of origin), but forward-looking (emigrant taxation—even if "unfair" to migrants—mitigates the pernicious effects of brain drain). In addition, the burden emigrant taxation imposes on skilled migrants is of only secondary concern for the PDP, as skilled migrants (although usually disadvantaged, all things considered) tend to be privileged in comparison to their poorer, internationally immobile compatriots.
- 28 The exception to this claim is Gillian Brock, the eighth chapter of whose book treats the human development consequences of wealthy countries' immigration policies as a fundamental concern (Brock 2009).

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INDEX

- ability *see* disability
Abizadeh, Arash, 239n, 247n
Ackerman, Bruce, 239n
admissions criteria, 19, 21, 24, 60, 63,
154–5, 157, 184, 186, 206, 213
cultural affinity, 218, 231, 234n, 252n
economic potential, 213–15
family relationships, 215–17
Africa, 5, 7, 9, 67–8, 100, 160, 180, 201,
207, 216, 220, 227
age, 1, 111, 116, 118, 132, 215, 232
minors, 52, 133, 215, 245n
aggregates, 32, 111, 113, 127, 140
Algeria, 8
America *see* United States
Anderson, Elizabeth, 120, 122–3, 194–5
Angola, 67
Asia, 5, 7, 106, 180, 216, 220
asylum *see* refugees
Australia, 4, 7, 36, 49, 164
Aborigines, 36
White Australia policy, 164
avoidability *see* harm

Bader, Veit, 238–9n
Bangladesh, 8
Beitz, Charles, 152, 248n
Benhabib, Seyla, 3, 11, 35–6
Benin, 68
Blake, Michael, 96–105, 236n, 240–2n
as a nationalist, 236n, 241n
Egalitarian Ownership, 96–100,
240–1n
political burden of immigration,
100–5, 241–2n
Borjas, George, 49

brain drain, 67–72, 202–7, 213–17,
223–9, 254n; *see also* development
brain waste, 49
Brazil, 67
Britain *see* United Kingdom
Brock, Gillian, 45, 63, 67, 69, 72, 223,
254n

Cafaro, Philip, 239–40n
Canada, 4, 36, 49, 54, 221–2, 253n
First Nations, 36
capabilities, 74, 119, 122–7, 132–4,
137–43, 146, 193, 223, 243–4n, 247n
as a metric of disadvantage, 122–6
as a metric of harm, 137–40
see also Nussbaum, Martha; Sen,
Amartya
Cape Verde, 68
Carens, Joseph, 17, 19, 61–2,
69–72, 82–4, 90–1, 216,
233n, 236n, 238–9n, 242n,
252–3n
brain drain, 69, 239n
libertarianism, 90–1
open borders, 61–2
paternalism, 70–2
Rawlsian arguments of, 82–4
remittances, 69–70
Caribbean *see* Latin America and the
Caribbean
caste, 112, 232
Castles, Stephen, 4, 6–9, 16, 28, 47–9, 63,
68–70, 136, 204, 222, 233n
Cavallero, Eric, 246–7n
chain migration, 19; *see also* family
reunification

- Chamorro, Martín, 247n
 Chang, Howard, 61, 234n
 Chapman, Robert, 93–6, 239–40n
 charity *see* supererogation
 China, 5, 28, 67, 206, 231
 citizenship, 1, 35, 56, 61, 75–6, 82, 87–8, 91, 111, 116, 118, 132, 165, 232, 245n, 254n
 citizenship status as a social group category, 1, 111, 116, 118, 132, 232, 245n
 coercion, 10, 104, 241n, 247n
 Cole, Phillip, 11, 45, 72–81, 84–5, 90, 147, 177–8, 180, 188, 234n, 236–9n, 252n, 254n
 human agency, 78–81, 237–8n
 liberal consistency, 72–6, 236n
 symmetry argument, 76–7, 236–7n
 colonialism, 8, 136, 165, 167, 180, 220, 237n, 238n
 communitarianism *see* Walzer, Michael
 compatriots, 32, 34, 36, 52–3, 55–7, 163, 173–4, 179, 248n
 co-nationals *see* compatriots
 Congo, 68
 consequentialism, 28, 60–3, 68–9, 72, 78, 90, 135, 150, 187–90, 236n
 argument for open borders, 60–72
 see also Priority of Disadvantage Principle; utilitarianism
 convicts, 133, 245n; *see also* exclusion criteria
 corruption, 37, 39–42, 68, 160, 224
 cosmopolitanism, 20–1, 56, 58, 59–60, 72, 90, 93–6, 101–2, 105, 108–9, 137, 143, 145–7, 177, 185–6, 210–11, 213–14, 229, 235n, 239n, 241n, 242n, 247n
 definition of, 59
 exclusive, 93–108
 inclusive, 60–93
 countries of emigration, 5
 countries of immigration, 4–5
 Cudd, Ann, 112–13, 117, 129–30, 242–3n, 245n
 cultural imperialism, 205–6
 culture, 25–8, 31–3, 35, 48, 57, 72, 83, 112, 123, 129, 153, 165, 182–3, 205–6, 238n, 242n, 252n
 as a ground of exclusion, 205–6, 252n
 distinctiveness of, 26–8
 homogeneity of, 27–8, 35, 182–3
 relation to social groups, 112, 123, 129
 see also Walzer, Michael
 democracy, 11, 13, 15, 32, 34, 82, 86–9, 156, 183, 239n, 247n, 251n
 democratic argument for open borders, 86–9
 deontology, 150
 Desai, Mihir, 68–9
 de-Shalit, Avner, 123
 development
 economic, 7, 198
 human, 13, 28, 54, 67, 74, 81, 99, 198, 207, 213–14, 217, 223–4, 226–7, 230, 232, 235n, 246n, 253n, 254n
 diminishing marginal utility *see* utilitarianism
 disability, 116, 118, 119–20, 125, 194, 252n
 ability as a category of social grouping, 1, 111, 116, 118, 132, 252n
 disadvantage, 119–37
 baseline of, 125–6
 domestic disadvantaged groups, 51–7
 metric of, 119–25
 unjust disadvantage, 128–32
 discrimination, 66, 121, 124, 131, 208
 distributive justice, 12, 52–6, 133–4, 186, 189–93, 195, 197, 236n, 251n, 252n
 domestic work, 66, 117, 180
 dominant groups, 27, 36, 157, 181, 205–6, 211; *see also* privilege
 Dominican Republic, 8
 Dummett, Ann, 236n
 Dummett, Michael, 238n, 239–40n
 Dutch Disease, 100
 duties of assistance, 17, 29–30, 37–8, 42–3, 52–4, 97, 105, 160
 ecological crises, 4, 7, 16; *see also* environmental impacts of immigration
 economic class, 1, 111, 113–15, 118, 130–2, 208, 214, 232
 domestic poor, 51–7

- economic class (*cont.*)
 global middle class, 81, 216
 global poor, 30, 54, 61–5, 74, 80–1, 88, 98–9, 168, 219, 246n
 working class, 48, 52, 143, 204
 economic effects of immigration
 on receiving countries, 44–9
see also brain drain; development; remittances
Economist, The, 44–50, 235n
 Egalitarian Ownership, 96–100, 240–1n
 emigration
 compensation programs, 81, 222–5, 237n, 253–4n
 countries of, 4–5
 economic effects *see* brain drain, remittances
 restrictions on, 225–7
 right of, 10, 76–7, 188, 226, 236–7n
 taxation, 227–9, 254n
 environmental impacts of immigration, 68, 93–6, 165, 239–40n
 essentialism, 35, 244n
 ethnicity, 13, 25–7, 33, 35, 86, 154, 206, 216, 244n, 252n
 Latinos, 116
 Europe, 4–5, 7, 63, 68, 99–100, 160, 216, 220, 237n, 238n
 European Union, 9, 40, 75, 253n
 exclusion criteria, 202–13
 criminal exclusions, 209–10
 cultural exclusions, 205–6
 medical exclusions, 208–9
 nationality exclusions, 206–7
 numerical quotas, 211–13
 poverty-based exclusions, 202–5
 security exclusions, 210–11
 social group exclusions, 207–8
 Exdell, John, 86–9, 239n
 explanatory nationalism, 2, 36–43, 56, 100, 160, 169, 178–9, 234n, 250n; *see also* Pogge, Thomas
 exploitation, 42, 53, 65–6, 71, 74, 81, 237n
 false consciousness, 120
 family reunification, 7, 19, 52, 212, 215–18, 233n, 253n; *see also* admissions criteria
 famine, 7, 11, 13, 16, 36–7, 42, 160
 feminism, 116, 207
 Fiji, 67
 Fine, Sarah, 161–2, 249n
 First World *see* Global North
 France, 8, 41, 206, 231
 freedom of association, 80, 84, 91, 158–64, 237n; *see also* Wellman, Christopher Heath
 freedom of movement, 9, 61, 79–80, 85, 91, 187–8, 226, 237n, 238n, 241n
 freedom of international movement, 3, 62, 70, 72–5, 78–85, 92, 238n, 239n, 241n
 free trade, 4, 8, 17, 220
 Friedman, Milton, 44
 Gans, Chaim, 234n
 gender, 1, 6, 35, 55, 64–7, 69, 71, 78, 111–13, 115–18, 129, 131–2, 213, 232
 men, 6, 14, 64, 115–18, 121, 127, 207, 215
 women, 6, 14, 49, 64–6, 114–18, 122, 125, 127, 180, 196, 207, 232, 234n, 251n
see also transgender
 genocide, 165, 167
 Germany, 4, 8, 41
 Ghana, 67, 220–22
 global economic institutions, 8, 30, 38–40, 60, 72, 88, 106–7, 142, 152, 159–60, 169–70, 219–20, 249n; *see also* International Monetary Fund; World Bank; World Trade Organization
 global economic order, 19, 108, 201
 Global Harm Principle *see* Wilcox, Shelley
 globalization, 2, 4, 7, 173–5, 180, 248n; *see also* Beitz, Charles
 global migration, 4–9, 13–19, 28, 63–6, 92, 101, 199, 203, 222, 229, 237n
 causes of, 5–9, 16–17
 rates of, 4–5
 Global North, 4–5, 30, 39–40, 53, 55, 57, 61, 63–4, 88, 159–60, 169–70, 173, 180, 214, 222, 234–5n, 236n, 237n, 249n, 250n
 global poverty, 3, 17–19, 39–43, 55–6, 61–70, 72, 89, 99, 184, 217, 219–20, 232, 233n, 235n

- absolute, 16, 53–4, 69, 99, 203–4, 214, 252n
 global economic inequality, 3–4, 9, 16–17, 19, 61–2, 80–1, 83–5, 86, 98, 184–5, 190
 relative, 53, 121, 124, 203
see also economic class
- Global South, 4–5, 9, 30, 38, 40, 42, 54–5, 57, 61, 69–70, 77, 88, 103, 106, 159–60, 169–70, 173, 178–80, 213–14, 220, 222–4, 232, 234–5n, 236n, 237n, 249n, 252n
- Gould, Carol, 86–7, 89
- group rights, 35
- guest workers *see* temporary migration
- Guinea Bissau, 68
- Haiti, 54, 67–8, 203
- Hamilton, Bob, 62–5
- Hardin, Garrett, 239n, 240n
- harm, 137–43
 avoidable, 140–3
 baseline of, 138–40
 Global Harm Principle *see* Wilcox, Shelley
 metric of, 137–8
- Haslanger, Sally, 117
- Heath, Joseph, 234n, 235n
- historical conception of justice *see* Nozick, Robert
- historical injustice, 52, 165–8; *see also* colonialism
- historical–structural approach, 233n
- Hobbes, Thomas 148–52, 159, 164, 175; *see also* moral sovereignty of states
- Hong Kong, 5
- hooks, bell, 116
- humanitarianism *see* duties of assistance
- human rights, 9, 13, 53, 79, 81, 82, 86, 88–9, 105–8, 152, 158–60, 187, 222
 as negative, 36, 74–5, 76–7, 160, 236–7n
 as positive, 36–7, 160
see also duties of assistance; emigration; right of immigration; United Nations
- ideal theory 11, 14–15, 63–4, 84, 105, 179, 219, 233n, 238n, 253n
- India, 5, 8, 9, 28, 67, 68, 206, 231
- Indonesia, 5, 67, 114, 206
- international arms trade, 40
- international borrowing privilege *see* Pogge, Thomas
- international law, 9–10, 79, 187
- international migration *see* global migration
- International Monetary Fund, 30, 38, 152, 160, 169, 173, 180, 234n
- international order, 13–17, 21, 148, 150–1, 164, 180, 242n
- international resource privilege *see* Pogge, Thomas
- intersectionality, 115–18
- Iraq, 106, 242n
- Irish Americans, 113
- Israel, 5
- Italy, 4
- Jaggar, Alison, 66, 180, 233n, 234–5n, 249–50n, 253n
- Jamaica, 67–8
- Japan, 4, 100, 205
- just war theory, 150, 247
- Kapur, Devesh, 67–8, 207, 223–4, 227–8
- Kent, O. T., 148–51, 182, 247–8n
- Kenya, 67, 68
- Korea, 8
- Kukathas, Chandran, 62, 80
- Kuwait, 5
- Kymlicka, Will, 61, 73
- Latin America and the Caribbean, 4, 8, 36, 67, 180, 207, 218, 220, 252n, 253n
- Latinos *see* ethnicity
- least well-off, the, 136–7, 193–7
- legal permanent residents, 20, 110, 132, 215–16
- legal sovereignty of states, 92, 146–7, 176, 247n, 248n
- liberalism, 13–17, 34, 72–9, 82–6, 131, 156, 162, 164–5, 184, 187, 205, 211, 220, 226–7, 229, 238–9n, 242n, 252n; *see also* Cole, Phillip; *see also* Rawls, John
- Liberia, 67

- libertarianism, 74, 89–93, 96, 236n, 239n, 244n
 argument for open borders, 89–93
 conception of the state, 90–1
 Lister, Matthew, 216, 233n, 253n
 Lockean proviso, 92, 96
- Maastricht Treaty, 9
- Macedo, Stephen, 51–7, 235–6n
- McHale, John, 67–8, 207, 223–4, 227–8
- Malawi, 68, 201
- Malaysia, 5, 244n
- membership
 political, 11–12, 24–9, 33, 35, 153–7, 175, 178, 181, 237n
 social group, 6, 31, 82, 112–13, 128–9, 132–4, 143, 195, 197, 207–8, 218, 232, 246n, 252n
- Mexico, 5, 8, 9, 69–70
- Middle East, 100
- migration systems theory, 8, 233n
- Mill, John Stuart, 71
- Miller, David, 28, 31–43, 51, 52–3, 79–80, 162, 179, 181, 183, 234n, 237n, 239–40n, 247n, 248n, 249n, 251n
 bare freedom and basic freedom, 79–80
 moral motivation, 33–4
 moral sovereignty of states, 248n, 249n
 national identity, 31–3
 redistributive programs, 34, 51, 52–3
- Miller, Mark, 4, 6–9, 16, 28, 47–9, 63, 68–70, 136, 204, 222, 233n
- minorities, 27, 35–6, 104, 116, 125, 181, 183, 206
 national, 35–6, 181
 racial *see* race
 sexual *see* sexuality
- moral sovereignty of states, 20, 22–4, 102, 143, 145, 146–75, 175–7, 185, 241n, 247–9n, 253n
 associative ownership, 164–75
 communitarian defense, 153–8
 contrasted with legal sovereignty of states, 146–7, 247n
 contrasted with prescriptive nationalism, 22–3, 175–6
 freedom of association, 158–64
 Hobbesian defense, 148–52, 159, 164
- Mozambique, 67
- Narayan, Uma, 253n
- nation, 34–6, 50, 177–8, 181–2, 184–5, 205
- national identity, 31–6, 43, 48, 57, 165, 181–2, 235n
- national interest, 22–3, 57, 147, 148, 182, 241n, 250n
 national economic interest, 44–8
- nationalism (prescriptive), 21, 22–58, 145–6, 175–86
 arbitrariness of, 177–8
 contrasted with moral sovereignty of states, 22–3, 175–6
 definition of, 22
 economic nationalism, 44–57
 false unity of, 181–3
 reliance on equivocation, 181
 reliance on explanatory nationalism, 178–81
 universalist and particularist, 49–51, 185
see also Macedo, Stephen; Miller, David; Walzer, Michael
- nationality, 10, 25, 59, 146, 177, 186, 197, 237n, 250n
 as a ground of exclusion, 31, 206–7
see also Miller, David; national identity; nationalism (prescriptive)
- national security *see* exclusion criteria
- natural disasters, 37, 194
- natural resources, 41, 92–3, 96–100, 240n
- negative freedom, 74–5, 84, 88, 124–5
- negative liberty *see* negative freedom
- neoliberalism, 44, 138, 180, 220
- New Zealand, 4
- non-ideal theory *see* ideal theory
- non-immigrants, 20, 110, 234n
- non-migrating foreigners, 2, 67, 70, 81, 103–4, 160, 163, 199, 213–14, 223, 225, 229–31, 254n
- non-refoulement *see* refugees
- North America, 5, 63, 68, 99
- North American Free Trade Agreement, 152, 173

- North Atlantic Treaty Organization, 152, 173, 234n
- Norway, 159
- Nozick, Robert, 90–2, 133–4
 historical conception of justice, 133–4
 libertarianism, 90–2
- Nussbaum, Martha, 122, 243–4n
- Oceania, 5
- Okin, Susan Moller, 117
- O'Neill, Onora, 91, 233n
- open borders, 23, 60–93, 97, 105, 138–9,
 150–1, 155, 176, 214, 218–20, 235n,
 236n, 238n, 239n, 242n, 247n, 253n
 consequentialist defense of, 60–72
 democratic defense of, 86–9
 liberal consistency defense of, 72–81
 libertarian defense of, 89–93
 Rawlsian defense of, 81–6
- opportunity, 1, 12, 74, 78, 84–5, 111–16,
 123–4, 130, 133–4, 138, 189–90, 192,
 195–6, 219, 232, 239n, 243n, 251n
 in relation to disadvantage, 123–4,
 133–4
 in relation to harm, 138
 in relation to social groups, 1, 111–16,
 130, 133–4, 195–6, 232, 243n, 251n
see also capabilities
- oppression, 7, 11, 13, 16, 27, 40–2, 53, 65,
 80, 89, 101, 103–4, 115–18, 183, 208,
 233n, 237n
- Organization for Economic
 Co-operation and Development,
 67–8, 203
- overpopulation, 6, 11, 14, 94–5,
 238n, 240n; *see also* Egalitarian
 Ownership; *see also* environmental
 impacts of immigration
- Pakistan, 5, 8, 68
- Pareto optimality, 190–1
- particularism, 49–51, 95, 177–8, 185,
 240n
- paternalism, 70–2
- Perry, Stephen, 234n, 235–6n, 248n
- Pevnick, Ryan, 52–3, 164–75, 234n,
 241n, 249–50n
 associative ownership, 164–75,
 249–50n
 redistributive programs, 52–3
- Philippines, 5, 68
- philosophy, 10–15, 17, 23, 187, 233n
- Pogge, Thomas, 2, 17–19, 30, 36, 38–43,
 50–1, 55–6, 63, 89, 100, 142, 159–60,
 169–70, 172, 174, 178–80, 185, 233n,
 234n, 235n, 246n, 253n
 explanatory nationalism, 2, 30,
 36, 38–43, 55–6, 159–60, 169–70,
 178–80, 234n, 235n
 hierarchy of injustices, 142, 246n
 immigration as epiphenomenal,
 17–19, 233n
 international borrowing privilege,
 41–2
 international resource privilege, 41
 nationalisms, 50–1, 185
 political community, 23–9, 35, 52, 153–7,
 163, 172–3, 237n, 249n; *see also*
 Walzer, Michael
- positive freedom *see* capability
- Pratt, Geraldine, 65
- prescriptive nationalism *see* nationalism
- principle of mutual aid *see* Walzer,
 Michael
- Priority of Disadvantage Principle,
 20–1, 104, 110–44, 186–98, 199–202,
 218, 222–9
 as forward-looking, 134–7, 141,
 199–201
 as backward-looking, 134–7, 141–2,
 199–201
 implications for admission, 213–17
 implications for exclusion, 202–13
 privilege, 48, 64, 115–18, 119–28, 136,
 140, 143, 182, 189–90, 192–3, 243n
 in relation to disadvantage, 119–28
- property rights *see* libertarianism
- proportionality (principle of), 191–3,
 251n
- push–pull theory, 6–7, 17
- Qatar, 5
- Quinones, Sam, 69–70
- quotas *see* exclusion criteria
- race, 1, 25, 55, 64, 66, 78, 111, 113,
 115–18, 125, 126, 129–30, 132, 156,
 207–8, 213, 216, 232
 Asian Americans, 116, 121
 black, 26, 115–17, 126, 196, 244n

- race (*cont.*)
 Native Americans, 36, 113–14, 116
 white, 26, 115–18, 156, 205, 207
- racism, 202, 206
- rape, 117, 211
- Rawls, John, 11, 13–17, 42, 81–6, 194,
 233n, 235n, 238n, 239n, 253n
 Difference Principle, 83, 85–6, 194
 Equality of Opportunity Principle,
 85
 Liberty Principle, 82–5
 original position, 82
 Rawlsian arguments for open
 borders, 81–6
 realistic utopia, 11, 13–17, 82, 233n
 view on immigration policy, 83
- receiving countries, 4–5
 duties of, 202–18, 223–5
see also sending countries
- rectification, 52–5, 92, 135–6, 165–8,
 250n; *see also* libertarianism
- redistributive programs, 34, 37, 41, 44,
 46, 51, 53, 234n
- refugees, 5, 9–10, 16–17, 20, 94, 110, 165,
 187, 204, 233n, 237n, 245n
- relativism, 230
- religion, 35, 83, 111, 113, 116, 118, 123,
 132, 207–8, 232, 252
 Amish, 121, 124
 Christians, 128, 242–3n, 244n
 Muslims, 114, 128, 243n
- remittances, 18, 68–70, 74, 99
- resourcism, 121–4
- retirement migration, 253n
- right of immigration, 76–7, 100, 187–8,
 236n, 237n
 right of entry, 73–5
 right to freedom of international
 movement, 73–5, 77–8, 80–1, 236n,
 237n
 right of international mobility,
 79–80
- rights *see* human rights
- Risse, Mathias, 96–100, 240–1n
- Russia, 4, 41
- Saudi Arabia, 5, 128
- Scanlan, John, 148–51, 182, 247–8n
- Second World War, 4, 5, 77, 216
- Seglow, Jonathan, 242n
- segregation, 24–6
- self-determination (national), 34, 37,
 155–7, 158–62, 164–5, 248–9n;
see also Pevnick, Ryan; Walzer,
 Michael; Wellman, Christopher
 Heath
- Sen, Amartya, 122, 243n
- sending countries, 5
 policy options of, 225–9
see also emigration; receiving
 countries
- Senegal, 67
- sexual harassment, 66, 117
- sexuality, 1, 25, 78, 111, 113, 115–18, 121,
 125, 129, 131–2, 207–8, 210, 215,
 232, 245n, 253n
 bisexuals, 125
 gay bashing, 219
 gay men, 116, 118, 121, 125, 131, 156,
 211, 215, 245n
 heterosexism, 206
 heterosexuality, 121, 125, 131, 215,
 253n
 homophobia, 206
 homosexuality, 131, 218, 245n
 lesbians, 121, 156, 211, 245n
see also admissions criteria; exclusion
 criteria
- sex work, 42, 66, 180
- Shachar, Ayelet, 63–4, 72
- Sierra Leone, 67
- Singapore, 5
- Siracusa Principles, 79, 237n
- skilled migration, 44–9, 54, 67–8, 81,
 103, 165, 206, 213–15, 216–17,
 218–20, 223–5, 227–8, 230–1, 235n,
 254n; *see also* admissions criteria;
see also exclusion criteria
- slavery, 66, 165, 167, 216, 220
- social group, 1, 111–18, 129–32, 193–7,
 232, 242–3n
 as a ground of exclusion, 207–8
 definition of, 111–18, 242–3n
 voluntariness of, 129–32
- social institution, 1, 111–12, 123–4,
 195–6
- social science, 25, 35, 48, 57, 179–80,
 201–2, 231
- social structure *see* social institution
- sociology *see* social science

- South Africa, 5, 126, 244n
 Blacks, 126, 244n
 Coloured, 126, 244n
 sovereignty *see* legal sovereignty of states, moral sovereignty of states
 Spain, 4
 Spelman, Elizabeth, 115–16
 Staples, Winthrop, 239–40n
 starvation *see* famine
 state (definition of), 34–5, 181
 state of nature, 91, 138, 148–52, 164, 175
 Steiner, Hillel, 90, 92–3
 stereotypes, 112, 121, 124
 structural adjustment policies, 180, 234n
 subjective welfare, 119–21, 124, 243n
 supererogation, 29–30, 38, 97; *see also* duties of assistance
 Suro, Roberto, 63–4
 sweatshops, 42, 180
- Tamir, Yael, 27–8, 35, 184–5
 Tanzania, 67
 tariffs, 30, 39
 taxation, 46–7, 68, 93, 164, 169–73, 227–9, 254n
 of emigrants, 227–9, 254n
 temporary migration, 110, 165, 234n
 temporary workers *see* temporary migration
 terrorism, 77, 210–11, 252n; *see also* exclusion criteria
 Thailand, 5
 Third World *see* Global South
 Togo, 68
 transgender, 112–13, 125
 transnational migration *see* global migration
 Trans-Pacific Strategic Economic Partnership, 152
 Trebilcock, Michael, 61, 63
 Turkey, 8
- Uganda, 67, 68
 undocumented migrants, 20, 52, 66, 87, 98–9, 127, 132, 165
 United Arab Emirates, 5
 United Kingdom, 4, 8, 41, 46, 244n
 United Nations, 3–5, 9–10, 66–7, 159, 173, 201, 237n, 247n, 251n
 Convention Relating to the Status of Refugees, 9–10
 Declaration of Human Rights, 9–10
 Department of Economic and Social Affairs, 3–5
 Development Fund for Women, 66
 Human Development Index, 67, 159, 201, 247n, 251n
 Protocol Relating to the Status of Refugees, 9–10
 United States, 9, 36, 40, 68, 69, 94–5, 98, 106, 154, 172–3, 235n, 240n, 242n, 250n, 253n
 effect of immigration on, 46, 49–50
 immigration to, 4, 7, 8, 63, 203
 policies of, 20, 207, 215–16, 234n, 253n
 social groups in, 113–14, 121, 128, 129, 131, 132, 243n
 unskilled migration, 44, 46, 48, 54, 66, 142, 202, 204, 218, 235n; *see also* admissions criteria; exclusion criteria; skilled migration
 utilitarianism, 73, 150, 188–90, 247n, 248n
- victim blaming, 218–20
 Vietnam, 8, 106
 violence, 26, 66, 117, 121, 124, 131
 domestic, 66, 117
- wage gap, 9, 117
 Walzer, Michael, 23–31, 34–6, 153–8, 162, 164, 175, 179, 181, 234n, 248n
 argument from analogy, 154–6
 communitarianism, 153–7
 cultural distinctiveness, 26–8
 domestic cohesiveness, 24–6
 principle of mutual aid, 24, 29, 153–4, 157
 self-determination, 156–7
 war, 13, 41, 148–52, 227, 233n, 247n, 248n; *see also* Second World War
 welfare state, 44, 244n
 welfarism *see* subjective welfare
 Wellman, Christopher Heath, 158–64, 220–2, 248–9n
 Wenar, Leif, 137
 Westphalian conception of sovereignty, 56, 175, 179–80

- Whalley, John, 62–5
Whelan, Frederick, 85–6, 238n
Wilcox, Shelley, 105–8, 242n, 251n
Wolff, Jonathan, 123
World Bank, 30, 38, 39, 63, 67, 152, 160,
180, 202–3, 227
World Trade Organization, 30, 38, 39,
152, 160, 169, 173
- xenophobia, 9, 57, 77, 202, 205, 206, 211,
212, 229, 238n
- Yeoh, Brenda, 65
Young, Iris Marion, 111–12, 195–6, 205,
207, 244–5n
Ypi, Lea, 226, 254n