Selective Migration, the Right to Exclude, and Global Justice

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Abstract:

Sovereign states enjoy broad discretion to control their own borders and decide who can have access to the social and economic opportunities available within their territories. These restrictions, however, are highly selective and borders are often open to the desirable migrants such as wealthy investors and highly-skilled workers while an open borders system is infeasible for the foreseeable future. This paper therefore considers the moral permissibility of selective migration and argues that it is morally permissible only when a set of demanding conditions are met. It also seeks to explain why global background injustice seriously undermine the right of affluent states to exclude would-be immigrants and this will in turn make selective migration morally impermissible. To reclaim their right to select migrants for economic benefits, the affluent states will have to do their fair share in alleviating global injustice.

(139 words)

1. Introduction

In today’s world, people’s life prospects are largely determined by their membership of a particular state. At the same time sovereign states enjoy broad discretion to control their own borders and decide who can have access to the social and economic
opportunities available within their territories. As Joseph Carens rightly observed almost twenty years ago, the current system of closed borders is a modern-day equivalent of feudal class privilege.¹ Since then academic debate has largely focused on the rightness or wrongness of the immigration restrictions imposed by states which severely constrain freedom of transnational movement.² These restrictions, however, are highly selective and borders are often open to desirable migrants. Among these “welcome and wanted” are the wealthy investors and highly-skilled professionals. The motto “give me your poor and your tired” is now changed into “give me your wealthiest and your brightest.”

This paper considers the moral permissibility of selective migration. By selective migration I mean the practice of states’ giving priority to those would-be immigrants who are expected to strengthen their pool of financial or human capital. This practice has two separate aspects. First, states which want to attract wealthy foreign investors to become their citizens could offer them fast-track visas, waiving some or all naturalization requirements, or even introduce a case-for-passport programme. The United Kingdom, for example, offers a Tier-1 Work Permit for 3 years (extendable for a further 2 years) to those who invest £1 million in government bonds or UK firms, allowing them to become citizens. Canada, for another example, grants 5-year residence permit to investors with a C$1.6 million investment, as a path to full citizenship.³ Some potential investors find these programmes attractive because of the mobility rights attached to these passports, legal protection of their assets, and

better prospective for their children. These and many other similar programmes raise the issue of whether citizenship should be for sale.\textsuperscript{4}

Another aspect of selective migration is the global race for talent. In the past states often considered racial factors when admitting immigrants but now they tend to select the well-educated and highly-trained professionals. These “desirable migrants” can range from scientists, engineers, medical personnel to professional athletes.\textsuperscript{5} The replacement of racial attributes by personal merit as a criterion for admission seems to be quite unobjectionable and it is widely believed that states have a legitimate interest in selecting migrants for their potential contributions.\textsuperscript{6} However, as this paper will go on to show, the moral permissibility of this form of selective migration is far from straightforward.

The practice of selective migration raises important moral issues. Despite all the rhetoric about globalization and the world being flat, in reality a person’s access to social and economic advantage is largely determined by her citizenship or place of residence. More important, most people cannot choose their citizenship as transnational movement of persons are heavily regulated by states. People might have a right to emigrate but other states have no obligation to accept them except in some unusual conditions. The existing international law gives sovereign states broad discretion in controlling their own borders. Worse still, these immigration restrictions


\textsuperscript{6} Joseph Carens, a well-known advocate of open borders, argues that economic potential is a criterion that “seems morally permissible,” “ungenerous,” but “not unjust” at least under the non-ideal situation where open borders are not implemented. See Carens, \textit{The Ethics of Immigration}, pp. 183-185.
are coercively imposed without ever consulting the would-be immigrants. All these suggest that selective migration is an issue pertaining to global justice and merits moral scrutiny.

This paper argues that selective migration is morally permissible only when a set of demanding conditions are met. It proceeds as follows. Section 2 considers the argument that selective migration is wrong because citizenship should not be subject to market exchange and argues that this argument is unpersuasive. Section 3 identifies some conditions which must be met for selective migration to be morally permissible. Section 4 explains why background injustice at the global level seriously limits a state’s right to exclude would-be immigrants and thus makes selective migration impermissible. Section 5 responds to some possible objections to my arguments. By placing the states’ right to exclude under the restrictions imposed by their duties of global justice, this paper offers an alternative perspective on the ethics of immigration.

Some clarifications about the scope and aims of this paper may be in order here. First, this paper assumes that the states which are selecting immigrants are democratic legitimate states and their immigration policies are a result of democratic decision-making. Second, this paper does not take a stand on the question whether states should (ideally) open their borders to all non-members. Even if open borders are morally required, it will be infeasible foreseeable future and as such some immigration restrictions are still justifiable because (a) the immigration pressure may simply be overwhelming in a non-ideal world where so many individuals need to escape from poverty and oppression and (b) states might still have other moral

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8 EU membership represents a complication which I shall not discuss in this paper. For example, if an EU state, such as Malta, sells its passports for cash, the holders of these passports will also gain right to enter all other EU member states. Do the other EU states have a right to stop Malta from doing so?
reasons to exclude would-be immigrants in some circumstance. Thus, it is important to ask whether states could permissibly give priority to some would-be immigrants over others. Finally, the focus of the present inquiry is selective migration of individuals from poor countries to relatively affluent ones and not the migration from one affluent country to another. In a vastly unequal world like ours, there will always be people from poor countries who want to migrate to an affluent state but cannot enter. In fact, selective migration in the former case tends to have much greater impacts on distributive justice and is more likely to exacerbate the existing international inequalities.

2. Market Competition and the Ideal of Citizenship

Sometimes the moral objection to selective migration arises from the thought that citizenship simply should not be subject to norms of market competition. The problem, it has been argued, is that the exchange of citizenship for some tangible benefits—such as money or productive labour—inevitably corrupts its proper values.\(^9\)

Let me start with Judith Andre’s taxonomy of “blocked exchanges.” Her contention is that if a good falls into any of the following categories then it should not be subject to markets.\(^10\) The question is whether citizenship belongs to one or more of the following cases.

I. What Cannot or Should Not be Owned

I. a. Somethings by their nature cannot be owned

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\(^9\) Shachar, “Selecting by Merit”; Ayelet Shachar and Ran Hirsch, “On Citizenship, States, and Markets,” the Journal of Political Philosophy 22, 2 (2014): 231-257; and Shachar, The Birthright Lottery: Citizenship and Global Inequality (Cambridge, MA: Harvard University Press, 2009), pp. 54-61. Sure enough, an ordinary citizen cannot trade her own citizenship with someone else for gains. There are some cases in which a citizen can pretend to marry a foreigner and help the latter to acquire citizenship for a price but I shall not discuss this issue further.

For this category, Andre gives the examples of love, friendship and divine grace.\textsuperscript{11} Although citizenship has sometimes be described as “civic” friendship, it does share some important features with property which means it can be owned. By acquiring citizenship one also acquires a set of rights including, but not limited to, a right to remain in the territory, other membership benefits, and a right not to be excluded. In this sense, citizenship can be owned like a property.\textsuperscript{12}

I. b. Some things could be (fully) owned, but should not be

Examples of this category include human beings and some public good like defence and roads. Again, if property-like features of citizenship consists of the right it entails and having these rights does not raise moral problems (unlike owning human beings does), then citizenship does not fall into this particular category of goods.

II. What Cannot or Should Not be Alienated

II. a. Some things cannot be alienated

Some goods are inalienable in the sense that it cannot be disconnected from the person and go on existing. Honours, for example, cannot be alienated by the recipients.\textsuperscript{13} However, it seems perfectly possible for someone to migrate to another country and then renounce one’s original citizenship especially when the receiving country does not recognize dual citizenship.

II. b. Some things could be alienated but should not be (179)

There are some goods which one should not alienate. Natural rights are perhaps an obvious example.\textsuperscript{14} However, renouncing one’s citizenship is not renouncing one’s

\textsuperscript{11} Andre, “Blocked Exchanges,” p. 175.
\textsuperscript{12} Shachar, The Birthright Lottery, pp. 33-38.
\textsuperscript{13} Andre, “Blocked Exchanges,” p. 178-179.
\textsuperscript{14} Ibid., pp. 179-180.
natural rights. To the contrary, it is widely recognised that a person has a right to emigrate and a right to renounce one’s citizenship when the original state is oppressive to her.

III. What Should Not Changed for Gain

III. a. Some markets are bad for buyers and sellers

Sometimes marketization of some good will bring undesirable outcomes to the parties involved. For instance, the trade in human organs may increase the risk of selling diseased and defective organs and may also lead to exploitation of poor people.\textsuperscript{15} However, the “trade” in citizenship does no harm to either the buyers or the sellers. The migrants will benefit from their new citizenship and the state will have more investment or a bigger pool of talented workers.

III. b. Some markets mistreat what is sold

A final possibility is that treating some good as a commodity will result in damage to its value by making people view this good in a different and perhaps objectionable way.\textsuperscript{16} Is citizenship a good of this category?

Citizenship is not merely a set of rights which could be owned or renounced by individuals but comprised of \textit{“political relations”} which are supposed to reflect \textit{“a notion of participation, co-governance, and a degree of solidarity among those included in the body politic.”}\textsuperscript{17} There are at least three normative concerns raised in these arguments: allocating citizenships through market competition (1) will

\textsuperscript{15} Ibid., pp. 184-185.
\textsuperscript{16} Ibid., pp. 181-183.
undermined the trust, shared responsibility and binding political commitments among
the citizens themselves;\(^{18}\) (2) is inconsistent with the ideal of citizenship grounded in
equality and democracy;\(^{19}\) and (3) allows the illegitimate transfer of advantage in one
sphere (e.g. wealth) into advantage of another sphere (e.g. membership).\(^{20}\)

Let us consider these claims in order. First, it is largely an empirical question
whether selective migration will undermine trust and political commitments among
citizens. It is far from clear why this must be the case and the opposite may be true.
Since these immigrants have actively chosen their new membership, they may have
strong incentives to participate in the public life of the community. Also, they have a
clear interest in integrating into the community. Furthermore, it is not uncommon that
immigrants make important contribution to or endure personal sacrifice for the
common good of their new country.

In response to the second concern, it should be stressed that the ideal of equal
citizenship depends on how the domestic institutions are structured rather than how
citizenship is granted to immigrants. Sometimes investment immigration is likened to
selling franchise and so it corrupts democracy and the egalitarian thrust of
citizenship.\(^{21}\) Also, selective migration may give out the signal that only the wealthy
and the exceptionally talented are welcomed to the community. Nonetheless, it is
entirely possible for this new immigrants the same political and civil rights like every
other citizens, and no existing members will be disfranchised. When the political

\(^{18}\) Shachar, *The Birthright Lottery*, p. 56.


system gives every citizen equal rights to participate and the influence of money on politics is carefully managed, the ideal of equal of citizenship will be maintained while some individuals acquire their citizenship through investment or superior qualifications. If the state is already committed to the ideal of equal citizenship, it will not practice discriminatory immigration policies and selective migration is not necessarily discriminatory. If, however, the political system is itself undemocratic, citizenship will not be a political relation based on co-governance even when the state refuses to exchange its citizenship for benefits.

Finally, further arguments are needed to show that selective migrations represents an illegitimate transfer of advantage of one sphere to another. Why shouldn’t citizenship be allocated according to money or exceptional talents? If the argument is that selective migration is unfair to those who cannot afford to pay or do not possess exceptional talents, then it will be difficult to make sense of the existing practice of birthright citizenship. In practice, most individuals acquire their citizenship in virtue of their parentage (jus sanguine) or birthplace (jus soli), which is just as arbitrary as one’s wealth and native talents. To be sure, we do not have to accept the existing practice uncritically but one challenge faced by Walzer’s theory of complex equality is that it gives unwarranted weight to the customary practice within a community in deciding how a particular good should be distributed.

3. The Conditions for Selective Migration to be Morally Permissible

The previous section has shown that one particular objection to selective migration is unpersuasive but there are other moral issues. This section will identify three conditions which must be met for selective migration is morally permission. That is to say, although the practice of selective migration is not inherently wrong, it may be
wrong for the affluent states to use selective migration as a means to enhance its national interests under some conditions.

3.1 No Harm on the Already Disadvantaged Persons

*Condition 1: admissions of desired migrations must not harm the life-prospect of the already disadvantaged persons who are unable to migrate.*

The rationale for this condition is rather straightforward: although the practice of selective migration brings benefits to both the affluent states and the migrants, it should not be done at the expense of the poor who remains in the countries of origin.

This paper does not aim to settle the empirical question concerning the actual impacts of brain drain.\(^{22}\) The point being made here is simply that it is morally impermissible for the affluent states to purposefully attract the wealthy and the best-educated migrants *when* doing so will cause *harmful* brain drain in the poor countries.\(^{23}\) However, some practices of selective migration are more morally questionable than others. For instance, many domestically educated medical doctors are migrating from sub-Saharan African countries to the US, Canada, the UK, and Australia. The sub-Saharan region is most affected by HIV/AIDS and is experiencing serious shortage of healthcare professionals. Moreover, medical brain drain has a self-enforcing impact: when a healthcare system weakens, bright physicians and nurses tend to leave; when these professionals leave, the healthcare system weakens further.\(^{24}\) One study estimates that such medical brain drain costed the region $2.17bn (in 2011) while bringing an estimated amount from $846m to $2.7bn to the


\(^{23}\) I shall also bracket the question of whether these individuals have a right to emigrate or whether the country of origin has a right to restrict emigration on this ground.

destination countries. \textsuperscript{25} Worse still, recruitment agencies from these affluent countries sometimes actively recruit healthcare professionals from these African countries, providing them with legal advice on immigration and moving expenses. \textsuperscript{26}

3.2 Obligatory Admissions Must Have Been Given Priority

\textit{Condition 2: admissions of desired migrants must not crowd out other individuals who has a strong claim to be admitted.}

In some cases, states are under an obligation to accept certain individuals to settle or seek refuge in their territories. Priority should be given to these individuals who have a claim to admissions before states could permissibly seek to admit other migrants. Despite the controversy surrounding who has a claim to be accepted there are some categories of obligatory admissions which are more or less uncontroversial. (1) Refugees: states have a strong duty to allow foreign refugees, defined as persons who have to flee her own country due to well-grounded fear of persecution, to take refuge in their territories. (2) Family reunification: this category of obligation admission is not based on the claim of the foreigners to be included but on the moral right of citizens to live with their immediate family members. The justification of this right is the interest of each citizen to have the freedom to form her own family through marriage and procreation and to live with her family members in her own country. \textsuperscript{27}

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\textsuperscript{27} Carens, \textit{The Ethics of Immigration}, pp. 185-191. Against this view, Peter Higgins argues that the adoption of family reunification criteria was motivated by a desire to maintain the existing racial composition of a society. See Higgins, \textit{Immigration Justice} (Edinburgh: Edinburgh University Press, 2013), pp. 215-217.
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To be sure, in theory selective migration is not incompatible with these obligatory admissions but, in practice, the limited immigration quotas have been allocated to those desired migrations at the expense of others. Again, the point being made here is that selective migration is morally impermissible when it “crowds out” other individuals who have a strong claim to enter the country.

3.3 The State Has Done Its Fair Share to Alleviate Global Injustice

Condition 3: a state can permissibly seek to admit wealthy and highly-skilled migrants only when it has done its fair share in alleviating global distributive injustices.

This final condition is the most controversial among the three. I shall discuss the rationale for this condition in the next section but I must address a conceptual difficulty first. What constitutes a “fair share” of a state’s duty to alleviate global injustice will of course depend on, first, what conception of global distributive justice one is using and, second, how this particular conception allocates duties of justice. These issues cannot be addressed within a single paper but there is perhaps no need to do so. In the following paragraphs I shall argue most, if not all, affluent states are not doing their fair shares to alleviate global injustices according three most prominent conceptions of distributive justice.

Consider cosmopolitan egalitarianism first. A typical form of this approach to global distributive justice holds that one should not face worse opportunities than others simply in virtue of one’s national or cultural identity.\(^{28}\) Not surprisingly, our world falls short of this ideal. Branko Milanovic estimates that the level of global economic inequality, expressed in Gini value, is around 0.67 in 2011. He also finds

that 80 percent of global inequality depends on one’s place of residence and only 20 percent on one’s social class. Hence, for most affluent states there is a “citizenship premier” defined as the benefits conferred to their citizens simply by living in their current country.\(^{29}\) If we accept this conception of global distributive justice, it is evident that no affluent state has done its fair share to remove the systematic disadvantage faced by the global poor. To the contrary, many affluent states (together with many multinational corporations) have used their disproportionate influence to shape the international rules in order advance their own interests often at the expense of the global poor.\(^{30}\)

Next, consider global sufficientarianism. Not everyone objects to global inequality. John Rawls, for example, argues that inequality is not a concern for distributive justice at a transnational level.\(^{31}\) However, Rawls himself and many other political theorists do hold that everyone is entitled to a level of resources that is necessary for a minimally decent life such as adequate nutrition, shelter, security, basic healthcare, unpolluted water and air.\(^{32}\) However, the current situation of global poverty is morally shocking: 1.2 billion people live on less than $1.25 a day. In developing countries (where 92 per cent of the world’s children live), 7 in 100 will not survive beyond the age of 5 and 25 will live in poverty. Nearly 156 million children are stunted as a result of malnutrition and infection.\(^{33}\) Most affluent states have done little to alleviate the problem. Most OECD countries, which are among the


most affluent countries in the world, have been giving less than 1% of their Gross National Incomes (GNIs) as overseas development aid. The U.S., for example, gave only 0.19% of her GNI as foreign aid.\textsuperscript{34} Worse still, global poverty has also been caused by the global institutions which many of the affluent states have played a part in maintaining.\textsuperscript{35} Thus, most affluent states have failed to do their fair share in alleviating global injustices according to global suffiencitarianism.

Finally, consider the view of \textit{international libertarianism}. Libertarianism, as exemplified by Nozick, maintains that justice is not a matter of conforming to a certain distributive principle, be it sufficiency or equality. Rather, justice is a matter of how the current distribution of holdings arises and the process must respect people’s property rights in cases of the initial acquisition of these holdings and their subsequent transfers. As Nozick puts it, “whatever arises from a just situation by just steps is itself just” and past injustices will certainly “taint” the current distribution of holdings and the person is not entitled to such “ill-gotten gains.”\textsuperscript{36} The history of our world is characterized by slavery, colonialism and imperialism so according to the libertarian view the current distribution of resources is largely unjust and calls for rectification. Even though one might be sceptical about the relevance or feasibility of rectifying historical injustices,\textsuperscript{37} it is hard to deny that \textit{on-going} injustice has shaped the current distribution of burdens and benefits around the world. Consider, for example, the global trade of natural resources and raw materials. Currently many resources-rich poor countries are controlled by repressive regimes. They consolidate

\textsuperscript{34} Data from the OECD. Retrieved from \url{http://www.oecd.org/dac/stats/statisticsonresourcetoflowstodevelopingcountries.htm}. Last accessed August 20, 2016.
their power by the revenues from selling the country’s natural resources while their people remain poor and oppressed. At the same time, many affluent states and multinational corporations knowingly buy natural resources from these countries. This practice violates the people’s property right to these natural resource of their land and should be regarded as theft.\(^\text{38}\) It is highly doubtful that the affluent countries today have done their duties to correct such injustices. The countries which suffered from a brutal history of colonialism and slavery are still the poorest and global trades of natural resources and raw materials with repressive regimes continue as if they were legitimate.

4. Background Injustice and the Right to Exclude

In the last section I have identified some conditions which must be met before selective migration could be morally permissible. This section aims to provide further arguments for the claim that states could permissibly exclude outsiders only when they have done their fair share in alleviating global injustice. To do so we must see how selective migration could be justified. Javier Hidalgo has recently defended the sale of citizenship by putting forward the following argument:

1. Sometimes it is permissible to deny foreigners access to citizenship.

2. If (1) is true, then it is prima facie permissible for this state to sell citizenship to these foreigners if the transaction is voluntary and does not violate anyone’s entitlement.

3. Some foreigners would voluntarily purchase citizenship in other states and doing so does not violate anyone’s entitlement.

Conclusion: it is prima facie permissible for states to sell citizenship to these foreigners.\textsuperscript{39}

Hidalgo’s aim is to defend the sale of citizenship but his argument can also apply to selection by personal merit. If the state can sell citizenships to someone who can afford it, it could surely set other conditions for access to citizenship such as possession of certain marketable skills or qualifications. Provided that both parties consent to the arrangement and that other foreigners have no claim to citizenship, selecting the talented is also morally permissible. So far so good except that the first premise of the argument is problematic. To support his first premise, Hidalgo uses the analogy that if Robs owns an apartment and have a right to deny others the good of using that apartment, he could certainly rent the apartment out for money.\textsuperscript{40} Imagine an alternative situation: suppose that Robs lives in a society with widespread poverty and many people become homeless. Suppose further Robs owns a dozens of apartments and he bought them with the money he has earned from selling narcotics. In these circumstances it is far from straightforward that Robs could simply rent out his apartments as he sees fit.

The point here is that, if the current distribution of holdings is unjust which means the owner is not entitled to the property, his right to exclude others will also be questionable. This is not an either-or issue but admits of degrees so more unjust the current distribution is, the more questionable the right to exclude as held by the proclaimed owner, who has been unjustly advantaged, will be.

My principal contention in this section is that the affluent states’ right to exclude outsiders is seriously undermined by the background injustices at the global


\textsuperscript{40}Ibid., p. 227.
level and this will eventually make selective migration morally impermissible. In what follow, four separate arguments will be invoked to support this claim.

4.1 The Benefiting-from-Injustice Argument

The first argument could be summarized as follows: if an agent has benefited from an injustice/ or wrongdoing committed against a victim, then this agent is not entitled to all its current holdings and has no right to deny the victim access to some of these benefits. Imagine the following case:

Betty and I are neighbours. Each of us has a garden with some apple trees and they are divided by a fence. These apples are our only food source. One day a hurricane strikes our gardens and all the apples somehow fall on my side of the fence. There is no way of knowing which apples are originally hers. As a result, Betty faces starvation.

Call this the Hurricane Case. It seems that Betty has a right to come to my garden to collect some apples and I could not legitimately complain about her trespassing perhaps because I do not rightfully own all these apples. The hurricane, one might argue, is a natural event so Betty is not a victim of any injustice or wrongdoing but a victim of brute bad luck. Imagine another case:

Betty and I have our own gardens. One night, a thief came to Betty’s garden and stole all her apples. On his way out, the theft dropped some of Betty’s apples in my garden. I notice that my pile of apples becomes bigger mysteriously but take no further action. Again, Betty is left with nothing.

Call this the Theft Case. In this case, I benefited innocently from a wrongdoing of others. Now I do not know exactly which apples originally belong to Betty but it is certain that the legitimacy of the current distribution should be called into question.
and so should my entitlement to my current holdings. This removes one particular type of argument against redistribution.\textsuperscript{41} The fact of benefiting from injustice does more than calling the current distribution in question. It also means that if I refuse to share some apples with Betty, my right to forcibly exclude her from my garden will be seriously undermined. True enough, I might have other moral reasons to exclude but I cannot appeal to the cost of giving up some apples. This is because by benefiting from the wrongdoing I incur a special responsibility to alleviate the harm.\textsuperscript{42} Also, by refusing her entry, I am also contributing to or perpetuating her unjust suffering.

Just like I have no right to forcibly exclude Betty, the affluent states’ right to exclude non-members from poor countries is tainted by the existing global injustices as their current holdings are in question. People living in affluent societies cannot reasonably complain that opening their borders will be costly to them as they are not entitled to their current holdings. Perhaps the morally permissible options open to these state is either transfer more resources to reduce the incentives for the poor to migrant or to open their borders in less selective manner.

4.2 The Taking-Advantage-of-Injustice Argument

This argument maintains that it is morally impermissible for an agent to actively take of advantage of an unjust situation since doing so will exacerbate the existing injustice by creating some ill-gotten gains. Imagine the following case:

Betty is now left with no food. She wants to come to and settle in my garden to share some apples but she cannot cross the fence. At this point I say to her,


“You can live in my garden and share some apples only if you promise to clean my house for me every day. If one day I’m not satisfied with your house-keeping, I’ll just kick you out of my garden.”

Call this the House-Keeping Case. In this case I do not just passively benefit from injustice (or just try to keep my morally questionable holdings). Instead, I am actively taking advantage of the injustice faced by Betty for my self-serving ends. It is perhaps clear by now that although I have played no part in the first wrongdoing, it is morally impermissible for me to later take advantage of it.43 To put this in another way, I am trying to wrongfully exploit Betty’s unfortunate situation.44

The intuitive appeal of this case does not rest entirely in Betty’s unfortunate situation. After all, Betty is “better-off” via being a housekeeper for me (otherwise she will starve). This fact cannot justify my act because I should have let her in or provide her with sufficient food but now, instead of doing any of these, I actively seek to take advantage of this unjust situation. If one finds the House-keeping Case morally troubling, then one should also be troubled by the practice of selective migration. Obviously enough, a major motivation for individuals living in poor countries to migrate is the superior social and economic opportunities available in affluent states. However, they cannot simply move to these affluent societies. They are forcibly prevented from doing so unless they match certain criteria set up by these states. Thus, the affluent states are actively seeking to benefit from the current (vastly unequal) distribution of social and economic opportunities to attract exceptionally talented or wealthy investors and this is morally impermissible.

43 As a general matter, perhaps there is a negative duty not to take advantage of an injustice. See Norbert Anwander, “Contributing and Benefiting: Two Grounds for Duties to the Victims of Injustice,” Ethics & International Affairs 19, 1 (2005): 39-45.
4.3 The Legitimacy Argument

The third argument stems from the need to justify the global institutional order as it is currently organized. The system of territorial sovereign states is a constitutive part of the existing global order and it comprises of a set of international treaties, laws, and shared expectations of the states themselves. A crucial aspect of this system is the institution of semi-closed borders which grants the sovereign states a broad discretion to control their own borders with coercive means when necessary. More important, this system has significant implications on the global distribution of burdens and benefits among individuals. On the one hand, the individuals living in poor countries are largely prevented from migrating to affluent states to improve their life prospects. On the other, individuals in affluent societies are protected from the competition of these poor individuals and continue to enjoy the cheap imports from the developing countries.

It seems plausible, then, to argue that the states are collectively responsible for maintaining the legitimacy of the state system itself, which requires them to provide reason to justify the imposition of such a system on individuals worldwide. This is because these states are the agents which are currently enforcing the system against various individuals (and no supra-national institutions are responsible for borders control). One minimal legitimacy requirement is that the state system must respect people’s basic rights, such as the right to be free from poverty and security rights. Nonetheless, as discussed in Section 3, since the basic rights and entitlements of so many individuals around the world are being violated, it is very unlikely that the basic legitimacy requirements of the state system are in fact met.

45 For this point, see Allen Buchannan, Justice, Legitimacy, and Self-Determination (Oxford: Oxford University Press, 2004), pp. 322-327.
To the extent that this system fails to respect the claims of the unjustly disadvantaged persons, its claim to legitimacy, along with the normative binding force of its rules, will be severely undermined.\textsuperscript{46} It follows that the states’ right to exclude outsiders is questionable and therefore it is morally impermissible for states to purposefully select migrants to advance its narrowly-defined national interests.

4.4 The Right-of-Resistance Argument

The fourth and final argument focuses not on the obligations of the affluent states but the right of those who are unjustly disadvantaged to resist injustice. The underlying idea is that individuals who suffer from global justice have a right of resistance which implies a right to act in contrary to existing domestic and international laws in order to secure their own entitlements. The argument for this right of resistance has two steps:

1. If we have reasons for thinking that X has a claim right to Y, we also have reasons to think that X has a right to take steps to ensure X has Y (at least within certain moral parameters).

2. In some cases, X may do something illegal to ensure X has Y because X has no moral obligation to comply with a law/ an institution which treats X unjustly. (According to any plausible argument for political obligation, this cannot be the case.)\textsuperscript{47}

Now it seems that this right to resistance should include a right to act in contrary to the immigration restrictions imposed by affluent states to protect their own interests.


Given the extent and pervasiveness of global injustice, as discussed in the previous section, it is implausible to argue that those unjustly disadvantaged have a political obligation to comply with the existing international and domestic laws regarding borders control. For instance, an unjustly disadvantaged person may enter another state illegally or use forged documents to gain access to that country in order to improve her life prospect. If this is the case, it will be morally impermissible for these affluent states to exclude them in favour of some more “desirable” migrants. It may now be argued that this argument is pointless because the poorest individuals in the world are least likely to migrant to another country. Nonetheless, what I am defending here is the right of these individuals to migrate and it is important to recognize this right even when they may not currently have the resources to do so.

5. Possible Objections and Replies

In this section let me consider some possible objections to my arguments in this paper.

5.1. Objection 1: Freedom of Movement of the Chosen Migrants

It may be objected that my arguments fail to respect the right of the talented individuals from poor countries to make important life decisions. There right to immigrate seems particularly strong provided that their destination country actually consents to their immigration. In reply, the arguments in this paper do not deny the freedom of movement of these individuals. The focus of this paper is instead whether the affluent states have the right to exclude some migrants but not others. Also, from a moral point of view, their freedom of movement is no more important than that of other less wealthy or less talented individuals.
5.2 Objection 2: Legitimate Interests in Attracting Economically Productive Migrants

States have special responsibilities to the well-being of their own members and therefore they have legitimate interests in selecting new members. In contrast, states do not have similar responsibilities to non-members. Negatively, states could have a legitimate interests in refusing certain immigration applications. For example, influx of a large number of unskilled workers is harmful to the local economy and the costs are disproportionally bore by the poor working-class people who now face intense competition in the job market. Therefore, the state could have a legitimate interest in refusing these immigrants. Positively, states could have a legitimate interest in selecting those who are capable making a contribution to the community, economically or otherwise. For instance, a state which suffers from environmental degradation may want to attract some competent environmental scientists in order to solve the pollution problem.

Two responses could be given to this objection. First, a legitimate interest is not necessarily an overriding or an unconditional one. In many case, the interest is benign or unobjectionable in itself but it could be outweighed by other important moral considerations. To take a hypothetical example: suppose I am enjoying a sunbath on a beach and some child is drowning in the shallow water. Suppose further I could save her easily and there is no one around to do so. Now even if I have a legitimate interest in continuing my sunbath, in these circumstances the interest is clearly outweighed by the potential deal of the drowning child and I am therefore

48 Several political theorists have argued that one does own certain special responsibilities to one’s fellow citizens. It may be taken to imply that a state, as a collective agent of the people it represents, owes special responsibilities to its members in deciding how to act. See, for example, David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007).

under a duty to rescue her. Similarly, states do have legitimate interests in excluding unskilled workers or to admit only trained professionals but such interests can justify selective migration only when the conditions identified in Section 3 are met. For instance, states may have a legitimate interest in exercising freedom of association or in maintaining their global economic competitiveness. These interests are unobjectionable in themselves but they must be weighed against their duties to alleviate global injustice (from they have clearly benefited). Again, given the extent of existing global injustices, it is far from clear that the interests of affluent states could justify a broad discretion to exclude would-be immigrants for purely economic considerations. Second, if the working-class people were disproportionately burdened by less restrictive immigration policies, then the appropriate response would be to demand a more equitable distribution of burdens arising from immigration. Alternatively, if the country does not want to receive some many immigrants, it should try to transfer more resources to the poor countries to reduce the incentive to migrant for economic reasons.

5.3 The Costs Imposed on Affluent Individuals

Another possible objection to my arguments is that the conditions identified in Section 3 are overly demanding to the affluent states and their existing members (most of whom were simply born into their current country and they are not responsible for such injustice). Note that in many cases global injustice may not have a clearly identifiable contributor and is instead caused by some structural process for which many agents are responsible. Thus, the pursuit for global justice seems an

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extremely demanding task and why should this be necessary condition for selective migration to be morally permissible?

Two things can be said about this objection. First, background global injustice means that the current holdings of the affluent persons are morally questionable. Therefore, whenever we are assessing the demandingness of a particular theory of global justice, we should take into consideration that the duty-bearers may not be entitled to all their holdings and thus their appeal to costs are tainted. Second, the condition is that the state must do its fair share in alleviating global injustice. Any particular state is not required to more than its fair share in circumstances where other states are not doing their duties of global justice.

6. Conclusions

Throughout this paper I have assumed that it is the relatively affluent states which select migrants. There are, of course, some cases in which a state can permissibly exclude some outsiders from entering their territories. For instance, in cases where their national security or the personal security of their members is under threat, states could exercise their right to control their own borders. However, the practice of selecting the super-rich and the exceptionally talented migrants seems to require more justification.

To conclude, this paper does not show that selective migration based on wealth or individual merit is inherently wrong. What it does show, however, is the practice of selective migration is morally permissible only when a set of fairly demanding conditions are met. It has argued that overwhelming background global injustice which exists today does limit the ways in which affluent states can do to advance their national interests even further. Moreover, this paper has shown that
given the extent and gravity of existing global injustices, the right of the affluent
countries to exclude prospective immigrants from relatively poor countries is severely
constrained.