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Selecting Immigrants in an Unjust World

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Abstract

For many individuals living in poor societies, migration is the best hope for improving their life prospect. However, global migration today is highly selective and stratified. Affluent states often enjoy great discretion to cherry pick their immigration, favouring those with particular skills and qualifications. In this article, I argue that this practice of selective immigration is morally permissible only when a set of demanding conditions are met. I also argue that their right to exclude potential immigrants is constrained by the background distributive injustice in the global context.

Introduction

‘Give me your tired, your poor, your huddled masses yearning to breathe free’. These are the famous words from Emma Lazarus’s poem engraved on the pedestal of the Statue of Liberty. The current situation of global migration obviously falls short of Lazarus’s humanitarian vision as affluent states often enjoy great discretion to ‘cherry pick’ their immigrants. Some political theorists argue (Carens, 1987, 2013; Cole, 2000; Oberman, 2016) that national borders should be open to potential migrants, while others maintain (Miller, 2013, 2016; Wellman, 2008) that states should have the right to restrict immigration. In fact, global migration today is highly selective and stratified. States often grant privileged admissions to potential migrants who can bring productive labour, marketable talent, knowledge and innovation to their host society. In this article, I ask whether it is morally permissible for states to select immigrants according to their expected economic contributions. This practice is referred to as ‘economic selection’.

In the late nineteenth century, Henry Sidgwick (1996 [1897]: 248; Cited in Miller, 2016: 5) argued that ‘a state must obviously have the right to admit aliens on its own terms, imposing any conditions on entrance or tolls on transit, and subjecting them to any legal restriction or disabilities that it may deem expedient’. Sidgwick’s view would find little support today, as it is now widely believed that selecting immigrants according to their race or religious background is both discriminatory and indefensible. However, economic selection appears to enjoy much greater support. David Miller (2016: 104–106), for example, argues that as long as human rights are not at stake, the admission of economic migrants should be understood in

terms of mutual benefits, as both the receiving state and the migrant should gain from such an arrangement. Even Joseph Carens, the most prominent advocate of open borders, claims that economic selection in immigration ‘seems morally permissible’. Provided that states are morally entitled to control their own borders,¹ argues Carens (2013: 83–185), selecting immigrants according to their economic potential would be ‘ungenerous’ but ‘not unjust’. In recent decades it has been increasingly common for affluent states to select immigrants according to the applicants’ talents, professional qualifications or demand from the domestic market. These welcome and wanted migrants include scientists, engineers, doctors and healthcare workers. Canada, for example, has a Comprehensive Ranking System for economic migrants, in which candidates are ranked according to their level of education, skills and work experience, and if they belong to in-demand occupations and language ability. The highest-ranking candidates in the pool are invited to apply for permanent residence through an ‘Express Entry’ scheme (Government of Canada, n.d.). The case for poor low-skilled migrants, however, is far more precarious. Even when some of these individuals eventually cross the borders into a developed country, they are often granted a much less secured status (Heyman, 1998). They may become temporary workers or undocumented migrants with no claim to social welfare or family reunification. These immigrants will also face significant barriers in becoming full citizens.²

For many individuals who live in societies with limited job opportunities or economic resources, migration is their best hope for improving their life prospects. This is so because under the existing international order a person’s access to social and economic advantages is largely determined by her place of residence, and transnational movement of persons is heavily regulated by states. Branko Milanovic (2016: 118–139) finds that 80% of global inequality depends on a person’s place of residence and only 20% on social class. People in the most affluent states enjoy ‘citizenship premium’ – benefits conferred by their citizenship – simply by living in their current countries. At the same time, immigration restrictions are coercively imposed on unwilling individuals (Abizadeh, 2008).

This article argues that economic selection in immigration is morally permissible only when a set of demanding conditions are met. It proceeds as follows. Section ‘Market Competition and the Ideal of Democratic Citizenship’ considers an objection to economic selection, which states that citizenship should not be subject to market exchange and argues that this objection is unfounded. Section ‘The Conditions for Selective Migration to be Morally Permissible’ identifies the conditions that must be met for economic selection to be morally permissible. Section ‘Background Injustice and the Right to Exclude’ explains why background distributive injustice at the global level undermines the right of affluent states to forcibly exclude potential migrants. Section ‘Objections and Replies’ responds to some possible objections to my arguments. The bulk of academic discussions of immigration ethics has focused on whether borders should be open in principle, while the problem of immigration selection has received relatively limited attention. The article attempts to fill this gap in the literature by showing that a state’s right to exclude outsiders is constrained by its responsibility for global justice.

Before proceeding, some clarifications are in order. First, this article remains agnostic about whether state borders should be open as a matter of ideal theory. Instead, it focuses on what affluent states could permissibly do under non-ideal circumstances. Given the existing level of global economic inequalities, opening up borders will be excessively burdensome on some states. As such, the proponents of open borders should also consider the question of granting priority to some potential migrants before a more open borders system could be realistically implemented. Similarly, even if states are entitled to control their borders, it does not follow that they can exclude non-members for any reason. Second, this article focuses on the so-called ‘South–North migration’ in which highly-skilled workers from poorer countries are seeking to migrate into an affluent country where their talents command higher returns. However, selective openness of borders means that individuals without the desired talents and skills in the global labour market will be excluded and left behind.

Market Competition and the Ideal of Democratic Citizenship

Some economists have defended (Backer, 1998: 58–59; Borna and Sterns, 2002: 193–207) the sale of citizenship as an efficient and mutually beneficial way of allocating membership goods. Economic selection in immigration is not a ‘cash-for-passport’ programme but they both follow the logic of market competition. When a state selects potential migrants according to their particular skills, it is offering its citizenship in exchange for the economic benefits those immigrants could bring, such as their productive labour and marketable skills, which are vital to a country’s economic competitiveness. Immigrants can also clearly benefit from this kind of ‘exchange’.

What, if anything, is wrong with a state using immigration selection to pursue economic gains? According to Ayelet Shachar, marketisation in immigration selection will inevitably degrade or corrupt the proper values of citizenship. The problem with economic selection in immigration, argues Shachar (2016: 196–197), is ‘the potential eroding or diluting effect of bringing market-valuation of talent and exchange into assigning and allocating “membership goods”’, and that this model of selection poses ‘serious hazards to democratic and egalitarian notions which at least formally assign membership to individuals irrespective of how innovative, talented, or accomplished they may (or may not) be’.³ If this argument is sound, economic selection in immigration will be inherently wrong because trading citizenship for economic gains always means allocating it in a morally objectionable way. In this section, I examine this objection to economic selection and find it to be unpersuasive.

Surely, there are some goods which should not be traded for tangible benefits (Andre, 1995). Friendship, for example, will cease to exist once it is exchanged for tangible benefits. Citizenship is not like this, as it implies a bundle of benefits and entitlements. Typically this includes a set of social and political rights, security of residence, a legal status equal to other citizens and access to various public services and economic opportunities available in their political community. These benefits and entitlements may be owned like properties, forfeited or traded without losing their value. However, it may be argued (Shachar, 2009: 56; Shachar and Hirsch, 2014: 247) that citizenship is not only a bundle of entitlements but also composed of political relations that are supposed to reflect ‘a notion of participation, co-governance, and a

degree of solidarity among those included in the body politic'. Therefore, treating citizenship as a commodity will undermine its value by making people view this good in a different and perhaps objectionable way. There are three distinct concerns here.

First, the surge in selective migration tends to make citizenship more 'functional' and 'utilitarian' and ultimately weakens the political bonds between the individual and her political community and between the citizens themselves (Shachar, 2009: 56; Shachar and Hirsch, 2014: 253). However, selecting immigrants according to the particular skills they possess does not necessarily weaken the political bond between citizens. In fact, there are some reasons to suspect that the opposite may well be true. As these immigrants have actively chosen their new state, they may have more reason to accept the public culture of the community and to participate in its public life. They also have a strong incentive to integrate into their host society through, for example, learning the majority language and finding employment. Furthermore, new immigrants who possess the skills or qualifications desired by the receiving country are likely to contribute to the economic cooperation of the society, rather than being dependent on the state.

Second, economic selection in immigration can be seen as reflecting a vision of citizenship that is essentially productive and contributory, whereby individuals without the desired skills or talents are increasingly regarded as 'costs' to their society (Shachar, 2016: 252). Racial selection in immigration can be seen as a parallel to this – if a state excludes potential migrants because of their race or ethnic backgrounds, it shows disrespect for existing members who belong to the excluded groups (Blake, 2005: 232–233. Cited in Wellman and Cole, 2011: 148). However, economic selection does not necessarily show disrespect for those citizens who lack the desired traits. States may have legitimate interests in recruiting immigrants with skills that are in short supply in the domestic market, but they do not have a legitimate interest in pursuing or maintaining the racial purity of its members. Besides, the admission of highly skilled and well-educated immigrants tends to promote economic growth, also benefitting the citizens who are not similarly positioned in the job market.

Finally, some would claim that economic selection in immigration is incompatible with the ideal of citizenship grounded in equality and democracy, which at least formally assigns memberships 'irrespective of how innovative, talented, or accomplished they may (or may not) be' (Shachar, 2016: 197; Shachar and Hirsch, 2014: 248). However, it is unclear why economic selection in immigration is incompatible with democratic citizenship. First of all, what really matters in democratic citizenship is that the domestic institutions must respect the social and political equality of all members. Democratic or egalitarian citizenship can be understood in different ways, but this article does not have the space for a discussion of this concept (Anderson, 1999; Mason, 2012; Scheffler, 2003). If all members enjoy similar rights and liberties and have access to sufficient resources to stand as an equal to one another, it is difficult to claim that selective immigration will undermine democratic citizenship. The problem with racial selection is that racist immigration policies always treat some citizens who are ethnic minorities as if they were second-class citizens. Economic selection, in contrast, does not have the same implications, as new members will enjoy the same rights and liberties as existing ones. Moreover,

economic selection in immigration can also actually promote democratic citizenship, by ensuring these new immigrants have the required skills to become full participants in social and economic cooperation and integrate into society.

The Conditions for Selective Migration to be Morally Permissible

In the preceding section, it is argued that economic selection does not necessarily corrupt the value of citizenship, but economic selection raises other important moral issues. Defenders of economic selection may believe that states are entitled to exclude some immigrants without violating their rights. David Miller, for example, argues that economic migrants have no general right to immigration, and so states are entitled to exclude them from entering their territory. In this context, when a state decides to admit potential migrants it finds desirable due to particular skills and talents, while excluding others, it does no wrong to anyone. Such an arrangement is mutually beneficial for the migrants and the receiving country provided that doing so will not jeopardise human rights (Miller, 2016: 104–106). One key premise of Miller’s defence of economic selection in immigration is that immigration policy is a tool states can justifiably use to promote the interests of their own members. In this section and the next, I argue that a state’s right to pursue its national interests through selective immigration policies ought to be constrained by other important moral considerations, including concerns for global distributive injustice. More specifically, this section identifies three conditions that must be met before an affluent state can permissibly pursue its national interests through economic selection in immigration.

Selective Immigration Must Not Harm Those Unable to Migrate

- *Condition 1: The admission of desired migrants must not harm the already disadvantaged persons who are left behind and unable to migrate.*

Although some arrangements are mutually beneficial to the parties involved, they may become morally impermissible when they impose harm on others. These arrangements are even more morally problematic if those who suffer are already badly off. Peter Higgins (2013: 110–144), for instance, argues that immigration policies are unjust to the extent that they avoidably harm social groups which are already unjustly disadvantaged.⁴

The net effects of selective immigration are likely to vary from case to case, but skill-based migrant programmes may cause harmful ‘brain drain’ in poorer countries. One example is the migration of medical doctors and healthcare workers: many domestically educated doctors and nurses migrate from sub-Saharan African countries to the United States, Canada, the United Kingdom and Australia. The sub-Saharan region is most affected by HIV/AIDS and is experiencing a serious shortage of healthcare professionals. Medical brain drain has a self-enforcing effect: when a healthcare system weakens, successful physicians and nurses tend to leave, and when these professionals leave, the healthcare system weakens further (Karan et al., 2016). One study estimates that such medical brain drain cost the region \$2.17 billion in 2011, while bringing an estimated \$846 million to \$2.7 billion to the destination countries (Mills et al., 2011). Worse still, recruitment agencies from the affluent countries actively recruit healthcare professionals from African countries, providing

them with legal advice on immigration and moving expenses (Mills et al., 2008. Cited in Brock and Blake, 2015: 221). A recent World Health Organization (WHO) report suggests that migration of healthcare professional contributes to 20%–40% of the estimated critical shortages in healthcare personnel in 51 developing countries and the number of migration of healthcare workers kept increasing (Buchan et al., 2017: 102–103).

David Miller (2016: 108–111) argues that affluent states act wrongly if they actively seek to recruit skilled migrants from poor countries and that sometimes states ought to refuse admission to certain migrants whose skills are in short supply in the sending countries, if they are struggling to meet the basic needs of their members. Section ‘Freedom of the High-Skilled Migrants’ will consider the normative challenges to the ‘brain drain’ argument, but there is also an empirical question of whether high-skilled migration is harmful on the global poor. Sometimes even opponents to the ‘brain drain’ argument would concede that immigration restrictions are justified when the emigration of high-skilled workers results in severe harms (see, for example, Hidalgo, 2014: 122).

The overall impacts of high-skilled migration are surely complex. My arguments do not rule out the possibility that high-skilled migration is non-harm or even beneficial for developing countries. However, this does not undermine my central claim in this section that economic selection in immigration is morally impermissible *when it causes harm* to those already disadvantaged. If it can be convincingly shown that the overall effects of high-skilled migration causes no harm, the first condition will be met. Yet, we should be sceptical about the claim that high-skilled migration is beneficial for the developing countries. Two reasons are often invoked for this claim: (1) remittance generated by emigrants can compensate for the negative effects of ‘brain drain’; (2) emigrants may eventually return to their original country, bringing back valuable skills, ideas, savings, contacts. However, financial capital (remittance) cannot substitute for human capital (high-skilled labour) which is vital for long-term development. Also, the role of returning migrants is at best uncertain because it depends on how many and which migrants actually return and so it applies more to temporary labour programmes rather than permanent migration (Kapur and McHale, 2005: 145–146, 172–176).

Obligatory Admissions Must Be Given Priority

- *Condition 2: The admissions of desired migrants must be compatible with admitting other individuals who have strong claims to enter.*

Different selective migrant schemes follow different logics – family reunification, humanitarian or economic. In some cases, states are under a moral obligation to accept certain individuals who wish to settle or seek refuge in their territories. Priority should be given to those with strong claims to admission before states can permissibly seek to admit other migrants for economic reasons. Although there has been debate over obligatory admissions, the following two categories are worthy of inclusion.

1. Refugees: refugees are those whose basic needs, including personal security and material needs, are not protected in their own country and who are forced to flee to seek international restitution (Shacknove, 1985: 274–284).⁵
2. Family reunification: this category is not based on the claims of foreigners to be included but on the moral right of citizens to live with their immediate family members. The justification for this right is that each citizen should have the freedom to form her own family through marriage and procreation and to live with her family members in her own country (Carens, 2013: 185–191).

These two categories of individual should be given priority over high-skilled migration in general. The duty to admit refugees is first grounded on a humanitarian reason. It is also a collective duty of sovereign states to address the human right deficit created by the modern state system – in cases where assigning people to a particular state is disastrous for them. (Carens, 2013: 195–196; Owen, 2016) The duty of a state to allow family reunification is based on its duty to secure its members’ fundamental interest in giving and receiving care in intimate relations (Honohan, 2009: 774–775).⁶ To these two groups of obligatory admissions we may add a third: the individuals who have been harmed by the foreign policies of some affluent states. In this case, immigration admission is a compensatory measure for global injustice (Wilcox, 2007: 284–286).

Skill-based migration programmes can be seen as compatible with these obligatory admissions because a state may have different migration programmes for different purposes. However, the point is that selective migration is morally impermissible when it ‘crowds out’ individuals who have strong claims to admission. In practice, it is possible for economic programmes to crowd out other programmes because states may not be able to accept a large population influx within a short period of time. When states are more and more determined to compete for talents in the global market, the tension between skill-based migration programmes and obligatory admissions must be taken seriously.

The State Must Do Its Fair Share to Alleviate Global Injustice

- *Condition 3: A state can permissibly seek to admit highly skilled migrants only when it has done its fair share to alleviate global distributive injustice.*

Christopher Wellman (Wellman and Cole, 2011: 68–69) argues that while some states may decide to discharge their duties of distributive justice by opening their borders to the foreign poor, ‘those legitimate states that prefer to guard their membership more jealously are equally free to do so as long as they transfer the required resources abroad’. However, Wellman does not go on to provide arguments for this claim. Any plausible theory of global distributive justice will typically imply certain duties to promote justice (or to address injustice), and some of these duties will fall on the states that are the most powerful agents in the international realm. Of course, it is difficult to determine what these duties are and how they should be distributed among agents. What constitutes a ‘fair share’ of a state’s duty to alleviate global injustice depends on (1) what theory of global distributive justice is invoked and (2) how this particular theory allocates duties of justice among different agents.⁷ These issues

cannot be addressed within a single article, so I will briefly describe the three most prominent conceptions of distributive justice and then argue that most (if not all) affluent states fail to do their fair shares to alleviate global injustice according to any of the three conceptions.

Consider cosmopolitan egalitarianism first. Egalitarianism involves the commitment to reduce the relative deprivation of some, even when no person suffers from absolute deprivation. Some political theorists find the current level of global inequality morally repugnant. For example, Simon Caney suggests that a person should not face worse opportunities than others simply by virtue of national or cultural identities, which are circumstances part of one's unchosen circumstances. Caney (2001) defends this position by arguing that the internal logic of the justification of fair equality of opportunity in the 'domestic' case – that it is unfair for a person to have worse opportunities because of his cultural identity – entails that the scope of this principle of justice should be global. According to this conception of distributive justice, our world is seriously unjust. An average child born in Uganda or Syria has a considerably worse opportunity to achieve advantaged social and economic positions in life than an average child born in the United States or Switzerland. According to this conception of global distributive justice, it is evident that affluent and powerful states have done little to equalise opportunities across societies. Worse still, through the workings of multinational organisations, these states have done a great deal to preserve their own advantage at the expense of the global poor. For example, WTO regulations severely impair developing countries' ability to adopt industrial policies that can serve their developmental needs, such as export subsidies, industrial imitation and domestic content requirements, which have been successfully used by affluent states in their early stages of industrialisation (Rodrik, 2011: 198–200).

Next, consider *global sufficientarianism*. Apparently, not all theorists accept the egalitarian conception of global distributive justice but most would maintain that everyone is entitled to the level of resources necessary for a minimally decent life, such as adequate nutrition, shelter and basic healthcare (O'Neill, 2016; Shue, 1996). According to this view, the current situation of global poverty is morally shocking: 1.2 billion people live on less than \$1.25 a day. In developing countries (in which 92% of the world's children live), 7 in 100 will not survive beyond the age of 5 years, and 25 will live in poverty. Nearly 156 million children are stunted as a result of malnutrition and infection (United Nations Development Programme (UNDP), 2014). Few affluent states have addressed the problem sufficiently. Most Organisation for Economic Co-operation and Development (OECD) countries, which are among the wealthiest in the world, have been giving less than 1% of their gross national incomes (GNIs) as overseas development aid. The United States, for example, gave only 0.19% of its GNI as foreign aid (OECD, n.d.). The current global order, which many affluent states have played a part in maintaining, imposes significant harm on the global poor and makes it much harder for them to escape poverty (Pogge, 2002).

Finally, let us consider the view of *international libertarianism*. Libertarianism, as exemplified by Robert Nozick, maintains that justice is not a matter of conforming to certain distributive patterns, whether sufficiency, equality or any other, but is rather a matter of how the current distribution of holdings arises in terms of their initial

acquisition and subsequent transfers. The property rights of individuals are of supreme importance. Accordingly, past injustice inevitably calls into question the justice of the current distribution because no one is entitled to ‘ill-gotten gains’ (Nozick, 1974: 151–152). The participation in slavery, colonialism, exploitation and imperialism by most affluent states means that they are not entitled to their current levels of economic resources (Butt, 2009). In addition, massive and systemic violations of property rights are an on-going phenomenon that has significant distributive implications. Consider, for example, the global trade of natural resources such as oil and rare metals. Many resource-rich countries are ironically among the poorest on earth, and are ruled by tyrants who consolidate their power through the revenues gained from selling the country’s natural resources. Thus, the property rights of the people to their natural resources are constantly being violated when many affluent states and multinational corporations knowingly pay the tyrants for natural resources (Wenar, 2008). It is extremely doubtful that affluent countries have done their duties to address such injustices. The countries that suffered terribly from colonialism and slavery are still the poorest, and the global trade in natural resources and raw materials with repressive regimes continues as if they were legitimate.

In short, one can distinguish between two questions: (1) whether affluent states have done their fair share in addressing global distributive injustice; and (2) whether it is morally permissible for these states to ‘cherry pick’ their immigrants without doing their fair share as far as global justice is concerned. This section tries to answer the first question while the next section will try to answer the second. However, the following arguments do not assume any particular conception of global distributive justice. They will apply even when we adopt a minimal theory of global distributive and believe a state has a *pro tanto* right to control immigration.

Background Injustice and the Right to Exclude

Economic migration is often voluntary and mutually beneficial. Since a state has a right to exclude outsiders from entering its territory, it should also have the right to select immigrants for economic benefits (Hidalgo, 2016: 224–225; Miller, 2016: 104–106). My principal objection to this view is that affluent states’ right to select migrants is seriously undermined by background injustice in the global realm. At first glance, it may be unclear why background global injustice should limit the permissible options that affluent states have in their immigration policies and their right to exclude certain potential migrants from entering in favour of others. In what follows I shall offer four arguments for my position.

The Benefitting-from-Injustice Argument

This argument can be summarised as follows: if an agent has benefitted from injustice or wrongdoing, then this agent has no right to deny the access of victim(s) to such benefits. Consider the following case. Richland and Poorland are two neighbouring countries. One day Richland invaded Poorland, took most of its natural resources and enslaved most of its people. Years went by and the original wrongdoers and victims passed away, but as a result of this invasion, the descendants of the two countries enjoy markedly different standards of living – people in Richland enjoy great wealth and prosperity while people in Poorland live in abject poverty.

We can refer to this as the Past Aggression Case, a hypothetical case that involves historic injustice (one could, of course, come up with other cases with a different conception of distributive justice). This case has three features: (1) the resulting distribution of advantages is unjust, (2) such injustice confers benefits on some parties and (3) others suffer from an undeserved disadvantage or simply fall below the morally relevant threshold. Thus, it appears plausible that a redistribution of resources is warranted, as the injustice of the existing distribution will remove one type of argument against redistribution (Caney, 2006: 476–478; Goodin and Barry, 2014). The Richlanders should bear the remedial responsibility and address the unjust situation even though the receipt of benefits was largely involuntary. Two arguments can be made for this claim. First, benefits obtained from an unjust situation are ‘distortions’ in the overall scheme of distribution. Therefore, making the beneficiaries pay can better restore justice by cancelling out their unjust gains (Butt, 2009: 118–123). Second, the beneficiaries of injustice cannot reasonably complain that these obligations of justice are too costly for them, because their current holdings are in fact questionable (Haydar, 2009: 141–144).

Admittedly, the Richlanders could fulfil their remedial obligations by transferring the required resources to the Poorlanders. Thus, the existence of distributive injustice does not automatically create a right to immigration for the disadvantaged persons. However, what would be the appropriate response to a situation in which the wealthy either refuse or fail to meet their obligations? Perhaps someone else could take up the slack, but this is unfair. Thus, if the Poorlanders decide they will cross the borders to secure their entitlements, the Richlanders will have no valid complaint because they are responsible for the situation. Similarly, when an affluent state has refused or failed to do its fair share to alleviate global injustice, it will have no valid complaint if the unjustly disadvantaged have to cross the border to secure their entitlements.

The Taking-Advantage-of-Injustice Argument

The second argument maintains that it is morally impermissible for an agent to actively take advantage of an unjust situation, as doing so will exacerbate the existing injustice by creating even more underserved benefits. Consider the following case. The Richlanders refuse to give up the resources they currently have but they make an offer to the Poorlanders, saying ‘You may come to live on our land and share its produce only if you promise to work very hard for us’. The Poorlanders agree to this condition and move. Now the wealthy do not have to work anymore, but they maintain their lifestyle thanks to the incredibly productive labour of the Poorlanders who work in their fields and factories.

We can consider this as the Productive Labour Case. In contrast to the Past Aggression Case, here the Richlanders do not simply benefit passively from an injustice (or simply try to keep their present properties); they are actively taking advantage of an injustice to the Poorlanders. It should be clear by now that it is morally impermissible for the Richlanders to take advantage of this unjust situation.⁸ The intuitive appeal of this case does not entirely rest on the misfortune of the Poorlanders. If we take the status quo for granted, this arrangement is mutually beneficial – the Poorlanders themselves benefit from the arrangement by improving

their own living standard. The problem lies in the behaviour of the Richlanders. They not only refuse to give up their ill-gotten gains but also seek to further their own interests by taking advantage of the underserved vulnerability of the Poorlanders. In other words, they are trying to wrongfully *exploit* others (Goodin, 1987).

If the Productive Labour Case is morally troubling, then so is the current practice of selective immigration. Given the extent and pervasiveness of global distributive injustice, many individuals who are seeking to migrate are unjustly disadvantaged, but not all of them are granted the same opportunity to move. Instead of meeting their obligations to alleviate global injustice, most unjustly advantaged affluent states continue to enjoy the discretion to select immigrants according to their particular skills, education background or professional qualifications. In this sense, the affluent states are actively seeking to benefit from the prevailing unjust distribution of social and economic opportunities to further their own economic interests. More questions may then arise. Is economic selection morally permissible when a state has fulfilled its own duties of global distributive justice, while most other states fail to do their fair share? Is this state taking advantage of an unjust situation created by others? I am inclined to answer these questions negatively for two reasons. First, it is unclear why a state has an obligation to take up the slack for other agents' failures to act on their duties of distributive justice. Second, a plausible theory of distributive justice cannot require agents to promote justice regardless of what other duty bearers may do, as doing so would be unreasonably demanding for the complying agents.

The Legitimacy Argument

The third argument involves the need to justify the global institutional order to those who are subject to it. The system of territorial sovereign states is a constitutive part of the current global order, and it comprises a set of international treaties, laws and shared expectations of the states themselves. A part of this system is the institution of heavily regulated borders: sovereign states enjoy broad discretion to control their own borders by coercive means when necessary. More importantly, this system has significant implications for the life prospects of countless individuals worldwide. Individuals living in poor countries are often prevented from migrating to well-off countries to improve their life prospects, thus keeping wages low in these countries. Affluent individuals also have the collective right to exclude foreigners from enjoying the social and economic opportunities available in their society.

Sovereign states are currently enforcing this system against unwilling individuals by coercive means. They are therefore collectively responsible for the legitimacy of the international border system. This requires them to justify the imposition of such a system on individuals worldwide, particularly those who are disadvantaged by it (Owen, 2016). 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 (Buchanan, 2004: 322–327). Nevertheless, given that the basic rights and entitlements of so many individuals around the world are not being protected, it is unlikely that the basic legitimacy requirements of the international border system are in fact being met. Alternatively, from the perspective of cosmopolitan egalitarianism,

the international border system that creates and sustains extreme levels of social and economic inequality becomes even harder to justify (Carens, 2013: 233–236).

Background distributive injustice inevitably undermines the international border system's claim to legitimacy as it is difficult to justify the system to individuals who are unjustly disadvantaged. To justify this system, sovereign states (particularly those that are affluent and powerful) must fulfil their respective obligations to address distributive injustice in the global context. If they fail to do so, their right to enforce the system, along with the normative binding force of its rules, should be called into question. As a state's right to exclude outsiders depends largely on the legitimacy of the international border system, its right to use immigration control to further its economic interests will also be undermined, unless it has done its fair share to alleviate global distributive injustice.

The Right-of-Resistance Argument

While the previous three arguments focus on the obligations of the affluent states, the fourth and final argument focuses on what those who are unjustly disadvantaged may permissibly do to secure their entitlements. The underlying idea is that individuals who are unjustly disadvantaged have a right of resistance, including a right to act contrary to existing domestic and international laws to secure their entitlements. Two arguments can be given for the right of resistance (Caney, 2015: 59–61):

1. If we have reason to think that X has a claim right to Y, we also have reason to think that X has a right to take steps to secure such a right herself, at least within certain moral parameters, and others should accordingly refrain from interfering with X's action.
2. No plausible theory of political obligation would suggest that individuals who are suffering injustice have an overriding political obligation to comply with the rules or institutions that treat them unjustly. Thus, within certain moral parameters, those victims of injustice may act contrary to domestic or international laws to secure their entitlements.

This right to resist global injustice can reasonably include a right to act contrary to the immigration restrictions imposed by affluent states (Hidalgo, 2015). Given the extent and pervasiveness of global distributive injustice, as discussed in the previous section, it is implausible to argue that those who are unjustly disadvantaged have a moral obligation to comply with the current international and domestic laws regarding border control. For example, an unjustly disadvantaged person may enter another state illegally or use forged documents to gain access to that country so that she can improve her life prospects. This implies that affluent states have no right to exclude the disadvantaged in favour of more 'desirable' migrants. However, this argument may be regarded as pointless, as the poorest individuals in the world are the least likely to migrate to another country. Nevertheless, I am defending the *right* of these individuals to migrate, and it is important to recognise this right even if they may not have the resources to migrate.

Objections and Replies

Thus far I have identified three conditions that must be met for economic selection in immigration to be morally permissible, and discussed arguments in support of them. Let us now turn to some possible objections to the arguments presented.

Freedom of the High-Skilled Migrants

The first objection suggests that my arguments unjustifiably restrict the fundamental liberties of high-skilled migrants and thus fail to show proper for these individuals. In the debates on ‘brain drain’ in migration, some theorists argue that the sending states should not impose coercive restrictions on emigration as a way to deal with ‘brain drain’ (Tesón, 2008; Brock and Blake, 2015; Cole, 2010; Sager, 2014). The right to exit is widely considered to be a human right but it is also argued that immigration restrictions on high-skilled migration are unjust (Hidalgo, 2013, 2014; Oberman, 2013).⁹ A common theme for their arguments is that the fundamental liberties of high-skilled individuals are at stake – their occupational liberty and freedom of movement. These liberties, they argue, could outweigh these individuals’ duty to remain in their own country or even the negative duty of the receiving countries not to impose harm on foreigners (through encouraging brain drain).¹⁰

The first thing to note here is that my arguments focus on immigration policies of the receiving countries and they do not directly interfere with people’s right to leave.¹¹ Moreover, it must be stressed that *if* ‘not being selected for immigration’ constitutes an unjustifiable restriction on the occupational liberty and freedom of movement for those high-skilled migrants, then it will also be an unjustifiable restriction on the similar rights for low-skilled migrants who are refused admissions. It is unclear why the moral force of occupational liberty and freedom of movement should depend on a person’s productive skills and talents. If such liberties are so fundamental, as suggested by these arguments, why should people not have an equal right to them?

Therefore, we need some further moral reason for favouring high-skilled migrants in admissions (while excluding many low-skilled or unskilled ones). One possible reason is that, at least in some cases, high-skilled migration is beneficial for both the receiving and the sending states. More specifically, high-skilled migration actually contributes to the development of poor countries (through, say, remittance and skill transfers), and it is therefore a way in which affluent states discharge their duties of global distributive justice.¹² Hence, economic selection in immigration is morally permissible and may even be obligatory. But if the justification for favouring high-skilled migrants is that doing so will promote global distributive justice, then these states should, for the same reason, admit low-skilled or unskilled migrants from poor countries. Low-skilled migration could be even more beneficial for the migrants and also for the sending countries. The low-skilled migrants are typically worse-off than the high-skilled professionals in their country and could potentially gain much more from migration. Therefore, if immigration policies are a measure to discharge distributive duties, the affluent states should perhaps adopt a non-discriminating approach and admit both high-skilled and low-skilled migrants into their territory and also give them equal access to citizenship.

States’ Legitimate Interests in Attracting Economically Productive Migrants

The second objection is based on the widely held belief that each state has a special obligation to its own members, which implies that except in times of humanitarian crises, states can legitimately give more weight to the interests of their own members when making policy decisions. States may have a legitimate interest in refusing to admit certain immigrants. For example, it has often been asserted that an influx of poor, low-skilled migrants harms the domestic poor in affluent countries by drawing down wages (Macedo, 2007). States may also have a legitimate interest in accepting those who are capable of contributing to the community, economically or otherwise. Finally, immigrants who voluntarily migrate to their host countries have a responsibility to contribute to the local scheme of social and economic cooperation (Miller, 2016: 105–106). In short, states could have certain legitimate policy goals, such as helping the domestic poor or maintaining their economic competitiveness, and they are entitled to use immigration policies to achieve these goals.

Four responses can be given to this objection. The first calls into question its empirical premise. Many believe that low-skilled immigration harms the domestic poor because it increases the local supply of low-skilled workers, causing wages to go down if the demand for such workers remains constant. However, for this model to work, immigrants and natives with similar educational attainment must be perfect substitutes for each other. Empirical studies have disproved this assumption and shown that the two groups tend to specialise in different tasks. For example, low-skilled immigrants tend to specialise in manual and physical labour, whereas natives tend to specialise in jobs that require communication and language skills. The effects of higher immigration rates on the wages of native low-skilled workers in affluent countries have thus been negligible (Abizadeh et al., 2015).

Second, although that as a matter of reciprocity new immigrants can be reasonably expected to make contributions to their host society's scheme of economic cooperation, it is unclear why only highly skilled workers or well-educated professionals can do so. Fair reciprocity does not require members who will make predetermined levels of contributions, but *proportional* and *appropriate* contributions according to their capacities and circumstances. Native-born citizens can still honour their duty to reciprocity by engaging in economically productive activities wherever they can, or can become caretakers of their families without being trained professionals or investors. Why should different standards of reciprocity be applied to immigrants? If the answer is that these immigrants voluntarily choose to migrate, then we are talking not about fair reciprocity but about whether states should have the right to offer more stringent terms of cooperation to immigrants. This article argues that they should not.

Third, a legitimate interest is not necessarily an overriding or unconditional one. In many cases, an interest that is otherwise benign or unobjectionable may be outweighed by other moral considerations. Consider a hypothetical example: Bob is sunbathing on the shore while a child is drowning in the water nearby. Suppose that Bob could save the child easily and that there is no one else around to do so. It seems obvious that under these circumstances Bob is obligated to save the drowning child, although his interest in sunbathing is legitimate and unobjectionable in itself. Similarly, states have a legitimate interest in selecting economically productive (or

simply wealthy) migrants, but this interest can be outweighed by other moral considerations. For example, the active recruitment of medical professionals from poorer countries may irreversibly harm their populations. Again, given the extent and profoundness of global injustice, it is far from clear how affluent states can justify their use of immigration selection to further their economic gains.

Finally, if disadvantaged individuals in affluent societies were disproportionately burdened by less restrictive immigration policies, then the reasonable response would be to demand a more equitable distribution of burdens among the existing members.

Excluding Immigrants in Non-ideal Circumstances

The final objection is that the conditions set out in this study are overly demanding – they imply that any immigration restriction is impermissible. For example, most affluent states have not done their part to alleviate global injustice, and it is unrealistic to expect them to do so in the foreseeable future. In addition, it seems impossible to avoid harmful brain drain in developing countries when it is easier for highly skilled professionals to migrate. Thus, my arguments effectively require all affluent states to open their borders to anyone who wishes to immigrate. However, if open borders are endorsed, discussions about selecting immigrants become redundant. The question now becomes whether states have a right to exclude any potential migrants when they have not done their fair share to alleviate global injustice. Thus, I must justify the distinction between economically motivated selection and other forms of exclusion.

The conditions for permissible immigrant selection set out in this article are admittedly demanding. However, they do not imply that selecting immigrants for economic reasons is inherently wrong. It may even be argued that when the world becomes reasonably just, the pressure of immigration from developing to developed countries will be much less than it is today (Carens, 2013: 233–234). Equally important, there are reasonable grounds on which states can exclude potential migrants regardless of the conditions defended in previous sections. One obvious example is national security: a state may justifiably refuse to admit a migrant if it has genuine reason to suspect that the person is engaging in terrorist activity. Another example is public safety: states have a right to look into potential migrants' criminal records and reject applicants who have committed violent crimes. These selection criteria appear to be acceptable from a moral point of view as long as they are applied non-arbitrarily. Here, the basic rights of existing members, such as the right to physical integrity, are at stake. The moral significance of these basic rights is sufficient to outweigh the claims of those whose entrance is denied. However, for economic selection in immigration, states are using immigration policies primarily as a tool for furthering their economic gains.

Conclusion

To conclude, this article demonstrates that economic selection in immigration is not *inherently* wrong because citizenship, or access to citizenship, is not a kind of good that should never be subject to market exchange. However, this is morally permissible only when a set of stringent conditions are met: (1) it must impose no harm on the disadvantaged persons in the sending countries, (2) it must be made

compatible with obligatory admissions and (3) the receiving state must do its fair share to alleviate global distributive injustice. The underlying point is that background global injustice limits the ways in which affluent states can advance their national interests through immigration policies. Finally, what constitutes a state's fair share in alleviating global distributive justice remains an open question, and the answer depends on the theory of justice adopted. It may include external intervention to defend basic human rights, large-scale transfer of resources to reduce immigration pressure (Cavallero, 2006: 97–127), providing appropriate compensation for historic injustice and reforming the global institutional order for the benefit of the global poor. However, by any reasonable standard, most affluent countries are not doing enough, and their failure in this regard casts doubt on their right to select immigrants.

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Notes

1. Carens (2013: 225–233) challenges this conventional view.
2. I thank an anonymous referee for pointing out the distinction between (a) being admitted to the territory and (b) having access to citizenship. The second issue has important moral implications, but it requires a separate discussion. For such discussions, see Lenard and Straehle (2011) and Ypi (2018).
3. It should, however, be noted that Shachar does not categorically reject economic selection in immigration. Granting admission to those with great talents is permissible, argues Shachar, if the practice remains exceptional and is in the genuine interest of the receiving society (See Shachar and Hirsch, 2014: 251).
4. I agree with Higgins that a state's immigration policies should not harm the foreign poor people who are already unjustly disadvantaged, but there are also other moral considerations.
5. Some might find this definition of refugees too broad to be plausible (see, for example, Cherem, 2016; Lister, 2013). However, even if one adopts a different definition, refugees should still be given priority in terms of admissions as opposed to economic migrants in general.
6. It could be argued that the dominance of family reunification in migration is biased against homosexual couples (Higgins, 2013: 215–218; Luibhéid, 2002). However, it is possible to extend the definition of 'family' to include homosexual couples and their children.

7. I have discussed these issues in a previous publication (Ip, 2016: 159–184).
8. As a general matter, perhaps there is a negative duty not to take advantage of an injustice (See Anwander, 2005: 39–45).
9. Or, in Oberman’s (2013: 452–455) case, immigration restrictions are justified only in a small minority of cases.
10. Reed-Sandoval (2017) suggests that the brain drain arguments should also apply to ‘low-skilled’ and ‘unskilled’ migrants.
11. However, as an anonymous reviewer points out, these policies may interfere with the migrants’ ability to exercise their right to leave.
12. I thank an anonymous referee for pointing out this possibility.

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