

Justice in Migration: A Closed Borders Utopia?*

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I. JUSTICE IN MIGRATION

THIS article enquires whether it is possible to have a global theory of justice in migration and, if so, on what kind of principles it should be grounded. It assesses possible conflicting circumstances that might give rise to a concern for justice in migration, explores who are the subjects that the theory addresses, what kind of claims it ought to accommodate and, finally, on what sort of principles it could rely.

What exactly do we mean when we speak of justice in migration? Justice in migration consists of two parts: justice in immigration *and* justice in emigration. Justice in *immigration* indicates when restrictions on incoming freedom of movement are unjustified and provides a principled way of assessing the distribution of benefits and responsibilities between migrants and citizens of host societies. Justice in *emigration* indicates when restrictions on outgoing freedom of movement are unjustified and provides a principled way of assessing the distribution of benefits and responsibilities between migrants and citizens of sending societies. Justice in *migration* therefore identifies permissible and impermissible restrictions on freedom of movement and articulates how benefits and responsibilities should be distributed between all affected parties (migrants, citizens of host societies and citizens of sending societies).

Underpinning these thoughts is what I shall refer to as ‘the general principle of justice in migration’. The general principle of justice in migration prescribes the following: if restrictions on freedom of movement could ever be justified, such restrictions ought to take equal account of justice in immigration *and* justice in emigration. Or, to put matters somewhat differently, if R provides a valid reason for restricting incoming freedom of movement, R also provides a valid reason for restricting outgoing freedom of movement. In probing the case for each of those

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restrictions and in assessing the validity of that general principle, **this article shows that the requirements of justice in immigration and justice in emigration, while being independently valid, are jointly incompatible.** What is required by just immigration is ruled out by just emigration and what is required by just emigration is ruled out by just immigration. Or, alternatively, satisfying justice in immigration *and* justice in emigration requires sacrificing the claims of migrants themselves.

The article proceeds as follows. Section II introduces the definitions of some key terms and outlines the methodological preliminaries. Sections III and IV discuss the circumstances and requirements of justice in immigration and emigration, respectively. Section V identifies a tension between such requirements and illustrates how a global theory of just migration based on egalitarian principles leads to a paradox. Section VI concludes with a few rough remarks on how to save justice in migration from being largely a closed borders utopia.

II. METHODOLOGICAL PRELIMINARIES

The word ‘migration’ has Latin roots. It derives from the verb *migrare*, which means to move from one place to another. A migrant is a person who commits the act of migrating. That act consists in leaving one place and settling in another. When we want to emphasize the former we talk about *emigration* and call the person who leaves his place of residence an *emigrant*. When we want to emphasize the latter we talk about *immigration* and call the person who seeks residence in a different place an *immigrant*. In this article I shall refer to the place where the act of emigrating starts as the ‘sending society’ or ‘source state’ and to the process involved as ‘out-migration’. I shall refer to the place where the act of immigrating ends as the ‘receiving society’ or ‘host state’ and to the process involved as ‘in-migration’.

There are different kinds of migration. One distinction concerns the length of stay. Migration can be long-term or short-term. Long-term migration is the act of moving from one place with the aim of settling in another. Short-term migration is the act of moving from one place with the aim of visiting another.¹ This article is concerned only with long-term migration. It assesses legitimate and illegitimate restrictions on long-term migration and investigates the distribution of benefits and responsibilities between all affected parties. While this way of proceeding may have important empirical limitations (for example, it neglects the fact that migrants who initially intended to settle may eventually leave and that others who move as guest-workers or students eventually settle), it may be better to start

¹There is also a third category, that of migrants who intend to neither settle nor visit a different place (e.g. students or guest-workers). I do not consider this case here, for further discussion see: Carens 2008; Attas 2000.

with premises which assume motivational consistency and explore at a later stage if and how this (non-ideal) issue of circularity in migration affects the principles identified.²

Another important distinction concerns the reasons for wanting to migrate. Some flee for political reasons such as political persecution or war, some for economic reasons such as escaping poverty and destitution, and others are simply seeking better life opportunities.³ The main claims of this article will have much more bearing on economic migration. Nonetheless, political reasons are very important in helping to identify one type of restriction on freedom of movement that is always in principle unjustified and also for illustrating a rare (as we shall shortly see) case of joint consistency between the requirements of justice in immigration and of justice in emigration.⁴

There is a third preliminary clarification. This article considers the claims of migrants, those of citizens in sending societies and those of citizens in host-societies from a relational perspective. It tries to identify areas of conflict and convergence between distinctive moral requirements, assesses potential ways of solving such conflicts and examines the moral trade-offs involved. While this comparative assessment of conflicting claims has received some attention in the context of discussions on the distribution of benefits and responsibilities in receiving societies,⁵ almost nothing of the sort has been undertaken with regard to the migration-related distribution of benefits and responsibilities in sending societies. One reason may be that while many scholars (including defenders of open borders) are prepared to concede that freedom of movement, when exercised to enter one place, may sometimes be constrained, the freedom to exit, also recognized by the United Nations Universal Declaration of Human Rights, is seldom questioned.⁶

This article argues that the asymmetry between emigration and immigration points to a serious moral deficiency in the theory and is incompatible with the general principle of justice in migration. Either freedom of movement matters or it does not. If it does not, the issue of justice in migration becomes largely superfluous since conflicting claims related to freedom of movement have no

²For an outline of the distinction between ideal and non-ideal considerations in debates about justice see Ypi (forthcoming).

³There is also long-term migration for private reasons such as seeking family reunification. Even though abstracting from flows due to family reunification significantly reduces the number of migrants left under consideration, in particular with regard to Europe, I will not explore this case in further detail. The duty of the state towards newcomers flows not so much from any commitment to the claims of non-members but rather from the willingness to take into account the interests of already-existing members who wish to be joined by their close relatives (see Carens 2003, p. 96.) Moreover, the admission of family members implies that the prior question regarding what kind of restrictions on freedom of movement are justified has been solved in the first place, yet it is that prior question that lies at the heart of this article.

⁴For a more detailed analysis of immigration for political purposes see: Carens 2003, pp. 96–203; Shacknove 1985; Wilcox 2007, pp. 284–7.

⁵Miller 2008. Carens 2003. Kymlicka 2001, ch. 8. Scheffler 2007.

⁶As I go on to discuss in Section IV.

reason to be normatively discussed. But if freedom of movement does matter, the reasons allowing us to place restrictions on it should be serious and also be consistently applied, both with regard to immigration and with regard to emigration. To argue otherwise means to unfairly benefit the relation between migrants and citizens of host societies at the expense of the relation between migrants and citizens of sending societies, and vice versa.

I shall return to the complications of this argument in a moment. Let us assume, for now only hypothetically, that since freedom of movement matters, restrictions on emigration are justified on certain grounds if and only if restrictions on immigration can be justified on the same grounds. Before we go on to consider what those grounds might be and how we assess them, it is important to notice that this article's use of the term 'restriction' does not merely denote the presence of an obstacle to the physical ability of moving freely from one place to another. Freedom of movement may be considered restricted every time it is not granted unconditionally, that is, every time certain conditions must be satisfied in order to be able to enjoy such freedom. Notice also that if restrictions on individual freedom of movement are endorsed, they are not endorsed because we are favouring a collectivist perspective aiming to increase the aggregate welfare (whatever that might mean) of either the sending or the receiving society. The right of every individual to exercise freedom of movement should be compatible with that of every other individual to do the same (including exercising their freedom of movement in order to stay where they are). When we agree—for example—that your right to walk around the room and sit anywhere you please does not include my lap, or that in the latter case your exercise of freedom of movement may be restricted by the need to obtain permission to sit on my lap, we are not committing ourselves to any grand statement about the normative superiority of the general will. Likewise, when we emphasize that migrants' freedom of movement may be restricted in order to become compatible with the claims of every citizen in either the receiving or in the sending society, we are not saying anything particularly troublesome from a liberal perspective.

This last point serves to introduce another methodological clarification, regarding the relevance of freedom of movement in idealistic and realistic approaches to migration.⁷ A realistic approach is frequently invoked by defenders of open borders to underline how restrictions on freedom of movement are *prima facie* justified only in non-ideal circumstances where we face insufficient moral motivation, calculations of political realism, illiberal presuppositions about justice and the value of communities and so on. This article emphasizes how even in ideal conditions (of full compliance, perfect moral motivation and globally homogeneous epistemic constraints) it would still be wrong to prioritize some individuals' freedom of movement at the expense of citizens in either the sending or the receiving society. There must be a principled way of assessing potential

⁷For the distinction see Carens (1996).

restrictions on freedom of movement and of distributing benefits and responsibilities between all affected parties. Imagining a world organized according to such principles will turn out to be no less 'ideal' than imagining a world with completely open borders.

One objection that the argument may attract in its present form concerns the fact that it assumes the existence of borders. If there were no borders there would be no 'sending' and 'receiving' society and consequently no tension between migrants and citizens in each. It is important to emphasize that this is not a premise I bring into the argument for the sake of obtaining a more realistic-cum-feasible theory of just migration. To put it more crudely, the assumption is not dictated by concerns of non-ideal theory.⁸ I have considered the existence of borders part of the circumstances of justice in migration but that is not the same as saying that borders are problematic *qua* borders. The reason why borders and the movement of people across them stand in need of normative scrutiny is that they constitute a visible expression of a profoundly unequal distribution of spatially-differentiated opportunities.

It is true that open borders would, by stipulation, resolve the problem of inter-state migration. It is not true that this would settle all concerns related to freedom of movement. We would simply start facing a different problem, that of intra-state migration and we would need a different theory to accommodate the conflicts that it might create. An argument in favour of open borders does not necessarily represent, by itself, a remedy to the more general spatially-related socio-economic inequalities that make borders appear morally problematic. The reunification of Italy, for example, and the removal of boundaries between the North and the South of the country has not abolished all divisions between those two regions or put an end to the movement of people from one part of the country to the other—with costs and benefits to both sending and receiving localities. Indeed their differential economic development is precisely what has recently brought some right-wing parties to campaign for secession. Equalizing welfare in regions with different developmental paths is notoriously tricky and open-borders proposals have yet to say anything distinctive on similar theoretical and political controversies. I am not suggesting that it is impossible for them to succeed in doing so. But such complications illustrate that there are no clear reasons to prefer an open-borders type of approach to a theory of just migration similar to the one I propose, even if we were to confront normative issues of justice in migration from a merely ideal perspective.⁹

⁸These kind of 'non-ideal' or 'real-world' presuppositions seem to have motivated Carens's (1999) shift from his earlier argument in favour of open borders to more modest proposals.

⁹That said, my argument in this article should be considered more as an alternative way of exploring issues of justice in migration than as a fundamental challenge to open borders type of arguments. I offer it more in the absence of any persuasive study of how a borderless world with some 6 billion inhabitants speaking 6000 different languages might cope with large waves of internal migration due to profoundly unequal regional developmental paths.

This thought leads to a final clarification, concerning the kind of assumptions upon which this article relies with regard to the normative relevance of boundaries. If we could ever justify restrictions on freedom of movement would such restrictions apply equally at the domestic and at the global level? Even though here I only address the implications of freedom of movement across borders, I believe that the kind of arguments offered below in favour of certain kinds of restrictions on freedom of movement would also apply within the state. The specific way these restrictions take place may vary according to the particular institutions available at the domestic and at the global level but the general principle according to which they are justified remains the same.¹⁰

III. JUSTICE IN IMMIGRATION

What (if any) restrictions on in-migration are justified? How should benefits and responsibilities between migrants and citizens of host-societies be distributed? These two questions lie at the heart of any theory of justice in immigration. The former raises the issue of the admission of immigrants, the latter that of their integration. Those questions can by no means be considered in isolation. Any further analysis on the terms of migrant integration implies that the first issue, that of their admission, is settled. Conversely, making decisions on who to admit and who to exclude must take into account the prospects for integration and impact on citizens of the host society of different migrant groups.

At the extremes of the debate on immigrant admission we find those in favour of a nearly absolute individual right to freedom of movement and those in favour of a nearly complete discretion of the members of historical political communities to make decisions on who to admit and who to exclude.¹¹ The limitations of both lines of argument are by now well-known even to their onetime defenders.¹² Erring on the side of orthodox individualism is as dubious a move as the intransigent defence of communitarian self-determination. The former risks neglecting the conflicts that an unqualified defence of free movement might generate, the latter allows for hardly any external criticism of even deeply exclusionary practices.¹³

Steering a middle way between individualist and communitarian approaches to immigrant admission demands assessing restrictions on immigration in a way that takes into account both the claims of migrants and those of the citizens of

¹⁰Elsewhere I have argued against the idea of compatriot favouritism with reference to global justice debates, see Ypi (2008a). For further discussion of the moral significance of political membership see Ypi (2008b).

¹¹For a review of the literature see: Seglow 2005; Bader 2005. The classic defense of open borders is Carens (1987), and of the opposite is Walzer (1983, ch. 3).

¹²See Carens 1999, p. 1091. Walzer's (1983, p. 62) defence of a duty of 'mutual aid' which requires a state to admit refugees or other victims of severe poverty is ill-compatible with his argument that 'admission and exclusion are at the core of communal independence'. For a recent restatement of Walzer's argument see Meilaender (2001).

¹³For a similar critique to both individualist and communitarian lines of argument see Ypi (2008a).

receiving-societies. This in turn implies finding a balance between the right of citizens in receiving societies to benefit from the public goods guaranteed by their collective institutions and the right of individuals to move freely across borders in search of better life opportunities.

There is one case of immigrant admission on which both communitarians and individualists seem to converge: that of political refugees.¹⁴ Restricting refugees' freedom of movement is usually considered morally objectionable both for those who appreciate the polity for its instrumental ability to protect individual basic needs and for those who consider it an important end in its own right. This is because, in the case of refugees, even the minimal contractual bond between the political community and its members has been severed. Political persecution constitutes a visible expression of such rupture.¹⁵ Political persecution and political violence mark in any case the impossibility for certain members to either claim the benefits of citizenship or participate in the collective process of promoting certain historical political institutions. This pretty much clarifies why a theory of justice in immigration should rule out restrictions on the admission of political refugees.

Restrictions on freedom of movement with regard to other categories of immigrants highlight more complex issues. Freedom to enter a new place should be exercised in a way that accommodates equally the claims of both immigrants and citizens (or permanent residents) of host-societies.¹⁶ The claim that freedom of movement may be restricted by appealing to considerations such as the need for the receiving state to preserve security and public order (including, for example, public health) is relatively uncontroversial. Defenders of open borders have often qualified their arguments by granting that certain restrictions on incoming migration are necessary if moving freely across borders led everyone to become worse-off.¹⁷ If, for example, the vast majority of the citizens of Italy contracted a dangerous contagious disease and Greece allowed everyone from the neighbouring country to claim citizenship in it without considering the capacity of its hospitals to offer remedies or without paying attention to the medical risks for its own citizens, the Greek commitment to freedom of movement would hardly prevent us from criticizing its policies. Granting unconditional freedom of movement would in this case

¹⁴I use the term somewhat loosely to denote both internationally recognized refugees and asylum-seekers claiming refugee status. For the distinction see Carens (2003, pp. 96–104).

¹⁵Shacknove 1985.

¹⁶From now on I will use the term 'citizenship' somewhat loosely, to include permanent residents. Permanent residents enjoy most of the benefits of political membership and share its burdens, they constitute de-facto citizens and often their acquisition of the formal status of citizen is a matter of time, see Carens (2008). This article does not distinguish between formal citizens and long-term residents, anything applying to the former also applies to the latter.

¹⁷Carens (1987, p. 259), for example, does not oppose a certain amount of restrictions on immigration, provided that the threat to public order 'emerged as the unintended cumulative effect of individually just actions'.

simply lead to an increase in the amount of worse-off people without benefitting anyone. It is hard to see who could endorse such a self-destructive principle.

Considerations of public order (including public health) provide some guidance on certain principles that must be in place to ensure a proper distribution of benefits and responsibilities between immigrants and citizens of host societies. There may be other tensions however. Such tensions are owed to the fact that citizenship in modern democracies is not merely a formal status, it entitles newcomers to a number of substantive benefits and social opportunities which bring the state to incur significant costs of both admission and integration. Avoiding discrimination between old and new members requires a fair distribution of social goods enabling all to be functioning citizens of the political community. Granting merely formal rights of political participation would ultimately result in social alienation if the state failed to protect new members from potential discrimination. To the extent to which avoiding differential treatment of members (new and old) is essential to the legitimacy and stability of political institutions, the host-state faces an obligation to accommodate new demands for public spaces, educational and recreational opportunities as well as an obligation to progressively modify traditional ways of fostering civic inclusion.¹⁸ Moreover, if the arrival of immigrants is not to result in the creation of a category of 'second-class citizens' with differential rights and less social opportunities, it is important that the same access to welfare enjoyed by existing residents is extended to newcomers. Fair treatment means that educational resources, healthcare benefits, housing assistance, programs in support of children, of the elderly and of the disabled, unemployment insurance and so forth are distributed in a way that advances the life prospects of both old and new members.¹⁹

The requirements of fair integration shed light on some tensions bound to arise while extending the benefits of membership. Immigration has both costs and opportunities for receiving societies.²⁰ Several states benefit from immigrant contribution, especially when the integration of new members in the domestic labour market represents the only source of compensation for population ageing and domestic decline in fertility rates (as it is often the case in Europe and East Asia). Moreover, income taxes paid by immigrants and their contribution to social security programs help to finance the welfare budgets of national/federal governments and domestic employers often profit from the cheaper labour force that immigration makes available. However, the admission of immigrants may also have significant social costs, especially for the worse-off groups of receiving societies. Newcomers tend to compete with the domestic poor for a range of

¹⁸Miller 2008.

¹⁹These issues are familiar in the migration literature, see e.g.: Carens 2005; Miller 2008.

²⁰I am grateful to an anonymous reviewer and to Rainer Baubock for valuable suggestions on the empirical assessment of immigration.

welfare provisions such as housing, childcare, educational support, hospital beds, access to healthcare facilities and so on. Immigration often affects negatively the wages of low-income citizens who suffer from the availability of a cheap workforce in the domestic labour market. Such problems arise even without considering the potential corrosive effects of immigration on social trust and the alleged necessity of social trust to maintain support for the welfare state.²¹ Even if we set aside that motivational concern and consider the issue of immigration from a purely distributive perspective, tensions between immigrants and citizens of receiving societies appear unavoidable. As one author puts it: 'immigration increases the size of the economic pie *and* changes how the pie is split. Those who care about economic efficiency will typically want to see more immigrants: the greater the number of immigrants, the more the gains to employers (through lower wages) and consumers (through lower prizes). Those who care about distributional issues will typically want to see lesser immigrants: the greater the number of immigrants, the greater the dislocation in labour markets, and the greater the losses suffered by those who compete with immigrant workers'.²²

These empirical considerations seem to raise various dilemmas for a principled based approach to immigration. Can justice in immigration benefit *both* newcomers and citizens of the receiving society? Is it possible to promote freedom of movement without reducing domestic social justice?

There may be two responses here. The first is to deny that the welfare of receiving states should have any impact on the criteria for admitting migrants.²³ If domestic social justice is undermined by immigrant integration, then so much the worse for domestic social justice. But if excluding migrants altogether would shift the balance too much in the direction of the host-state, this line of argument commits the reverse mistake: it unjustifiably neglects the claims of its worse-off citizens for the sake of migrants.

A second line of argument may appear more promising. It suggests that in establishing criteria of admission we should take into account the potential of migrants for economic contribution so that any impact of admission and integration on the welfare state is compensated by the benefits migrants bring to the host-society. Equal consideration of both immigrants and existing members leads to a set of criteria for admission taking into account both the skills of immigrants and the needs of the host society. Many authors do not perceive such a conclusion as morally problematic.²⁴ Establishing skill-specific criteria of

²¹For one influential empirical discussion on the effects of immigration on social trust see Putnam (2007). For normative assessments of this question see: Carens 1988; Pevnick forthcoming; Abizadeh 2002.

²²See Borjas 2001, p. 17. See also Freeman 1995.

²³For one argument pointing in this direction see Pevnick (forthcoming).

²⁴While discussing Canada's focus on immigrants' potential economic contribution in setting up criteria of admission, Joseph Carens (2003, pp. 106–107) for example stresses that such a criterion 'does not raise any issues of justice'. David Miller (2008) also notes that 'so long as the policy is introduced and applied in good faith' it can be 'legitimately' used.

admission allows the state to accommodate the claims of migrants' based on freedom of movement in a way that avoids reducing domestic social justice. Moreover, skill-specific principles have the advantage of being culturally neutral.²⁵ The state may reject claims from migrants with a background similar to its own in favour of more different candidates able to make a productive contribution. The criteria for inclusion are here based on a combination of desert and need rather than on suspicious attempts to preserve the national culture. A fair distribution of benefits and responsibilities between migrants and citizens in host-societies, requires prioritizing migrants able to contribute to vulnerable productive sectors of the receiving state in a way that promotes (or at least does not negatively affect) domestic social justice. The more likely candidates are to contribute to the maintenance of certain welfare standards in the host society next to reaping its benefits, the better able immigration policies will be to combine the claims of incoming migrants with the concerns of existing members. Skill-specific principles appear therefore a reasonable means through which to establish restrictions on incoming freedom of movement in a way that benefits equally both immigrants and the citizens of receiving states.

Let us review what we have argued for so far. After examining the case of political refugees and assessing restrictions on freedom of movement based on considerations of public order (including public health), we considered another source of tension between immigrants and citizens of host-societies. We argued that extending the benefits of citizenship in a non-discriminatory way, entitles immigrants to access the same range of public goods as existing members. Yet the availability of these resources for a substantive number of newcomers would significantly harm the worse-off citizens of the host society if they were not balanced by a contribution of immigrants to their new state. Social subsidies extended to new members impose significant costs on the welfare state and may be in tension with traditional programs in support of domestic social equality. Compensating for this trade-off is possible by rendering admission criteria skill-specific and ensuring that migrants contribute to the welfare of the receiving society. In this way one succeeds in accommodating both the claims of migrants and a commitment to their freedom of movement with the claims of citizens and a commitment to domestic equality.

Whether criteria of justice in immigration based on skills and considerations of public order (including public health) are indeed as morally appealing as they may initially appear depends on the overall place of immigration principles within a general theory of justice in migration. In order to be able to assess that claim we need to consider the requirements of the second part of a theory of justice in migration: justice in emigration.

²⁵For recent critiques to the cultural preservationist argument see: Scheffler 2007, p. 101 ff.; Miller 2008.

IV. JUSTICE IN EMIGRATION

Raising the question of *justice* in emigration from a relational perspective may at first appear puzzling. While the issue of whether states have an obligation to admit whoever seeks entrance in their territory is a matter of enduring contention, few doubt that states have no right to restrict outgoing freedom of movement. Such presumption seems supported by the United Nations Universal Declaration of Human Rights (UNDHR) stating in Art. 13(2) that ‘everyone has the right to leave any country, including his own,’ and in Art. 15(2) that ‘no one shall be arbitrarily . . . denied the right to change his nationality’. It is unsurprising therefore that those few theoretical studies dedicated to freedom of exit from the state have never questioned its normative foundations. Rather, they have endorsed the unconditional right to emigrate in order to lament (or justify) the absence of the analogous recognition of an unconditional right to immigrate.²⁶ What is implicitly at stake in all these debates is the validity of the general principle of justice in migration. Clarifying the issue of justice in emigration therefore requires a deeper exploration of the objections that such a principle may attract.

The first contentious issue regards the possibility of restricting freedom of movement, in general. As I will try to show, the general principle of justice in migration requires that restrictions on incoming and outgoing freedom of movement are justified on the same grounds. If there are good reasons for placing restrictions on immigration, such reasons ought to be valid also in the case of emigration. Just as we worry about the distribution of benefits and responsibilities between migrants and citizens of receiving states we ought to worry about the distribution of benefits and responsibilities between migrants and citizens of sending states.

Discussing the analogy between immigration and emigration implies arguing against the United Nations Declaration of Human Rights. This may be rather embarrassing for a theorist. To alleviate that task (and also to placate human rights lawyers) it may be worth reminding that similarly to all other rights in the Declaration, article 13 is also subject to limitations when these are directed to securing ‘morality, public order, and the general welfare’ (Art. 29.2). In the specific case of the right to emigrate, the Covenant on Civil and Political Rights also stresses that considerations of ‘national security, public order, public health or morals or the rights and freedoms of others’ may derogate from the right to leave one’s country’ (Art. 12.3).²⁷ These conditions are consistent with the general principle of justice in migration. As we have seen above, in the case of *immigration* they are often invoked to justify specific criteria of admission and restrictions on incoming freedom of movement. The necessity of preserving

²⁶Carens 1987, pp. 258–9; 1992, pp. 29. Cole 2000; 2006. Dummett 1992, pp. 173–5. Seglow 2005, p. 325 ff.

²⁷For a more detailed discussion see Whelan (1981, pp. 637–8).

public health, for example, is one of the main reasons for prohibiting entrance to people suffering from contagious diseases such as tuberculosis or AIDS or for limiting access to people suffering from chronic illnesses which would require expensive treatment and place high demands on the healthcare system of host states.²⁸

Notice however that with regard to emigration similar dilemmas arise more frequently than one may think in sending societies. Public health, for example, is one of the main preoccupations lying behind the so-called 'brain drain' problem, the movement of human capital from the poorest areas of the world to developed countries. The outflow of medical professionals from Africa, a continent devastated by contagious diseases, tropical illnesses, HIV and with thirty-nine out of the forty-nine least developed countries in the world, represents a serious threat to the health of the region. As many observe, the number of Ethiopian, Kenyan, and Sierra Leonean doctors and nurses employed in Europe, North America or Australia is greater than in their home countries; South Africa—the state with the largest number of people infected by HIV—has lost a third of its medical staff, most of which has settled in Canada; in Ghana, by 2001, almost half of the University of Ghana Medical School had emigrated, leaving the country without academics to train future doctors and serious consequences for public health.²⁹ Similar alarming data are reported on the Indian subcontinent and the Caribbean—again with serious loss for states with some of the worst healthcare indicators in the world. It is ironic to see that some of the most deprived countries spend billions of dollars in education only to lose their skilled workforce in favour of richer states.³⁰

There would be a moral deficiency in an argument justifying restrictions on incoming freedom of movement for, say, public health reasons, yet insisting that the right to exit one's country may be exercised with no cost to those benefiting from it and no benefit to those who are harmed by it. As the cases above show, unrestricted immigration is no more problematic for receiving societies than unrestricted emigration may be for sending societies. The first case raises a concern of integration after admission, the second a concern of adaptation after expatriation. Therefore in assessing the circumstances of justice in emigration from a relational perspective it seems appropriate to investigate what kind of restrictions on outgoing freedom of movement may be justified and to consider how the benefits and responsibilities between migrants and citizens of sending societies ought to be distributed. Before we do so however it may be worth pausing to clear the ground from two frequent (though different in nature) objections to the core of the argument.

²⁸Carens 2003, p. 105.

²⁹The data are taken from El-Khawass (2004, p. 47). On the impact of brain drain on developing countries see: Carrington 1999; Desai, Kapur, and McHale 2004.

³⁰See Kapur and McHale 2006, p. 307.

The point of departure for both objections is what we have called the general principle of justice in migration: restrictions to freedom of movement can be justified if and only if they take into equal account the claims of justice in immigration and the claims of justice in emigration. To put it differently, the general principle of justice in migration has two components; it argues that i) if freedom of movement could be restricted, ii) whatever grounds for restriction apply to immigration ought also apply to emigration (and vice-versa). The first objection denies the second component of the principle, while the second objection denies its first one. More specifically, the first objection rejects the general principle of justice in migration by criticizing the analogy between emigration and immigration. The second objection denies the conditional statement expressed above; it argues that the existence of different standards on emigration and immigration may be morally problematic but that a restrictive immigration as well as emigration regime, is unjustifiable. Let us examine them in turn.

A. OBJECTION 1: DENYING THE ANALOGY BETWEEN EXIT AND ENTRY

Interestingly enough, the first objection comes from authors usually sympathetic to the idea that restrictions on freedom of movement may sometimes be justified.³¹ Such an objection denies that there is an analogy between exit and entry by focusing on the differential implications of each along two dimensions: i) the nature of free associations; ii) the type of obligation that exit and entry call into question.³²

Consider the first. What is it in the nature of free associations that allows for a diversification of responses to exit and entry? The argument is the following. The scope of voluntary associations is to protect some common purpose, typically the purpose for which members have associated.³³ However the same does not apply as far as restrictions on exit are concerned since, as Michael Walzer puts it, 'the restraint of exit replaces commitment with coercion'.³⁴ Coercion, I take it, is the problem here. But it is not clear why the exercise of coercion, if it serves the end for which the association was created, is acceptable in the case of entry but not of exit. Consider the following example. A soccer team is a kind of voluntary association formed in order to play football. It requires, among other things, denying access to people who don't know how to

³¹Miller 2007, pp. 207–8. Baubock 2006, p. 4. Walzer 1983.

³²There is also a third one: the impact on community values, which claims that since immigration might affect the integrity of a particular culture more than emigration there are good reasons for challenging the analogy and restricting the former but not the latter. However, since I am generally skeptic of the use of communitarian-types of argument as a criterion of justification for anything, I will bracket it here. For an outline of my argument see Ypi (2008a). For recent good critiques of the argument that restrictions on freedom of movement may be justified by the necessity to preserve cultural integrity see Scheffler (2007).

³³For a fuller discussion on this issue see White (1997a).

³⁴Walzer 1983, p. 21.

kick a ball and also placing numerical limits on participation—i.e. restricting the team to a number of eleven players. We would not think it morally problematic if members of that association were to exclude any willing candidates either on grounds that they cannot play football or because the team already has eleven members. Now suppose that a tournament starts and one player wants to leave halfway through the game. It is not clear why this player should have an unconditional right to exit the game if doing so undermines the ability of the rest of the members to continue playing, that is, if it undermines the purpose for which the association was created. It is also not clear why the rest of the team would be acting in a morally unjustified way if the player was retained until the game was over or if he was granted leave only upon condition of finding a replacement player or upon repaying damages. In any case the player cannot arbitrarily decide to exit the game without any kind of agreement from the rest of the team members.

One may object here that even though the unsatisfied player may be doing something wrong by arbitrarily deciding to exit the game, the remaining team members are in no position to coerce him to stay or force him to pay damages. But why does that argument not apply also to those potential players keen to participate in a match that has already started? Suppose that I am a passionate football fan watching Chelsea play against Arsenal and that at some point I decide that I could do better than Joe Cole if only I could get hold of the ball. Following that objection, why would anyone be entitled to force me out of the game after granting that I have done something wrong to interrupt the ongoing match in the first place? The argument that tries to disentangle the wrongness of an inappropriate exercise of freedom of movement from the authorization to use force in attempting to restrict it either succeeds or fails in both circumstances of exit and entry. In any case it does not serve to undermine the analogy between the two that we are trying to establish.

What makes the football team case different from that of states? In a way they are similar: citizens of particular states have a rule-guided cooperative relation to one another, they share the benefits of citizenship as well as distribute its burdens. They make decisions in common and act on the basis of jointly established projects. They produce public goods enjoyed by all and they share a commitment to the political institutions that make the framework for political decision-making possible. It seems fair to claim that in both cases of exit and entry, certain reciprocal principles of interaction with the rest of the citizen body must be agreed, and that such principles of interaction cannot arbitrarily favour those who want to exit at the expense of all others.

But maybe the rejoinder to this claim is that the state is not so similar to a football team after all. The state is not a voluntary association, it is a set of coercive structures assigned from birth. No one was ever given an option to choose his citizenship: it is precisely this fact that renders issues of migration particularly pernicious and creates a presumption in favour of unrestricted

freedom of movement more generally. Notice however that as a rejoinder to the freedom of association objection mentioned above this claim proves both too much and too little. It proves too much because it shows that states are not the kind of associations with regard to which either entry or exit could legitimately be restricted on grounds of voluntariness. But the associative argument mentioned above does not necessarily want to endorse this conclusion, it simply wants to show that there is a difference in the moral permissibility of restrictions on entry and exit. And it is precisely with regard to the disanalogy between exit and entry that the rejoinder on the unchosen coercive nature of the state proves too little. For such objection makes no distinctive contribution to the argument that emigration should be unconditionally granted but immigration may not. The argument on the unchosen nature of citizenship fails as a rejoinder to the objection on the nature of associations as stated above. However it raises an important point which is worth assessing for its own merit. I will return to it after explaining why the second argument on the disanalogy of circumstances of justice in emigration and immigration also fails.

The second part of the argument that there is no analogy between emigration and immigration focuses on the kind of obligations involved in each case. Emigration is said to involve a duty of non-interference with migrants' freedom of movement; in the case of immigration however an obligation of positive provision is also required. And since the fulfilment of negative duties is (ordinarily assumed to be) both more stringent and less demanding than that of positive ones, the difference between emigration and immigration translates into a difference in the kinds of restrictions that may be permitted or prohibited in each case.

But if justice in migration is assessed from a relational perspective positive and negative obligations arise with both immigration and emigration.³⁵ Justice in immigration focuses on the responsibility of receiving states towards their own citizens as well as incoming migrants. Here there are two different types of obligation at stake: a negative duty of non-interference on justified freedom of movement (as in the case of political refugees) as well as a positive duty to provide both migrants and those affected by their claims with equal opportunities to access the benefits of citizenship. On the other hand, in the case of emigration there is a negative duty of non-interference with justified outgoing freedom of movement (of which more will be said later) and a positive duty to provide the remaining citizen body with at least the same amount of public goods as they were able to enjoy previous to the outflow of migrants. Emigration and immigration both involve negative and positive duties on the side of the state. Hence the obligations argument in favour of the differential treatment of outgoing and incoming freedom of movement also fails.

³⁵Some might even question the significance of the distinction between positive and negative obligations more generally, see Shue (1988). However, for purposes of this article, I will set aside that larger question.

B. OBJECTION 2: ACCEPTING THE ANALOGY BUT DENYING RESTRICTIONS ON FREEDOM OF MOVEMENT

Let us now consider the second type of objection to the core of our argument: the idea that even if (or rather, precisely because) immigration and emigration present us with analogous circumstances of justice, restrictions on both are hardly ever justified.³⁶ Taking up this objection requires dealing with the conditional form of my earlier statement of the general principle of justice in migration: if restrictions on freedom of movement are justified, they ought to take into equal account the requirements of emigration and immigration. Objection 2 implicitly claims that the general principle of justice in migration is a non-starter since restrictions on freedom of movement can never be justified. But is that really so? And why?

Part of this objection was already introduced in relation to a rejoinder to the argument on freedom of association. That argument goes like this: since citizenship is an unchosen status, it is unjust to subject citizens to the coercive laws of any particular state without granting them freedom of movement. In its most popular version, the objection compares citizenship in modern societies to feudal status in the medieval world. Just like tying a person from birth to a set of burdens or privileges may have been morally problematic in the Middle Ages, being born a citizen of a specific modern state is a morally arbitrary fact in need of rectification. If the feudal practices were wrong—it is often asked—what justifies the modern ones?³⁷

The answer to this question lies in the idea of democratic responsibility. In feudal societies people from a specific social class were not only denied the right to enter or exit but also the possibility to have a voice in all the processes determining the ways in which they had to lead their lives. There is a world of difference between modern citizenship and feudal status and this is marked by the different relationship that modern citizens entertain with political power. In modern societies, unlike in feudal systems or absolutist states, those subject to the law are also authors of it; political power is exercised not only on the people but also in their name. Coercion is never a one-sided process, it is legitimized by those who benefit from the state's provision of public goods and take decisions in common on how to transform the political community.³⁸ It is precisely for this reason that classical contractualists—who initiated the transition from a feudal conception of authority, which was entirely unaccountable to the people, to

³⁶Cole 2006, pp. 4–6. Carens 1992, p. 27. Whelan 1981. Dummett 1992, pp. 173–6. Kukathas 2005. Nett 1971.

³⁷Carens 1992, p. 27. On related questions see also Shachar and Hirschl (2007).

³⁸One could also make a democratic/coercion based argument in order to reject state's unilateral right to control borders, see Abizadeh (2008). That line of argument is compatible with the claims of this article. Nothing I say here implies that states have a right to unilaterally control their borders, simply that the claims of citizens in both source and host states need to be equally taken into account by any authority establishing how the benefits and responsibilities between them ought to be distributed. Unfortunately I cannot explore here the details of the implementation of such proposal, for one discussion see Marchetti (2008).

the modern idea of popular sovereignty—objected to an unconditional right to freedom of movement. As Locke puts it, he who has agreed to be part of the commonwealth ‘is dispensably obliged to be and remain unalterably a Subject to it, and can never again be in the liberty of the state of Nature; unless by any Calamity, the Government, he was under, comes to be dissolved’.³⁹ And as Grotius also notes, it is ‘a rule of natural justice . . . that a thing should not be permitted if it is contrary to the interests of society’ and since the departure of citizens in large bodies could threaten civil society, emigration in times of duress for the state is contrary to natural justice.⁴⁰ The right to exit is therefore part of those rights enjoyed in the state of nature which individuals surrender upon entering the civil condition.

It may still be objected that the contractualist tradition implies that individuals have consented to alienate their natural freedom, whereas in the real world no one consented at birth to the state they were born into. However the point of the idea of the contract is not to identify a moment in time in which consent was actually given, arguments which—as Kant remarked—are either ‘altogether pointless’ or ‘threaten the state with danger’.⁴¹ The point is to figure out how to think about the relationship between citizens and political authority such that it allows for the freedom of each to be exercised in a way that takes into account that of every other. Of course the examples above prove too much. We need not claim that citizens in modern states have no right to exit whatsoever, all we need to show is that this right is not unconditional. And these examples clearly illustrate that for as long as individuals enjoy the benefits of citizenship, discharge its obligations and contribute to shape the rules of life in common, the rights of exit and entry cannot be unconditionally allocated but have to take into account the claims of justice of everyone else.

C. THE CASE FOR RESTRICTIONS

This last remark allows to introduce some further clarifications on what might constitute a just emigration theory. What kind of restrictions on outgoing freedom of movement are always impermissible and how should the benefits and responsibilities between emigrants and citizens of source states be distributed?

Analogously to justice in immigration, it seems that the one case in which it would be unjustified to criticize freedom of movement or to seek to restrict it, is when the outflow of people is dictated by political anarchy in sending societies. When a country is occupied by foreign forces, or subject to colonial rule, or prey to civil disorder and social unrest, or when power is exercised by a dictatorial

³⁹Locke [1690] 1988, sec. 95.

⁴⁰Grotius [1625] 1925, II.v.xxiv, pp. 253–4.

⁴¹Kant [1797] 1996, p. 462.

authority which has ceased to act in the name of the people, citizens should be entitled to leave. Here the right to emigrate is perfectly symmetrical with the right to immigrate. There should be schemes for facilitating the distribution of refugees among receiving societies so that the burdens of immigration are not shared simply by those states who happen to be neighbours. The reason for recognizing a right to leave in the case of political emigrants is the same as that for which receiving societies face an obligation of admission. Where the elementary bond between citizens and political authority has been severed, where there is simply no space for exercising political will, forcing people to stay amounts to coercing them without the exercise of coercion being legitimate. There are no grounds to restrict emigration for the sake of protecting the associative purpose to which the state owes its existence. That purpose has already collapsed and individuals find themselves in a condition similar to the anarchy of the state of nature where all the natural rights alienated upon entering the civil condition are reacquired.⁴²

But what of the other cases subject to justice in emigration? When may freedom of movement be legitimately restricted and how should the benefits and responsibilities be distributed between emigrants and citizens of sending societies?

Let us consider these questions in turn. Citizenship, we emphasized, consists in a status acquired from birth which entitles individuals to a number of benefits and requires them to take up specific responsibilities upon reaching maturity. Citizens cooperate with one another in the production of public goods and participate in political processes upon which the distribution of the benefits and burdens of citizenship depend. It is precisely the provision of goods such as personal security, guarantees on property, the enforceability of contracts, education and healthcare (to mention but some) that justifies the request that capable citizens make a productive contribution to society. Enjoying benefits made available by the state through the cooperative work of one's fellow-citizens yet being unwilling to share one's efforts with them in return, amounts to an unfair exploitation of the work of others for one's unilateral advantage.⁴³

⁴²To say that when the state is in a condition of political anarchy individuals may exercise the right to leave, is not the same as saying that they are also obliged to exercise that right. It may be that some citizens of special patriotic inclination will prefer to engage in activities of civil disobedience or resistance to the occupiers in order to restore the civil order. That is an admirable activity and may certainly be encouraged but there are no grounds for requiring that it be made compulsory. Patriotism, at the point of self-sacrifice, is a commendable virtue but it is commendable precisely because it cannot be taken for granted from anyone. It would be wrong to sanction exit and condemn to self-annihilation ordinary civilians who are trying to protect themselves or their children from torture and oppression.

⁴³Contribution need not be exactly proportional to benefit. The idea of fair reciprocity is captured nicely by the slogan 'from each according to his capacities, to each according to his needs'. For more on this issue see White (1997b, pp. 318–20).

Of course unconditionally denying a claim to exit is as implausible as allowing it unconditionally.⁴⁴ Yet it seems fair to require that the claims of those who want to leave the state should be balanced with the claims of those who are left behind. Hence the right to exit should be granted only if certain obligations of emigrants to fellow-citizens are met. Just like in the case of immigration, fairness in emigration requires that freedom of movement be restricted when it results in harm being done to citizens of the sending society.

This implies that emigration may be legitimately restricted when allowing for the outflow of particular categories of emigrants leads to a reduction in the general welfare of the sending society. The principles according to which such restrictions may be placed must take into account how much the productive contribution of prospective emigrants affects the institutions of the source state. Again, such principles rely on skill-specific considerations. Justice in emigration requires limiting the outflow of more productive groups since it is precisely their exit which will most likely affect negatively sending societies.⁴⁵

There are several dimensions along which the emigration of productive groups, particularly of skilled workers, may affect negatively sending societies. One is the purely distributive dimension: great fluxes of outgoing migration result in a loss of economic contribution to the state by the better off, who usually pay the highest amounts of taxes and whose outflow would consequently reduce the bundle of social goods available for redistribution. Another, related effect, is the corrosion of the *progressive* aspect of distributive justice and the related pressure on worse-off groups: if the more productive and better-off citizens leave, worse-off citizens face greater fiscal pressure in continuing to produce collective goods.⁴⁶

In domestic discussions concerning distributive justice we would usually consider it morally illegitimate if better-off citizens tried to free-ride, dodging their obligations to the rest of society by taking the benefits of social cooperation

⁴⁴However, it is interesting to notice how considerations of political reciprocity lie at the heart of a denial of a right to exit in ancient Greece where—it should also be noticed—being expelled from the polis constituted one of the harshest punishments. ‘Could you deny that you are our offspring and servant, both you and your forefathers?’ the lawgivers of Athens ask Socrates in Plato’s *Crito*. ‘We have given you birth, nurtured you, educated you, we have given you and all other citizens a share of all the good things we could’.

⁴⁵One may wonder here about the implications of these considerations for citizens of the same state and for internal freedom of movement. Is the state entitled to use its coercive apparatus to incentivize or disincentivize the exercise of particular professions or to force a number of workers (say doctors) to serve in specific vulnerable areas? The answer is, I think, that given the way in which domestic institutions function, the movement of people is usually restricted from the start. Even though the state does not disincentivize or incentivize the exercise of certain professions, the number of people who can undertake a certain career is often determined by the limits of admission in graduate schools, the geographical extension of specific companies and so on. Within the basic institutional setup in which citizens find certain opportunities, freedom of movement is already constrained. The considerations according to which such restrictions are justified seem similar to the ones that we find in the global level, even though the specific way in which they are applied may be different. The overarching consideration is that in both cases it would be naive to grant unconditional freedom to some individuals regardless of how its exercise affects the life of others.

⁴⁶See for some empirical evidence on these issues Desai, Kapur, and McHale (2004, pp. 675–7).

without contributing their share. We would ordinarily resist the idea that wealthy citizens can, for example, avoid paying their taxes yet take advantage of, say, a free high-level education system or free healthcare. But if we consider it morally illegitimate to free-ride on domestic distribution and are ready to use coercive mechanisms to ensure that everyone contributes to society, why does it suddenly become morally problematic if restrictions on exit from the country are in place for the same purpose?

One could reply here that while in the first case, domestic free-riding citizens would still be taking the benefits of collective goods without contributing their share, in the case of exit from the country emigrants would both cease to contribute *and* cease to take the benefits of social cooperation. Notice however that the same could be argued in the domestic case with regard to an extreme libertarian who, say, refuses to contribute to compulsory distributive schemes without requiring any benefits in exchange.⁴⁷ How would we justify to such an extreme libertarian coercive inclusion in distributive schemes that go beyond what is required for the minimal state? A democrat might reply that by accepting to have his life and property protected by the state, he is also implicitly subjecting himself to the democratic will of the majority.⁴⁸ But why does this thought not apply also to restrictions on the emigration of the skilled workforce? What makes exiting from the state more justified than refusing to pay taxes? Why does the democratic will of the majority of citizens in sending societies not count also in deciding how restrictions in emigration should be placed?

There is also another argument speaking in favour of emigration restrictions beyond the democratic one just mentioned. It relates to the negative impact of the emigration of skilled workers on the development of sending societies, especially poor ones. Human capital is famously essential to the improvement of social and political institutions. Developing states usually spend a significant amount of resources on the education and training of local staff to be employed in relevant sectors of society; this is so not just for the healthcare sector, but also for sectors related to social and scientific innovation (including the area of advanced technological production). However, when it comes to receiving back the benefits of such investment on human capital, the migration of the skilled workforce means that those citizens who cooperated in the production of public goods such as education and healthcare, receive no benefit from these investments. Indeed the opposite is the case: the worse-off citizens in worse-off countries contribute to advantage citizens of developed states where skilled workers from developing countries are usually employed.

In the face of such evidence, it seems plausible to insist that a global theory of just emigration should not give to those who leave an unfair advantage over those

⁴⁷Indeed this is one of the arguments used by Nozick (1974, p. 173) to object to patterned distributive principles.

⁴⁸For a more detailed critique to the libertarian defence of property rights see Ypi (2008c).

left behind. An egalitarian theory of justice in emigration seems to require placing restrictions on the outflow of productive citizens when this results in harm to sending societies. The higher the exit of a skilled workforce in a particular state, the more the welfare standards of the remaining citizens will be negatively affected. A theory of justice in emigration must be able to give equal weight to the claims of outgoing migrants and to those of citizens in sending societies. This does not mean abolishing freedom of movement altogether, it simply requires placing restrictions on emigration when it threatens to reduce the general welfare of citizens in sending societies. Whether this finding is as morally appealing as it may initially appear depends on the overall place of emigration and immigration within a general theory of justice in migration.

V. THE PARADOX OF EGALITARIANISM

Having explored the requirements of justice in immigration and those of justice in emigration, we are now in a position to consider how they relate to each other in a global theory of justice in migration. As I have argued, a global theory of just migration requires identifying permissible and impermissible restrictions on freedom of movement and articulating the principles according to which benefits and responsibilities should be distributed between migrants, citizens of sending societies and citizens of receiving societies. Succeeding in advancing a global theory of just migration depends on the possibility of achieving coherence between the principles of justice in immigration and those of justice in emigration.

Above I have shown that justice in immigration and justice in emigration converge in identifying one set of circumstances under which restrictions on freedom of movement are never justified. Similar circumstances are the ones in which those who face the need to migrate for political reasons find themselves: the circumstances of political refugees. There are no grounds for preventing people from leaving a society which has fallen in a condition of anarchy similar to the one in the state of nature. And there are also no grounds for denying political refugees admission in a hypothetical receiving society. Hence there seems to be no incompatibility between justice in immigration and in emigration. Restrictions on the freedom of movement of agents enjoying no political protection are never justified in a global theory of justice in migration.

Now let us consider how justice in emigration and justice in immigration combine with each other on other kinds of restrictions on freedom of movement. The circumstances of justice in immigration, we emphasized, present a conflict of claims between citizens and newcomers on admission and integration. Here states ought to cope with a double request: on the one hand, they must ensure that migrants integrate fairly and are able to enjoy the opportunities of citizenship; on the other hand, they have to guarantee domestic social justice. The ideal principles of justice in immigration seem to be of an egalitarian kind, able to

distribute benefits and burdens equally between both migrants and citizens of receiving societies. Justice in immigration therefore mandates admission policies that are sensitive to public order and skill. More specifically, it requires facilitating entrance to people able to make a productive contribution to receiving-societies in a way that allows the state to maintain both decent integration schemes and a fair domestic distribution of resources.

The circumstances of justice in emigration, on the other hand, are due to potential tensions between those who wish to migrate and the citizens left behind in sending societies. Here the problem is one of adaptation on the side of source states after the emigration of specific categories of people. Fellow-citizens are owed a fair return for what they contribute to one another: education, investments in healthcare and so on. It would be unfair to leave the state without repaying for the advantages enjoyed. Again, the principles of justice in emigration ought to be of an egalitarian kind: taking into account equally the claims of migrants and those of citizens in sending societies. Ensuring that both kinds of claims are equally satisfied is possible by placing skill-sensitive restrictions on emigration so that the advantages enjoyed by productive groups are balanced by repaying the contribution they owe to society.

Now if we consider together the claims of migrants, those of citizens in sending societies and those of citizens in receiving societies we are likely to face a paradox. Principles of an egalitarian kind fail to accommodate the claims of *all* affected parties. Indeed they are likely to involve reducing the welfare of at least one of the groups involved. For, aside from public order considerations, what is required by just immigration—facilitating admission to skill-specific and productive groups and limiting all the others—clashes with just emigration. On the other hand what is required by just emigration—restricting exit to skill-specific and productive groups and facilitating all the others—clashes with just immigration. An egalitarian theory of just migration appears therefore plainly impossible. Increasing justice in immigration implies decreasing justice in emigration, and vice versa. More generally, justice in migration requires both restricting the outflow of skilled migrants (from the perspective of emigration) and encouraging it (from the perspective of immigration). Freedom of movement ought both to be and not to be restricted, on the very same grounds.

This conclusion is likely to provoke several objections, conducive to two different categories. One category of objections will challenge our observations on justice in immigration. The second will challenge our observations on justice in emigration. Let us consider them in turn.

Consider first the attempt to criticize what is presupposed by justice in immigration. Here an objector might argue that the integration-admission trade-off, the alleged source of all tensions between newcomers and citizens of receiving-societies, may rely on unwarranted speculations about the limited capacity of host states to combine generous admission schemes with domestic distributive requirements. As a matter of empirical observation—so our objector

might argue—such tensions do not necessarily arise. One reason for this may be circularity in migration: those who intended to settle might, at a certain point, change their mind and return to their home country. Circularity plays an important role here since receiving societies are more likely to benefit when immigrants do not claim back the social benefits that they have subsidized. Remember, however, that in this article we are considering justice in migration from an ideal perspective. This means that we need to operate with premises that assume motivational consistency and cannot rely on potential sources of benefit arising from non-ideal considerations. For that a different type of theory is required. More generally, the observation that a generous welfare state can only be secured if the principles of immigrant admission are skill-specific seems confirmed from a number of empirical sources. The success-stories of Australia or Canada, for example, suggest that a generous welfare state is sustainable in great part because the criteria for admission in those states tend to privilege migrants with specific skills able to make an economic contribution to the host-society and to successfully adapt in its job market. Canada has recruited skilled immigrants since the 1960s under its points-based Independent Immigrants Scheme and the fraction of immigrants entering the country under such scheme has increased from 15 per cent in the 1980 to two thirds in 1999. In Australia more than half the places in its points-dependent immigration program are reserved for highly skilled migrants (especially medical professionals and IT staff).⁴⁹ The admission-integration conflict does not arise only because measures similar to the ones we suggested in order to eventually solve it, are already presupposed.

A second category of objections will try to challenge our premises on justice in emigration by claiming that the expatriation-adaptation conflict may not arise. The consequences of brain drain on the citizens of sending societies may not be as severe as they initially appear. Emigrants, our objector will argue, usually contribute to source states in a number of alternative ways.⁵⁰ Firstly, by sending remittances back home the loss of human capital may be compensated by a financial gain. Or emigration may contribute to the creation of diasporas which in turn perform a crucial role as intermediaries between receiving and sending societies, by increasing trust in trade negotiations or by acting as intermediaries to facilitate bargaining.⁵¹ Or it may be the case that high-skilled emigrants, even though much needed, would be badly employed at home because source states lack institutions able to absorb all the educated workforce.⁵²

These are hugely controversial matters and I am certainly in no position to assess all the strengths and weaknesses of the empirical literature on the topic.⁵³

⁴⁹See Desai, Kapur, and McHale 2004, p. 665.

⁵⁰For objections in a similar vein, see Carens (1992, p. 33).

⁵¹For good empirical discussions of these issues see Kapur and McHale (2006).

⁵²See on these issues: Fan and Stark 2007b; Kingma 2007; Kukathas 2005.

⁵³For a good overview see Kapur and McHale (2006). See also: Brown 2006; Desai, Kapur, and McHale 2004; Fan and Stark 2007a.

But it is hard to see how such observations make any difference to my argument on the impossibility of coherently combining justice in emigration and immigration. As already explained, I do not understand ‘restrictions’ merely as raising physical barriers to the outgoing movement of people but rather as specifying the conditions under which emigration would be fair to both migrants and sending societies. It may well be that remittances help compensating the brain drain with financial gain, and it may well be that diasporas create beneficial networks between host and source states. It may also well be that emigrants face better prospects of life when they immigrate to developed countries (though it is hard to see how exploiting institutional weaknesses in source states makes brain drain more respectable).⁵⁴ Remittances, just like diaspora returns, are voluntary acts, they rely on feelings of reciprocity of single individuals willing to contribute to their home country and can by no means substitute coordinated political intervention or relieve us from the responsibility of seeking a more principled approach to the problem. (In a similar way, in the context of discussions on domestic justice the ad-hoc initiatives of generous individuals or organizations cannot substitute for interventions through patterned distributive principles.) It is when we approach the issue of justice in migration from a principled perspective taking into equal account migrants, citizens of sending societies and citizens of receiving societies, that we realize that the claims of emigration and immigration cannot be equally satisfied.

There may be one last attempt to defend an egalitarian theory of just migration. It follows from a rejoinder to the previous objection. It is possible that the voluntarist response, so the critic might argue, could be avoided by proposing to institutionalize contribution to sending societies. One could for example create schemes of compulsory remittances, reduce their cost, improve on provider services, tax emigrants and so on. In this case the worse-off citizens in source states would not be negatively affected by the outflow of productive fellow-citizens. Again, I will set aside here considerations on the efficiency of financially-oriented rather than human capital supplying schemes. The point is that the principle of strict equality in this case would still suffer. Migrants, for example, would in fact be burdened twice, having to contribute both in sending societies to compensate for old citizenship benefits *and* in receiving ones to acquire the new ones. But why should migrants pay twice rather than also the citizens of host-states who benefit from high-skilled emigration? And if we included the latter, how could we avoid reducing social justice in immigration-affected states? Wouldn’t we be taking with one hand what we have conceded with the other (i.e. that citizens of host societies can legitimately require restrictions designed to guarantee equal welfare standards)?

⁵⁴Rather, brain drain may make things worse than they already are. For a fuller response to this third objection see Kapur and McHale (2006, p. 312).

The paradox of justice in migration is that by trying (and failing) to accommodate equally the claims of both justice in emigration and justice in immigration, we may end up dreaming of a world where there is no movement of people across borders and where claims of justice have therefore no reason to arise. The paradox of justice in migration is that it leads us to a closed borders utopia.

VI. A CLOSED BORDERS UTOPIA?

Of course that closed borders utopia would be unjust to migrants themselves. It would compromise freedom of movement in ways that, if consistent with the general principle of justice in migration, would nevertheless be hard to justify. It may be wiser to abandon the attempt to search for egalitarian principles in a theory of justice in migration. A better way forward might be to recognize that the claims of migrants, citizens of sending societies and citizens of receiving societies are in inherent tension with each other and simply *cannot* be simultaneously satisfied. If we abandoned that attempt we would have to start thinking about alternative principles indicating how to solve the egalitarian paradox of justice in migration by relaxing either the criteria of justice in emigration or the criteria of justice in immigration.

One way to conceptualize the way in which the criteria of either emigration or immigration could be relaxed may be to start with the point in which justice in immigration and justice in emigration converge: the case of political refugees. We then might consider the situation of economic migrants in analogy with that of political refugees. Where people's subsistence needs go unmet and there is no possibility of improvement by interventions in loco, there may be an obligation to prioritize economic migrants for reasons similar to the ones invoked when considering the case of political refugees. When the state is unable to protect the most basic needs of its citizens and there is little that members can collectively do to improve their economic conditions, the bond with political institutions has been severed just as in the case of political refugees. And just as in the case of political refugees, there is a clear obligation related to freedom of movement, a duty involving either exit or entry, since measures of assistance or development aid, in the absence of functioning domestic institutions, would in any case be wasted.⁵⁵ So one way to decide who should enjoy unrestricted freedom of movement within a just migration theory would be the following: the less able worse-off agents are to take responsibility for their economic development, the more they should be favoured. The right principle would therefore attempt to combine urgency and ascription of responsibility: urgent claims for which people cannot take responsibility (past and future) should be favoured over those for which they can.

⁵⁵For alternative proposals focusing on transfers of resources rather than people, see: Cavallero 2006; Pogge 1997.

While this proposal does not settle all the issues that might arise when assessing conflicting circumstances of justice in migration, it does provide some guidance for deciding which of the requirements of justice in migration to relax at any given point. At least a theory of justice in migration grounded on similar principles does not face a paradox straight-out in the way in which a theory grounded in egalitarian principles does. One might hope that it will also deliver more: a complex and still rough theory of justice in migration, but perhaps not a closed borders utopia.

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