Background work on immigration as a human right.

If foreign nurses cannot afford to pay the price upfront, they can still come into country A but are subject to a higher income tax schedule so as to repay the government the price of immigration right.

The main objections to the radical and fair solution to immigration are based on the right to exclude argument, which gives rise to the closed-borders regimes. Here I present the rationale for such regimes based on Wellman (2008), White (1997) and Blake (2001).

Higgins (2008) brain drain – weak; Celia Dugger – weak;

# Objections to the radical and fair solution

In this section, I will argue that migration should be understood as a basic positive right. The difference of negative and positive duties is particularly important for libertarians, so I will draw from their literature. If I can prove that migration meets the criteria for positive rights according to libertarian principles, then it is straightforward that individuals hold a claim on governments to promote migration policy. This viewpoint is consistent with the open-borders theory.

## What are positive rights?

According to Narveson (1988), positive rights correspond to duties to perform an action to guarantee existence of these rights. In the context of political organizations, it holds governments and States accountable for carrying out actions to promote these rights. Narveson’s example is illustrative: suppose that A possesses right X against B. If X is a positive right, then B has a duty to perform actions Y to enable X for A. In our political environment, it means that governments (B) have to perform actions Y so that individuals (A) exercise right X.

## The right to migrate and consistency with open-borders theories

Carens (1987) is probably one of the most important papers that posit the existence of a right to immigration. He argues that citizenship in Western societies corresponds to the feudal privileges in the Middle Ages. Developed societies experience much better social and economic conditions and, by preventing immigration, they preclude people from accessing a better life. This creates an analogous situation to class privileges in feudal societies, when lower classes were denied upward mobility.

There are two important arguments in Carens (1987). First, and in consonance with more libertarian approaches, Carens claims that the right of migration is not an attribute of citizenship; it is, in fact, an intrinsic right of every human being. He strips down governments from the assumed (implicitly) permission to exclude. Citizens do not hold any additional right to exclude and to authorize their State to exclude free movement because they were not entitled to this right in the first place. No one is. Every individual is placed in an equal moral position, whether they are immigrants or not. His second point in support of the right to migrate is based on Rawls’ principles of justice. Under Rawls’ original position experiment, individuals would have to agree to principles of justice to guide the social organization they were about to establish. Since no individual knows about their own social position, nor do they know about innate skills and abilities, Carens claims that it is reasonable to assume that they would all agree to a “freedom of movement” basic liberty.

His arguments provide two avenues to analyze the right to immigration: as a human right and as a result of the social contract of political organizations. I shall focus on the former but concede the existence of the latter.

Huemer (2010) is a good account in support of the right to immigration. In his illustrative case, Huemer describes a situation where one person (Sam) is directly responsible for someone else’s death (Marvin) by actively preventing the latter from buying bread at a grocery store. Sam’s coercive action imposes harm on Marvin and is a clear violation to Marvin’s right to life[[1]](#footnote-1). In a similar fashion, if a State imposes restrictions to entry on people who would have access to life-saving conditions by accessing the State’s territory, this State is actively violating the right to life of its potential immigrants.

But we need not to restrict ourselves to the single case where Sam actively harms Marvin. Suppose the same conditions described in Huemer (2010) hold, i.e., Marvin has a plan to avoid starvation and Sam anticipates what the plan is. Does Sam have the duty to tell Marvin where the marketplace is? If Marvin does not know where the grocery store is, he will not be able to carry out his plan and will starve to death. This is the classic moral controversy of *doing harm* (effectively preventing Marvin from purchasing food) and *allowing harm* (not telling Marvin where the marketplace is). If one equates allowing to doing harm, then it is clear that Sam has a duty to help Marvin. In this scenario, migrants hold a claim on States to support immigration so as to guarantee individuals’ human rights. It does not matter if migrants are citizens of another State as the right to migration, recognized as a human right, precedes the existence of Nation-states and is binding to all States against every individual.

What if the one believes that allowing harm is less wrong than doing harm? I grant that it becomes unclear whether Sam has a duty to help Marvin with the information provided by Huemer. However, in the concrete case of immigration, an overwhelming amount of evidence provides additional information about Sam and the marketplace. We know that the grocery store will benefit from Marvin’s presence. For starters, the additional bread sale increases the shop’s profit. Marvin is likely to motivate other consumers to make better consumption choices; he does not engage in shoplifting any more than current customers. Sam, whose mission is to promote the interests of the shop, thus has to help Marvin because this is an integral part of his mission. If he refuses to tell Marvin where the shop is, he is effectively going against his own duty to help the marketplace succeed. In our State analogy, if it is clear that (1) the right to migration is a human right and (2) governments ought to act in the best interest of their citizens, and (3) immigration promotes (1) and (2), it is straightforward that individuals hold a claim against States to promote immigration.

An additional support is provided by Oberman (*forthcoming*). Even though he concedes that human rights are not absolute and restrictions are acceptable under severe social costs that cannot be prevented otherwise, his defense of immigration is based on the fact that it is a basic liberty and as such should receive equal treatment to other liberties (to move, to associate, to speak, etc.).

## Immigration market and open-borders regimes

The appeal of an immigration right market is extremely high because it is compatible with both closed and open-borders regimes. The more a government charges in immigration rights, the more they move to a *de facto* closed-borders regime. If prices vary with age, skills, primary nationality, and so on, States effectively exert their right to exclude by prioritizing whom they want to admit. At extremely high prices, it is reasonable to assume that no one would migrate. On the other hand, if governments decide to price immigration low, then they are imposing little to no restriction on who should be allowed entry.

1. Even if Marvin does not die, Huemer (2010) makes the case that Sam’s action is still a violation of Marvin’s right to life. [↑](#footnote-ref-1)