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Module Title:	Topics in Political Philosophy: The Ethics of Migration
Module Code: (e.g. 5AABC123)	6AANA046
Assignment: (may be abbreviated)	Summative Essay
Assignment tutor/group:	Dr Sarah Fine
Deadline:	19.05.2021
Date Submitted:	19.05.2021
Word Count:	2580

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Should we recognize a human right to immigrate?

In 1948 the Universal Declaration of Human Rights (UDHR) was proclaimed by the United Nations General Assembly. The declaration contains 30 articles detailing an individual's "basic rights and fundamental freedoms"¹, and has 525 official translations – more than any other document in the world². Since its inception it has become a powerful tool in establishing a so-called international political morality. Journalists, politicians and legal scholars all over the world use the declaration as a framework to criticize governments that violate human rights, and such violation is met with condemnation from the international community. While not legally binding, its influence is therefore apparent – for example, all 193 member states of the United Nations have ratified at least one of the nine binding treaties influenced by the declaration and the 154 member states have ratified four or more.

Safe to say, the idea of a human right is a powerful political tool, and the official recognition of a human right can have profound consequences for people all over the world. It is therefore worth thinking carefully about which rights the UDHR recognizes and whether there are any important rights that have gone unrecognized. This essay is dedicated to the latter – specifically, it will examine whether we should recognize a *human right to immigrate*. The world has changed a great deal since 1948 – in particular, it has become increasingly interconnected. People today are a simple tap on their phone away from instantly talking to their friends on the other side of the globe. And if they should wish to visit their friends in person, air travel is easier and more accessible than ever before. For many, this interconnectedness serves to erase many of borders that used to separate people of different nationalities and is embraced as a sign that national borders should be a thing of the past. However, others look with worry at recent migrant influxes into their countries and/or pandemics worsened by international travel and insist that national borders should be more strongly enforced. The right to immigrate is therefore heavily contested and deserves careful evaluation.

¹ "Human Rights Law". www.un.org/en/sections/universal-declaration/human-rights-law/index.html. Retrieved 19th May 2021.

² "OHCHR | Universal Declaration of Human Rights". www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx. Retrieved 19th May 2021.

In order to evaluate whether there should be such a right I will follow David Miller's³ example of distinguishing between three different strategies of potentially grounding the right and consider them in turn. These are the instrumental strategy, the cantilever strategy and the direct strategy.

To begin with, the instrumental strategy uses an instrumental argument to ground the right to immigrate. On this argument, one attempts to show that the recognition of a human right to immigrate is instrumental to other important rights already recognized. It is easy to see how one might construct such an argument. Start out with a fundamental right already found in the UDHR, for example paragraph 1 of article 25:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.⁴

Clearly, there are people in the world currently being deprived of this right. For these people, one could imagine, the only way to secure this right would be to move to a different country. It seems plausible then to say that the recognition of a right to immigrate would be instrumental to other important rights, such as the right to a standard of living adequate for health and well-being. So, what are potential problems for this line of reasoning? The first thing to notice is that the argument relies on the assumption that, for the people in question, the only way to secure an adequate standard of living is by moving to a new country. As Miller points out, there may be other ways to secure this right, such as transforming the conditions in the original country. Complicating the picture further is the possibility that the migration of some people from a country will make conditions worse for the people left in the country. To illustrate this phenomenon, Kieran Oberman uses the example of the Zambian health care system⁵. The problem in this case being that half of the country's educated medical doctors emigrate soon after graduation, leaving the rest of country in a hopeless place to deal with its health-related issues such as the HIV/AIDS endemic.

³ David Miller (2016), *Is There a Human Right to Immigrate?*, Migration in Political Theory: The Ethics of Movement and Membership, Oxford University Press.

⁴ UN General Assembly (1948), *Universal Declaration of Human Rights*, <https://www.refworld.org/docid/3ae6b3712c.html> Retrieved 19 May 2021.

⁵ Kieran Oberman (2013), *Can Brain Drain Justify Immigration Restrictions?* Ethics, 123(3), 427-455. doi:10.1086/669567

This is known as the brain drain effect and is used by some as an argument to enforce immigration restrictions. However, it is unclear how real or widespread the effect is, and this essay will not provide any more insight on the topic. Rather, in the interest of further pursuing other objections against the right to immigration, I will instead assume – as Oberman concludes – that the brain drain effect only provides a legitimate argument for immigration restrictions in a minority of cases. If this is the case, I believe one can still argue for the recognition of a right to immigrate. It is commonly accepted that even though these rights are supposed to be “universal”, there can be special cases where the right nevertheless must be denied. If these special cases are rare enough, they do not need necessarily need to threaten its status as a universal right. I therefore continue with the assumption that brain drain effect is minimal or can be resolved by means other than immigration restrictions – in the case of the Zambian health care system for example, by imposing a requirement for Zambian doctors to practice in Zambia for a specified period of time.

So much for the brain drain effect, but what about the objection that an adequate standard of living can be obtained by transforming conditions in poorer countries, as opposed to allowing unrestricted immigration? Transformation of this kind would be ideal, however this is clearly a very complicated process. One must imagine that for most immigrants, they would prefer to transform the conditions in their own countries as opposed to leaving their home behind. The problem is that this kind of process can take decades upon decades without making much progress and one could not expect people to simply put their lives on hold while waiting for this to happen. Additionally, if we are assuming minimal brain drain effect, there should be no contradiction between allowing unrestricted immigration and transforming conditions in originating countries. Therefore, if one adds the assumption that transforming conditions in originating countries is not a simple substitute for immigration to secure people’s basic rights to adequate health and well-being, I argue the instrumental argument remains convincing.

It seems that as long as minimal brain drain is assumed and the difficulties of transforming conditions in developing countries is realized, a right to immigration is instrumental to secure other fundamental rights. But is this right unrestricted? Miller points out that there doesn’t seem to be an obvious reason why would-be immigrants should be able to choose whichever country they want to move to. As long as they have one option available that would be able to secure their fundamental rights, this would be enough. In other words, one would not have to force every country in the world to completely open their borders. Instead, one would have to make sure that countries have

their borders “open enough” that there is space for the amount of people being deprived of their basic human rights. I argue this is the furthest one can come with the instrumental strategy. Clearly, this is very different to the unrestricted right to immigration that some people would like to claim. Importantly, it does not give a right to immigration for people already enjoying adequate well-being and health in their own countries, and it does not give a “free choice of country” to those being deprived of these rights.

Perhaps one of the other strategies can get closer to grounding an unrestricted right to immigration. Let us consider the cantilever strategy. This strategy is similar to the instrumental strategy in that it grounds its argument in existing, recognized human rights. One then attempts to show that not recognizing the right to immigration is inconsistent with the existing rights. If a direct inconsistency can be shown, it seems likely that one could more legitimately claim an unrestricted right to immigration by using the cantilever strategy. The existing right typically cited in such a cantilever strategy is the right to domestic freedom of movement:

Article 13.1.

Everyone has the right to freedom of movement and residence within the
borders of each State.

The argument goes that if we regard domestic freedom of movement as a universal right, then it would be inconsistent not to regard international freedom of movement as a right also. As expressed by Joseph Carens: “If it is so important for people to have the right to move freely within a state, is it not equally important for them to have the right to move across state borders? Every reason why one might want to move within a state may also be a reason for moving between states...”⁶ The strength of this argument therefore relies on the strength of the analogy between the domestic case and the international case. Are there important differences between the two?

Miller points out that states can have political reasons to target particular domestic groups by restricting their movement in a way that does not extend to the international case. Within a state, the ruling power can have an interest in controlling what sort of political movements are happening within its borders. If a certain movement is unpopular with the state, the state can seek to sabotage it by restricting the movement of the people in question so that they cannot meet and express their

⁶ Joseph Carens (1992), *Migration and Morality: A Liberal Egalitarian Perspective*, Free Movement: Ethical Issues in the Transnational Migration of People and of Money, University of Pennsylvania Press, p. 239.

dissent. In this way, domestic freedom of movement is instrumental to the right of peaceful assembly and association. However, this argument does not work in the international case. This is because states do not have the same political interests to control opinions and movements of non-citizens as they do with citizens. Because states have a fundamentally different relationship with non-citizens, the analogy between the domestic and international case is importantly different, and the cantilever argument becomes too weak to successfully claim a right to unrestricted freedom of immigration.

The last strategy available then is the direct strategy. On an argument of this sort, one does not make reference to previously existing recognized rights. Instead, one tries to show that the right in question is essential to serve some basic human interest that is not being fulfilled by existing rights. In other words, one moves straight from a grounding interest to the right. It is important that the grounding interest is not one already covered by existing rights, such as the right to freedom of speech, freedom of religion or adequate health – in this case the argument turns to an instrumental one. The challenge is then to find a basic human interest that is not already being served and can only be secured by an unrestricted right to immigration.

In order to imagine what sort of interests could serve this purpose, it is worth thinking about why people choose to migrate. Clearly, some are forced to migrate as a result of being deprived of their human rights – this is dealt with in the instrumental strategy. For the direct strategy one must think, why do people who are not being deprived of their human rights migrate? Some people might move for love, others might move to attend a prestigious university, and others yet might move simply because they feel enticed by the idea. These sorts of interests lead Oberman to claim that people have a basic interest in being “free to access the full range of existing life options when they make important decisions”⁷, and in order for people to properly access this full range of life options one must recognize an unrestricted right to immigration.

For this argument to be successful, we must be convinced that the interest to access the full range of existing life options is a sufficiently basic interest to ground the right. However, Miller points out that these types of interests are importantly different from the interests being served by existing rights. Consider the interest to study at whichever university one wants. The UDHR states in article

⁷ Kieran Oberman (2013), *Can Brain Drain Justify Immigration Restrictions?* Ethics, 123(3), 427-455, p.4.

26 that everyone has a right to education. However, it seems intuitively too strong of a requirement that everyone should get the opportunity to study wherever one wants. An important part of the UDHR is that the rights declared are realistic and feasible so that if some state is not fulfilling them, they will be met with international condemnation. In the interest of maintaining the integrity of the rights in the UDHR it is therefore a good idea to only cover the most basic rights one believes all humans at all times should be able to enjoy (with some very rare exceptions). Claiming a basic interest in being able to study wherever one wants goes against this line of thinking and therefore should not be considered sufficient grounds for an unrestricted right to immigration. The same type of reasoning applies for someone who wants to move abroad for love or simply because they find the idea enticing.

It is therefore very hard to find a convincing basic interest with which one can ground an unrestricted right to immigration on. And with that, all three strategies have been exhausted. I have argued that the direct strategy suffered from the problem of finding a sufficiently basic interest to be grounded in and that the cantilever strategy suffered from the weakness of analogy between the domestic and international case. The instrumental strategy comes closest to claiming an unrestricted right to immigration but falls short as it does not require every single nation to open its borders – only enough that those being deprived of their basic rights can be accommodated. As such, I believe the instrumental argument is the best strategy for arguing for more open borders in general, but I do not believe it is strong enough to claim an unrestricted right to immigration.

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FINAL GRADE

/100

GENERAL COMMENTS

This is a good essay.

Shows very good knowledge and understanding of the Miller-Oberman debate.

Nice presentation of that debate.

Writing is clear throughout.

Remains focused on the question.

Ideas are nicely organised.

Would have benefited from using the extra space available to develop the argument beyond Miller-Oberman, and to show knowledge of wider issues and literature.

Overall, a good effort.

Provisional mark: 68

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