

Breaking Down Borders: Migration as a Fundamental Human Right

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Thesis presented for the degree of
MASTER OF PHILOSOPHY

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Spring 2019

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2019

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<http://www.duo.uio.no>

Trykk: Reprosentralen, Universitetet i Oslo

Abstract

This thesis examines the question of migration as a fundamental human right. To determine the normative force of human rights, I begin by distinguishing several accounts of human rights. I identify a conception of human rights to apply to the case of migration, namely a contemporary conception of human rights, and examine the relationship between this conception and its ethical foundation. Following this discussion, I analyze the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) to show the human right to migration is implicit within the two documents.

I argue that the principles of freedom, moral equality, and equal autonomy support the right to migration, and these principles provide ample reason to implement open borders. I also look at arguments for implementing porous borders, and I argue that porous borders grant nations the right to exclude certain migrants and forcibly exercise their sovereignty. I assert that the reasons provided for the implementation of closed borders and porous borders are not ethically justifiable because they hinder access to freedoms protected by the UDHR and ICCPR and impede the fulfillment of moral equality and equal autonomy.

I show that nations are morally obliged to respect and protect the human right to migrate. I explore the responsibilities this obligation entails, in particular, receiving nations extending economic, social, and cultural rights and services to a migrant. I aim to show open borders are the most morally defensible solution to the case of migration. I then consider various counter-arguments: security, culture preservation, self-determination, economy, brain-drain, and population control. I conclude that current migration policies are incompatible with human rights and in need of significant modifications and suggest several ways in which a human rights approach to migration can be upheld and protected.

Acknowledgments

First and foremost, I would like to express my sincere gratitude to my supervisor Anna Smajdor for her enthusiasm, patient guidance, and insightful feedback. The gift of her time has been invaluable.

I want to thank Sondre Lefsaker, who provided me with unfailing support and encouragement throughout the process of researching and writing this thesis.

I would also like to thank my sister Tiffany Ho for being a fantastic role model to me and for supporting my pursuit of further education.

Finally, I am especially grateful to my parents, whose incredible journey from Myanmar to the United States inspired this thesis.

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Introduction

People are constantly moving across borders and settling in different nations for a variety of reasons: to pursue economic opportunities, to reunite with family, or to escape conflict and violence. But the right to migration has become a hugely controversial issue, with many nations around the world struggling to implement an ethical admissions policy. People hold different ideas about why people migrate and what type of impact migration will have on a host nation and its citizens, which has led many to question whether a closed border, a porous border, or an open border policy should be implemented. In this thesis, I argue that there are strong reasons to support an open border policy. With such a claim, there are many questions that need to be addressed: why migration should be considered a fundamental human right; what nations' obligations to migrants are; what their moral obligations to refugees and political asylum seekers are; why a porous border policy is an unsatisfactory solution to the issue of migration; and whether there are concerns and objections that trump a human right to migrate. I explore these challenges in my thesis and aim to show that an open border policy is the most ethical solution to the issue of migration.

This thesis is structured in the following way:

In Chapter 1, I provide an overview of three conceptions of human rights, namely the natural approach, political approach, and the contemporary approach, and select an approach to apply to the case of migration. I review common criticisms of human rights and focus primarily on the cultural relativism argument. I conclude that the argument is not compelling.

In Chapter 2, I turn to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) to show why migration is a fundamental human right. I illustrate how our access to a range of life options is limited when there are migration restrictions in place. I then look to two essential interests – attachments and possibilities – which provide ample reason for accessing life options beyond the adequate range. Lastly, I examine whether nations have a specific moral obligation to refugees and political asylum seekers.

In Chapter 3, I discuss the principles of individual autonomy, moral equality, and freedom and explain how they support the right to migration. I introduce the cantilever argument and

argue that the right to internal migration, which is protected by the UDHR, should be expanded to include migration across borders.

In Chapter 4, I examine whether porous borders are an ethically justifiable solution to the issue of migration. I outline how an admissions policy based on porous borders may be discriminatory, and thus morally impermissible. I then turn to an open border policy and offer some suggestions on what a nation's obligations should be to migrants within their borders.

In Chapter 5, I outline six objections commonly raised by opponents against open borders. I attempt to show that each objection does not offer sufficient reason to implement restrictions against the right to migration. Finally, I offer some concluding remarks to sum up the discussions throughout this thesis.

1 Ethics of Human Rights

In this chapter, I consider three approaches to human rights – the natural approach, political approach, and contemporary approach – and select an approach to apply to the issue of migration. I begin by first outlining several features of human rights, and go on to sketch out key features of each approach. I distinguish between these three approaches to understand how human rights was first conceived and how it has developed to determine which approach can best deal with modern issues such as migration. I discuss why the natural and political approaches are not satisfactory approaches for this thesis, and I propose using the contemporary approach to human rights. I then address one common challenge that argues against the ethical basis of human rights: cultural relativism. I conclude the chapter by asserting that human rights can withstand the challenge raised by cultural relativists.

1.1 What Are Human Rights?

Human rights are generally understood to be basic, fundamental entitlements that everyone has in virtue of being human, and they hold several important characteristics. First, human rights are *rights* – they are not to be perceived as benefits or privileges – and “rights in turn are special entitlements of *persons*.”¹ Second, human rights are guaranteed indiscriminately, as every individual, irrespective of race, nationality, gender, ethnic origin, age, disability, or religion, is entitled to human rights. They are equally applicable to everyone, as an individual is either considered a human being or not. Third, human rights are inalienable. Regardless of how deplorable people’s actions are, their human rights cannot be taken away. People do not cease being human and are thus entitled to human rights. Fourth, human rights are universal, since all human beings possess human rights, irrespective of the laws and culture of their country of residence.²

Fifth, human rights are traditionally perceived as “moral rights of the highest order” – they are moral visions of rights and standards that every human is due, “one that can be invoked as a basis for criticism of actually existing laws and social practices.”³⁻⁴ Human rights may not be considered absolute; however, when pitted against other considerations, they usually win. In *Taking Rights Seriously*, Ronald Dworkin observes:

Individual rights are political trumps held by the individuals. Individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not sufficient justification for imposing some loss or injury upon them.⁵

Under this conception, human rights do not have the same standing as other social or moral goals. As Jack Donnelly asserts, “rather, in ordinary circumstances, rights have prima facie priority over utilitarian calculations or considerations of social policy.”⁶ Human rights cannot be justifiably denied to individuals if the reason for doing so would be for the betterment of the community at large. Sixth, human rights do not depend on governments to recognize or enact them to exist. As James W. Nickel states: “They exist as legal norms at the national and international levels, and as norms of justified or enlightened political morality.”⁷ Seventh, human rights set minimum standards for the world to follow. They do not exist to merely illustrate an ideal world; rather, political decisions regarding human rights are left to national leaders to implement and enact. Lastly, human rights are perceived as “international standards of evaluation and criticism unrestricted by political boundaries.”⁸ Foreign governments, organizations, or people from other nations can use these standards as a basis for their criticisms, and they will not be restricted by political boundaries.

With this, we have a general idea of what human rights are and how they should be understood. But conceptions of human rights have changed over the years, with many of its central tenets being revised and updated as the world progresses. In the next section, I start by outlining the natural approach to human rights and consider whether it is appropriate to apply to the issue of migration.

1.1.1 Natural Approach

Historically, the idea of human rights is believed to have descended from the concept of natural rights. While natural rights and human rights are often treated as the same kind of rights because they share common characteristics, they also possess features that distinguish them from one another.ⁱ Similar to the general conception of human rights, the natural approach also purports that human rights are rights that people possess in virtue of their humanity, since “the grounds on which a particular human right may be claimed are available

ⁱ For more information on rights, see: Jones, P. Rights. Hampshire: The MacMillan Press LTD; 1994.

to everybody because they inhere somehow in each person's nature or status as a human being."⁹ They are rights that cannot be taken or given away, and thus have features of "universality, independence (from social or legal recognition), naturalness, inalienability, non-forfeitability, and imprescriptibility" – human rights understood only in this sense would capture the idea that all human beings may claim human rights.¹⁰

Charles R. Beitz identifies four features of the natural approach to human rights. First, a natural approach perceives human rights "as having a character and basis that can be fully comprehended without reference to their embodiment and role in any public doctrine or practice."¹¹ If human rights are to be understood in this manner, they would be considered natural because people's rights do not rely on their social relationships, status, or any political institution – they "exist in a pre-political state of nature."¹² Second, natural rights exist independently of the moral conventions and laws of their society; instead, they stand as moral standards *for* society's laws and regulations. This is essential if natural rights are to provide any semblance of a moral standard, as one should be able to claim, for instance, that if society allows slavery, it will violate the natural rights of the slaves. Third, human beings possess human rights at all times. It does not depend on factors such as a society's stage in development, religion, or culture, and can, therefore, be interpreted as universal. Lastly, as mentioned above, in the natural conception, human rights belong to everyone.

As such, many believe that natural rights should be immune to interference from governments, as they can be perceived as absolute. However, Donnelly does not believe this claim to be an essential part of the natural conception of human rights, nor does he believe it to be a defensible one. He argues that if natural rights were to be considered absolute, there could only be one natural right, and no more, because it is unrealistic to assume natural rights will not conflict with one another. In addition, Donnelly points out that people's experience with human rights runs contrary to the claim that natural rights are absolute, as "society does not treat human rights as exceptionless."¹³ He does acknowledge, however, that any natural rights theorist, as well as any human rights theorist, would contend that human rights "represent the strongest (moral) claims available," and can thus be perceived as "relatively absolute."¹⁴

He uses this term because he believes that it would be justified to override natural rights for other pressing considerations. For example, consider a situation where a terrorist is standing

with a hostage on a building's roof terrace. The terrorist has three canisters of potent chemicals, and if the substances are mixed, it will form a nerve gas that puts thousands of lives at risk. The only way to prevent this from happening is to kill the hostage. Killing the hostage will violate the hostage's right to life, which may seem untenable to some people. But Donnelly believes there is a strong reason to claim that failing to kill the hostage would be morally unjustifiable. While this example may be an extreme case, it shows that though the right to life may be considered one of the most basic natural rights, it should still be recognized as relatively absolute. Overall, treating rights as absolute is "to present this central feature of rights – a feature which is especially characteristic of natural rights as the highest class of rights – in an unjustifiably exaggerated form."¹⁵

The natural approach to human rights is not a satisfactory approach to apply to the case of migration. While it provides a general understanding of the nature of human rights, it does not delve into the specific rights that concern the issue of migration. In the next section, I provide a brief overview of an alternative account – the political approach – which includes rights that ensure people's ability to participate in civil and political life. They also limit governments from infringing upon their freedoms. I will determine whether this is an acceptable account to apply to the issue of migration.

1.1.2 Political Approach

While the natural approach is concerned with the rights people possess in virtue of their humanity, the political approach to human rights is to be understood in relation to its role in modern international political practice. Proponents of the political approach believe that the natural conception of human rights is not "usefully conceived," and that human rights should instead be understood as "international norms that aim to protect fundamental human interests and/or secure for individuals the opportunity to participate as members in political society."¹⁶ These norms also allow people to assess how political societies and others conduct themselves. As John Rawls states in some of the first commentaries on the political conception of human rights: "Human rights are a class of rights that play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy."¹⁷ He too believed that human rights should set limits to a nation's sovereignty. Thus, civil and political rights are rights that focus

on the powers of governments to ensure they do not infringe on people's rights, and they do this in two ways.

First, they restrict the powers of governments from “doing things they should not, rather than failing to do things they should.”¹⁸ The duties that are derived from these rights are considered *negative*, meaning the rights require inaction or restraint from governments to prevent them from committing unwarranted actions against individuals. Second, civil and political rights also ensure that individuals can participate in politics by “protect[ing] people's rights against internal and external invasions.”¹⁹ The duties derived from these rights are considered *positive*, meaning the rights require action and contribution from governments by conferring duties to them. For example, due process rights were put into place to prevent people from being, for instance, tortured or cruelly punished, and they exist to rectify abuses in the legal system. Abuses can include manipulating the legal system to benefit friends, governing a nation through fear, or placing political enemies in prison.ⁱⁱ Participating in politics by running for office or voting were remedies for other abuses, where a government may suppress political opposition, ignore citizens' complaints, or attempt to stay in power by acting manipulatively.

The political approach is inadequate for the topics I will be discussing in this thesis, as it does not address all the rights and interests migration touches upon. Though governments may restrain themselves from committing serious abuses against individuals, like those listed above, there would still be “social and economic problems such as poverty, disproportionate illiteracy among women and girls, disease, and lack of economic opportunities” – all of which are issues that could potentially impact migrants, but are not covered by the political approach.²⁰ The contemporary approach, which I will discuss further in the following section, is mainly concerned with these types of social and economic problems. It has acknowledged the problems outlined above by including them in the human rights agenda, and seeks to provide positive rights that attempt to resolve the social and economic problems people face. In the following section, I turn to the contemporary conception of human rights, which I believe will help us best tackle the discussions around migration.

1.1.3 Contemporary Conception of Human Rights

ⁱⁱ For more examples of abuses, see: Nickel, J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007.

In this section, I look at an account of the contemporary approach to human rights put forth by James W. Nickel. I focus primarily on his work because I find his argument to be clear, thorough, and convincing. Though the central idea of human rights has a long prehistory, my focus will be on the framework of contemporary human rights. I have elected to draw on a contemporary notion of human rights for a number of reasons. First, I will be referencing the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which form two-thirds of the International Bill of Human Rights, throughout the remainder of this thesis. The UDHR is considered a primary source of the contemporary conception of human rights.²¹ Second, even though the contemporary approach to human rights was influenced by the natural approach, the contemporary approach differs because it is more specific in its content, rather than abstract and general. Instead of having rights such as “life, liberty, and property,” the contemporary approach is concerned with particular issues like employment and fair trials.²² Because migration is a specific issue that is inherently linked to other rights asserted by the UDHR and ICCPR, it is best analyzed through a contemporary framework. Third, the contemporary approach includes the civil and political rights outlined in previous bills of rights (Articles 1-21); however, it also includes social and economic rights (Articles 22-27), which touch upon issues such as welfare, standard of living, and education.²³ Because migration concerns civil and political rights, as well as social and economic rights, the contemporary conception of human rights will help us best address the central arguments in this thesis.

The contemporary conception of human rights was conceived after the atrocities of World War II. During the war, there was little concern for people’s lives, and horrific crimes were committed against many people. After the war, many held the belief that the destruction ensuing from the war could have been avoided if there had been an effective international organization that could identify human rights violations committed by Nazi Germany and defuse crises between nations at times of duress.²⁴ Ultimately, this belief fueled the creation of the United Nations (UN) and consequently, the UDHR and binding treaties such as the ICCPR.

If we accept the notion that the UDHR and ICCPR are representative of the contemporary view of human rights, it can be said that the contemporary approach differs from the earlier natural approach to human rights in three distinct ways. The contemporary approach is “more egalitarian” and “less individualistic,” and it has “an international focus.”²⁵ The contemporary

conception of human rights is considered more egalitarian because it focuses on protecting people against discrimination and inequalities. While the natural approach asserted that everyone was equal before the law, introducing protections against discriminations was a modern development. Furthermore, differing from the natural approach, the contemporary notion of human rights includes welfare rights. In the past, the role of human rights was to prevent governments from interfering with people's lives, as people viewed governments who acted in a way they should not as an abuse of political power. The duties that were derived from these rights were primarily perceived as negative rights.²⁶

In contrast, as mentioned in section 1.1.2, positive rights were viewed as duties belonging to the government, where they protected people's rights against invasion, both internally and externally. Nickel lists three ways in which rights help protect people from such invasions. Firstly, rights such as the right to a fair trial or the freedom from unjust punishments are known as due process rights, and they prevent people from abusing the legal system. For example, due process rights prevent a person in power from putting their political opponents in prison. Secondly, rights such as the freedom of movement and the freedom of association are known as rights of privacy and autonomy, and they prevent nations from invading people's personal lives. For example, the freedom of movement limits the government from controlling where people live or travel. Lastly, rights such as the freedom of expression and the right to vote are known as rights of political participation. They remedy abuses such as interference in electoral processes or a government's failure to acknowledge complaints.

Socialists have argued that even if the government was prevented from carrying out the abuses listed above, social and economic problems, such as discrimination, poverty, and disease, would remain unchanged. Nickel claims that "movements for social change have been as much concerned with these social and economic problems as with violations of traditional kinds of political rights."²⁷ In response, the scope of the rights vocabulary has been broadened to address these issues. A modern welfare system, which utilizes taxation to distribute welfare services to those in need, is necessary to deliver the services that these rights demand. There are three beliefs that "seem to be involved in the process by which these social and economic problems come to be seen as problems to be solved by government and hence, if left unsolved, as violations of political rights."²⁸

The first belief contends that issues such as poverty, exploitation, and discrimination threaten human dignity and welfare, and as such, are “as serious as deliberate violations of traditional political rights.”²⁹ The second belief suggests issues such as inequality can be a consequence of social, political, and economic conditions, all of which can be altered and controlled by moral and political control. The third belief “is the belief that political, economic, and social systems cannot really be separated – that government power is often used to create and maintain economic and social institutions that favor certain groups.”³⁰ Consider a government that supports an economic and social system that benefits the wealthy minority, while leaving the majority of people in misery. If this scenario can be avoided, where a system that supports the majority is a possible alternative, then the government can be held accountable for the consequences that result from the current system. Because these three beliefs have become widespread, governments are now expected to provide solutions to these issues by utilizing their resources and redistributive powers.

Further, modern conceptions of rights have dampened the individualism that has been present in traditional natural rights theories. Compared to the past, current documents refer to people as members of a family or community, rather than individuals. For instance, the UDHR states: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”³¹ This less individualistic approach to human rights is also evident in the treaties that were produced in various human rights movements, which implemented measures to protect minority groups and women. Lastly, the main difference between natural rights and the contemporary approach to human rights is internationalization. Human rights are “prescribed internationally – which is nothing new – but now they are also seen as appropriate objects of international concern and action.”³² As Nickel claims, natural rights were perceived as criteria that provided justification to rebel against a government rather than standards where, if violated, governments could justifiably carry out investigations and apply diplomatic and economic pressure through international organizations. Nations may feel the need to prevent outside forces from interfering with their affairs; however, it is now widely accepted that international inquiries and sanctions can be imposed when human rights are violated.

For example, currently, under the European Convention of Human Rights, Western Europe is perceived to have a system that effectively enforces human rights internationally. The European Convention of Human Rights provides “a bill of rights,” “a Human Rights

Commission to investigate complaints,” and “a Human Rights Court to deal with issues of interpretation.”³³ A nation that ratifies the European Convention of Human Rights authorizes the Human Rights Commission to investigate and mediate any complaints they receive from other nations regarding human rights violations. When the Human Rights Commission receives a complaint, they examine the complaint to determine whether it is admissible, and if it is, they investigate and mediate the complaint. If the parties involved in the complaint are unable to negotiate in a friendly manner, their case may be passed along to the court or the Committee of Ministers of the Council of Europe. At the present time, the commission and court have received many complaints, and as such, have developed many procedures and laws to deal with them. The commission and court, generally, “have proceeded quite cautiously,” but this cautious approach “has been rewarded by the member states’ confidence in the integrity of the system and by their continued willingness to accept the limitations on their sovereignty that the system requires.”³⁴

Additionally, the ICCPR protects human rights internationally and provides a Human Rights Committee with three main functions to monitor the implementation of the covenant. Firstly, each nation that adheres to the ICCPR is required to submit a report, and the Committee is to examine them. The reports include measures the nation has adopted to recognize the rights within the ICCPR, along with “the progress made in the enjoyment of these rights.”³⁵ Secondly, when a nation submits a complaint against another nation for violating the rights within the ICCPR, the Committee is to address and mediate the complaint. Thirdly, when an individual files a complaint against a nation for violating their obligations, the Committee is to address and mediate the complaint. There are similar systems that offer protection of human rights around the globe, such as the Organization of American States (OAS), which established the Inter-American Commission on Human Rights in Latin America, or the Organization of African Unity, which created the African Charter on Human and People’s Rights in Africa. The Middle East and Asia have no regional institutions that exist for promoting human rights.

To summarize, I discussed Nickel’s account of the contemporary approach to human rights and showed that it differs from the natural approach in several ways. It is more egalitarian, less individualistic, and more internationalized. Thus, the contemporary notion introduced protections against discrimination, included welfare rights, and invited international action against rights violations, all of which are important to the issue of migration. Now, I turn to

address the question of whether human rights are ethical, from the perspective of cultural relativists.

1.2 Are Human Rights Ethical?

There are several challenges that have been presented against the notion of human rights. I focus on the perspective raised by cultural relativists, as the universalism-cultural relativism debate is one of the most common challenges posed against human rights that has emerged in recent decades. I then present several rebuttals to the challenge raised by cultural relativists and conclude that their argument is not convincing.

1.2.1 Cultural Relativism

The concept of cultural relativism challenges the idea that human rights are universal norms that can be applied to every human being, across all cultures, religion, gender, or age. Cultural relativists disagree with this idea; rather, they believe that human rights are culturally dependent, as different communities hold different values, and no universal moral principle can be applied to all cultures. In fact, the American Anthropological Association (AAA) released a statement after they declined to endorse the UDHR and its claim that human rights are universal – they questioned the ethnocentrism of the document. The AAA’s statement contended that the UDHR would be “a statement of rights conceived only in terms of the values prevalent in Western Europe and America,” and that “standards and values are relative to the culture from which they derive.”³⁶ They argued that if human rights were to be applied universally, they should be based on the understanding “that man is free only when he lives as his society defines freedom, that his rights are those he recognizes as a member of his society...”³⁷ The purpose of the AAA’s statement was “to condemn intolerant colonialists and to advocate cultural and political self-determination.”³⁸

Cultural relativists further claimed that because human rights contained values that were most prevalent in the West, they were also designed to serve the interests of the West. Indeed, when the UDHR was written, the West had a more significant role in formulating the rights listed in the UDHR than non-Western countries. Many saw this human rights approach as a manifestation of cultural imperialism, where the West attempted to impose their cultural practices on non-Western parts of the world without displaying any respect for the different traditions that may exist there. In *The Clash of Civilizations?*, Samuel P. Huntington writes:

Western ideas of individualism, liberalism, constitutionalism, human rights, equality, liberty, the rule of law, democracy, free markets, the separation of church and state, often have little resonance in Islamic, Confucian, Japanese, Hindu, Buddhist or Orthodox cultures. Western efforts to propagate such ideas produce instead a reaction against ‘human rights imperialism’ and a reaffirmation of indigenous values...³⁹

Critics of human rights argue that the Western construct of human rights is at odds with non-Western societies because they are not compatible with the traditional practices of non-Western societies.⁴⁰

Asian values may have been influenced by the Confucian system, which emphasizes order and discipline, in comparison to the values of the West, which focuses on rights and freedoms. Because of this difference, Asian societies may be opposed to the universalism of human rights. Consider an example: in an Asian society, the government may choose to censor the press, and this is perceived as acceptable because their values find discipline and order to be more important than rights and freedoms – this position was stressed at the Vienna Conference on Human Rights in 1993 by governmental spokesmen from Asia.⁴¹ If human rights were imposed on non-Western nations, they would come to interpret components of human rights to be Western cultural impositions that seek to control or change their values and beliefs by pushing Western values and beliefs on them. Therefore, cultural relativists purport: “Cultural contexts determine the ways in which rights are interpreted, used, or abused” and thus cannot be considered universal.⁴²

In sum, cultural relativists take issue with the idea that human rights can be applied universally. They believe different societies around the globe hold different values, and therefore do not have a universal moral standard. Because of this, cultural relativists argue that imposing human rights onto non-Western nations is a form of imperialism. However, in the following section, I highlight why human rights can resist this challenge.

1.2.2 Defense Against Cultural Relativism

The cultural relativist argument has several failings. The claim that human rights, in relation to the UDHR, is imperialistic because it is a Western concept that enforces its values on the

non-Western parts of the world is dubious. As mentioned, when the UDHR was drafted, many Western countries participated; however, there were non-Western countries that were involved with its construction too. Therefore, it is important to highlight that the UDHR does not originate solely from Western roots. In *Are Human Rights Universal?*, Shashi Tharoor writes: “A number of developing countries – notably India, China, Chile, Cuba, Lebanon, and Panama – played an active and influential part in the drafting of the Universal Declaration of Human Rights.”⁴³ During the drafting of the UDHR, “many of the issues which would become central to charges that international human rights discourse reflected only Western values were in fact debated in one form or another...”⁴⁴ For instance, when the UDHR was being drafted, the Soviet Union, socialists from Western Europe, and several representatives of countries in Asia and Latin America stressed “the right of economic development,” and this “was later embodied in United Nations resolutions after the United Nations majority had shifted.”⁴⁵ The different ideas put forth by both Western and non-Western nations were heard, which is evident in Eleanor Roosevelt’s column, *My Day*. Roosevelt was chair of the drafting committee for the UDHR, and she wrote: “We will have to bear in mind that we are writing a bill of rights for the world, and that one of the most important rights is the opportunity for development.”⁴⁶

In addition, many developing countries have adopted and ratified human rights, and it is thus no longer relevant to ponder over how many nations were involved in their creation. The fact that human rights have been adopted by many nations – receiving cross-cultural support around the world – demonstrates that the notion of human rights and the principles outlined within the UDHR, and the subsequent covenants, the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), are generally accepted by the international community. Nations may have chosen to adopt these Covenants and treaties because they wanted to be perceived well internationally and because the “irresistible pressure to comply with the United Nations human rights treaties.”⁴⁷ However, as Nickel mentions, nations would not have chosen to adopt the treaties “if they regarded their content as outlandish or totally alien to their visions of their future,” and “countries that ratify a treaty consent thereby to scrutiny and discussion of their practices.”⁴⁸ It is essential to point out that many nations did not only choose to ratify the treaties and Covenants; they also decided to incorporate parts of the treaties into their legislation and constitutions.

The sets of values of non-Western countries that are often interpreted to be incompatible with human rights “can also be and have been interpreted to support human rights, as they regularly are today in Japan, Taiwan, and South Korea,” and the political developments being made in many countries around Asia suggests “that ordinary people and even governments are increasingly viewing human rights as a contemporary political expression of their deepest ethical, cultural, and political values and aspirations.”⁴⁹ Thus, while the West has significantly contributed to the UDHR, historically, there were also non-Western countries who actively participated in the construction of the declaration and have accepted the rights within it, so it would be incorrect to assume that the UDHR is a uniquely Western construct that is not relevant to non-Western countries.ⁱⁱⁱ

Furthermore, the argument that human rights cannot be applied universally assumes that the principles and rights in the UDHR are exclusively Western, and implies that there are clashing civilizations and cultures. However, there are nations in many different regions of the world that share common values, despite their cultural differences. As Nickel has argued, globalization has influenced many nations to share a combination of beliefs and practices, and nations are no longer as homogeneous and isolated as they were previously.⁵⁰ The borders separating nations have now been breached by many outside influences, through trade, international media, travelers, and migration, among other factors, which has led nations to integrate a variety of different beliefs and practices into their cultures. However, this does not mean that nations do not have dominant cultures that contribute to their different traditions and practices. For example, as mentioned previously, in an Asian society, order and discipline may be valued more than freedom and rights; however, even though Confucius did stress order and discipline, he did not expect people to follow nations blindly. Thus, it must be stressed that in both Western and non-Western traditions, there is “much variety within themselves,” and both Asia and the West “have emphasized order and discipline, even as others have focused on freedom and tolerance.”⁵¹

Moreover, human rights can be perceived as compatible with cultural diversity, as “human rights are minimal standards open to interpretation at the national level.”⁵² When nations are implementing human rights, they can consider their local conditions as they formulate their constitutional and legal rights. This is possible because the human rights language is broad,

ⁱⁱⁱ For more information about the construction of the UDHR, see: Waltz, S. On the Universality of Human Rights. *The Journal of the International Institute*. 1999;6(3).

which allow for some flexibility when nations interpret and apply them at the national level. In fact, as Nickel writes:

When human rights are enforced by courts, as they are under the European Convention on Human Rights (Council of Europe 1950), the scope allowed to local interpretation is constrained. But even there, accommodation is promoted by the ‘margin of appreciation’ doctrine. It allows the Court to defer to national authorities in matters that are culturally sensitive.⁵³

The standards of human rights have several features that allow for cultural diversity. First, one of those features is its limited scope, as they “provide minimal standards in a limited number of areas.”⁵⁴ For instance, a teacher or homeowner’s rights are not dependent on human rights; rather, the teacher or homeowner is reliant on the customs and laws of her country.

Because human rights language can be perceived as broad and abstract, it allows nations to apply some degree of local interpretation to it. For example, consider Article 10.1 of the ICCPR (1966), which states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁵⁵ The term “dignity” can have various conceptions, because what nations consider indignity can vary depending on how people live, how they are treated, and what they perceive as repulsive. If people spend their days on a farm painstakingly pulling plows because they have no access to tractors or modern day equipment, being punished with such work would not be considered undignified, as it is normal activity to them. However, if people who use tractors and modern farm equipment are forced to use plows, they could come to view the work as undignified. Lastly, Nickel writes, “the possibility of overriding some human rights in emergency situations is explicitly allowed by major human rights treaties.”⁵⁶ In fact, according to Article 15 of the European Convention on Human Rights (1953), nations can stray from certain rights and freedoms during exceptional circumstances, such as “in time of war or other public emergency threatening the life of the nation.”⁵⁷ As such, it appears human rights do exhibit some level of flexibility when it is being interpreted and applied by a nation, a level which allows for nations to take into consideration their local culture. Thus, cultural diversity does not necessarily collide with the universality of human rights.

To sum up, I have sketched out an overview of three approaches to human rights and identified the contemporary notion as being the most appropriate to apply to the issue of migration. While the natural approach gave us a general understanding of human rights, it was abstract and did not provide us with specific rights related to the issue at hand. The political approach focused on civil and political rights, but it did not address the social and economic problems migrants may face. Thus, I suggested that the contemporary approach, as I have illustrated, is best equipped to deal with the issue of migration. Following this, I moved on to argue against the cultural relativist argument to establish human rights as ethical. In brief, I have shown that the argument failed for several reasons. First, non-Western nations were involved with the drafting of the UDHR. Second, many nations, with many different cultures, have embraced the UDHR and ICCPR. Third, nations do have common beliefs and practices. Fourth, the broad human rights language allows for some local interpretation. In the next chapter, I discuss the UDHR and the ICCPR and seek to establish migration as a fundamental human right. I do this by highlighting the ways in which migration restrictions limit our range of life options, which are protected in the documents.

2 Migration as a Fundamental Human Right

In this chapter, I turn to the primary source of contemporary human rights, the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR) to establish migration as a fundamental human right. To do this, I begin by illustrating how migratory restrictions prevent us from exercising the freedoms laid out in the two documents by limiting our access to life options beyond the adequate range. I identify two essential interests we have in accessing these options: attachments and possibilities. Further, I consider a vulnerable class of migrants – refugees and asylum seekers – and seek to show that nations do not have a specific moral obligation to grant them the right to migrate, as the right must be extended to everyone.

2.1 Essential Interests Beyond the Adequate Range

The UDHR emerged from the contemporary conception of human rights, and it was formally adopted by the United Nations (U.N.) on December 10, 1948. The declaration delineates thirty universal basic rights and fundamental freedoms that form the basis of a democratic society.^{iv} When the UDHR was created, it was a non-legally binding agreement. But to enforce the implementation of the UDHR, two treaties were drafted: the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The two Covenants were adopted by the U.N. in 1966 and became international law in 1976. As I noted in the previous chapter, together with the UDHR, they form the International Bill of Human Rights. The universal principles covered in the documents are applicable to every human being, irrespective of who they are or where they are located, and the principles seek to recognize the equal dignity and worth of every human being. Among the rights relevant to this thesis are a set of basic human freedoms that protect our right to freedom of movement, freedom of association, freedom of expression, freedom of religion, freedom of marriage, and freedom of occupational choice. People have essential interests in making important political and personal life decisions, and they should be able to make them without being limited by restrictions nations may place on their available options.

^{iv} For more information on the rights within the UDHR, see: United Nations. Universal Declaration of Human Rights. New York: United Nations Dept. of Public Information; 1948.

To explain this further, consider Article 13.1 of the UDHR (1948), which focuses on the freedom of movement. It is closely linked to the freedom of movement and it claims:

Article 13.1: Everyone has the right to freedom of movement and residence within the borders of each State.⁵⁸

In addition, the ICCPR (1966) holds that:

Article 12.1: Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.⁵⁹

According to these two articles, people within the borders of each nation have the right to freedom of movement. Implementing restrictions on internal migration would infringe on their freedom “to access the full range of existing life options” when they make decisions regarding their lives.⁶⁰ If their freedom of movement is restricted to a particular area of a nation, they will be limited in their life options. They are prevented from exercising various rights listed in the UDHR and ICCPR, as they would not be able to associate with friends and family, start a romantic relationship, practice a religion, or search for employment in another part of the nation.

The UDHR and ICCPR protect people’s freedom of internal movement and their ability to access a range of life options within the borders of a nation. However, this protection is not sufficient, as there are many life options available in places outside their nation of residence. As Joseph Carens writes,

Every reason why one might want to move within a state may also have reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one’s native state and many in another; one might wish to pursue cultural opportunities that are only available in another land.⁶¹

It is nonsensical to accept freedom of internal movement as a moral imperative while simultaneously rejecting freedom of external movement. Restricting the freedom of external

movement limits one's access to a *full* range of life options, and it prevents one from exercising the other freedoms listed in the UDHR and ICCPR – it is clear that “the interests that ground the human right to internal freedom of movement also ground a human right to immigrate.”⁶² The right to migration can be derived from the various human rights mentioned thus far, such as the right to freedom of association and freedom of expression. Preventing people from migrating freely interferes with their freedom to decide who they want to marry, who they want to associate with, where they want to work or study, and what religion they want to practice, among other freedoms. As such, migratory restrictions “act...precisely like those internal restrictions on individual liberty that conventional human freedom rights protect us from.”⁶³ If the UDHR and ICCPR are to adequately protect the basic set of human rights listed within the documents, the human right to migration must be included.

Critics may be skeptical of the claim that people should have access to a full range of life options, and they may claim that most liberal societies already provide sufficient freedom of movement within nations' borders. As David Miller claims, this freedom provides people access to an “adequate range of options,” and the adequate range is enough “to protect the interests that the human right to free movement is intended to protect.”⁶⁴ However, Miller's “adequate range” contention cannot possibly support human rights. To explain why this is the case, it is crucial to understand what essential interests people have in accessing life options beyond the adequate range: attachments and possibilities.⁶⁵ Attachments refer to the options people have chosen or have become attached to, such as their career and family. Possibilities refer to the options they are not currently attached to but may want to pursue in the present or near future.

2.1.1 Attachments

According to Kieran J. Oberman, it is quite evident why people have essential interests in attachments that exist beyond an adequate range, and he presents two examples to show why. First, people may want to practice a religion that is not available in their nation, and to do so, they want to move abroad. A proponent of the adequate range view range may sympathize with them, but insist they select an alternative religion that is available in their nation to practice instead. This would not be an acceptable solution, as any other religion they could practice will not be one they truly believe in. Second, people may be separated from close friends and family. Though the city they reside in has an adequate range of people to form

relationships with, they cannot be perceived as alternatives to the family they love. These examples outline why people have essential interests in accessing attachments; however, Miller disagrees with Oberman's assertion.

In *Is There a Human Right to Migrate?*, Miller presents two objections against Oberman's claims. The first purports that people's essential interests in accessing attachments, such as religion, "depend upon subjectively strong interests of particular persons," and "not on the essential interests of human beings as such."⁶⁶ He believes that the interest in religion and relationships is specific to every individual, rather than universally applicable, and therefore cannot form the basis of human rights. To understand why, consider Miller's food analogy. There is a human right to food, and people may have an interest in a specific kind of food, such as top-quality sashimi. Should the human right to food include conditions that allow them to obtain sashimi? Perhaps, environmental legislation is passed to prevent overfishing, which causes the demand for sashimi to increase. Consequently, sashimi prices skyrocket, and people are no longer able to afford it. Would this be considered a human rights violation? According to Miller, many would not think so. The human right to food means having access to an adequate amount of food – a person's strong interest in a specific kind of food is irrelevant. Thus, human rights can be based only on generic interests, rather than specific interests. In the case of migration, the desire to fulfill one's specific interests provides one with reason for wanting to migrate. But if a nation provides one with an adequate amount of opportunities to fulfill one's *general* interests, one does not require the right to migrate across borders. In his second objection, Miller suggests that when people want to build relationships – one that would require another person to cooperate and fulfill – with others, they have the right to refuse the association. For instance, a person may want to join a Tibetan monastery to learn about their practices, but the monastery is within its right to refuse her. He argues that because people are not obligated to associate with one another, it must not be an essential interest. If it were, associations could not be so easily waived aside.

Oberman believes that Miller's objections are mistaken. In his first objection, Miller "confuses universal interests with claims to generic objects."⁶⁷ While "human rights are grounded on universal interests," universal interests do not "only ground claims to generic objects."⁶⁸ People are entitled to associate with the people they love and practice religions they want, and it is not because people's interests ground human rights. As Oberman contends, it is because the interests they have in being with their loved ones or practicing a

religion are interests everyone shares. Since the objects people love and the religions people choose to follow are relative to each person, generic objects will not satisfy people's interests. Miller himself admits that "potential partners and religion are not substitutable in the way foodstuffs are."⁶⁹ This claim applies to other human rights, such as healthcare. The right to healthcare is grounded in a universal interest to be healthy. However, what people would need to be considered healthy can differ from person to person. If a patient needs antibiotics to cure the flu, and she rejects a prescription of antidepressants, her rejection should not be dismissed. Antidepressants would not heal the patient's flu symptoms. Health conditions do not have a generic treatment, and neither does love or religion.

Miller's second objection contains a misconception about why people have the right to choose who they associate with. According to Oberman, "rights of refusal are not merely compatible with human freedom rights, they are a consequence of them."⁷⁰ Everyone is entitled to choose who they love, and if they are forced into a relationship, they will lose their freedom of choice. Even though people have the right to refuse associations, this does not mean the freedom of choice is not morally significant. Recall Miller's analogy, where he states that people's right to refuse associations is similar to nations' right to place restrictions on people's freedoms. As Oberman has argued, this is an incorrect assumption, as the people's right to refusal and the nations' right to restrict freedoms run contrary to each other. When people choose not to associate with someone, they are making a choice to do so – they are exercising their rights. But when nations prevent people from making associations, they are placing restrictions on people's freedom – they are violating their rights.

2.1.2 Possibilities

As mentioned previously, human rights protect the freedom to pursue possibilities in the future to permit people to, for example, develop new relationships with others, practice new religions, or attend gatherings to learn about new subjects. Rights provide this protection because of their interest in, as Oberman highlights, conscience, independence, and politics.

First, people possess an interest in conscience, "a value which involves more than simply acting in accordance with one's ethical beliefs."⁷¹ They are also concerned with "inquiring and searching" for answers to "what one might call ultimate questions, questions of life and death, the meaning of life, life's ethical foundation, and so forth."⁷² Because people are

interested in searching for these answers, they are also interested in the conditions of freedom that have made conscience possible.⁷³ In *Liberty of Conscience: In Defense of America's Tradition of Religious Equality*, Martha Nussbaum writes:

From the respect we have for the person's conscience, that faculty of inquiring and searching, it follows that we ought to respect the space required by any activity that has the general shape of searching for the ultimate meaning of life, except when that search violates the rights of others or comes up against some compelling state interest.⁷⁴

When a nation prevents people from accessing certain possibilities in life, it makes it difficult for them to find answers to the ultimate questions. Even more, it may prevent them from finding the truth. After all, the possibilities nations have restricted may contain the answers they seek. Oberman notes that even if people are not interested in a particular option in life at the present moment, they can become interested in it in the future. Take, for instance, an atheist. An atheist can become committed to a religion decades later in life, even though she has never expressed an interest in it. For the possibilities people may never take an interest in, their presence and accessibility can “sharpen [people's] understanding and commitment to options [they] do pursue.”⁷⁵ As Oberman asserts, conscience needs freedom. It needs the freedom to explore both the possibilities one is attached to and those that one has yet to pursue. This means that people need to have the freedom to associate with who they want, to express themselves in a way they wish, to practice a religion they are interested in, and “to travel or settle where conscience – this faculty for searching and inquiring – takes [them].”⁷⁶ Thus, when a nation places any restrictions on their freedom of association, religion, or movement, they also put restrictions on their conscience.

Second, people have an interest in independence. They have an interest in making personal decisions without being constrained by nations.⁷⁷ Coercion limits their options, as “it reduces the coerced person's options below adequacy,” and it invades their independence and autonomy, even if they are “left with plenty of other [options] to choose from.”⁷⁸ As Joseph Raz stresses:

“[Autonomy] designates one aspect of the proper relations between people. Coercion and manipulation subject the will of one person to that of another.

This explains why coercion and manipulation are intentional actions: they would not amount to a subjecting of the will of another person if they were not... They violate autonomy because of the kind of treatment of others that they are.⁷⁹

From Raz and Oberman's perspective, one of the purposes of human rights is to separate issues that a nation has authority over from issues that are basic in people's lives, which people should be able to determine themselves. Basic issues include where people live, who they choose to build relationships with, what religion they practice, where they work, and how they want to spend their time. When nations interfere by restricting the options available to them, without providing any justifiable reasons for doing so, they fail to recognize them as autonomous beings. They instead invade their personal lives. I will discuss individual autonomy further in the next chapter.

Lastly, people have an interest in politics. Their interest cannot be protected by granting them access to an adequate range of life options or by allowing them to access options that they have already formed attachments to.⁸⁰ If people want to hold governments accountable for the effects their policies have across all geographical areas, then they must have access to those areas. As Oberman stresses, being granted the freedom to move within a certain perimeter or access to options that they already have an attachment to is not sufficient enough for them to realize the effects government policies have in other areas. Furthermore, if people were to have the freedom to pursue various life options, they must also have the freedom to seek out new ideas and change their opinions about different political matters – these freedoms “are crucial to the maintenance of a free society.”⁸¹ Governments must allow people to assemble and protest when they need to. If their political actions are restrained, then the nation has taken steps to coerce the opinions of the people. For a democratic decision to be truly representative of the people, they must assume full political liberty; governments cannot coerce them into making decisions.

To briefly summarize, we now have an understanding of why people have essential interests beyond the adequate range – they have interests in attachments and possibilities, which include conscience, independence, and politics. If nations limit our right to migrate, we would be limited from accessing a full range of life options and restricted from exercising the freedoms listed in the UDHR and ICCPR. Now, I address the case of refugees and political

asylum seekers and determine whether nations have a moral obligation to provide them refuge. I refer to this case because refugees and political asylum seekers are a class of migrants that many people consider when they debate about migration. They are migrants who may not be able to access an adequate range of life options in their nations of origin, and any border restriction will severely impact them.

2.2 Refugees: The Perspective from Altruism

In the case of refugees and political asylum seekers, many believe that nations have a moral obligation, based on strong humanitarian reasons, to admit entrants through their borders. By definition, a refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinions.”⁸² The UDHR (1948) supports the idea that political asylum seekers have the right to immigrate, as highlighted in:

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 14.1: Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Article 14.2: This right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.⁸³

Because political asylum seekers’ human rights are under threat in their country of residence, nations ought to offer them protection and refuge, with some people believing they have a stronger claim for admittance than other types of migrants.

In *Practical Ethics*, Peter Singer argues that when determining migration policies, one should consider the interests of those who will be affected by them. He states: “Where the interests of different parties conflict, we should be giving equal consideration to all interests, which

would mean that more pressing or more fundamental interests take precedence over less fundamental interests.”⁸⁴ According to Singer, people should give equal consideration to all those whose interests would be affected by the migration policies. The first that would be affected are the refugees, as they have pressing and fundamental interests at risk. The next group that would be affected is the residents of the receiving nation, who could be impacted by, for example, increased job competition. The effects residents undergo is dependent on factors such as the state of the nation’s economy or the number of refugees admitted, and they may not all be negative. In fact, residents may instead encounter a more cosmopolitan atmosphere in their nation. Refugees may open new restaurants that have not previously existed, which could improve the residents’ way of life. There are also other consequences to consider, such as the problem of overpopulation, which will be discussed in section 5.6. However, when these interests are weighed against each other, Singer argues, “it would not be difficult for the nations of the developed world to move closer towards fulfilling their moral obligations to refugees.”⁸⁵

Furthermore, in *Famine, Affluence, and Morality*, Singer argues from the perspective of altruism, and advocates for the principle that states, “if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it.”⁸⁶ By this, he means “without causing anything else comparably bad to happen, or doing something that is wrong in itself, or failing to promote some moral good, comparable in significance to the bad thing that we can prevent.”⁸⁷ Allowing migrants admission into a nation may, for example, affect welfare programs, but it would not necessarily mean a nation’s citizens would be sacrificing anything that is morally comparable to the migrants; rather, they would be acting altruistically, and morally, by aiding migrants in need. Carens also argues that immigration restrictions implemented “on the grounds that immigration would reduce the economic well-being of current citizens” would not be justified, and citizens’ would need to establish that they will be worst-off by showing immigration “would reduce the economic well-being of current citizens below the level the potential immigrants would enjoy if they were not permitted to immigrate.”⁸⁸

Singer encourages well off nations and people to aid those in need, and he appears to uphold the idea that it is, in fact, their moral duty to do so. He uses a metaphor to support his principle and writes:

An application of this principle would be as follows: if I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will mean getting my clothes muddy, but this is insignificant, while the death of the child would presumably be a very bad thing.⁸⁹

In the case of migration, the drowning child represents the refugees, who may be fleeing from disastrous conditions in their home country. The expensive clothes symbolize the nations that have the means to help, but they have chosen to enforce strict migration laws to prevent migrants from entering their borders. These migration restrictions may have been implemented for economic reasons, where refugees cannot pursue safety from life-threatening conditions because of the financial costs to the nation. In this case, actively refusing entry to refugees that nations know are fleeing because their lives are at risk is like drowning the child, rather than idly standing by as the child is drowning.

Some people may argue that it may be true that the interests of refugees outweigh those of residents. But rather than implementing an open borders policy, nations may instead opt to allow only refugees and political asylum seekers to migrate to nations, as they may consider them to be more vulnerable than other would-be migrants. However, granting the freedom to migrate on these grounds is not sufficient. In the next chapter, I will explore how three considerations – autonomy, moral equality and dignity, and freedom – will provide ample justification as to why the freedom of migration is a fundamental human right. As such, the freedom must not only be applied to refugees and political asylum seekers; rather, it must be extended to *everyone*.

3 Autonomy and the Right to Migrate

In this chapter, I argue that the human right to migration is supported by three principles: autonomy, moral equality and dignity, and freedom. First, I show how placing restrictions on our freedom of movement will violate our autonomy. Second, I examine how the promotion of moral equality warrants open borders. Third, I discuss the cantilever argument, where I explore how the freedom to internal movement can be extended to the freedom to move across nations' borders. I discuss why the argument can withstand a number of possible objections.

3.1 The Principle of Individual Autonomy

The notion of equal autonomy is a key aspect of human rights, and the Universal Declaration of Human Rights (UDHR) seeks to promote the idea that every individual, regardless of their sex, religion, or race, is independent and possesses the ability to make, or self-determine, their own decisions and shape their own lives. In this thesis, I will follow Joseph Raz's understanding of personal autonomy, where "the autonomous person is a (part) author of his own life. The ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives."⁹⁰ As Raz explains, to act autonomously, people must fulfill three conditions: they must possess mental capacities, they must enjoy an adequate range of valuable options, and they must be independent, meaning they are free from any coercion or manipulation. Coercion is defined as:

An intentional action, designed to replace the chosen option with the choice of another...violating the autonomy of the individual by replacing that individual's chosen plans and pursuits with those of another. Let us say, therefore, that coercive proposals violate the autonomy of those against whom they are employed; they act so as to replace our own agency with the agency of another.⁹¹

When people are coerced, their actions are directed by external forces, and their considerations and desires no longer guide them – this "seems to mark the height of oppression."⁹² If people are coerced, their autonomy is invaded in three ways. First, by being

coerced, their “mental capacities to formulate personal projects and pursue them” can be destroyed or hindered.⁹³ Second, it eliminates several valuable options which would otherwise be available to them. Third, because people are being influenced by someone else’s will, they will suffer a lack of independence. While coercion does not always affect the first two conditions, it *always* violates the third. According to Arash Abizadeh, nations can coerce people with coercive acts and coercive threats. Through coercive acts, a nation can deprive people of several options they may have otherwise had access to, and prevent them from freely and independently pursuing their interests. For instance, a nation can *legally* act coercively by sending agents to physically prevent them from entering its borders. Coercive threats, on the other hand, declare an intent to prevent people from selecting options they may have chosen otherwise.

The principle of autonomy is fundamental to the human rights and freedoms listed in the UDHR. As Abizadeh says: “...the core value of both liberalism and democratic theory is personal autonomy, and that freedom is valuable precisely insofar as it serves autonomy.”⁹⁴ The UDHR protects one’s freedom to choose one’s course of action to live life in accordance to one’s values and principles. For example, the UDHR protects the freedom of religion in Article 18, the right to associate with who one wants in Article 20, the right to choose one’s occupation in Article 23, and the right to enjoy the arts and share in any scientific advancements and its benefits in Article 27. When nations place migratory restrictions on people, they infringe on their right to exercise these freedoms and access essential opportunities in life. The restrictions prevent people from living their lives as they want, which ultimately prevents them from being fully autonomous beings. According to Abizadeh, “it is clear that the state’s exercise of political power is ultimately backed by coercion.”⁹⁵ To be truly autonomous, people must be able to access all morally acceptable life options, and to grant them this access, nations must avoid interfering with their freedom of movement.

3.2 Moral Equality and Dignity

In *Groundwork for the Metaphysics of Morals*, Immanuel Kant declared that human dignity was grounded in autonomy.^v One of the foundations of human rights is the idea that every

^v For more information about Kant’s view on dignity and autonomy, see: Kant, I. *Groundwork for the Metaphysics of Morals*. New York: Yale University Press; 2002.

individual has equal moral worth, and should thus all be treated with the same dignity and respect. As the UDHR (1948) states:

Article 1: All human beings are born free and equal in dignity and rights.⁹⁶

In *Aliens and Citizens*, Joseph Carens takes a utilitarian approach to the issue of migration, where he states: “The utilitarian commitment to moral equality is reflected in the assumption that everyone is to count for one and no one for more than one when utility is calculated.”⁹⁷ He argues that whatever method of calculation people use, it should consider both citizens and migrants’ gains and losses – a nation’s citizens should not be given more consideration than migrants. For example, consider the economic impact migration will have on a nation. Increased migration could have negative economic consequences on the nation’s citizens, which would favor a restrictive border policy. But the utilitarian calculation does not simply end there. One must also consider the economic benefits migration could have on the citizens, as well as migrants. Carens claims that economists generally assert that the free mobility of labor and capital is necessary to maximize overall economic gains, but this would require that a nation’s borders remain open. If someone takes a different approach to utility, one that provides more reason to restrict migration, “the final outcome is still likely to favor much more open immigration than is common today.”⁹⁸

In addition, Phillip Cole believes that the discussion around migration “has lost sight of the fundamental moral objection to national membership restrictions, that they necessarily violate a central ethical commitment to moral equality.”⁹⁹ Ethical universalism implies that moral values must be applied to everyone equally. When there is a lack of morally relevant differences, one cannot prioritize the moral commitments of citizens over others and claim one is still committed to the principle of moral equality.¹⁰⁰ As Cole writes: “With its universalist commitment to the moral equality of humanity, liberal theory cannot coherently justify these practices of exclusion, which constitute ‘outsiders’ on grounds any [recognizable] liberal theory would condemn as arbitrary.”¹⁰¹ Those who support a nation’s right to exclude would-be migrants are faced with a challenge that borders appear morally arbitrary, as migrants have no control over where their social starting positions are. As Julieann LeGrand states: “It seems to be regarded as inequitable if individuals receive less than others because of factors beyond their control,” therefore “distributions that are the outcome of factors beyond individual control are generally considered inequitable; distributions that

are the outcome of individual choices are not.”¹⁰² Because people do not have control over national membership, its distribution can be viewed as inequitable. Since national membership is morally arbitrary, it does not provide a basis for distributing resources justly; rather, it causes “the power of exclusion from membership just that – the exercise of power, not of right.”¹⁰³

3.2.1 A Challenge Against the Principle of Moral Equality

As we have seen in the previous section, the principle of moral equality has provided a strong challenge against those who support a nation’s right to restrict migration within the context of liberal egalitarianism. However, those against open borders may raise an issue with Cole’s argument: Cole has exaggerated the role of moral equality in liberal theory.

First, Natalie Brender raises the question of whether moral equality is a liberal nation’s only commitment. She observes:

The state exists for many functions other than the dubious one of national community. Its administrative functions are by their very nature focused largely on the welfare of its members rather than of outsiders. A liberal state will have as one of its central commitments the moral principle of equality, but... that cannot be its only commitment. If it is to fulfill the functions we expect a state to fulfill, it must also be committed to tending to the political, social and economic welfare of its members.¹⁰⁴

Cole agrees that it is a mistake to believe that a liberal state will be committed *only* to the principle of moral equality. After all, there are other principles liberal theory values, such as welfare, social justice, and democracy. Liberal egalitarianism may have moral equality as its central commitment, but as Brender pointed out, there are other values to consider. However, moral equality “plays a central role in the critique of liberal philosophy on the question of immigration... the central role of the principle is to provide a limit to the extent to which liberal states can pursue other particular values, especially non-liberal ones such as national security.”¹⁰⁵ In such cases, one might question whether there are limits to what nations can do to pursue national security before undermining the principle of moral equality. This relationship between moral equality and other values, such as national security, “lies at the

heart of practical liberal politics,” which means moral equality is given a “privileged place,” but this does not mean that “it can never be compromised at all in the pursuit of other values.”¹⁰⁶ However, this does mean moral equality holds a favorable position, and a liberal nation must seriously mull over the decision to trade off moral equality for other values. It should only be compromised under extreme conditions. Overall, Cole accepts that Brender is correct in thinking migratory controls can help a liberal nation achieve other values. However, he questions whether their pursuit of those values ultimately undermines moral equality in ways that can be deemed impermissible – he believes this has already occurred, “both in practice and theory.”¹⁰⁷

3.3 Freedom

As I have discussed in Chapter 2, the UDHR and the International Covenant on Political and Civil Rights (ICCPR) protects our freedom to internal movement. There are strong reasons why the freedom should be extended to include our freedom to external movement, as placing limitations on our right to migration prevents us from making personal choices regarding our lives and consequently restricts our ability to live as fully autonomous beings. In this section, I discuss the cantilever argument as well as several objections that have been raised against it.

3.3.1 The Cantilever Argument

Currently, there are no nations that recognize a human right to migrate to a nation and live there without the nation’s permission.¹⁰⁸ A nation’s citizens hold the right to enter the nation where they hold citizenship, but there is no recognized human right that allows individuals to enter *any* nation of their choice and freely reside there. To illustrate that the right to migrate should be a human right, Carens appeals to what David Miller has referred to as the “cantilever” argument. He uses the cantilever argument to argue that because the freedom to move within a nation’s borders is widely recognized as a human right, it would be logical to extend that right to the freedom to move across nations’ borders. The right to migrate within a nation’s borders is endorsed in both the UDHR and the ICCPR. As referenced in Chapter 2, the UDHR (1948) states:

Article 13.1: Everyone has the right to freedom of movement and residence within the borders of each State.¹⁰⁹

Additionally, the ICCPR (1966) holds:

Article 12.1: Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.¹¹⁰

As “every democratic state in Europe and North America has endorsed these international documents, and many of them have constitutional provisions of their own guaranteeing internal rights of free movement,” the internal rights of free movement are therefore “firmly established as a human right, at least at the level of principle.”¹¹¹

If the right to internal movement is significant to people, one can argue that the right to move across borders would also be equally significant. People have the same reasons for wanting to move within a nation as they do for wanting to move across nations. They may want to move because they want to pursue a job, they fell in love with someone who resides in another nation, they want to practice a religion that few practice in their nations, or they want cultural opportunities that are not available in their nations. Carens argues, “the radical disjuncture that treats the freedom of movement within the state as a human right while granting states discretionary control over freedom of movement across state borders makes no moral sense.”¹¹² Instead, the freedom of internal movement should be extended to include the freedom to move across nations. Those who oppose the right to migrate must provide a rationale for accepting the freedom to internal movement while explaining why the rationale provided does not apply to the freedom to move across nations.¹¹³ Carens introduces several challenges that have been raised against the cantilever argument. I present them in the next two sections and show how the cantilever argument resists these objections.

3.3.2 Challenging the Freedom of Internal Movement as a Human Right

The cantilever argument relies on the idea that the freedom of internal movement is a human right. When he began his open borders argument, Carens believed that those who were committed to democratic principles would not “challenge the moral status of basic human rights articulated in major human rights documents.”¹¹⁴ However, he quickly came to realize that when his opponents were faced with either extending the freedom of internal migration to external migration or challenging the notion that the freedom of internal migration was a

human right, several opponents were willing to sacrifice the latter. They may assert that the freedom of internal migration is not an important human right, and therefore does not need to be recognized as such. However, the freedom of movement, whether it is internal or external, does make a significant contribution to human freedom. To build this case, one must first establish the idea that the freedom of internal movement is important. Then, one must show that if the freedom of internal movement were controlled in a similar way to external movement, it would severely restrict the freedom of internal movement. Carens believes that “this will enable us to see that treating movement across borders as we currently treat internal movement within democratic states would enhance human freedom, other things being equal.”¹¹⁵ To explore the idea that the right to internal movement is important, consider Carens’s New York – Los Angeles scenario.

In the scenario, the world is how it is today. You currently live in New York, and you want to travel to Los Angeles for a holiday. To do this, you decide to drive, which would require that you either rent a car or purchase one. On your road trip, you will need to consider tolls, gas, food, and lodging. When you arrive in Los Angeles, you will need to find a hotel to stay at for the duration of your vacation. There are two factors that may limit your capacity to freely travel from New York to Los Angeles. First, you must have certain resources to carry out the road trip, such as a car or food. Second, you would need to obey two laws while traveling: traffic laws and private property laws.

You must also consider the absence of other limitations that may prevent you from traveling. You can visit Los Angeles because you wanted to, not because you were ordered to by any public official. No public official has the power to prevent you from traveling, unless there is, for instance, an outstanding warrant for your arrest. You do not have to ask for permission from the government to take your vacation or drive on a freeway. You are not obligated to disclose your travel plans to your friends, family, or any public official, though you may eventually be required to do so if you decide to move to Los Angeles. Carens writes:

...all of these facts about the ways in which government may not hinder or even involve itself in your move from New York to Los Angeles are not just contingent features of the current situation which the government is free to change by passing new laws... The freedoms that I have identified are deeply

integrated into the legal structure of the United States at the most fundamental constitutional level.¹¹⁶

The freedoms laid out in this scenario restrict public officials from interfering with your travel plans, though they are within their power to enforce traffic and private property laws. The scenario illustrates what the freedom of internal movement can look like, and it appears to be an important freedom. But for those who disagree with this contention, what are their reasons for doing so? Here are four objections that have been raised.

Objection 1: If the freedom of internal movement can be restricted for trivial reasons, such as traffic laws, it must not be an important freedom, let alone a basic human right.

Critics argue that the freedom of internal movement is not important because people can be restricted from moving freely within borders for multiple reasons, such as parole orders or medical quarantines. They also believe that some of these reasons “do not involve any fundamental values,” such as traffic regulations, and “they are merely matters of efficiency or public convenience.”¹¹⁷ Thus, if the freedom of internal movement can be limited for trivial reasons, it must not be an important freedom. However, the critics’ argument “implicitly relies upon a conception of freedom that no friend of freedom would endorse,” and “even if we were to grant that laws regulating traffic and protecting private property can appropriately be described as constraints on freedom of movement, similar constraints apply to most important freedoms.”¹¹⁸ The argument presented invokes “an implausible standard,” and it can “be used to discredit any claim to a freedom right.”¹¹⁹

For instance, Carens refers to the freedom of speech. Many people recognize it as an important freedom and a human right. Though people are granted freedom of speech, they do not have the right to say anything wherever or whenever they want. The freedom is subject to certain regulations, despite it being viewed as a fundamental human right. People would not be allowed to set up a loud speaker outside someone’s home to express their ideas even if the house is filled with people they are trying to reach. Nations around the globe have rules against libel, slander, and hate speech. They cannot yell fire in a concert hall. People are expected to share their ideas in order, and they know to raise their hands if they have something to share. While some regulations restricting the freedom of speech, such as hate speech, are contested, most people agree that it would be nonsensical for there to be no

limitations. However, Carens argues “none of this means that freedom of speech is a meaningless concept or a trivial concern.”¹²⁰ Similarly, though the freedom of movement may have certain restrictions, it does not discount the fact that it is an important human right. Rather, one can argue that some restrictions, such as traffic regulations, on the freedom of movement contributes to the overall freedom of movement. As Carens states: “It’s a familiar point that the freedom of one individual must be compatible with a like freedom for others. Restrictions that serve the purpose of making everyone’s freedom compatible with everyone else’s freedom are freedom-enhancing.”¹²¹

In addition, there are other restrictions, such as private property laws, that also limit the freedom of movement; however, the purpose of these restrictions is to promote other freedoms. The freedom of movement is not the only freedom that is limited for this reason – there are restrictions on other freedoms too. While our different freedoms may conflict, they should be balanced against each other.¹²² Thus, the limitations placed on the freedom of movement for the purpose of promoting other freedoms do not show that it cannot be considered a human right.

Objection 2: Human rights are meant to protect people’s vital interests. If the freedom of movement were a human right, it must be necessary for a person to move to protect a vital interest. This is normally not the case.

Critics argue that human rights exist to protect people’s vital interests, but it is rarely the case that people must move to meet a vital interest, especially if they reside in democratic nations. Furthermore, critics purport that “vital interests cannot be idiosyncratic,” meaning the vital interest “must be a generic human interest like the need for subsistence rather than the need for a particular kind of food.”¹²³ Therefore, the likelihood that people need to move to meet a vital interest is even lower. Let us revisit the New York - Los Angeles scenario. This objection would have one to ask why it is important that you move from New York to Los Angeles. After all, you would not need to move to Los Angeles to satisfy your generic interests – you would be able to do that in New York. Further, if you did not want to stay in New York City, you do not need to leave the state to fulfill your interests. There are many other cities you could move to, so you would easily be able to stay within New York’s boundaries to satisfy your interests.

This objection is not sufficient because of the limitations a city in New York has as an alternative to Los Angeles, and most importantly, “freedom itself.”¹²⁴ People have an interest in freedom, and their ability to move freely contributes to that freedom. After all, “having your will is one important aspect of freedom. One of the classic ways of conceiving freedom is in terms of not being subject to the will of another.”¹²⁵ If this is true, it is vital that no public official has the authority to decide whether people could travel to Los Angeles – that decision is ultimately theirs to make.

Objection 3: Some people do not want to move. The freedom of internal movement must not be significant if they do not want to utilize it.

Carens asserts that critics are incorrect in approaching freedom in this manner. The freedom of internal movement cannot simply be assessed based on the number of people who take advantage of the freedom, as rights were not created only for the majority. In fact, one of the reasons why human rights are important is because it protects the interests of the minorities and the vulnerable. Thus, the correct approach would be to consider which individuals want to utilize this freedom, not how many. If one considers *who* intends to exercise the freedom of movement, rather than how many, this argument becomes unpersuasive, as this freedom is significant to those who want to utilize it.

Furthermore, though people may never use the freedom of movement, having the knowledge that they could, if they wanted to, contributes to their freedom. For example, it is important that people know they can run for public office, even if they may not want to. It is also important that they know they have the right to marry and start a family, even though many may choose not to exercise it. Similarly, it is important that people know that they can move freely, even if they never do.

Objection 4: The freedom of internal movement is insignificant to those who lack the resources to take advantage of it.

In the New York-Los Angeles scenario, I have noted that the drive from one city to the other would not happen without certain resources, such as a car and food. This issue is even more prominent in international migration, as many people do not have the resources to make the

move even if they have the right to do so. However, not having sufficient resources do not mean the freedom is not important. Carens argues:

The crucial point for my purposes is that having a right to move is an important aspect of freedom in and of itself. Without that right, you are not free to move even if you have the economic resources to do so. And we should not underestimate the ability of people to find the resources to move even under difficult circumstances.¹²⁶

So far, we have only looked at a scenario where someone makes a normal decision to travel from New York to Los Angeles to discuss how vital the freedom of movement is.

Carens changes the New York - Los Angeles scenario in three stages so that it looks more like an opportunity – this would be more comparable to what migrants encounter. If we revisit the scenario, it can be modified so that you are required to ask for permission before taking your vacation, though the request is routinely granted. This alteration would limit your freedom in a few ways. For instance, if you wanted to take a spontaneous vacation, you would not be able to, as you would have needed to request permission in advance and wait for a period of time to receive confirmation. However, in this second scenario, you are entitled to travel once you have gone through the approval process, and thus still possess the freedom of movement.

But what if the scenario was modified more drastically? In this third scenario, you may not be allowed to go on your vacation even after requesting permission from public officials. You are still required to inform officials that you want to travel, but they have an obligation to consider other factors when determining whether you can travel. Some considerations can involve matters such as your ability to support yourself, as well as the circumstances California would be under, like their current number of tourists. Because of the modifications in this scenario, you no longer have the freedom to travel, as you are required to ask for permission to do so, and your request may now be denied.

In a fourth scenario, we can try restoring the balance by requiring officials to show three things: they need to deny you permission to travel in order to achieve their public policy goals, they do not have another way to achieve these goals, in a way that would not interfere

on your freedoms, and they benefit more from excluding you, compared to the harm you receive from being excluded. In addition, the officials will need to make their case against your request in an independent forum. You would be allowed to attend and present evidence against their claims, and you will be given a chance to appeal if your case is not approved. Though you are not able to freely move, with these three new considerations, you are not “a passive subject either,” as you are “treated as an agent whose will matters, you have a range of rights and your desire to move is a weighty consideration that must be taken into account in the final decision.”¹²⁷ Because of these requirements, your freedom is still viewed as significant, though it is less significant than in previous scenarios. This latest scenario illustrates that though there are different levels of freedom, there can be institutional arrangements in place that acknowledge people as free agents who are deserving of respect, even when their freedom of movement is restricted. Democratic nations may adopt certain institutional practices to restrict freedom that they view as “prima facie worthy of respect.”¹²⁸ The scenarios presented above employ these practices, and show how they “limit the arbitrary exercise of power and preserve some important elements of freedom.”¹²⁹

If we revisit the scenario once more, we can make several final modifications. To travel to California, you still need to provide notice, but the officials in California will be the ones deciding whether to allow you in or exclude you. You do not have the power to vote for officials in California. The officials can make their decisions based on public policies, but it is not mandatory that they do. They do not take your interests into account when applying the policies, and they do not have to bring their case into an independent forum. They will apply the policies to your case at their discretion, and you will not have the opportunity to appeal if your request is not approved, even if you believe the policies have been applied to your case unfairly. In this scenario, you may still travel from New York to California, but you have lost most of your rights, as your freedom to travel is left solely to the officials in California.

If we compare all the scenarios that have been presented in this section, you hold the least freedoms and rights in the last one. This last scenario is the one most migrants encounter. Carens writes: “Under a regime of discretionary control over borders, therefore, people have a lot less freedom to move compared with the freedom they would have under a regime of open borders or even than they would have under a regime modeled on the [fourth] scenario...”¹³⁰ Migrants who encounter nations with discretionary border controls have a lack

of freedom, and it is apparent even in examples where migrants attempt to move from New York to California.

3.3.3 Objections to the Cantilever Argument

In the previous section, I defended the freedom to internal movement against four objections and established that it is an important right that contributes to freedom. Next, I turn to objections against the cantilever argument. The argument can be objected to in two ways. As Carens contends, opponents may challenge the analogy itself or argue that the existing human right does not lead to harmful consequences, while the proposed human right does. I will outline five of Carens's arguments to the first type of objection: the analogy objection.

Objection A: The freedom of internal movement holds a nation-building functionality, while the freedom of external movement does not.

Opponents may argue that the freedom of internal movement possesses a nation-building functionality that the freedom of external movement lacks. The freedom of internal movement “helps to promote a sense of common national identity,” which is why nations accept it.¹³¹ However, Carens points out that this objection does not provide a normative justification for accepting the freedom of internal movement as a human right. While the right to internal movement may hold a nation-building functionality, promoting a common national identity does not provide ample reason for it to be considered a human right. To be considered a human right, the proposed right must be connected to “the fundamental interest of human beings, not to the contingent benefits of a particular policy.”¹³² After all, the freedom of internal movement may not always be perceived as advantageous, as circumstances may arise where nations have the desire to restrict people's mobility. For example, they may place limitations on mobility to manage rapid urbanization. China has a hukou system in place, where people are provided with localized welfare entitlements, such as education and subsidized medical care, and aims to control mobility by restricting those who live in rural areas from moving to urban cities. A consequence of this system has been “the creation of spatial hierarchies,” and some have thus criticized it as a violation of human rights.¹³³ If the freedom of internal movement is perceived as:

...merely a policy with certain advantages, there would be no reason for states to make it a human right, thus limiting their discretion. It would make more sense simply to leave the legal right to internal freedom of movement as a policy tool that states might (or might not) want to deploy, depending on the circumstances.¹³⁴

Overall, the nation-building functionality does not provide reason for perceiving the freedom of internal movement as a human right. Thus, there is no reason for rejecting the cantilever argument.

Objection B: The freedom of movement within borders is plausible because of people's political relationships with the nation they are moving within.

Opponents attempt to illustrate that, contrary to the freedom of external movement, the freedom of internal movement is made possible because of people's political relationship to nations. Those who have citizenship, for instance, are owed the freedom of internal movement because of their status as nations' citizens – the right to move freely within borders is thus dependent on the people's membership to nations. This objection is problematic because “it is not easy to explain why the right to internal movement should be seen as a membership-specific human right rather than a general human right.”¹³⁵

General human rights, such as the right to religion and the right to free speech, are established as rights that every individual, even a nation's visitors, is entitled to despite their legal status. As Carens argues, the freedom of internal movement “looks like this sort of general human right,” and it “certainly corresponds to the practice of democratic states.”¹³⁶ Democratic nations typically decide whether non-members can enter and live within their borders. When they are permitted to stay, they are not normally told where to go or where to reside. The major human rights documents, such as the UDHR and ICCPR, do not restrict the freedom of internal movement to nations' citizens. As mentioned in section 4.3.1, Article 13.1 of the UDHR (1948) declares that *everyone* is entitled to the freedom of internal movement and residence within nations' borders – no membership required. Article 12.1 of the ICCPR (1966) is more cautious in its wording, as it establishes freedom of movement and residence to those who are “*lawfully within*” nations' borders.¹³⁷ However, “*lawfully within*” does not only grant the freedom of internal movement to nations' citizens; it allows anyone

who is in the nation legally to travel and reside freely within its borders, including tourists. The phrase “lawfully within” is “intended to avoid providing irregular migrants with a legal foothold for moving within a state once they have gained entry.”¹³⁸

So, is there a reason for perceiving the freedom of internal movement as a membership-specific right rather than a general human right? There does not seem to be. To understand why, consider the right to vote as an example of a membership-specific right. Voting is restricted to members who have ties to the nation and the society around them. By voting, members will be able to shape the rules that affect the society they are in. Tourists lack these ties, and they should not be able to vote simply because they are visiting the nation during an election. Now, consider the freedom of internal movement. The freedom of internal movement cannot be classified as a membership-specific right like the right to vote because:

From the individual’s perspective, freedom of internal movement is important for many reasons unrelated to membership or political participation. It contributes to personal, civil, economic, and social dimensions of freedom as well as to the ability to participate in politics.¹³⁹

While the freedom of internal movement can also prove beneficial for political participation, it does not provide sufficient reason for changing the freedom from a general human right to a membership-specific right. Thus, this objection cannot be used to argue against the cantilever argument.

Objection C: The freedom of internal movement was created to prevent discrimination, which does not apply to the freedom of external movement.

Critics of the cantilever argument argue that the goal of the freedom to internal movement is to prevent nations from “target[ing] a particular group of people by restricting their movement,” which occurred in history during apartheid in South Africa and when Jewish ghettos were created in cities throughout Europe.¹⁴⁰ They believe that discrimination against those who want to move across borders do not “raise the same concerns,” and thus the analogy between the freedom of internal movement and the freedom of external movement fails.¹⁴¹ However, Carens states that if this assertion is “advanced as a historical claim about why [the freedom of internal movement] was originally established as a human right,” he has

not encountered much evidence supporting it.¹⁴² Though supporters of the UDHR were aware of Nazis forcibly relocating people, evidence suggests that this freedom was not primarily established to protect them against discrimination, as it was viewed as a significant freedom in itself. Carens contends that while the freedom to internal movement can be used as a protective force against discrimination, it cannot be its main purpose, as the right would be too broad. If the freedom were created to prevent discrimination, “it would make sense to tailor the right much more narrowly.”¹⁴³

Lastly, if the freedom of internal movement were created to prevent discrimination, there would still be good reason to extend the freedom to external movement. Historically, racial and religious discrimination had major influence over migratory policies, such as the White Australia policy. Carens states:

Ironically, this is the one area where states have generally imposed some limits on their own discretion with regard to immigration...despite the general right to discretionary control over admissions, no democratic state today treats it as morally acceptable to discriminate (openly) on the basis of race or religion in admissions.¹⁴⁴

Thus, the argument that the freedom of internal movement was made to prevent discrimination is not plausible, and even if this were, it does not provide sufficient reason to deny extending the right to include freedom of external movement.

Objection D: If people have an adequate range of freedoms within the nation they are in, they do not need to move across borders.

Those who object to the cantilever argument believe that it is important that people have an adequate range of freedoms in the nation they are in, and if they do meet this level of adequacy, “they normally have no vital interest in being able to cross state borders.”¹⁴⁵ However, this argument does not provide any normative justification for establishing the freedom of internal movement. If people’s interest is for them to have an adequate range of freedoms, and this range is “defined modestly,” then it is not clear “why this range of opportunities could not be provided within subunits of large states.”¹⁴⁶ For example, the United States is a large nation that has a big population, a wide range of both social and

economic opportunities, and states with “strong judicial powers and responsibilities.”¹⁴⁷ Thus, there may be good reason to adopt policies preventing people from moving to another state to, for example, access a better welfare program. Additionally, according to this “threshold argument,” those within the United States might be able to meet an adequate range of freedoms, and therefore need not move to another state within the nation. However, human rights guarantee people’s freedom of internal migration. Carens notes that “the cantilever argument demands a rationale for the radical disjuncture between the importance accorded internal free movement and the importance accorded free movement across borders.”¹⁴⁸ But because the threshold argument does not provide this rationale, it fails.

Objection E: People’s interest to move within a nation’s borders and their interest to move across borders are fundamentally different.

Critics may argue that people’s interest in internal migration is a vital interest, and should, therefore, be protected as a human right. In contrast, people’s interest in external migration is a minor interest, and should be perceived as “a matter of preference.”¹⁴⁹ As Carens explains, this may seem like a plausible argument, as many people develop ties to their surrounding community by sharing languages or cultural norms. As a result, it appears logical to believe that people may have a greater interest in moving freely within a nation’s borders than across it. However, when one considers the differences between nations, this objection weakens. For example, Fiji is a small island that does not possess the same wealth or size as the United States. It would be nonsensical to state that U.S. citizens have an interest in moving only within the borders of the United States, and Fijians have an interest in moving only within the borders of Fiji. However, this would be an inaccurate claim, as Fijians may have an interest in moving to the United States to pursue the political, social, and economic opportunities that are available in the nation.

To sum up, I have shown that the human right to migrate should be extended to everyone because of three principles: autonomy, moral equality and dignity, and freedom. First, I argued that migratory restrictions interfere with our ability to live as fully autonomous beings, as we are unable to pursue our interests freely. Second, I argued that citizens’ interests should not be prioritized over migrants’ – both groups must be given *equal* consideration. Lastly, I showed that limitations on our freedom to migration curtail our ability to freely make life decisions. I then presented the cantilever argument and discussed several

objections against it. Following this discussion, opponents of the freedom of movement may advance an alternative solution to the issue of migration: porous borders. I will address this potential solution in the following chapter.

4 An Open Border Policy

In this chapter, I discuss an alternative solution to the issue of migration: porous borders. I argue that porous borders are not a satisfactory solution to the issue of migration. I assert that many nations have discretionary control over migrant selection, and they may integrate morally impermissible criteria into their admissions policy. I proceed by turning to the only ethical solution to the issue of migration: open borders. I then suggest several obligations nations have towards migrants.

4.1 Porous Borders: The Right to Exclude

Several nations around the world have adopted a visa lottery system to determine who can pass through their borders. They have methods in place to select which migrants can enter, and the criteria in place likely favor those who are, for example, a good cultural fit, those who can sustain themselves economically, or those who already have a family member residing in the nation – all of which appears to be within their right.¹⁵⁰ Though nations can select which migrants may pass through their borders at their discretion, “some practices seem inherently morally objectionable.”¹⁵¹ Nations have excluded would-be migrants from entering their borders based on religion, race, or gender – this is morally troubling. Though Christopher Heath Wellman does not support open borders, he argues: “Even if states have the right to exclude all outsiders, it does not necessarily follow that they may screen applicants in any fashion they choose.”¹⁵² I agree with Wellman’s assertion. In this section, I will object to several criteria nations may use to select which migrants can be allowed through their borders. While there may be many selection practices or policies in force that I can challenge, I will not discuss all of them. Instead, I will critique the ones I find most problematic, and argue that porous borders are a cause for concern because, historically, the policies nations have adopted to exclude prospective migrants have been discriminatory. Some admissions policies used today may also lead to troubling consequences.

First, selecting migrants based on race or ethnicity is deeply worrying. By selecting migrants based on race or ethnicity alone, nations would be giving preference to a dominant group over others, which would “establish that ethnic group as having a privileged position in relation to the political community as a whole” and result in unequal treatment.¹⁵³ For instance, consider the *White Australia* policy or Germany’s *Aussiedler* policy. Under the

White Australia policy, the Australian government restricted immigration of non-Europeans to Australia to keep the nation “white and pure.”¹⁵⁴ The nation adopted restrictive migration policies to create a White Australia. However, Australia already consisted of multiple cultures and ethnicities, such as Aboriginals and Asian Australians, and by excluding non-white migrants, they treated “some individuals already present within the society as second-class citizens” – it would be “insulting to the members of that group already present.”¹⁵⁵

Under the *Aussiedler* policy, Germany granted people who had ancestors that left the nation years ago with an easy pathway to citizenship, while denying citizenship to Turkish guest workers who have lived in Germany for years, and whose descendants were born and raised in the nation.¹⁵⁶ This policy made clear to the migrants that membership would be attainable only to those who were ethnic Germans. There may be justification for using criteria based on race or ethnicity when people are being discriminated based against these traits in other nations. In the case of the *Aussiedler* policy, people who were of German descent were discriminated against in the Soviet Union and Eastern Europe following World War II.^{vi} In these circumstances, perhaps there was good reason to give them preference in the admission process when they attempted to enter Germany; however, this would not be justified anymore.

Second, migrant selection based on religion is morally impermissible. Historically, European and North American nations were influenced by Christianity. Because of this, a large proportion of their population may believe that it is easier to accept a Christian migrant into their community compared to a Muslim migrant. As we have seen over the past few years, many nations have come to view Muslim migrants as a threat to their culture, though they probably will not publicly admit they would give preference to Christian migrants in the admissions process. As Joseph Carens contends:

The use of religion as a criterion of selection would violate deep liberal democratic norms about religious freedom and religious toleration. What these norms require is often contested, of course, but it is hard to imagine any plausible interpretation of them that would be compatible with systematically

^{vi} For more information on the *Aussiedler* policy, see: Song, S. *Immigration and Democracy*. New York: Oxford University Press; 2019.

favoring one religious group or disadvantaging another in the selection of migrants.¹⁵⁷

Similar to selecting migrants based on race or ethnicity, an admissions policy that would distinguish migrants based on their religions is unjust. Admission decisions cannot be made based on these arbitrary factors.

Lastly, some nations have adopted an admissions policy that evaluates prospective migrants by their potential economic contributions. For example, both Canada and Australia utilize a points system to determine who should be granted entrance into the nations. The points system awarded scores based on factors such as education, work experience, and language skills, and those who scored high enough would be admitted.¹⁵⁸ Compared to an admissions policy that admitted migrants based on irrelevant traits such as race, ethnicity, or religion, the points system was believed to take on a more merits-based approach.^{vii} Migrants who could contribute their skills and boost economic growth would be beneficial to the host nations, and would thus receive more points than those who were less skilled. While this approach may appear morally permissible, it raises a huge concern. A nation may allow migrants in based on specific skill sets necessary for highly specialized work. With these types of admittances, there are often restrictions placed on them regarding what kind of work they can do, or they may be required to work for a specific employer. These conditions can cause migrants to become more vulnerable to mistreatment by their employers because their stay may be contingent on them working in that particular role. The fear of being sent back to their nation of origin can prevent them from reporting this mistreatment.

To address the issue of migrant selection, Carens suggests that when nations consider migrant admittance or exclusion, a distinction must be made between the public and private spheres.

He writes:

There is a deep tension between the right of freedom of association and the right to equal treatment. One way to address this tension is to say that in the private sphere freedom of association prevails and in the public sphere equal treatment does. You can pick your friends on the basis of whatever criteria

^{vii} See: *ibid*, p. 170

you wish, but in selecting people for offices you must treat all candidates fairly... So, the fact that private clubs may admit or exclude whomever they choose says nothing about the appropriate admission standards for states. When the state acts it must treat individuals equally.¹⁵⁹

Carens' solution is convincing. Businesses, which are a part of the public sphere, would not be able to hire or discriminate against employees based on factors such as race, so why should nations be able to? Such exclusions would violate the principle of equality and prospective migrants' rights, as listed in the UDHR. While many argue that nations have a right to control who they grant admissions to and how they do it, the ways in which some nations may choose to control their border is concerning. After all, historically, they have been discriminatory.

4.2 Open Borders

I have thus far argued that closed and porous borders are unethical solutions to the issue of migration. The arguments for closed borders, as I have shown, do not provide legitimate reasons to restrict people's right to migrate. Moreover, porous borders are insufficient because of the unethical ways in which would-be migrants are selected. I now turn to the only possible, and ethical, solution: open borders. In the following section, I discuss the obligations nations could have towards migrants.

4.2.1 Obligations to Migrants

When nations open their borders to migrants, host countries have an obligation to extend certain rights they already grant their citizens to incoming migrants. This will ensure that migrants are treated fairly, with dignity, and without any discrimination. If nations fail to extend these rights to migrants, they may consequently experience oppression, exploitation, and mistreatment by the nations' citizens. As Michael Walzer states:

The determination of aliens and guests by an exclusive band of citizens... is not communal freedom but oppression. The citizens are free, of course, to set up a club, make membership as exclusive as they like, write a constitution, and govern one another. But they can't claim territorial jurisdiction and rule

over the people with whom they share the territory. To do this is to act outside their sphere, beyond their rights. It is a form of tyranny.¹⁶⁰

When migrants are not given access to rights that are available to citizens, there is an inequality between the two groups. A ruling group – the citizens – will have a greater advantage over the subordinate group – the migrants. The citizens' rights give them the ability to rule over migrants in a nation that both groups reside in. For the two groups to have equal standing, all migrants should have a pathway to citizenship, so they will, eventually, have the same rights as citizens. However, the process to naturalization, as it is now, can take years. To protect migrants during this process, there are several rights nations should grant migrants. I will not outline all the rights that should be extended to them in this discussion; rather, I will briefly lay out the three essential rights I believe nations should offer, at minimum, during the process.

First, nations should grant migrants access to healthcare. Migrants may experience difficulties accessing health services because of reasons such as cost, location, or language. Nations should, therefore, implement policies that will make healthcare accessible to the migrant population, so everyone has an equal right to life. Second, nations should offer migrants access to education – it will help them fully integrate into society. They will be able to learn about the nation they are now residing in, including its language and culture, in their classes. As we will see in section 5.3, supporters of the culture preservation argument believe that migrants can change a nation's culture and values. However, if migrants are provided with education about their host nation's culture and language, the likelihood of them influencing a nation will be minimal. Lastly, migrants should be given access to the labor market. Finding work is key to helping migrants become self-sufficient. Many opponents of open borders are concerned about the effects migrants will have on a nation's welfare services (see: section 5.2). But if migrants have the opportunity to work, it will not be necessary for them to consume welfare benefits. They will instead be able to contribute to a nation's welfare program by paying taxes. These three rights, among others, should be the minimum standard offered to migrants by their host nations. They also address several concerns raised by opponents to open borders.

To summarize, I have shown that porous borders are not a sufficient solution to the issue of migration because nations have discretionary control over their migration policies, and

historically they have been discriminatory. Additionally, a merits-based admissions policy can lead to worrying consequences. Specifically, it can leave migrants vulnerable to mistreatment. I then consider the obligations nations have towards migrants. I argue that nations should grant migrants a pathway to citizenship, which will grant migrants fair and dignified treatment. I also highlight three rights nations should extend to migrants in the meantime – healthcare, education, and labor – which addresses some concerns critics of open borders have. I discuss them in the next chapter.

5 Considering Restrictions Against Migration

In this chapter, I evaluate common arguments and concerns raised against implementing migration as a fundamental human right, namely the arguments concerning security, self-determination, culture preservation, economy, brain drain, and population control, and determine whether the arguments can be used to justify implementing limitations on migration. The goal of this chapter is to answer the question: *Are there morally legitimate reasons to restrict a person's right to migrate?* As I discuss each argument, I show why these concerns do not justify restricting the human right to migrate.

5.1 Security

Some nations do not want to implement open borders because they believe that migrants may pose a threat to their security. Though Joseph Carens is a proponent of open borders, he follows John Rawls in evaluating how threats to a nation's security might justify restrictions on migration. According to Rawls, restrictions may be placed on liberty, which Carens believes includes the right to migrate, for the sake of liberty, as "all liberties depend on the existence of public order and security."¹⁶¹ This is called the public order restriction. However, the public order restriction can be abused, and Carens believes that the distinction "between reasonable expectations and hypothetical speculations is crucial."¹⁶² The public order restriction cannot be used if there is only a hypothetical possibility of a threat to national security and public order. This restriction can only be used when there is "reasonable expectation," based on evidence, that migrants may have a desire to overthrow just institutions, thereby threatening public order and national security.¹⁶³ The public order restriction can be justified "only to the extent necessary to preserve public order."¹⁶⁴ Carens does not deny the potential threat to national security; rather, he focuses on evaluating the reasonability of migration restrictions based on national security. Sir Michael Dummett, another advocate for open borders, follows Carens' line of reasoning and suggests that national security would be considered reasonable grounds to restrict migration. He writes: "Admittedly, to protect its citizens, a state always has the right to exclude individuals when there is genuine ground to suspect them of intending to commit crimes or to inflame hostility towards racial or religious groups against which strong prejudice already exists."¹⁶⁵ National security is a legitimate concern, and while Carens and Dummett do appear reasonable in

believing that it warrants the implementation of restrictive migratory policies, there is no guarantee that limiting migration will provide the level of security that people desire. Chandran Kukathas wonders whether restricting migration will be helpful, and provides two justified concerns as to why this might be the case.

While Kukathas does acknowledge that concerns about security are not unfounded, he does not believe that restricting migration is the solution. First, he believes that though it may be simple to place restrictions on legal migration, it may be difficult to do that with illegal migration. Controlling legal immigration is “unlikely to deter either criminals or subversive agents” from moving between borders, and that borders are “porous even when they are closed.”¹⁶⁶ Second, implementing migration restrictions would not, in general, prevent people from moving, as there are “tourists, or students, or businessmen, or government officials” who move more frequently between borders than migrants who have the intent to settle in a new nation.¹⁶⁷ If security was truly a concern, then “tourism should be more severely limited in many countries than it presently is.”¹⁶⁸ It is strange that a tourist who might pose a threat to a nation could be granted a visa for one to six months. If a person is considered safe enough to be given a three-month visa, it is difficult to understand why that person can be denied permanent residency on security grounds. Rather, Kukathas argues that “in times of insecurity,” “greater vigilance” and “greater scrutiny of many aspects of the behavior of people” may be necessary, and instead of imposing stricter migration restrictions, people should intensify their efforts “to discover who poses a threat to society, to try [to] avert the threat, and to apprehend the particular persons who are menaces.”¹⁶⁹ Thus, even if a nation implements restrictive border policies, the policies would fail to eliminate all possible foreign threats against a nation, as any person who has the resources and the intent to harm a nation can enter as a tourist and pose a serious threat to national security.

Restrictive border policies would provide a false sense of improved security. A nation can, perhaps, hope to avoid this by closing its borders completely, even to temporary visitors and tourists, to secure safety for a nation and all of its citizens. But closing borders entirely would result in unwanted consequences, such as adverse effects on a nation’s economic development. In fact, according to the World Tourism Organization (UNWTO), a specialized agency of the United Nations, tourism is becoming “one of the fastest growing economic sectors in the world,” and today, “the business volume of tourism equals or even surpasses that of oil exports, food products or automobiles.”¹⁷⁰ The UNWTO argues that tourism is

“one of the major players in international commerce, and represents at the same time one of the main income sources for many developing countries,” and the rise of tourism has “produced economic and employment benefits in many related sectors – from construction to agriculture or telecommunications.”¹⁷¹ Tourism contributes vital revenue to nations around the world, and closing borders completely would thus appear nonsensical.

Furthermore, there are reasons why we should avoid putting too much weight on national security in the first place, as the goal of securing it comes at a price, often at the expense of a citizen’s freedoms. Kukathas explains: “The cost [of obtaining security] is borne not only in the financial expense that is incurred but also in the impact that controls on immigrants and immigration have on society more generally.”¹⁷² Migration controls will require surveillance of people moving in and out of a nation, and in some cases, surveillance of people moving within a nation, including their own citizens. While surveillance may be unavoidable in times of insecurity, there is a risk that comes along with it. It may impose burdens on a nation’s citizens, and there is a chance “that impositions designed to meet a particular danger will remain in place long after the danger has passed.”¹⁷³ Ultimately, Kukathas cautions us to be “wary of state controls advocated in the name of national security – particularly since the trade-off is a loss of liberty.”¹⁷⁴

5.2 Self-Determination: Culture Preservation

The argument from self-determination holds that a nation has the right to determine its political destiny, which includes exercising sovereignty and choosing its form of government. Some contend self-determination, therefore, entitles nations the right to close their borders to migrants, as the freedom of association enables nations the right to choose whether it wants to associate with migrants or not. It may also give them the right to enforce migratory restrictions, as a nation has the right to protect its community’s cultural and political identity from changes that inevitably follow migration. However, some question whether moral rights can be ascribed to nations as they are to individuals – it is not clear whether nations are merely acting on behalf of its citizens, or whether nations are the right-holders. For example, an individual has the right to invite certain friends over to her house for a dinner party. She can control the invitations because the house is her private property, and as such, she has the right to include or exclude whomever she chooses. But would a nation have an analogous right to exclude certain people from crossing its borders (see: section 5.3)? In this section, I

present one account of self-determination – Self-Determination: Culture Preservation, which is concerned with protecting nations’ social and political cultures. In the following section, I present another account of the argument – Self-Determination: Freedom of Association.

David Miller presents an account of the self-determination argument, and it is based on the idea of culture preservation, where a nation should have the right to determine its own public culture. He claims that a nation requires “a common public culture that in part constitutes the political identity of their members, and that serves valuable functions in supporting democracy and other social goals.”¹⁷⁵ As I will mention in the self-determination argument in the next section, Miller holds a similar view to Michael Walzer, where he supposes that migrants move to a new nation with certain cultural and political values, and while their values may be influenced and changed by the nation they move to, the nation’s public culture will also, in turn, be changed by the migrants’ values. For instance, a nation may have an established religion, such as Catholicism, which has become a vital part of the nation’s identity. After accepting a group of migrants, who have a Buddhist background, a nation will likely become more religiously diverse, and consequently, the role of Catholicism in the nation’s identity will decrease in significance, thus changing a nation’s values.¹⁷⁶

People have an interest in controlling the public culture of their nation, “in particular to try to maintain cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches backwards historically.”¹⁷⁷ Miller references the nation’s use of a national language or its pattern of landscape as examples for cultural continuity. In reference to national language, Miller claims that a nation’s language is becoming pressured by other international languages, such as English. A nation’s citizens may be incentivized to learn to use an international language for economic reasons, and the national language may slowly disappear within a few generations. If this were to occur, there would be significant changes in several cultural aspects of a nation. The literature of a nation may become inaccessible to its citizens, as it will now require a translation to be understood. An influx of migrants encourages a nation’s citizens to “defect from use of the national language in everyday transactions, and make the project of language-preservation harder to carry through,” and as such, a nation has good reason to restrict migration.¹⁷⁸ In reference to landscape, Miller refers to a society’s landscape and public buildings, where believes a nation’s citizens will feel “at home” when their surroundings “bear the imprint of past generations whose values were recognizably their own.”¹⁷⁹

Miller does, however, stress that cultural continuity should not be interpreted as cultural rigidity, as he does believe that many cultures are considered valuable because of its ability to adopt a set of new subcultures, which are associated with migrants, and to subsequently develop and adapt its public culture. Ultimately, Miller purports that cultural change can inhibit cultural continuity, and as such, a nation and its community must be able to determine the process of cultural change. A nation will be able to shape its public culture by restricting the flow of migrants through admissions policies, though its level of restrictiveness will depend on how well the new values and culture of would-be migrants integrate with the existing public culture of a nation's society. Like Miller, Dummett believes that culture preservation provides ample reasons for implementing restrictive migratory policies, but he limits his argument to nations with a small population and a distinct culture, which are susceptible to being overwhelmed by a large group of migrants with different cultural values and customs. Dummett writes:

Those whose culture is fragile and not shared with other people of power and influence therefore have a right that their culture should be protected from being submerged under the influx of foreigners who have no particular respect for it. This right gives a state under whose authority they live the right and duty to exercise such control over immigration into its territory as to prevent this from happening.¹⁸⁰

However, enforcing restrictive migratory policies merely to avoid cultural change does not provide sufficient reason for nations to disallow admittance to migrants. Miller and Dummett claim that a wave of immigration would threaten a nation's culture, and while cultures are valuable and are therefore worth preserving, one cannot be certain of how different migrants' cultures are to a host nation, how quickly their cultures will impact the nation, or how detrimental the impact will be.

Nations seem capable of absorbing large numbers of migrants without a profound impact. For example, consider a large group of migrants from Myanmar moving to the United States. The Burmese have a vastly different culture and background from those who reside in the United States. However, it is difficult to see how the influx of the Burmese migrants will have a profound effect on the culture of the United States – U.S. citizens will not suddenly adopt the Burmese language, clothing, or religion. Perhaps, the wave of Burmese migrants will cause

the U.S. citizens to be curious about Burmese culture. They may come to enjoy Burmese cuisine or dance, but these cultural aspects do not threaten U.S. culture; rather, they enhance the cultural and social lives of the citizens. It is inevitable that migrants will bring their own cultures and values to the nation they move too. However, this should not be viewed as a threat, but an asset. In fact, the absorption of new values and ideas lead to significant cultural change, such as changes in art, music, or social thought, such as how one perceives women's roles in society. As Carens writes: "Open immigration would change the character of the community but it would not leave the community without character. It might destroy old ways of life, highly valued by some, but it would make possible new ways of life, highly valued by others."¹⁸¹

Furthermore, consider internal migration, which can also impact local cultures. For instance, the United States is vast and culturally diverse, and one state's culture can differ vastly from another state's culture. If a group of people from San Francisco moved to a rural farm town in Illinois, the rural town would be influenced by the new values and culture the people from San Francisco bring, and the local culture of the town may be changed. The local people of the rural town will continue to live their life, but they must live together with the people of San Francisco. The locals may disagree with the cultural change in their town, and they may demand that the local government enact restrictive migratory policies to prevent more people from San Francisco from moving in. However, enforcing internal migratory restrictions cannot be justified, as the migrants are legally entitled to internal migration. Thus, if we cannot justify restrictions on internal migration, how will we justify restrictions on external migration? In addition, nations will undergo cultural or social change, whether there is migration or not. This can be easily achieved through other means, such as movies, which often reflect different cultural attitudes, or a wave of technological innovations. In closed societies, cultural evolutions can occur naturally, and these types of natural cultural changes can, in fact, avoid political control. Thus, the culture preservation argument appears doomed to fail, simply by virtue of the fact that even if there were migration restrictions in place, nations would be incapable of effectively controlling the inevitable wave of new ideas and values that ultimately form the basis of cultural and social change.

5.3 Self-Determination: Freedom of Association

This account of the self-determination argument maintains that nations have the right to freedom of association, which would give nations the right to choose not to associate with potential migrants, thereby granting nations the right to exclude them. Many believe that a sovereign nation “should be free to control the entry and settlement of non-citizens in their territories, as well as the terms and conditions for acquiring citizenship,” and a vital aspect of sovereignty is a nation’s right to control and restrict migration, thus allowing a nation to be “free to control the shape of the ‘self’ that is supposed to be self-determining.”¹⁸² To proponents of self-determination, it is “the right of a people (or state or nation) to set the terms of their common lives,” and those who support open borders often overlook a nation’s right to self-determination.¹⁸³

Those who support self-determination may refer to an analogy of a private club, such as a tennis club, to explain why nations have the right to choose who can and cannot be admitted into a nation.^{184,185,186} In the analogies, the general idea is this: it is entirely a club’s prerogative to decide what their membership rules are. They can limit the number of members who join the club or impose rules on how the club will be structured. The members of the club care about the membership rules because the organization of the club is vital, and new members will influence its organization. Several club members, for instance, may no longer want to expand the number of memberships because having too many members will affect the quality of a tennis court. Similarly, a nation’s citizens are concerned with migration policies because they “rightly care very deeply about their countries, and, as a consequence, they rightly care about those policies which will affect how these political communities evolve.”¹⁸⁷ A nation’s migration policy will affect “who will share in controlling the country’s future,” and thus, “it is a matter of considerable importance.”¹⁸⁸ Miller, Dummett, and Walzer believe that the admission and exclusion of potential migrants will significantly impact nation’s culture, and nations must work to preserve a nation’s common culture. As Walzer writes in *Spheres of Justice*:

Admission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination. Without them, there could not be *communities of character*, historically stable, ongoing associations of men and women with some special commitment to one another and some special sense of their common life.¹⁸⁹

Similarly, Miller suggests that “the public culture of their country is something that people have an interest in controlling: they want to be able to shape the way that their nation develops, including the values that are contained in the public culture.”¹⁹⁰ Recall Miller, Dummett, and Walzer’s version of the self-determination argument. Their arguments rely on the idea of culture preservation, and how the preservation of a culture provides good reason to impose migration restrictions. While many provide a self-determination argument on the basis of culture preservation, Christopher Heath Wellman does not invoke such a basis, as he emphasizes that the right to control the “self” does not need to depend on a nation’s distinct culture.

Wellman creates a two-stage argument for self-determination. In the first stage of his argument, he determines that a nation has the right to exclude potential migrants on the basis of self-determination by presenting a *prima facie* case of marriage and religion. Freedom of association is a vital aspect of self-determination, which is evident in people’s position on marriage and religion. Historically, it was appropriate for a father to choose a marital partner for his offspring or for a nation to determine which religion their citizens could practice. In the present, nearly everyone has the personal conviction that “we are entitled to marital and religious freedom of association; we take it for granted that each individual has a right to choose his or her marital partner and the associate with whom he or she practices his or her religion,” and a forced marriage or religion would violate the right to self-determination.¹⁹¹ Wellman notes that it is apparent that the freedom of association includes the right to disassociate. In the case of marriage, for example, a person is free to marry a willing partner, just as a person is free to reject a marriage proposal. Similarly, just as people have the right to marriage and religious self-determination, citizens have a right to determine who they want in their political community. Wellman suggests that just like a person’s freedom of association “entitles one to remain single,” a nation’s freedom of association “entitles it to exclude all foreigners from its political community.”¹⁹² He writes, “in sum, the commonly prized value of freedom of association provides the basic normative building blocks for a presumptive case in favor of each legitimate state’s right to exclude others from its territory.”¹⁹³ However, he does concede that competing considerations can outweigh this presumptive case.

Thus, in the second stage of his argument, Wellman goes on to argue that neither egalitarian nor libertarian considerations outweigh the *prima facie* case for a nation’s right to exclude potential migrants. Regarding the egalitarian case, Wellman accepts the idea that nations

have duties of global distributive justice, where they have duties to help those in poverty; however, they are not obligated to open their borders, as they can help the less fortunate by exporting justice and sending aid and resources to those in need. Regarding the libertarian case, a nation's right to exclude migrants infringes on citizens' freedom to invite foreigners onto their private property, thus limiting their individual freedoms. It also places restrictions on potential immigrants' freedom of movement. Wellman's argument can be broken into two parts. Firstly, if there is a conflict between an individual's right to invite a foreigner to his private property and a nation's sovereignty over its property, the rights of the nation will take precedence.¹⁹⁴ A person inviting foreigners to stay on her property for long periods of time may result in costly consequences for others in her community, and it is thus "only appropriate that the group as a whole" should determine a nation's migratory policies.¹⁹⁵ Secondly, the freedom of movement is not absolute – a person cannot simply walk into someone else's house without permission, so why would that person be able to enter a nation without their consent?¹⁹⁶ Wellman, however, does not object to foreigners staying in a nation for a limited period of time. Ultimately, though Wellman does appear to give several concessions, he nevertheless arrives at a stark conclusion:

...Even if egalitarians are right that those of us in wealthy societies have demanding duties of global distributive justice and even if libertarians are correct that individuals have rights both to freedom of movement and to control their private property, legitimate states are entitled to reject all potential immigrants, even those desperately seeking asylum from corrupt governments.¹⁹⁷

Unlike Miller, Dummett, and Walzer, Wellman pushes forward a self-determination argument that is absolute, and his position does not allow for the implementation of porous borders. In contrast, while Miller, Dummett, and Walzer defend a nation's right to control its borders, their position is open to the idea of porous borders.

5.3.1 Harm to Others

In *Freedom of Association Is Not the Answer*, Sarah Fine raises three objections to Wellman's self-determination argument. She focuses on "harm to others, the distinctiveness

of the state, and the absence of a justification for the state's territorial rights;" however, I will only focus on two of her objections: harm to others and the distinctiveness of the state.¹⁹⁸

In her first objection, Fine carefully inspects Wellman's conception of self-determination, and notes that Wellman omits a harm clause when he describes the individual right to self-determination, where people have a "morally privileged position of dominion over [their] self-regarding affairs."¹⁹⁹ In *A Paradox of Group Anatomy*, Wellman has stated that the actions of individuals are self-regarding when their actions do not harm others, in that their actions do not cause others to be worse off.²⁰⁰ Fine believes that one can "extrapolate a comparable notion of group self-determination" from this account of individual self-determination, where "groups enjoy a morally privileged position of dominion over their self-regarding affairs and should be allowed to choose freely when their behavior is not harmful to others."²⁰¹ However, there are several ways the actions of groups can potentially harm others, even to those who are not members of the group. This potentiality to cause harm brings into question the notion that people can "do as they please" regarding their own affairs.²⁰² For example, consider a restaurant that hosts an eating competition. The spectators and competitors participating in the competition are loud and rowdy. The noise and commotion can be heard outside of the restaurant, and it negatively affects the residents who live around it, which causes them harm. As a result, the spectators and competitors' right to carry out their self-regarding affairs can no longer be given preference over the residents', as the potential for harm provides good reason to intervene on the spectators and competitors' rights – their preferences must be weighed against the residents'.

Another way a group can inflict harm is by controlling, as Walzer terms, "who is in and who is out," which refers to a group's act of including some people and excluding others from joining the group.²⁰³ Excluding people from joining the group can cause harm, as this act of exclusion can thwart their interests, thus causing them to be worse off than they would have been had they not been excluded, or worse off than they are presently.²⁰⁴ For instance, consider a park that is open to the general public. The park is sold to a seller who converts the public park to a private park, where only members of an exclusive group are allowed admittance. The group of people who often goes to the park are left worse off than they were before. Similarly, consider another example. A student has a goal of becoming an engineer at a prestigious company. A pre-condition of joining such a company is for the student to show proof of membership in a labor union for engineers. However, the student is banned from

joining the union, and thus, the student is unable to join the company. This act of exclusion therefore makes the student worse off than she would have been otherwise, or worse off than she would have been had she not been excluded. These examples aim to show that exclusions such as the ones highlighted above can be substantial, where it causes harm to certain people's interests and their well-being – “the exclusion itself becomes a cause for concern.”²⁰⁵

The potential to cause harm to others, through the act of exclusion, holds significant implications for Wellman's argument for self-determination. As we have discussed, would-be migrants have many reasons for leaving their nation of origin to move to another. Several of them may have no choice but to move, while others may have voluntarily elected to move. Fine states, people can “distinguish between those who are unable to live a minimally decent life in their present country and those whose basic needs are currently met but who wish to settle elsewhere in order to further their (various) interests.”²⁰⁶ Migration has many significant costs – migrants leave their families and friends behind, and they leave the familiarity of their community and surroundings to become strangers in an unfamiliar place. Thus, it appears reasonable to argue that migrants who elect to move, or have no choice but to move, are willing to bear substantial costs to enter a new nation, and refusing them entry will cause harm to their well-being. Refugees, in particular, are a vulnerable group of migrants who may have been forced to move because of threats to their well-being, and migration can, in this case, be considered a critical matter. As we have seen, Wellman explicitly excludes refugees as an exception to his argument, and excluding them can cause extreme harm.

Additionally, Wellman had suggested that nations may choose to export justice to those in need, rather than opening a nation's border to them. Exporting justice would “not fully resolve the question of harm to would-be immigrants.”²⁰⁷ Even if economic or political reasons to migrate no longer existed, Caren states, “...in an ideal world people might have powerful reasons to migrate from one state to another.”²⁰⁸ Reasons can include falling in love with a citizen from another nation or pursuing better economic opportunities, as differences in economy may still exist between nations. Ultimately, the act of exclusion by a group can cause harm to others, and Wellman does not consider this; however, the potential to cause others harm does provide strong reason against allowing nations to exclude would-be migrants.

5.3.2 The Distinctiveness of the State

According to Fine, in response to the argument in the section above, Wellman may invoke his previous examples of marriage and religion. Wellman may admit that refusing to marry someone or being excluded from a religious group can cause harm to those who have been excluded; however, he argues that “everyone appears to assume that there is a clear presumption in favor of the refuser and excluder in those cases.”²⁰⁹ However, Fine argues that this only works to show that Wellman’s marriage and religion examples are problematic. Liberals may accept the idea that “the presumption lies with the excluder in the marriage and religion cases despite the potential for causing ‘pain or loss’ to the excluded,” and they hold this belief because “there is something special about certain forms of association, which gives them a privileged status.”²¹⁰ They may argue that in “intimate and expressive contexts,” there is a strong case for freedom of association, “and by extension exclusion.”²¹¹ In *Immigration and Freedom of Association*, Wellman references a view by Stuart White, where White argues:

...if the formation of a specific association is essential to the individual’s ability to exercise properly his/her liberties of conscience and expression, or to his/her ability to form and enjoy intimate attachments, then exclusion rules which are genuinely necessary to protect the association’s primary purposes have an especially strong presumption of legitimacy.²¹²

For example, a religious and cultural group, such as the Mormons, can choose to exclude a group of atheists from joining their church. The act of atheists joining the church would undermine the “association’s primary purposes,” as they do not share their Mormonistic views or lifestyle, and it is objectionable that the group of Mormons would be compelled “to form or maintain intimate attachments against their will or to betray their own consciences.”²¹³

Can a liberal nation be described in this manner? While a liberal nation cannot be described as an intimate association, it can, perhaps, be viewed as an expressive association, as the nation is, in some way, committed to “a set of principles that represent its liberal character,” such as the principles of “toleration, equality before the law, and individual liberty.”²¹⁴ However, the idea that a nation can be perceived as an expressive association because it adheres to a set of principles is not sufficient. Citizens of a liberal nation may support a

diverse set of principles and views, some of which may be antithetical to liberalism, and when a government misconstrues the nation as an expressive association “with a single, comprehensive point of view, the result is often distinctly and disturbingly illiberal.”²¹⁵ Thus, because a liberal state cannot be viewed as either an intimate or expressive association, “the initial case for exclusion then must be weaker than in the examples of marriage and religion.”²¹⁶

While Wellman admits that freedom of association is more important for an individual, which is evident in his examples of marriage and religion, he maintains his position on freedom of association by referencing his analogy of a golf club (see: section 5.3.). He argues that if golf clubs have the right to exclude new members from joining, “then there seems no reason to suspect that a group of citizens cannot also have the right to freedom of association, even if control over memberships in a country is not nearly as significant as control regarding one’s potential spouse.”²¹⁷ However, Wellman’s analogy is not convincing, as there are extensive differences between a golf club and a liberal state. For example, new members who have been excluded from joining a golf club can start their own club. Potential migrants who have been excluded cannot simply create their own nation. Furthermore, new members who are not admitted to the golf club will not experience devastating life effects, while potential migrants can. Moreover, Wellman’s analogy is further weakened when one questions whether a golf club is justified in excluding certain groups from joining the club. Consider a group of women who may be interested in joining a golf club, and they turn in applications for club membership. The members of the golf club have no interest in associating with the group of women, and thus reject their applications for membership. This act of rejection would be considered gender discrimination and could cause the women harm. Thus, Wellman’s golf club analogy does not work in favor of his argument that a nation has a presumptive right to exclude, as a nation is not comparable to a golf club.

When clubs or associations do begin to resemble a nation, “in the sense that outsiders have significant interests in becoming members and exclusion brings with it high costs to the nonmembers without serving clear expressive or intimate purposes, the argument in favor of exclusion becomes weaker.”²¹⁸ This is apparent in a U.S. Supreme Court Case that Fine introduces: *Roberts v. United States, 1948*. A case was raised against the U.S. Junior Chamber, or the Jaycees, because the organization only offered full membership to men and association membership to women. The Court ruled against the Jaycees and stated that it was

unconstitutional and discriminatory to exclude women from obtaining full membership. The Jaycees argued that the ruling violated their right to freedom of association. However, according to the Court, they could only appeal to their right to freedom of association if the organization was an intimate association or an expressive association.²¹⁹ The Jaycees did not qualify for either aspect. Their exclusion of women was unexpressive, and it did not meet any of the criteria the Court had to qualify for intimate association, as the organization is “very large and unselective in admitting young men.”²²⁰ Though the admittance of women into the organization could change the very nature of the Jaycees, refusing admittance of women cannot be justified because it would not only qualify as sexual discrimination. It would also come at a significant cost to women, as the advantage of being a member of the Jaycees is the career-enhancing opportunities that are offered to members.

Ultimately, Wellman has not proven that a nation has the presumptive right to exclude would-be migrants. Excluding migrants can cause significant harm to their interests, and the potentiality for harm “represents good reason for challenging the citizens’ right to exclude them.”²²¹ When a group has intimate or expressive associations, or if the act of exclusion is harmless, they do have the presumptive right to exclude outsiders. But as we have seen, a nation does not qualify as either an intimate association or an expressive association, and thus Wellman’s examples of marriage and religion cannot be applied. Furthermore, Wellman’s golf club analogy also fails, as a nation is not similar to a golf club – being denied membership to a golf club does not produce the same devastating effects as being denied admittance into a nation.

5.4 Economy

There are also strong economic arguments against open borders. Kukathas presents two different types of economic arguments that people are typically concerned about. The first economic argument concerns “the impact of migrants on the local economy,” where the balance of the economy can be changed when many people enter a nation.²²² This change may entail the lowering of wages and the increase in prices of several goods, such as real estate, which will work unfavorably for citizens. The second economic argument relates to “the impact of migrants on the cost and availability of goods and services supplied through the state,” such as healthcare, education, state allowances, and the maintenance of public infrastructures, such as roads and parks.²²³

Let us address the first argument. Most economists often argue that overall, the impact of migration is moderately positive. While it may be true that an influx of migrants may result in locals losing their jobs or accepting lowered wages, they can also benefit the economy. Society may enjoy a larger workforce and extensions in the division of labor, and because migrants will be new consumers, the domestic market will also increase in size and the prices of many goods may lower. Thus, the impact of migrants will be “at best, positive and, at worst, only mildly negative.”²²⁴ Furthermore, Kukathas argues that globally, the effect of migration is also positive, as people who were “less productive and often unable to make a living” will move somewhere where they will be “both more productive and better off,” and they will no longer be considered “a burden on their societies.”²²⁵

However, though the overall impact of migrants may be positive, those who are directly affected by migrants may suffer from the influx of cheap labor. They may lose their jobs or be forced to accept decreased wages. Though migration may not benefit everyone equally, open borders are still morally defensible for two reasons. Firstly, Kukathas questions why locals who reside in a certain area are entitled to the benefits of having “immediate access to particular markets,” as they would be enjoying these benefits, such as an acceptable rent, that “they secure in virtue of an arrangement that excludes others from entering a particular market.”²²⁶ In labor markets, there is nothing particularly negative about including outside labor to compete with locals. Even if locals are disadvantaged, outsiders will be equally disadvantaged if they are excluded from offering their labor. To Kukathas, companies who hire foreign labor are not any more justifiable on economic grounds than companies who move their operations abroad for cheaper labor. Overall, when access to labor markets is restricted, it only works to benefit a few people at the expense of others, and is in general, a disadvantage to everyone.

It is also necessary to point out that the correlation between migration and a decrease in citizens’ wages and unemployment is unclear. There are many prominent studies that conclude that migration does not necessarily drive wages down or impact employment. One such study follows the influx of Cuban immigrants, after the Mariel Boatlift, and its effects on the Miami Labor Market. Between May to September 1980, approximately 125,000 Cubans immigrants arrived in Miami after Fidel Castro declared that those wishing to leave

Cuba for the United States would be able to leave from the port of Mariel.^{viii} Of those who arrived, 50% remained in Miami permanently, which resulted in a 7% increase in Miami's labor force and a 20% increase in Cuban workers in Miami.^{ix} The study concluded that "the Mariel immigration has essentially no effect on the wages or employment outcomes of non-Cuban workers in the Miami labor market" and that the migration "had no strong effect on the wages of other Cubans."²²⁷ Another study follows the impact of migrants in various developed nations, such as the United States and Switzerland. They arrive at a similar conclusion: there is not enough proof to support the idea that migrants have a negative impact on the citizens' wages or employment opportunities. In fact, the study shows that "a 10 percent increase in the fraction of immigrants in the population reduces native wages by at most 1 percent."²²⁸ Thus, it does not appear that the influx of migrants necessarily leads to a decrease in wages.

Secondly, some critics are concerned that open borders will bring hardship to local members of society. Locals will be burdened with higher taxes because the poor and disabled may choose to move to a wealthier state that provides better welfare or subsidized education. They may consume more in benefits than they return in taxes, which may cause locals to pay higher taxes or cause the nation to lower the quality of its welfare services to resolve fiscal issues. Kukathas notes that this would be a problem that concerned the movement of the poor, not the rich, as wealthier migrants will be able to pay more taxes than they will likely consume. Thus, he suggests, "an important purpose of closed borders is to keep out the poor."²²⁹

Additionally, as Kukathas remarks, if closed border policies were adopted to preserve the welfare nation, then one of the only justifiable solutions would be to restrict access to the welfare system, so people would be able to move freely. Welfare restrictions may dissuade the poor from moving to wealthier states, as they would need to contribute to their healthcare and education. But to the poor, it may still be advantageous for them to move than to remain in their nation of origin, as they may be able to work and send money back, which could benefit their families greatly. Kukathas warns that this arrangement would not be ideal, as some may argue that the arrangement would create different classes in state membership.

^{viii} For more information about the Mariel Boatlift, see: Card, D. The Impact of the Mariel Boatlift on the Miami Labor Market. *Industrial and Labor Relations Review*. 1990;43(2):245-257.

^{ix} See: *ibid*, p. 246

This would deprive migrants of equal moral worth, as they would be treated as second-class citizens, and “the existence of such a vulnerable, exploited underclass is incompatible” with the goal of welfare states, which is to create “a society in which all members are regarded as having ‘equal social worth’ and equal social, legal, and political rights.”²³⁰ Moreover, tax-paying migrants may be dissatisfied that their taxes do not provide them the same entitlements as the locals have. But while it might be difficult for welfare nations to open their borders, it is not an impossible endeavor. Kukathas claims that based on the principle of freedom and the principle of humanity, “open borders should prevail.”²³¹

5.5 Brain-Drain

Critics may argue that nations may suffer from brain-drain because of an open borders policy, as their skilled workers may leave to migrate to other nations and ultimately cause harm to the citizens in their nation of origin. In *Immigration: The Case for Limits*, Miller challenges the notion that fundamental moral equality requires that equal opportunities should be granted to everyone at a global level, and thus argues that global injustice requires that only a provision of basic rights should be protected. According to Miller, accepting the assumption that all human beings should have equal moral worth does not tell nations what they are required to do in terms of equality. He believes a plausible solution to this problem would be to guarantee every human being equal opportunities, but he points to another equally possible alternative, which is to adopt a basic rights approach. Rather than providing everyone equal opportunities, he proposes that nations can ensure an adequate level of people’s basic rights is respected to prevent them from falling “below the minimum level of provision that protects his or her basic interests.”²³²

While Miller claims that everyone should have a right to a decent life, he believes nations should be careful with encouraging migrants with lives that are “less than decent to migrate elsewhere” to achieve equal opportunities.²³³ Miller asserts that if nations attempt to rectify global injustice by adopting an open migration policy, they should consider the negative effect it may have on the poor, as implementing open migration may result in further global injustice. Those in poverty may lack the resources to migrate to a wealthier country, and they will suffer when educated and skilled workers, such as doctors and engineers, move from “economically underdeveloped” societies to “economically developed societies in search of higher income,” which will work to deprive “their countries of origin of vital skills,” leaving

them without the necessary minimum provision of basic needs they are entitled to.²³⁴ Similarly, Gillian Brock also supports the idea of a basic rights approach and acknowledges the harm that will come to a developing country when skilled workers depart from their country of origin.²³⁵ According to Brock, besides the loss of skills, two additional detrimental effects may result from migration, which are a loss in finances, by way of potential tax revenues, and a loss in institution building, as institutional reform and development often require skilled workers.

However, it is not necessarily the case that migrants who move abroad for equal opportunities will not return to their country of origin. According to Devesh Kapur and John McHale, many discussions surrounding emigration have relied heavily on the idea that emigration is a permanent move abroad. However, they claim that eventually, many emigrants return to their country of origin, and the time they spent abroad may be considered an advantage to their homeland.²³⁶ Migrants who move abroad for the purpose of earning sufficient capital to be financially secure in their birth nations may choose to move back after they have achieved their goal, and they will return with beneficial skills and habits that may help reform and build institutions in their nations of origin. Even if migrants move abroad permanently, they may share the knowledge and skills they developed through education, which would be supplemented by their experiences abroad, and transmit them back to their nation of origin through their social networks, which includes their families, friends, and society. By disallowing migrants to move abroad, “valuable channels of skills-based development” would be blocked.²³⁷

In addition, Miller seems to focus solely on the negative aspects of brain drain, but brain drain can also lead to positive results. In discussing Kapur and McHale’s findings, Blake writes that the “awareness that education tends to lead to greater possibilities” incentivizes people to pursue more education and skills, and the possibility of leaving may induce many to invest more into their education, which may result in a “brain gain.”²³⁸ Blake utilizes a lottery analogy to better explain brain gain, where the ability to leave from a developing nation to a developed nation will be similar to a lottery, and the way to qualify for entry will be to have a particular skill, such as medical training. Some of the medically trained will win the lottery, and they will be granted the ability to leave, while others who have also been medically trained will lose, and though they have the desire to leave, they will be unable to. Blake points out that the individuals who lose the lottery will not lose their education or

training because of their inability to move abroad, and the net impact of this lottery will “be more effective at producing a skilled domestic labor force than a prohibition on exit.”²³⁹

Thus, it does not appear that brain drain necessarily has a negative impact on a developing country and it may, in fact, be beneficial to the country’s welfare and growth and contribute to the reduction of global poverty.

5.6 Population Control

Opponents argue that issues surrounding immigration and population control are linked. Miller identifies the issues “aris[ing] at two different levels: global and national.”²⁴⁰ He suggests that at a global level, as the population of the world continues to expand, the carrying capacity of the global population is pushed to its limits. Like Miller, Dummett argues that overpopulation is a genuine concern, as the global population is increasing continuously. He claims that many nations are already overpopulated, and if a nation were in danger of being overpopulated, they would be justified in refusing migrants.^x At a national level, Miller believes that the increasing demands on natural resources, such as oil and water, can result in their rapid depletion, which negatively affects quality of life. He notes that though “projections of population growth over the century ahead indicate a leveling off in the rate of increase,” people should “also expect – indeed should welcome – increase in the standard of living in the developing world,” which would “mean that resource consumption per capita will also rise significantly.”²⁴¹

Miller thus argues that, at a global level, it would be beneficial for people to ensure that the world is responsible for controlling and reducing the size of its global population, by way of birth control and various other measures, to ensure that enough resources will be available for them to survive. He proposes that nations with rising population levels should be responsible for controlling the size of their national population. If borders between nations become lax and migration restrictions are not enforced, nations will lack the incentive to enforce the suggested measures and stabilize their population levels, as they can simply “export their surplus population” to other nations “through international migration.”²⁴²

^x For more information on Dummett’s perspective on overpopulation, see: Dummett, M. Immigration. *Res Publica*. 2004;10(2):115-122.

At the national level, Miller admits that though “the effect of population growth may be less catastrophic,” it “can still be detrimental to important cultural values.”²⁴³ The population density of the nation where people reside may influence their opinions on this matter. Miller writes that those who live in “relatively small and crowded states” will experience the impact of “the sheer number of [their] fellow citizens, with their need for housing, mobility, recreation, and so forth,” on their “physical environment.”²⁴⁴ It will become difficult for people to enjoy public space and to move without encountering congestion, and they will, consequently, alter their way of life to deal with these problems, rather than control population levels. Miller argues that it is a nation’s prerogative to decide whether to restrict population levels or to bear the costs of a “high-consumption, high-mobility lifestyle in a crowded territory,” but if a nation decides to adopt more restrictive policies as “part of the solution, then controlling immigration is a natural corollary.”²⁴⁵

Miller’s argument on global overpopulation is unconvincing. Many factors contribute to the depletion of natural resources, such as increases in life expectancy, overconsumption of natural resources, erosion, and deforestation, all of which may have at least an equally significant or larger substantial impact on resource depletion compared to that of overpopulation. Miller himself notes that population levels are expected to level off, while resource consumption is expected to rise.²⁴⁶ In *The Source*, Robert Criss shares Miller’s views and says that “population growth is driving all of our resource problems,” but “the rates of increases of water and energy use have risen faster than population growth for the past 50 years,” and claims that the “fertility rate has actually lowered in much of the world.”²⁴⁷ If this is the case, it appears that some progress has been made regarding the issue of overpopulation, which may indicate that the increasing consumption of resources may become a larger threat to people’s future. It seems arbitrary for Miller to focus on the solution of limiting migration over other viable solutions, such as encouraging lifestyle changes by altering people’s consumption patterns.

Furthermore, Miller does not define the scope of his argument or the extent to which his argument can be applied. Given this, one can apply Miller’s reasoning on migration to the case of increased life expectancy. It may be the case that advances in medical technology and care have led to increases in life expectancy worldwide, which is another contributory factor to overpopulation. Given Miller’s reasoning, it would seem logical to apply restrictive measures to medical treatment for the elderly because extending their life expectancies also

contribute to overpopulation. However, this prima facie reason to withhold medical treatment constitutes serious violations of the rights of the elderly, as it would appear irrational to enforce restrictive measures on medical treatment because of overpopulation, and unethical because enforcing such restrictions would violate the elderly's right to life.

However, it could be such that Miller agrees that the amount of medical care administered to the elderly should be limited as a solution to overpopulation. He may share the view that those who have reached the end of their natural lifespan should be restricted from accessing healthcare. If Miller does assent to this view, the solution would not be ethical, as Miller would be creating a hierarchy within healthcare. The younger generation would be prioritized over the older generation because the older generation would be cast aside and prevented from accessing healthcare on the basis of age. If people believe that prioritizing a certain population group over the other would constitute discrimination, or more specifically, ageism, then they should not demean the value and status of an elderly person's life by restricting their access to healthcare because of overpopulation concerns. Their lives should be equally deserving of protection – the overall health of all people should be considered.

Discriminatory policies violate human rights, specifically the right to life and the right to health, as covered in the UDHR. Articles 3 and 25.1 of the UDHR (1948) hold that:

Article 3: Everyone has the right to life, liberty and security of person.

Article 25.1: 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 circumstance beyond his control.²⁴⁸

Health policies that are implemented to protect a human's life up until a certain age would not provide everyone an equal opportunity to adequate healthcare, as the elderly would have limited access to healthcare. Rather, it would interfere with the elderly's right to life, as the healthcare limits imposed upon them may run contrary to their desired healthcare treatments, and they may become a vulnerable and marginalized group as a result of these policies. Denying medical services to the elderly would result in intolerable consequences, where

inequality runs rampant, and human suffering and death can occur with limited or no attempt at prevention. Thus, it does not seem morally acceptable to limit health care, especially when it is being rationed or denied to a predetermined segment of the population based on age. The ethical way to allocate healthcare would be to fairly determine medical treatment by considering relevant factors such as a patient's health condition, not age.

In addition, migration restrictions may not be an effective solution to overpopulation because of “the fertility adjustments of immigrants in the destination country,” where “the assimilation model predicts that immigrant fertility converges to native levels.”²⁴⁹ According to Jochen Mayer and Regina T. Riphahn, there are economic reasons for this adjustment, as a mother's work income may differ from the potential wages of her home nation. They argue that this increase in wages may, in fact, “increase the demand for child quantity,” but it may also “increase the demand for child quality,” which would raise “the cost per child, and thus justifies a negative correlation between income and the demand for children.”²⁵⁰ Mayer and Riphahn believe the fertility assimilation model suggests that a couple who moves from a nation of high fertility levels to a nation with low fertility levels may, initially, continue to follow the levels of their home nation, but will eventually adjust to the fertility levels of their host nation. Their study on fertility assimilation in Germany corresponds to the predictions of the assimilation model.²⁵¹ If migrants' fertility levels eventually adjust to the fertility levels of their host nations, restrictive migration policies do not appear to be an adequate solution to regulating population levels, as the host country's population levels could eventually stabilize or may even reduce. Rather, it may be likely that open borders can, in fact, assist in stabilizing population levels. If Miller accepts the result of the assimilation model, opening borders may be a beneficial solution to overpopulation, as open borders allow migrants from low socioeconomic status with higher birth rates move to a high-wealth, high-consumption society with lower birth rates, which, as the study shows, may eventually reduce their fertility levels.

To summarize, in this chapter, I elaborated on various arguments in favor of closed borders, precisely arguments concerning security, culture preservation, self-determination, economy, brain-drain, and population control. Though the arguments raise legitimate concerns about the implementation of open borders, they do not provide sufficient reason to *override* the human right to migrate. In the security argument, I argued against the view that migration can be restricted for the sake of national security, as tourists and long-term residents with visas

can threaten a nation the same way a would-be immigrant can. In the economy argument, I argued against the notion that migration has a negative impact on the local economy and services provided by a nation. I showed that migration does not correlate with a decrease in employment and wages. In the two accounts of the self-determination argument, freedom of association and culture preservation, I argued that it is not necessarily the case that a nation's culture will be negatively impacted by migrant culture. Further, I showed that the freedom of association, as depicted by Wellman, wrongly ignores a nation's potential to cause migrants harm. In the brain drain argument, I contended that the argument focuses on negative aspects of migration, and ignores the possibility of brain gain and the exchange of knowledge, transmitted by migrants from their host nations to their nations of origin. Lastly, in the case of population control, I suggested that there are other factors, more significant than migration, that contribute to the depletion of natural resources. Thus, I conclude there is no morally legitimate reason to restrict migration.

Conclusion

The debate around migration is highly polarized. It is often fueled by emotions, as it tackles discussions around sensitive issues such as national security, welfare, and integration. These debates raise various moral questions that challenge how nations formulate their admissions policy and respond to an escalating global migration crisis. I presented and answered the ones I find most vital over the course of this thesis: why migration should be considered a fundamental human right; what nations' obligations to migrants are; what their moral obligations to refugees and political asylum seekers are; why a porous border policy is an unsatisfactory solution to the issue of migration; and whether there are concerns and objections that trump a human right to migrate.

To do this, I argued that there is a fundamental human right to migration. I began by presenting three conceptions of human rights. I showed that the natural approach to human rights was too abstract, and the political approach did not cover the full range of rights that concerned my thesis. I selected the contemporary approach to apply to the issue of migration because this approach addressed specific rights that concerned migrants. I went on to argue against the cultural relativist argument. I demonstrated that the challenge against human rights is unconvincing because non-Western nations played a role in its development, human rights received cross-cultural support from nations around the world, nations around the world share common values, and the human rights language is broad, and thus open to local interpretation.

After establishing human rights as ethical, I then introduced migration and its relationship with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). I concluded that implementing migration restrictions would prevent us from accessing all the life options we have available to us, as we have two essential interests – attachments and possibilities – in accessing options that exist beyond a nation's borders. Further, I referred to the case of refugees and political asylum seekers. I suggested that they should not be given special consideration when they migrate because migration must be extended to *everyone* for three reasons: individual autonomy, moral equality, and freedom.

First, I showed that the UDHR promotes the idea that people are autonomous individuals, and they should thus have the ability to shape their own lives. Restricting migration influences the decisions we make, which causes us to suffer from a lack of independence. Second, I argued that moral equality must be applied to everyone, and a nation's citizens cannot be prioritized over migrants, especially when migrants are prevented from moving across borders for arbitrary reasons. Third, I introduced the cantilever argument to show that because the right to internal migration is a freedom that is recognized by the UDHR and ICCPR, it would be logical for the freedom to apply to migration across borders. When faced with border controls, migrants ultimately suffer a loss of freedom.

Furthermore, those who support a more restrictive border policy may advance a porous borders policy, rather than agreeing to implement open borders. I identified ways in which a porous border policy can be morally concerning, as many nations have discretionary control over who can pass through their borders. This can potentially lead to nations integrating discriminatory migrant selection criteria into their admissions policy, which would be unjustifiable. If we conclude that both closed and porous borders are objectionable, we must turn to the only ethical solution, an open border policy, and accept migration as a fundamental human right.

However, to prevent migrants from being mistreated, I listed several obligations nations should fulfill, which include extending rights to healthcare, education, and labor to migrants. Additionally, I suggest offering migrants a clear pathway to citizenship, so they can eventually have equal standing with citizens. Finally, I argued against six challenges that are commonly raised against the freedom to migration: security, self-determination, culture preservation, economy, brain drain, and population control. I concluded that these considerations could not overcome the right to migration.

Overall, I believe that the discussions throughout this thesis should motivate nations to re-evaluate their admissions policy. The restrictive policies that are in place today violate the human right to migrate, and they prevent us from being truly free to determine the course of our own lives. However, it is clear that nations' admissions policy cannot simply be changed overnight without resulting in chaos, as it requires well-thought-through processes to minimize its impact on nations, citizens, and migrants. But by first acknowledging that

limitations to migration are unjust, we can start working towards a more ethical admissions policy.

References

1. Donnelly J. Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights. *The American Political Science Review*. 1982;76(2);304:303-316.
2. Donnelly J. *Universal Human Rights in Theory and Practice*. Ithaca: Cornell University Press; 2013:10.
3. *Ibid*, p. 11.
4. Beitz C. *The Idea of Human Rights*. New York: Oxford University Press; 2009:49.
5. Dworkin R. *Taking Rights Seriously*. London: Gerald Duckworth & Co. Ltd.; 1977:xi.
6. Donnelly J. Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights. *The American Political Science Review*. 1982;76(2);305:303-316.
7. Nickel J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007:10.
8. *Ibid*, p. 10.
9. Beitz C. *The Idea of Human Rights*. New York: Oxford University Press; 2009:49.
10. Simmons A. *Justification and Legitimacy*. Cambridge: Cambridge University Press; 2001:185.
11. Beitz C. *The Idea of Human Rights*. New York: Oxford University Press; 2009:50.
12. *Ibid*, p. 53.
13. Donnelly J. Human Rights as Natural Rights. *Human Rights Quarterly*. 1982;4(3);395:391-405.
14. *Ibid*, p. 396.
15. *Ibid*.
16. Baynes K. Discourse Ethics and the Political Conception of Human Rights. *Ethics & Global Politics*. 2009;2(1);7:1-21.
17. Rawls J. *The Law of Peoples with The Idea of Public Reason Revisited*. Cambridge: Harvard University Press; 1999:79.
18. Nickel J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007:12.
19. *Ibid*.
20. *Ibid*, p. 13.
21. Nickel, J. Human Rights. *The Stanford Encyclopedia of Philosophy*. Metaphysics Research Lab, Stanford University; 2019.
22. Locke, J. *Second Treatise of Government*. Indianapolis: Hackett Publishing Company; 1980:4.
23. Nickel J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007:9.
24. Nickel J. *Making Sense of Human Rights*. Berkeley: University of California Press; 1987:7.
25. *Ibid*.
26. *Ibid*.
27. *Ibid*, p. 8.
28. *Ibid*.
29. *Ibid*.
30. *Ibid*, p. 9.
31. United Nations. *The Universal Declaration of Human Rights*. New York: United Nations Dept. of Public Information; 1948.
32. Nickel J. *Making Sense of Human Rights*. Berkeley: University of California Press; 1987:10.
33. *Ibid*.

34. Ibid.
35. Ibid, p. 11.
36. American Anthropological Association. *American Anthropologist*. 1947;49(4);539,543:539-543.
37. Ibid, p. 543.
38. Nickel J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007:168-9.
39. Huntington S. *The Clash of Civilizations?*. *Foreign Affairs*. 1993;72(3);40-1:22-49.
40. Le, N. *Are Human Rights Universal or Culturally Relative?* *Peace Review*. 2016;28(2);204:203-211.
41. Sen, A. *Universal Truths: Human Rights and the Westernizing Illusion*. *Harvard International Review*. 1998;20(3);40:40-43.
42. Le, N. *Are Human Rights Universal or Culturally Relative?* *Peace Review*. 2016;28(2);205:203-211.
43. Tharoor, S. *Are Human Rights Universal?*. *World Policy Journal*. 2009;16(4).
44. Johnson, M, and Symonides J. *The Universal Declaration of Human Rights: A History of Its Creation and Implementation*. Paris: Imprimerie Darantiere; 1998: 47.
45. Ibid.
46. Roosevelt, E. *My Day*, February 6, 1947. *The Eleanor Roosevelt Papers Digital Edition*; 1947.
47. Nickel J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007:178.
48. Ibid.
49. Donnelly, J. *The Relative Universality of Human Rights*. *Human Rights Quarterly*. 2007;29(2);290:281-306.
50. Nickel J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007:169.
51. Sen, A. *Universal Truths: Human Rights and the Westernizing Illusion*. *Harvard International Review*. 1998;20(3);42:40-43.
52. Nickel J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007:175.
53. Ibid.
54. Ibid.
55. United Nations. *International Covenant on Civil and Political Rights*. *Treaty Series*. 1966;999:171-346.
56. Nickel J. *Making Sense of Human Rights*. Oxford: Blackwell Publishing; 2007:176.
57. Council of Europe. *European Convention on Human Rights*. Strasbourg: Directorate of Information; 1953.
58. United Nations. *The Universal Declaration of Human Rights*. New York: United Nations Dept. of Public Information; 1948.
59. United Nations. *International Covenant on Civil and Political Rights*. *Treaty Series*. 1966;999:171-346.
60. Oberman, K. *Immigration as a Human Right*. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:6.
61. Carens, J. *Ethics of Immigration*. New York: Oxford University Press; 2013:239.
62. Oberman, K. *Immigration as a Human Right*. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:11.
63. Ibid, pp. 11-2.

64. Miller, D. Immigration: The Case for Limits. In: Cohen A, Wellman C, ed. by. *Contemporary Debates in Applied Ethics*. Oxford: Blackwell; 2005:195.
65. Oberman, K. Immigration as a Human Right. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:15.
66. Miller, D. Is There a Human Right to Migrate?. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:14.
67. Oberman, K. Immigration as a Human Right. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:16.
68. Ibid.
69. Miller, D. Is There a Human Right to Migrate?. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:13.
70. Oberman, K. Immigration as a Human Right. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:17.
71. Ibid, p. 19.
72. Nussbaum, M. *Liberty of Conscience: In Defense of America's Tradition of Religious Equality*. New York: Basic Books; 2008:169.
73. Ibid.
74. Ibid.
75. Oberman, K. Immigration as a Human Right. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:20.
76. Ibid.
77. Ibid.
78. Raz, J. *The Morality of Freedom*. Oxford: Oxford University Press; 1988:377.
79. Ibid, p. 378.
80. Oberman, K. Immigration as a Human Right. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:22.
81. Ibid.
82. United Nations. *Convention and Protocol Relating to the Status of Refugees*. Treaty Series. 1951;189;3:137.
83. United Nations. *The Universal Declaration of Human Rights*. New York: United Nations Dept. of Public Information; 1948.
84. Singer, P. *Practical Ethics*. Cambridge: Cambridge University Press; 1993:256.
85. Ibid, p. 262.
86. Singer, P. *Famine, Affluence, and Morality*. *Philosophy and Public Affairs*. 1972;1(1);231:229-243.
87. Ibid.
88. Carens, J. *Aliens and Citizens: The Case for Open Borders*. *The Review of Politics*. 1987;49(2);262:251-273.

89. Singer, P. Famine, Affluence, and Morality. *Philosophy and Public Affairs*. 1972;1(1);231:229-243.
90. Raz, J. *The Morality of Freedom*. Oxford: Oxford University Press; 1988:369.
91. Blake, M. Distributive Justice, State Coercion, and Autonomy. *Philosophy and Public Affairs*. 2001;30(3);272:257-296.
92. Christman, J. Autonomy in Moral and Political Philosophy. In: Zalta E, ed. by. *The Stanford Encyclopedia of Philosophy*. Metaphysics Research Lab; 2018.
93. Abizadeh, A. Democratic Theory and Border Coercion: No right to Unilaterally Control Your Own Borders. *Political Theory*. 2008;36(1);39:37-65.
94. Ibid.
95. Ibid.
96. United Nations. *The Universal Declaration of Human Rights*. New York: United Nations Dept. of Public Information; 1948.
97. Carens, J. Aliens and Citizens: The Case for Open Borders. *The Review of Politics*. 1987;49(2);263:251-273.
98. Ibid, p. 264.
99. Cole, P. Taking Moral Equality Seriously: Egalitarianism and Immigration Controls. *Journal of International Political Theory*. 2012;8(1-2);121:121-134.
100. Ibid.
101. Cole, P. *Philosophies of Exclusion: Liberal Political Theory and Immigration*. Edinburgh: Edinburgh University Press; 2000:2.
102. LeGrand, J. *Equity and Choice: An Essay in Economics and Applied Philosophy*. London: Harper Collins Academic; 1991:86-7.
103. Cole, P. Taking Moral Equality Seriously: Egalitarianism and Immigration Controls. *Journal of International Political Theory*. 2012;8(1-2);123:121-134.
104. Brender, N. Exclusion and the Responsibilities of the Liberal State. *Social Philosophy Today*. 2002;18;193:192-196.
105. Cole, P. Taking Moral Equality Seriously: Egalitarianism and Immigration Controls. *Journal of International Political Theory*. 2012;8(1-2);124:121-134.
106. Ibid.
107. Ibid.
108. Carens, J. *Ethics of Immigration*. New York: Oxford University Press; 2013:237.
109. United Nations. *The Universal Declaration of Human Rights*. New York: United Nations Dept. of Public Information; 1948.
110. United Nations. *International Covenant on Civil and Political Rights*. Treaty Series. 1966;999:171-346.
111. Carens, J. *Ethics of Immigration*. New York: Oxford University Press; 2013:238.
112. Ibid, p. 239.
113. Ibid.
114. Ibid, p. 245.
115. Ibid, p. 246.
116. Ibid, p. 247.
117. Ibid.
118. Ibid.
119. Ibid.
120. Ibid, p. 248.

121. Ibid.
122. Ibid.
123. Ibid.
124. Ibid, p. 249.
125. Ibid.
126. Ibid, p. 250.
127. Ibid, p. 251.
128. Ibid, p. 252.
129. Ibid.
130. Ibid.
131. Ibid, p. 240.
132. Ibid.
133. Cheng, T, and Selden M. The Origins and Social Consequences of China's Hukou System. *The China Quarterly*. 1994;(139);644:644-668.
134. Carens, J. *Ethics of Immigration*. New York: Oxford University Press; 2013:240.
135. Ibid, p. 241.
136. Ibid.
137. United Nations. *International Covenant on Civil and Political Rights*. Treaty Series. 1966;999:171-346.
138. Carens, J. *Ethics of Immigration*. New York: Oxford University Press; 2013:242.
139. Ibid.
140. Miller, D. Is There a Human Right to Migrate?. In: Fine S, Ypi L, ed. by. *Migration in Political Theory, The Ethics of Movement and Membership*. Oxford: Oxford University Press; 2016:19.
141. Carens, J. *Ethics of Immigration*. New York: Oxford University Press; 2013:242.
142. Ibid, p. 243.
143. Ibid.
144. Ibid.
145. Ibid.
146. Ibid, p. 244.
147. Ibid.
148. Ibid.
149. Ibid.
150. Cole P, and Wellman C. *Debating the Ethics of Immigration: Is There a Right to Exclude?*. Oxford: Oxford University Press; 2011:144.
151. Ibid.
152. Ibid.
153. Carens, J. Who Should Get in? The Ethics of Immigration Admissions. *Ethics & International Affairs*. 2003;17(1);110:95-110.
154. Parliament of Australia. Chapter One: Federation and the Geographies of Whiteness.
155. Blake, M. Immigration. In: Frey, R.G., and Wellman C. ed. by. *A Companion to Applied Ethics*. Malden: Blackwell Publishing; 2005:233.
156. Song, S. *Immigration and Democracy*. New York: Oxford University Press; 2019:169.
157. Carens, J. Who Should Get in? The Ethics of Immigration Admissions. *Ethics & International Affairs*. 2003;17(1);109:95-110.

158. Walsh, J. Navigating Globalization: Immigration Policy in Canada and Australia, 1945-2007. *Sociological Forum*. 2008;23(4);797:786-813.
159. Carens, J. Aliens and Citizens: The Case for Open Borders. *The Review of Politics*. 1987;49(2);268:251-273.
160. Walzer, Michael. *Spheres of Justice*. New York: Basic Books; 1983:61.
161. Carens, J. Aliens and Citizens: The Case for Open Borders. *The Review of Politics*. 1987;49(2);259:251-273.
162. Ibid, p. 260.
163. Ibid, p. 259.
164. Ibid.
165. Dummett, M. Immigration. *Res Publica*. 2004;10;121:115-122.
166. Kukathas, C. The Case for Open Migration. In: Cohen A, Wellman C, ed. by. *Contemporary Debates in Applied Ethics*. Oxford: Blackwell; 2005:218.
167. Ibid.
168. Ibid.
169. Ibid.
170. UNWTO. *Why Tourism?*. 2016.
171. Ibid.
172. Kukathas, C. The Case for Open Migration. In: Cohen A, Wellman C, ed. by. *Contemporary Debates in Applied Ethics*. Oxford: Blackwell; 2005:218.
173. Ibid.
174. Ibid, p. 219.
175. Miller, D. Immigration: The Case for Limits. In: Cohen A, Wellman C, ed. by. *Contemporary Debates in Applied Ethics*. Oxford: Blackwell; 2005:199.
176. Ibid, p. 200.
177. Ibid.
178. Ibid.
179. Ibid, p. 201.
180. Dummett, M. Immigration. *Res Publica*. 2004;10;120:115-122.
181. Carens, J. Aliens and Citizens: The Case for Open Borders. *The Review of Politics*. 1987;49(2);271:251-273.
182. Fine, S. The Ethics of Immigration: Self-Determination and the Right to Exclude. *Philosophy Compass*. 2013;8(3);254,258:254-268.
183. Ibid, p. 258.
184. Miller, D. Immigration: The Case for Limits. In: Cohen A, Wellman C, ed. by. *Contemporary Debates in Applied Ethics*. Oxford: Blackwell; 2005.
185. Walzer, M. *Spheres of Justice*. New York: Basic Books; 1983.
186. Wellman, C. Immigration and Freedom of Association. *Ethics*. 2008;119(1):109-141.
187. Ibid, p. 115.
188. Ibid.
189. Walzer, M. *Spheres of Justice*. New York: Basic Books; 1983:62.
190. Miller, D. Immigration: The Case for Limits. In: Cohen A, Wellman C, ed. by. *Contemporary Debates in Applied Ethics*. Oxford: Blackwell; 2005:200.
191. Wellman, C. Immigration and Freedom of Association. *Ethics*. 2008;119(1);110:109-141.
192. Ibid, p. 119.
193. Ibid

194. Ibid, p. 131.
195. Ibid, p. 134.
196. Ibid, p. 135.
197. Ibid, p. 141.
198. Fine, S. Freedom of Association Is Not the Answer. *Ethics*. 2010;120(2);345:338-356.
199. Wellman, C. Immigration and Freedom of Association. *Ethics*. 2008;119(1);110:109-141.
200. Wellman, C. The Paradox of Group Autonomy. *Social Policy and Philosophy*. 2003;20(2);265:265-85.
201. Fine, S. Freedom of Association Is Not the Answer. *Ethics*. 2010;120(2);346:338-356.
202. Ibid.
203. Walzer, M. *Thinking Politically*. New Haven: Yale University Press; 2007:81.
204. Fine, S. Freedom of Association Is Not the Answer. *Ethics*. 2010;120(2);347:338-356.
205. Ibid.
206. Ibid.
207. Ibid, p. 348.
208. Carens, J. Aliens and Citizens: The Case for Open Borders. *The Review of Politics*. 1987;49(2);258:251-273.
209. Fine, S. Freedom of Association Is Not the Answer. *Ethics*. 2010;120(2);349:338-356.
210. Ibid.
211. Ibid.
212. White, S. (1997) Freedom of Association and the Right to Exclude. *The Journal of Political Philosophy*. 1997;5(4);381:373-391.
213. Fine, S. Freedom of Association Is Not the Answer. *Ethics*. 2010;120(2);349:338-356.
214. Ibid.
215. Ibid, p. 350.
216. Ibid.
217. Wellman, C. Immigration and Freedom of Association. *Ethics*. 2008;119(1);114:109-141.
218. Fine, S. Freedom of Association Is Not the Answer. *Ethics*. 2010;120(2);351:338-356.
219. Blake, M. Immigration, Association, and Antidiscrimination. *Ethics*. 2012;122(4)753:748-762.
220. Gutmann, A. Freedom of Association: An Introductory Essay. In: Gutmann A, ed. by. *Freedom of Association*. Princeton, New Jersey: Princeton University Press; 1998:9.
221. Fine, S. Freedom of Association Is Not the Answer. *Ethics*. 2010;120(2);352:338-356.
222. Kukathas, C. The Case for Open Migration. In: Cohen A, Wellman C, ed. by. *Contemporary Debates in Applied Ethics*. Oxford: Blackwell; 2005:211.
223. Ibid.
224. Ibid, p. 212.
225. Ibid.
226. Ibid.
227. Card, D. (1990) The Impact of the Mariel Boatlift on the Miami Labor Market. *Industrial and Labor Relations Review*. 1990;43(2);255:245-257.
228. Friedberg R, and Hunt J. The Impact of Immigrants on Host Country Wages, Employment and Growth. *The Journal of Economic Perspectives*. 1995;9(2);42:23-44.
229. Kukathas, C. The Case for Open Migration. In: Cohen A, Wellman C, ed. by. *Contemporary Debates in Applied Ethics*. Oxford: Blackwell; 2005:213.

230. Carens, J. (1988) Immigration and the Welfare State. In: Gutmann A, ed. by. Democracy and the Welfare State. New Jersey: Princeton University Press; 1988:212.
231. Kukathas, C. The Case for Open Migration. In: Cohen A, Wellman C, ed. by. Contemporary Debates in Applied Ethics. Oxford: Blackwell; 2005:214.
232. Miller, D. Immigration: The Case for Limits. In: Cohen A, Wellman C, ed. by. Contemporary Debates in Applied Ethics. Oxford: Blackwell; 2005:198.
233. Ibid.
234. Ibid.
235. Brock, G, and Blake M. Debating Brain Drain: May Government Restrict Emigration. New York: Oxford University Press; 2015:3.
236. Kapur D, and McHale J. Give Us Your Best and Brightest: The Global Hunt for Talent and Its Impact on the Developing World. Baltimore: Brookings Institution Press; 2005:163.
237. Brock, G, and Blake M. Debating Brain Drain: May Government Restrict Emigration. New York: Oxford University Press; 2015:163.
238. Ibid, p. 160.
239. Ibid, p. 161.
240. Miller, D. Immigration: The Case for Limits. In: Cohen A, Wellman C, ed. by. Contemporary Debates in Applied Ethics. Oxford: Blackwell; 2005:201.
241. Ibid.
242. Ibid.
243. Ibid, p. 202.
244. Ibid.
245. Ibid.
246. Ibid, p. 201.
247. Fitzpatrick T. Population Growth Drives Depletion of Natural Resources. The Source. 2008.
248. United Nations. The Universal Declaration of Human Rights. New York: United Nations Dept. of Public Information; 1948.
249. Mayer J, and Riphahn R. Fertility Assimilation of Immigrants: Evidence From Count Data Models. Journal of Population Economics. 2000;13(2);241:241-261.
250. Ibid, p. 243.
251. Ibid, p. 259.

