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MOVEMENT AS AN ESSENTIAL INTEREST: A CASE FOR JUST BORDERS

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I dedicate this piece of work to my moral hero, Mamaia.

It is probably customary to claim this work as my own. I believe, though, that very little in this world is rightfully truly our own, as possessiveness is one of the lowest human virtues. I therefore deeply thank all who co-participated directly and indirectly to it, in the hope that this knowledge will belong to everyone.

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In the hope that it will become common knowledge, as it reaches everyone, especially those with greater power and responsibilities:

"Keeping one's dignity can be burdensome. This is what integrity requires."

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ABSTRACT

This thesis is a philosophical inquiry about human movement. My interest begins from one very basic observation. Contemporary accounts aiming at answering "what *should* be done with border policies?" argue that policies affecting human movement should be more permissive or restrictive. Interestingly, however, neither camp of philosophers, open and closed borders advocates, sufficiently addresses the most essential element at the basis of all forms of migratory projects: what is the value of movement itself? This question not only is not answered in the philosophical migration literature, but it is also not problematized in the first place. Assuming that migration is beneficial to all parties, simply moving in view of lifting borders, may not entail (positive) freedom to move, just as simply marrying may not entail freedom to form meaningful relationships - if counterfactually one is forced by circumstances into marriages that bring about better distributive outcomes to all, and especially to the vulnerable partners.

I therefore aim to provide an account of movement, in order to contribute to determining permissible ways to regulate movement: to restrict, protect or promote it. I argue that movement is an essential interest. Humans have an intrinsic interest in movement, similarly to the interest to establish meaningful sexual and intimate relationships. Further, moving to mate, escape predators and find favorable climatic conditions, need not be thought to hold true only in the animal realm. Humans have an instrumental interest in movement as well, although for reasons that are often more complex and less basic (related to survival) – for example, instead of escaping animal predators, humans move to escape dictators.

With this leading idea in mind – that movement is intrinsically and instrumentally valuable – I consider the value of movement for underprivileged groups, economic migrants and refugees. In view of the fact that most human movement is voluntary, I argue, policies

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regulating movement should reflect the moral ideal that people should move out of choice. A holistic policy approach, taking into consideration normative and empirical considerations, is needed to address contemporary conditions under which movement takes place – generally out of need.

Upon considering the value of movement, the focus of the theorizing shifts from the main inquiry, which is currently about whether states should restrict or permit movement. I suggest instead to anchor our thinking around movement, more consistently, in liberal and democratic doctrines. Lifting movement restrictions, in my view, is too modest a moral goal, if for instance, a higher moral goal, that of more just movement – movement out of choice – is not achieved. Lifting restrictions will permit more unjust movement, if the poor is 'stuck' into perpetually moving out of dire need.

My account satisfies sufficientarian and egalitarian accounts of justice, as it engages both trends into considering that just movement should approximate an ideal consistent with the liberal tenets they stem from: everyone should choose whether or not to move. In this work I defended my thesis on sufficientarian premises, but with further argument, I preliminarily see egalitarianism having its way with my core argument as well. Furthermore, it contributes to open borders theories by showing that the case for more permissive and inclusive policies is more consistent with liberal justice, upon reconsidering how we conceive of basic liberties and movement as an essential interest. It contributes to closed borders theories focusing on reasons for movement restriction, such as the value of the community and self-determination, upon considering the value of movement in sedentary communities. If it is true, as I argued, that restrictions are harmful practices, then restrictions are justified only if a holistic policy approach seriously tackles the reasons for contemporary migratory movement – out of need. Restrictions, however, are hardly justified, when movement is undertaken out of choice, and for morally important (and non-malicious) reasons.

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LIST OF METHODOLOGICAL TERMS

Moral Desideratum = the moral level at which principles of justice obtain ideally

FCM (capital letters) = Freedom to Choose Movement is a principle of justice that obtains in Moral Desideratum

Moral Sub-desideratum = the moral level at which principles of justice obtain in non-ideal circumstances (in conditions of need)

Fnm = Freedom to need movement is a principle of justice that obtains out of need in the moral sub-desideratum

Moral suboptimal = the moral level at which principles of justice obtain in non-ideal circumstances, in which only unacceptable options are available; in this scenarios, agents' voluntariness is (possibly) undermined as they face impermissible moral dilemmas

Morality suspension = the moral level at which agents face impermissible moral dilemmas, and the philosophical discussion is out of the pale of common morality

Presumption = I use the term in an unorthodox sense. Generally, a presumption is a 'given', whereas I treat it as an argument and question its validity, insofar as I question the 'given'. I provide reasons to begin with a strong general presumption in favor of movement. The strategy

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I adopt aims at proving a strong moral foundation to the principles of justice I propose by showing the general acceptance of the presumption.

Moral Optimum versus **Moral sub-optimum** = Rawlsian distinction between respectively ideal and non-ideal theory

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INTRODUCTION

My dissertation concerns human movement. One of the most current inquiries raised in 'real politics' and civil society, as well as in policy-making and academic circles, is how states should regulate the movement of people across borders. The main debate is summarily divided between those who argue that policies regulating movement should be more restrictive, and the opposite camp, advocating more permissive[1] policies. The fundamental philosophical inquiry instead is whether restrictions are legitimate and just, whereby this question is understood to influence the main debate.

I attempt to reply to this question with specific reference to the nearly thirty-year long contemporary philosophical debate in migration. My interest begins from one very basic observation. While interminable debates look at the complex reasons to migrate, to host migrants and refugees, to conserve goods that may be lost in the course of migration, goods that the host society, or the migrants themselves may cherish, a great deal of empirical and normative literature contribute to these complex considerations, attempting to reply "what *should* be done with border policies?". Interestingly, however, neither camp of philosophers, closed or open borders advocates, sufficiently addresses the most essential element at the basis of all forms of migratory projects: the value of movement itself. I enter the theoretical debate in this conjunction: while I attempt to discuss what movement to contemporary persons is, I also attempt to bridge principles that stem from the theory I propose with general implications for migration policies.

The thesis I defend is that movement is an essential interest. The primary implication for policies regulating movement is that the underpinning principles of justice should reflect,

[1] Traditionally, the two camps are described as closed borders or open borders.

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among other values and competing considerations, the value of movement itself. I propose that policies regulating movement should be sensitive to two separate claims: liberty claims and distributive claims of migrants and citizens. In view of the standard liberal position, according to which the former have lexical priority over the latter, the primary principle of justice regulating movement is one that reflects the *freedom to choose movement* (FCM). The secondary principle, the *freedom to need movement* (fnm), which, in my view, open borders accept as a justice-based claim, is a remedial principle of justice. As such, it should be constrained by the former principle, which sets the moral optimum[2]. I suggest that if my argument for freedom as an essential interest is sound, people should move out of choice and not forced by dire circumstances, as a matter of consistency with the liberal doctrine and methodology (Rawls 1971).

Thus my project has two aims. First, it investigates and attempts to establish how we should think about regulating movement, by conceptualizing how we should view movement itself in light of facts such as the habits of contemporary humans and state (and other) institutions. This is the work of the first three chapters. Second, it shows some general implications of movement as an essential interest with respect to two categories of contemporary groups undertaking movement: economic migrants (chapter 4), and refugees (chapter 5).

The thesis that movement is an essential interest suggests that we should think about movement the way we think about other essential interests such as to form sexual and intimate relationships, to exercise conscience, and all range of correspondent freedoms, such as to

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[2] The term "moral optimum" indicates the highest moral ideal, as commonly understood in Rawlsian terms, which I define hereafter the "Moral Desideratum". See the "List of Methodological Terms". When encountered in the text, 'optimum' is the Rawlsian term for what is morally ideal, and 'desideratum' is the optimum that I argue for: one that considers the value of movement and the thesis I defend.

associate, to occupational choice, to form intimate relationships or ones' own conception of good, to adhere to any religion and so on. In short, what makes specific categories of things worth protecting and promoting, e.g. by declaring that they are basic freedoms, is the fact that they are *such* kinds of goods that we want to maximize, if well-ordered societies are, as I assume it is the case, a moral aim. For example, free conscience may entail that I shall engage and advance in the field of knowledge as I deem necessary to advance the truth, including if my views contrast the views of my government. I shall not be merely restricted to a few ideologies or limited number of books and perspectives. In this sense, a bare minimum of knowledge does not suffice for justice to obtain[3]. 'Bordering' the production of knowledge, as many institutions, such as the Church and dictatorial regimes have historically attempted to do, through acts of censorship or persecution of dissenters, is not compatible with liberal tenets. However, this does not settle the amount of freedom necessary as the lowest threshold compatible with liberal tenets to ensure a free pursuit of knowledge, or other essential interests. This question not only is not answered in the philosophical migration literature, but it is also not problematized in the first place. Simply moving in view of lifting borders, may not entail *freedom* to move, just as simply marrying may not entail freedom to form meaningful relationships (if counterfactually one is forced by circumstances).

In inquiring what it takes for one to be free to move, I offer argumentation to the effect of showing that the standard way in which one is free to do anything, such as to marry, to work, to adhere to a religion and so on, should apply to movement as well. This standard is understood by liberals to be protected and promoted with the aim of generating a context of choice, whereby

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[3] One commentator may suggest that freedom of conscience also protects and allows people to form all sorts of stupid or abhorrent beliefs such as homeopathy or racism. It is true that freedom of conscience alone, without it being balanced against other values that need promotion and protection, would also be insufficient for justice. Notice that this is a standard way most accept we think about all human rights.

subjects can be recognized to act autonomously and independently (Raz 1986). The more constrained in her substantive choices, the further away the agent is from her liberty claims.

Structure of the Dissertation

I advance my thesis in the subsequent chapters:

In chapter 1, I engage with the question: How may we establish whether any x is an essential interest? This is surely not established merely by the number of people who practice x, otherwise voting would not be an essential interest, given the lack of electoral democratic participation. It is also not established by whether x is a basic need, in the way we think about subsistence, because then we would need to drop from the list of essential interests too many interests recognized as fundamental freedoms, such as the freedom to occupational choice and choosing one's own intimate relationships. While I show that such arguments are deployed by closed borders perspectives to justify restrictions of movement, I determine that these arguments do not engage with the fundamental question about whether movement is an essential interest, but set it aside. I then pursue a positive line of argumentation responding to the question: what should x entail to be an essential interest. By analogy with other things that we think essential, I show that there are five features (necessary conditions) that any x will show in order to qualify as essential: generality, moral relevance, subjectivity and duty-claim, non-absolute criterion. In a nutshell, meeting the criterion of generality means that the object in question is of interest to most people in the following form: I may be healthy my entire life and never seek medical attention, but health is nonetheless a general interest. Moral relevance means that there is a moral loss if x does not obtain: There is a moral loss in denying a medical treatment to a patient. Subjectivity means that the medical treatment I am owed is one that attends to *my* condition, say diabetes, and not HIV. Duty-claim means that x places a duty on others: states institutions, medical boards, researchers, hospitals and so on, who can be

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identified to have a duty to protect and promote the general interest in health. Last, essential interests place *no absolute* moral demands on duty bearers. I conclude that movement, and not the narrower concept of *immigration*, qualifies as an essential interest and as such provides sufficient normative material to qualify movement as a general human right.

In Chapter 2, I show that general movement as a right finds support in both closed and open borders' theories. General movement is compatible with specific moral movement rights, of which some are also recognized as legal rights: to internal movement, exit any country, to stay, and to enter or to immigrate (the latter only advanced by open border theorists). In fact, not only the general right to movement is compatible with each of the above mentioned rights, but enhances, as a matter of consistency, the scope and depth of each right, which seems desirable. I then engage with the most disputed movement rights: the right to immigrate. The proposed grounding of this right is problematic in the literature of open borders. Whereas immigrating is understood as a liberty claim, but it is recognized as a distributive claim for the poor person, it violates the standard liberal understanding according to which, distribution concerns should not take place prior to liberty claims. That is, if it is true that a rich shall not be forced into a marriage that has better distributive outcomes, say, by marrying a poorer partner, I argue, migrants shall not, as a matter of justice, be forced into arrangements that have better distributive outcomes (assuming that migration is economically beneficial to all parties involved, including migrants themselves).

In Chapter 3, I engage more substantially with concepts of choice, need and voluntariness. I show that while conditions for freedoms are scarce – practically, these are the conditions under which the choice of migrating takes place – migrants mostly choose voluntarily to move. Only a few categories, such as trafficked persons, could be shown to move non-voluntarily. However, based on the distinction between *acting freely* and *being free*, I suggest that the focus of theorizing shall not be on whether migrants move freely, but on the

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conditions of freedom and a lack thereof, under which they act. In fact, I show that acting freely under circumstances of choice between unacceptable options - that is in the face of moral dilemmas, migrants who pick an unacceptable option over another, act like moral heroes. Moral heroes are individuals who, like Rosa Parks, faced with injustice, choose to pay the consequences of acting in this scenario, *inter alia*, in her case, in order to expose and tackle injustice – that is, they undertake autonomous acts of conscience within impermissibly limited conditions of freedom.

In Chapter 4, I examine implications of movement as an essential interest in the case of economic migrants. Accordingly, many economic migrants should be understood to exercise their freedom to need movement, in opposition to wealthy migrants who exercise freedom to choose movement. This conceptual distinction holds in virtue of acknowledging the fact that in moving, there are two distinct normative claims that persons press: a liberty claim, that is, choosing the course of action as one sees fit, similarly to a person choosing to marry and to marry Giovanni specifically; and, a distributive claim - that is movement is instrumental to meeting basic needs - generated by dire background conditions, similarly to a person who enters a marriage *because* she is in need and this is the only or one of a few available options. My thesis supports the idea that justice demands the protection of movement as a choice. From this perspective, migrants press a distributive claim that may not entail *tout court* a duty on behalf of states to loosen restrictions on movement, but a much more robust duty to incentivize movement in line with demands of justice: everyone should choose, and not be forced to move. In this sense, I argued that the principle of freedom to need movement (fnm) is constrained by the Freedom to Choose Movement (FCM). Last, I consider four objections to FCM: jurisdictional theory, associational theory, community of character and economic interest. These arguments are weak if considered from a liberal perspective, one that takes into account how we think about basic freedoms. As such, these are considerations, which do not provide

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strong grounds for movement restrictions, but at the most, for some considerations to be weighed against other fundamental interests of migrants and citizens themselves.

In Chapter 5, I examine implications of my theory regarding the case of refugees. Specifically, I examine the grounds of the duty of justice upon which states have to offer protection, and ways in which justice intertwines with fairness – the latter understood as a distributional principle. While both intuitions - one supporting justice to refugees, and one supporting a fair distribution of protection to each capable state, are strong - I argued that arguments supporting the latter are weaker, and leave, therefore, ample conceptual and normative space for justice to refugees to constrain competing considerations. In a nutshell, states minimize their duties of justice on three distributional arguments: first, that it is not the duty of a given state to undertake x action, or "*Why me*?"; second, that x is not *what* the content of the duty that a given state is willing to take (e.g. hosting or paying third parties to host is interchangeable); third, that even if the state were the one responsible for a specific duty, and the content was accepted, it is not a duty *towards a specific* refugee or group of refugees. While distributional principles should be worked out for states to be able to effectively discharge their duties of justice without some states being more burdened by non-compliant ones, what motivates the entire distributional discussion is the normative ground of the duty of justice to refugees. In this sense, fairness between states is not weightier than justice to refugees. But all the way around: fairness between states must obtain as a duty of justice. That is, not only do states have a direct duty to protect those in need, but a duty to find arrangements among themselves in order to do so.

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Ideal and Non-Ideal Theory: Assumptions

Carens (1996) eloquently argues:

> "There are two approaches to morality. The realistic approach wants to avoid too large a gap between the ought and the is and focuses on what is possible given existing realities. This approach, however, inhibits us from challenging fundamentally unjust institutions and policies. The idealistic approach, in contrast, requires us to assess current reality in light of our highest moral ideals. Its weakness is that it may not help us answer the question of how to act in this non-ideal world. Discussions about ethics of migration require a full range of perspectives using both approaches" (Carens 1996 p. 156).

As Carens notices: "Formally it is possible to construct an ethical account that incorporates both realistic and idealistic concerns, and ultimately it is desirable to do so" (1996, p 156). My concern therefore is to assess how we should think of migration in light of both main approaches, ideal and non-ideal, which I detail below in short, given the lack of space. Given the intent of this thesis to provide policy recommendations, the inquiry is closer to the areas where the gap between "is" and "ought" is smaller. The following assumptions shall clarify the framework of this work.

First, it is therefore necessary to start from non-ideal assumptions in migration studies (Beitz 1979) if we are to detect existing global injustices (that *trigger* migration, see the next assumption). However, even if we were to inquire what would our most ideal moral standpoint aspire to, we should view migration as something that is not *external* to the basic structure of a well-ordered society. It is not, in other words, a *problem* that comes with the existence of nonideal circumstances, but it is a *feature* of the world structure, like the 'basic structure of the society' itself, even if the latter is viewed ideally.[4] What is therefore in question is whether migration in the current form (out of need), rather than migration in general, reflects a just ideal. Second, following Beitz (1979) and Pogge (2002 a,b, 1992, 1994), I further assume that a world

[4] Contrary to Rawls' view, in the 'idealized cases' I will analyze why migration, as a social phenomenon pertains to the basic structure in our ideal view.

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with great economic disparities between "peoples" has an impact on migratory movements, causing a "pull" of the poorer in the world to higher standards of living. With regards to the central debate on the question as to what extent affluent societies and persons have obligations to help others who are worse off, among other reasons, I assume that -- because the institutional order which involves a complex pattern of interaction and international interdependence that contributes to maintaining the *status quo* or even exacerbates the situation of the poorer -- there is a moral obligation of the better off towards the worse off. However, I will not discuss the scope and the content of principles of distributive justice, as it is not my focus, and I assume a global sufficiency threshold, which I take, most theorists would support[5] . Notice that both principles I will argue for and their scope will depend on the relevant facts, for example if one wants to establish the content of a special duty or responsibility, one may need to know what are the relevant associations within which that duty should be understood, complied with and enforced. Even in the face of disagreement about the facts, this does not preclude thought on assuming that injustices deserve addressing (chapter 5 treats this point in detail regarding refugees). Independently of how we establish that injustices be addressed, further argument is needed to assess whether movement is the solution. A strong case must be built for this argument to hold. The question is therefore *how*[6] we should meet such obligations, particularly when it comes to would-be migrants' admission at the state border. Whether global poverty should be addressed with (more permissible) immigration policies by powerful states is a

[5] Egalitarians and prioritarians can accept that a minimum is necessary, even if they reject that it is sufficient.

[6] Nancy Fraser (2009) addresses the issues of what and how of justice in drawing a connection between justice and democracy. Benhabib (2004) draws upon Nancy Fraser in concluding that politics need be framed in such a manner that there are insiders and outsiders with respect to a given bounded polity. Like Fraser, she refuses the line of reasoning proposed by closed border theories, which, by taking as a given "fixed" democratic polity, prematurely forecloses the search for other frames, which might be more just and inclusive of others. Envisioning an ongoing process of critique, reframing, critique that democratically addresses claims for further reframing inevitably demands transnational regulatory institutions to support the process of framing.

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question I address: whether it is a normatively desirable strategy, cannot be assumed from the fact that there is straight line between a given (accepted) obligation and how one should discharge it (whether via migration or other means).

Third, related to the previous assumption, the very fact of considering (see Pogge 2006) the trade-off between migration or development aid, or that development could be offered in lieu of admission visas (Cavellero, 2006; Kymlica, 2001, p. 271; Wellman and Cole, 2011) carries the methodological nationalist bias, in that they rely on the fact that migration is related to development, or the consequence of lack of development. This assumption is close to how the world 'is', I think. But does this reflect a correct normative assessment of what it should be? If Sager (2016) is right—in claiming that one cannot theorize about rights abstractly, without considering the importance of economics at the basis of principles of justice and their scope, and without presupposing background facts at all- then the question whether the trade-off between migration and development is even a plausible question, should be assessed by the correct reading of facts. Sager suggests that it is a naïve question, if one properly assesses the relevant facts from a wider perspective[7], but I will not address this point any further, aside from accepting the main point: "Normative criticism demands an adequate empirical analysis" (Sager, p 64). In short, in the field of migration, there are other relevant relationships that should be considered to the end of justice, outside of the traditional one between citizens and states, and the non-citizen (migrant) and state. Empirical analysis must establish which these relationships are. There is no straight path from empirical to normative theory, Sager claims, "but until we understand how agents and structures exercise power and shape people's mobility

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[7] 'Wider perspective' is understood in opposition to the mentioned 'narrow' one: consider the mistake Wellman makes in theorizing the right to not associate with others outside of state borders, without properly considering the morally relevant associations, which, as it happens, may not cluster uniquely within the border of a state. Then facts, of how morally relevant associations happen, have deep implications for political theory (Sager, p. 51).

and how this influences opportunities" (p. 64), we are not in a position to declare 'relevant' rights and the general regulation of migration.

Fourth, however, if migration as a social phenomenon is best understood under actual circumstances (namely we take for granted the assumptions listed), this neither excludes nor undermines Rawls' main concern of having an ideal framework ahead of our non-ideal circumstances[8]. Still, the *aim* at supplementing non-ideal theory is desirable, and this aim can be provided by some idealized solutions/assumptions. To illustrate the argument, when slavery or cast societies were morally acceptable as a social practice, it was conceivable, ideally, to abolish inequality among individuals, but seemed unfeasible politically; and morally, it was not viewed as reprehensible as it would be in our current times. Yet, the ideal of equality was *worth* existing in order to be pursued. Seemingly, ideal and non-ideal views on migration can be seen respectively as long term (ideal *optimums*), and short term aims (transitional aims from injustice, providing *sub-optimums*) for our society[9].

Both sets of theories are needed in the field of migration. If we evaluate whether state's restrictions on immigration are legitimate, this normative inquiry might provide prescriptions on two levels: (1) in ideal terms of well-ordered societies, and (2) in non-well-ordered societies, in which, for example, allowing border restrictions could triple the number of immigrants' deaths occurring during border crossing attempts. Ideal theory must assess whether *restriction* in general or a *particular kind of restriction* is morally reprehensible insofar as it fails to address significant harm (such as the death of individuals)[10]. Ideal theory is generally taken to consider the *feasibility* constraints that are at stake if we look at how restrictions, understood as morally

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8 For an opposite view, that justice does not need a guiding ideal, see Valentini's discussion of Amartya Sen (Valentini 2012, pp. 659-62) for a summary.

9 Valentini (2012) ideal and non-ideal can be understood in terms of: 1) full compliance versus partial compliance, 2) utopian versus realistic.

10 Thousands of migrants died by European shores in the last five years (UNHCR, retrieved 6 July 2018).

permissible practices, will function, before concluding the *force* of the right to exclude. When it comes to restrictions, like in the case of affirmative action, we might disagree with such programs in general, but in order to combat widespread existing racism, we might end up advocating it. As Rawls famously argues, ideal theory must be a *realistic* ideal.

This philosophical task needs to be methodologically conducted in two steps. First, ideal theory can identify the long-term goals, which are in line with Rawls' view, 'achievable' and 'realistic' aims. And second, nonideal theory is required to theorize about addressing already existing injustices, a standpoint without which we would probably face the risk of not evaluating migration as it takes place in today's world (with partial compliance and non-favourable conditions). As Rawls claims, the role of non-ideal theory is to reveal the principles that govern as to how we are to "deal with injustice" (Rawls 1999, p.8) which he calls secondary principles; whereas ideal theory elaborates those principles that inform us on how a perfectly just society should look, and these are primary principles. Accordingly, the principle I will argue for, FCM, is a primary principle establishing the "moral optimum" in migration, and fnm, a secondary one.

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CHAPTER 1 - MOVEMENT AS AN ESSENTIAL INTEREST

This chapter concerns human movement. The thesis I defend is that movement is an *essential interest* on a par with other interests which liberal philosophers generally agree on, such as forming a conception of good, or choosing social and sexual relationships as one sees fit. In this chapter, I defend the idea that states ideally have a strong reason to deal with movement inwards, outwards and within its boundaries, in view of the thesis that human movement is an essential interest. Movement, understood and defended in such a way, places strong justice-based demands on states not to interfere with essential interests absent justification (duty to protect), and to ensure the conditions for it (duty to promote). Restrictions on essential interests are *pro tanto* wrong, and thus require strong justification, but do not always violate human rights. However, essential interests are not absolute. They do not place absolute demands on duty bearers – the states. Like all interests, they can be justifiably restricted in specific circumstances, and in view of other compelling rights, values and considerations. Proponents of 'open' borders, on one side, and 'closed' borders, on the other, debate extensively whether a right of free movement across international borders can be justified by compelling reasons.[11] In this chapter I limit my inquiry to a more basic question, which should precede the aforementioned debate: is general movement an essential interest? I will argue that it is. To briefly explain what I mean by 'essential interests' by way of example, consider some things we think essential in human life, such as forming a conception of good, sex, affection and love. These features of human existence are so valued that, in accordance with mainstream liberal democratic tenets, we protect and promote[12] them in the form of institutionalized human rights

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[11] I call such reasons 'substantive'. By these I mean arguments and considerations such as self-determination and culture for closed borders, and distributive justice for open borders. See Miller 2007, and Carens 1987.

[12] Many rights are respected only if both a duty of noninterference (protection), as well as a duty of creating conditions for the right (promotion) are met. By analogy with the right to subsistence, not only

– right to free exercise of conscience, right to marry, a variety of sexual rights, family rights, etc.

In this chapter, my aim is to engage with what we think about movement in general, before we decide 'what to do with movement', e.g. whether to institutionalize it in the form of a human right.[13]

I proceed in the following way. First I explain that it is important to establish whether there is a presumption in favor of general movement. In 1.2., I establish that such a presumption holds strongly for all creatures, in light of movement being a vital interest. In 1.3, I proceed to show that movement is also an essential interest.

In 1.4, I establish that there is an even stronger presumption in favor of movement, as humans have a vital interest in it as well as an essential interest. I distinguish between vital and essential interest in the following way: many animals as well as some nomadic human groups like the Sami are on the move in order to fulfill basic biological functions. Essential interests are interests humans have *beyond* biological functions. They encompass the set of interests

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are we not allowed to take a homeless person's sandwich, that is, not interfere with her limited amount of food, but we also bear duties for creating conditions for subsistence (the provision of food and shelter). Subsistence does not obtain only if the single available sandwich is not snatched away from the homeless person (negative duty). My understanding of 'creating conditions' stands for two types of duties: 1.) positive, which is to directly provide the homeless with necessary goods; and 2.) derivative, which stands for the duty to create appropriate institutions and practices for eradicating homelessness or sheltering and offering basic subsistence to the very worst off. I do not specify what types of duties movement should be guarded by. I am assuming a combination of the three types here stated. For a full account for distinguishing such duties, see O'Neill, O (1989, 1975, 1986, 2000 a, 2000 b), who distinguishes between liberty rights, satisfied by non-interference of all, and welfare rights, satisfied by positive duties. Contrary to this view, I take the position that because basic rights are respected when a combination of the three aspects is at play (See John Tassiolas 2007 for full argument), movement also qualifies as a type of interest which demands more than mere non-interference.

[13] By 'what to do with movement', I refer to the extensive debate undertaken by a number of philosophers. For example, the debate between David Miller's "Is there a Human right to Immigrate?" with Kieran Oberman "Immigration as a Human Right" (2016) Miller and Oberman agrees that internal movement and exiting a country are both fundamental interests and rightly recognized as human rights. They disagree on whether entering a country should also be made a human right. Unlike this debate, I do not ask whether specific instances of movement are to be made human rights. I instead ask whether movement in general is an essential interest, and later on, whether movement in general should be recognized as a human right.

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protected under fundamental freedoms, such as free conscience, free speech, and free association. In other words, humans could survive without essential interests, yet, if these were not recognized and protected, they would be at a great moral loss. I then show that if there is a strong presumption in favor of movement, there cannot be one for movement restrictions. Although restrictions on movement can be justified by compelling reasons, the burden of proof rests with providers of such reasons, not with their opponents. In 1.5, I show how the presumption in favor of movement enters the current debate, and casts doubt on the opposing presumption, in favor of movement restrictions. In 1.6, I provide a roadmap and present further implications of movement as an essential interest. In 1.7, I summarize the full argument for general movement as an essential interest.

1.1 A Presumption in Favor of General Movement. A Foundation of Movement as an Essential Interest and a *Prima Facie* Justification

Is there a presumption in favor of *general* human movement grounding a *general* right to movement?[14] There are two possible replies to this question: a) there is no presumption in favor of general movement, and b) there is.

Regardless of whether theorists of open and closed border endorse a) or b), they do not address why perhaps because, as the general argument goes, a presumption in favor of x is a very weak argument in the face of strong as well as trivial arguments, both of which can easily override a presumption. For example, the presumption of *free* movement in my city is *de facto* overridden

[14] I here use the term 'general' twice in two different ways. First 'general movement' refers to movement as such, from the point of view of specific humans (see clarification in assumptions ii. moral relevance, and iii. subjectivity, below). Second, with a 'general right', I refer to a right that encompasses, in terms of its *content*, movement in general. Consider the following: I may not have a right to enter a specific private building, whereas I have a right to enter most public buildings, but I have a right to exit any building I find myself in. My movement into or out of places is subjected to qualifications of all sorts, yet my movement in general is understood as the right upon which I normally act. While qualifications may justifiably restrain my right of movement, only serious matters strip me from my general right of movement (example of prison, where one may not go anywhere in general as a matter of right).

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by numerous restraining signs, signaling the presence of overriding considerations against such a presumption. Some restrictions are weaker, e.g. restraining the time, place, and the manner in which I move: "Keep off grass", "Stop at a red traffic light", "Keep off grounds from 9am to 5pm", "Public park closed at night", etc. Some are stronger, e.g. restraining the content of an interest: "Keep off private property". Yet, both are valid constraints on movement.[15]

Accordingly, a presumption is thought to tell us very little about why it is essential that it should take form in certain ways, or not be restricted in certain ways. A presumption in favor of *general movement* does not have sufficient philosophical strength in any direction the conversation moves – for or against general movement, or specific patterns of movement.

I nevertheless begin my discussion by asking whether there is a presumption in favor of movement.[16] There are three reasons why I find this approach fruitful.

First, a presumption in favor of x establishes strong grounds that there is a level of *generality*, that is, x is assumed 'to work' in a specific way. For example, sex is an essential interest, although not all may engage in sexual relationships. The level of generality that a presumption advances, permits a range of assumptions, for example, one should consent to sex, that one does not need a state permission to choose her partner, although state regulations may interfere with impermissible choices, such as underage partners.

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[15] I am indebted to Andres Moles for many points and objections. I will not add a thank you note for each comment (with his permission, and on his request). His name will appear in the published material.

[16] I anchor this strategy in core liberal tenets, due to which, despite differences in what counts as 'basic' liberties grounded in essential interests, there is a general agreement that the burden of proof is on those who restrict liberty rather than its promoters. Locke claims that people are in "a state of perfect freedom to order their actions […] as they see fit […] without asking leave, or depending upon the will of any other man" (1960, p 284). John Stuart Mill claims that the burden of proof rests with those […] who contend for any restriction and prohibition […]. The *a priori* assumption is in favor of freedom" (Mill, 1963, p 262). I have not discussed whether movement qualifies as such a liberty or freedom. My strategy is to prove instead that movement is essential, and, as such, grounds moral rights, which place duties on others (people and states). Although it may seem from the above that these are mere rights to non-interference, core liberal tenets also prioritize 'positive liberties', such as to effectively pursue a conception of good, reproduce, etc. Thus, the recognition of x as essential, demands that x is not interfered with, and that conditions for x are advanced.

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A general case[17] made in favor of movement, establishes a strong presumption. Movement, appears to most theorist as *weak* presumption, as I described it. The level of generality makes the presumption strong in the sense that it ensures for a more extensive protection and promotion of the given interest, although restrictions apply. If movement is generally important, as I think it is, we cannot derive that it is not from the mere fact that movement is de facto heavily restricted, e.g. traffic lights. Traffic lights, from this perspective, are things that ensure orderly movement, and not ones restricting it. Moreover, the fact that specific types of movement, for example walking in the middle of the highway are not only restricted, but punished with fines, only tell us that specific types of movement are impermissible, and not that movement in general is not essential.

By analogy, if there is a general presumption in favor of free speech within a group, there are at least two normative powers at play: one, the normative significance of free speech in that given context (e.g. political liberties), for example, each person's opinion counts equally, the senator's view about a bill is *weightier* than that of a common voter who only elects representatives; and two, the *generality* of it – *everyone* is free to speak, everyone can voice *any* opinions, including those contrary to common perception, but not those that are offensive. There is a sense in which it is believed that conditions for freedom of speech at the level of generality should be in place, beyond the setting of that one group.[18] That is a presumption in favor of free speech. When it is backed by further argument, for example that free speech is

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[17] See note 3, discussion on generality.

[18] 'Generality' is one of the core conditions for x to be recognized as essential, as well as in settling what we are willing to deem *so* essential as to be merited the status of a human right (Miller 2016). One example, offered by Miller, is that human rights recognize an interest in food in general, but not in expensive raw fish, specifically. Miller distinguishes between 'general' and 'specific' interests, the latter of which he calls 'preferences'. Only general interests ground human rights.

essential to democracy, this makes it a qualified presumption, which I call a *strong* presumption in favor of free speech.

Second, and related to the first point, I assume that presumptions, especially those backed by additional arguments, prove strong 'default' positions. Presumptions force those who want to theorize from starting points other than the assumed default positions to bear the burden of proof.[19] One typical example comes from the legal understanding of presumptions. Consider the presumption of innocence, indicating that one is assumed innocent until proven guilty. As the Latin saying goes:

Ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit. Ditto: The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof[20].

In philosophy, on the other hand, we assume that we can and should produce 'proof' – arguments for and against those general facts that seem otherwise evident and obvious. We 'prove' even those general facts we assume to hold at first glance.

The normative force of a presumption of innocence shows that any case needs *strong* proof, including arguments as well as evidence, which need to show that x is confirmed beyond reasonable doubt. Since there is such a strong presumption based on the general existence and functions of state borders,[21] that states have rights and powers to restrict movement among

[19] This will become clearer in the course of the chapter. Principles need to meet some 'generality' criterion to establish strong moral footing. Consider when we want to determine with an illustration whether an aspect of an argument is true, what we do is to ask whether "all rational persons would subscribe to x as true, upon moral scrutiny". When we prove that this is the case, we then place the burden of proofs on those who want to prove an exception, or prove the statement altogether false with further argumentation.

[20] My translation, with the help of multiple google translation devices.

[21] A typical understanding presumes the restriction imposed by legitimate state borders, which virtually blocks a human right to free movement. Notice that in the beginning of David Miller's paper, before arguing why he thinks border restrictions are legitimate, Miller accepts by assumption the 'realist' premise that states have a right to restrict movement.) He begins: "Is there a human right to immigrate? The importance of this question may need no underlining, but just to spell it out briefly: all states in

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closed and open border theorists alike,[22] I want to contribute to the discussion by "proving" the opposite presumption – that in favor of movement.[23]

today's world proclaim their right to control their borders, deciding who should be admitted and who should not. Moreover, in many cases this right is coercively enforced, through the familiar apparatus of border control, and the harsh measures that await would-be immigrants if they fail to satisfy the legal requirements for entry. If there was indeed a human right to immigrate, all of this would be unacceptable. States would have to *open* their borders to all-comers unless they could show that there were specific individuals whose admission posed a threat to the human rights of others." (my emphasis) He assumes that unless obligated (for example to respect a human right of refuge state borders are not open to all comers of the world. Whether states assume the right to restrict movement is not questionable. I question instead why Miller thinks such a premise is philosophically true, before forwarding arguments that justify it. We do not start from the presumption that states have a right to reject legitimate asylum claims, just because they *de facto* do so, or that states have a right to colonize and subjugate other states, just because they *de facto* colonized in the past. The problem with this premise is that it is assumed to be general, or the default position. And if it is true, it places the burden of proof on those who want to prove exceptions to this general case in favor of restriction. I do not provide an argument against this presumption, but merely cast a doubt: it is not obvious to me that the UK border control should be able to deny me from entry without justification. In fact, the current discussion surrounding Brexit is whether the UK should reverse the established (intra-EU) regime of freedom of movement, by offering stronger reasons for restricting movement. But such reasons should be provided by all other states, who I assume have no right to limit my movement without providing a justification. The realist premise suggests that states may check my passport at the border, and ask me questions about reasons for visiting or entering their country, but it may be argued that the burden of justification for restricting my movement lies with them. One consideration I shall press against the presumption for restriction is that there is a presumption in favor of movement, and that presumption is strong if grounded in essential interests. The point I counter is the following 2015 draft: https://www.politics.ox.ac.uk/materials/publications/13732/sj033is-there-a-human-right-to-immigrate-final-draft.pdf

[22] See Carens 1987, and Miller 2007.

[23] Liberal theorists generally overlook what I call foundational, by taking shortcuts in two general directions. David Miller (2015) – link above- argues that there is no general right to free movement and thus, by restricting borders, states do not violate any rights. His analysis is about whether immigration amounts to a human right. It eschews the question of whether immigration lies on an account in virtue of which movement is generally essential, and unjustifiably declares that movement is important to specific people, but not in general. Others, such as Joseph Carens argues that movement is a basic liberty (Carens 1987), or a human right, taking up the same strategy as Miller, but reaching opposite conclusions. They take the shortcut to proclaiming movement as a basic liberty, specific to people, but without backing this up by a general account of why movement is generally important. Contrary to this debate, I look at the foundational level: is movement an essential interest, and if it is, is it a good ground for generating moral rights which incorporate a right to movement? The disagreement between closed and open borders theorists is generated *inter alia* by their missing out on this foundational part of the discourse.

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Third, and related to the first and second point, is that this is a methodological choice: I approach how I think about movement in a "ground up"[24] (Carens 2013) or "direct grounding"[25] fashion, that is, from our foundational thinking about movement in general, and how its importance is accommodated within the larger liberal democratic tradition. This method is contrasted to that of contemporary theorists. I, would like to use this method in order to contribute to the foundations of the debate, which I found insufficiently addressed. I consider first the question of whether there is a *strong* presumption in favor of movement. To show this, I first need to prove that there is a general presumption, backed up by further argument, that movement is essential, which leads to a strong general presumption in favor of movement.

1.2 Movement as an Essential Interest: Its Main Features

Before I present my argument, I first describe the main features of *movement as an essential interest*. If movement is to be essential *similarly* to other essential interests, it must have the same features as other things we consider essential, such as an interest in forming a conception

[24] In "Ethics of Immigration", Carens approaches the topic of immigration from a normative point of view, but starts from existing practices and values most reasonable people would subscribe to, given their prior commitments to a set of values, such as democracy. The ground up approach is useful, because it forces us to think about theories and principles strictly rooted in 'reality' as a starting point, without having to subscribe to either an ideal or non-ideal approach. In Carens' book, both theoretical dimensions are presented consistently and every reasonable person can in principle understand the overall theory and be persuaded by its most abstract (ideal) prescriptions, which no other approach is able to do so successfully. This is the methodology of this thesis, particularly because it aims to speak not only to theorists, but to policy-makers and other stakeholders working on migration. Second, Carens correctly claims that in deciding what we think of specific aspects of migration, our views rely on a number of established beliefs and values that we assume by default. One of the most accepted and long-living philosophical methodologies, exemplified here and rooted in ancient philosophy, is to look at the consistency between held values and how they play out in relation to specific questions (for this discussion, see the introduction of Carens 2013).

[25] Although Miller (2016) supports a basic needs-based human rights account, he accepts that the 'grounding strategy' is the typical strategy of showing that x is so important that it grounds a moral right. See, Tasioulas (2003) for a convincing interest based account. In a nutshell: "[…] even though a right is a priori to the duty it grounds, it is still not *fundamental* in the order of justification. That place belongs, instead, to the interest […] so it is one's interest in being free from extreme poverty that is the basis of the human right to be free from severe poverty and it is in virtue of its existence that duties are imposed on others" (p. 25)

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of good, or in having meaningful sexual and social relationships. When we think about these, we think that they must show the following necessary conditions:

1.2.1 Generality Criterion

First, I assume that movement needs to meet the *generality* criterion (Miller 2016). Even if people understand movement in their own way, one that is important *to them* (see point below), movement *in general* is meaningful to people. By analogy, although people may have specific preferences for fish or vegetarian meals, everyone has interest in food in general.

1.2.2 Moral Relevance Criterion

Second, movement has a *moral* dimension, and if proven essential in the way basic liberties are, it has the potential to ground movement as a moral right or legal right. Consider the distinction Caleb Yong draws between movement as bodily locomotion and immigration (moving to a new place, taking residency and accessing the working market). For the purposes of my inquiry, this distinction (Yong 2017) is helpful to show, that humans have interests that are morally meaningful to the extent to which they are meaningful *to them*, interests which include both concepts from Yong's distinction. By analogy, it makes moral sense to discuss whether one has a right to fish or to apples given the interest in nourishment,[26] but it does not make moral sense to distinguish between those who eat in their flat and those who eat in other people's flats, if the inquiry is whether movement is essential. In both examples, assuming Yong's distinction, we introduce an assumption of legitimate restriction on types of movement and/or types of food consumption (for example, by means of policies that make raw fish very expensive, or restrict movement). Immigrating presumes crossing a state border, much like

[26] A basic needs based account (Miller 2016) holds that one's interest in food should be generally protected as a matter of right, but not in specific types of food. I cannot claim, for instance, that my right is fulfilled only if I eat expensive raw fish. As a right, I can only claim food.

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eating in other people's flats presumes trespassing on private property. If we were to allow the assumption of Yong's distinction, we would be replying to a different question: whether movement is essential in the face of an assumption that movement is legitimately restricted. Call it a presumption to restriction A. Of course, it matters morally whether one's interest can extend to other types of interests, but only for determining the strength of an interest, and not for defining the interest in the first place. By analogy, we think that there is a strong interest in freedom of speech, and we persist in attributing strength to it even if it is limited by other interests, such as privacy. Hence, even if my right to speech is restricted by privacy, I do not deem my interest in free speech any less essential, but I accept instead some justified limitations.

I do not dispute presumption A in this section. I merely justify why I do not engage with it in discussing whether movement is morally essential to humans. Similarly, we do not discuss whether free speech is an essential interest in view of the fact that there are well justified restrictions on speech. Further, allowing the 'bias of restriction' in the debate and splitting movement into bodily locomotion and immigration carries a few implications. First, 'bodily locomotion'[27] may indicate a default bias against movement as an essential interest, and second, 'immigration', built on many closed border assumptions and arguments, may be conceptually shaping the interest in movement within limited spatial spheres, i.e. states. Even if presumption

[27] Yong's distinction is based on his reading of Miller (2007). Miller's view is in two ways with regards to my inquiry. On the one hand he is quick to declare movement insignificantly essential' given the many restrictions we place on it, and which we do not consider wrong, e.g. traffic lights, restrictions not to trespass private property, etc. On the other, movement is restricted at the state border, and given his extensive work engaging with all the reasons why such restrictions are legitimate, how important can the idea of extensive movement be? Both these strategies are problematic. First, we place very similar restrictions on all basic liberties. Consider free speech. We are not ready to render speech insignificant merely because we place many morally in/significant restrictions to it: 'don't talk in class, "don't talk in the cinema", "don't talk over me when I am talking". Second, the fact that we have good reasons to restrict movement (an argument which I do not engage with here) does not trigger considerations regarding the *nature* of movement as such. It means instead, that movement, like all fundamental liberties, is justifiably constrained by other values, considerations and other fundamental rights.

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A were true, it does not speak about whether movement is essential, but only about whether movement may be justifiably restricted. It forces us to start from a dubious conceptual distinction that reduces our ability to judge the purely moral dimension of movement. I avoid this 'default position', which inserts what I call a restriction bias against our thinking about movement and its *full* moral capacity.[28] Therefore, I do not discuss movement as mere bodily locomotion, such as moving my hand to scratch my leg, in opposition to immigration, such as walking from point A to point B for a good reason. I am instead interested in showing how movement is *morally* meaningful to human kind, as an essential interest.

1.2.3 Subjectivity Criterion

Third, I assume that the *subjectivity* criterion must hold. Suppose that I am an Olympic swimmer. It is of utmost moral importance to me that I move in specific ways that matter to *me* and *my own* lifestyle: I regularly train for competition, which amounts to bodily locomotion of a specific kind, intensity, etc. and not one that is *generic*, like walking. I travel internationally to all the competitions, which I need to attend in person, and which are necessary to qualify for the Olympics, I return back home to see my lover, or take him along if we so wish. If I were Hemingway, I would probably live within a few blocks, drinking mojito in El Floridita write my novel, and then return back home to edit and sleep. The movement of the latter is much more limited than that of the international swimmer: this is what is morally meaningful *to them*. Movement, if an essential interest, ensures that people enter and reside in the country of their

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[28] A similar strategy is taken by Oberman, who also accepts that many things matter to people, but some are trivial and others important. Only the latter count as essential. I will show why both Yong's and Oberman's positions have problematic implications.

choice, as an extension of the subjectivity criterion: as long as they like (for *trivial* or *significant*[29] interests to be achieved).

1.2.4 Duty Criterion

Fourth, a *duty* criterion: interests are essential if they generate a duty for others and the state to respect (protect and promote) the given interest. It is essential to me that I can express my political views freely, that I choose my ideology, and my partner. Unwarranted censorship, forcible indoctrination, threats from others because of my views, and impositions of partnership, clearly restrict my essential interests, or in some cases, deny my essential interests altogether. The duties others have with regards to my interest are negative (non-interference), positive and derivative, whereby the latter two ground conditions for rights.

1.2.5 Non-Absolute Criterion

Fifth, I assume essential interests place *no absolute* moral demands on duty bearers. Essential interests compete with other moral values and interests, even if they take the shape as human rights. It is useful to follow James Griffin's view of human rights: "human rights are resistant to trade-offs, but not too resistant" (2008, p. 77).[30]

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[29] The distinction between trivial and significant interests is made by Oberman (2016). His view conflates two dimensions of rights: content-rights and subject-rights. Content-rights are about what one is entitled to as a matter of right. For example, one may be entitled to food, but not to expensive raw fish. Subject-rights are about whether the interest in question is satisfied for the subjects themselves. For example, one who needs a medical treatment for diabetes cannot be satisfied by receiving an HIV treatment instead. In his view, content-rights protect and promote only significant interests, but not trivial ones. Oberman successfully argues for subject-rights as a feature of a human right to immigrate (subjectivity), but he does not accommodate the interest in movement as a content-right, that is, what a right that protects and promotes movement may entail. This is because he does not argue for movement in general being essential. He argues instead that movement for specific people is important *to them*. In terms of the content of the right, morally meaningful movement includes trivial and important types of movement. One may not have a right to fly to the Moon by analogy with raw fish, but may have a right to walk around the park. I will detail this argument in the section 'subject-right versus content-right'.

[30] The point I want to make is that essential interests may, upon further argument (Oberman 2016), be proven the normative grounding force of human rights. Yet even if movement was recognized as a

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1.3 Earthly Movement in General. General Presumption in Favor of Movement

My thesis is that human movement is an essential interest. I need to show two things. First, that there is a presumption in favor of movement, and that the interest in movement is strong, that is, coupled with a compelling normative argument in favor of movement. My argument, that movement is an essential interest, relies heavily on a presumption in favor of movement, for which I will make the case first. I begin by showing that movement is a vital interest for all earthly creatures.

1.3.1 Earthly General Movement

When it comes to non-human animals, we rarely cast doubt on a general presumption in favor of their movement. This is quite intuitive. We favor such a presumption based on the fact that many non-human animals have a vital interest in moving. Migratory tendencies are found among most animal species, including fish, birds, reptiles, mammals, insects, and so on.

Ecologists distinguish between 'movement' and 'migration', whereby only full season journeys and yearly departures qualify as movement of the 'migratory' sort. Triggering movement in general and migratory movement specifically are factors such as local climate, food supply, and mating.

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human right, it would not be absolute, that is, it would not trump all other moral considerations and rights.

In other words, we assume that movement in general is constitutive of *a way of life*, which all species undertake *to fulfill vital needs*, to the point that not only do we take for granted that it is essential to animals to move in order to mate, find green fields, and escape predators, but we do not inquire whether we should restrict their movement as a general matter.

There may of course be reasons to restrict their movement, but those reasons stem neither from the existence of state borders, which are presumed to justify a right to restrict movement of birds, nor from a mere acceptance that movement may not be vital for non-human animals in the first place. Were some or all states to erect high barbed-wired walls around their state borders to prevent birds from migrating, for no justified reason other than having the right and power to decide what moves over their territory, we would find this scenario impermissible.[31]

In making this argument, ambientalists suggest that states should not act on a general presumption in favor of restricting non-human movement, without providing a good justification to actively harm the vital interests of animals.

However, when it comes to human movement, the fact that many disciplines investigate whether states have a right to restrict movement in general and specifically immigration, and the extent to which states should restrict movement at their borders, shows that many believe that 1) there may be good reasons why general or migratory human movement, unlike animal

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[31] To appreciate the normative importance of a lack of restrictions, consider the view of an advocate of open borders, Carens in *Ethics of Immigration*. When it comes to human migration, he thinks "States have borders and borders have guns". He reifies borders, in that the existence of borders entails a presumption of limiting human movement. Even if all arguments for states restricting movement, such as sovereignty, self-determination, etc. hold for humans, they are not proposed to hold for non-human movement. In other words, when it comes to non-human migration, all such border-based reasons may be justified with regards to what they ensure for citizens, e.g. upholding institutions, but might not restrict non-human movement. It is not a question whether states should restrict non-human movement, as it is for human movement.

movement, is *not* an essential interest,[32] and 2) that states act on a general presumption in favor of restricting movement.[33]

Before addressing each of these presumptions, a clarification is needed. We know that both general presumptions, one in favor of movement and one in favor of restricting it cannot be true, at this level of generality. By analogy, if it is true that there is a general presumption in favor of free speech, then it cannot be the case that there is a general presumption against free speech. There may instead exist good reasons to limit speech, compatibly with a general presumption for free speech. For example, students may not chat or post their personal or political views on Facebook during a lecture, one may not talk during a screening at the cinema, and arguably, one may be impeded from divulgating hate speech or speech that trespasses on others' rights, such as the right to privacy. Contrary to this, in a scenario with a presumption in favor of restricting free speech, imagine one group of people are held at gun point by another group.[34] The former here refrain from freely expressing their personal and political views, unless exceptionally required or permitted by their captors.

Our task is to decide which presumption is true.

1.3.2 Earthly Human Movement. Assumption A: No General Presumption in Favor of Movement

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[32] One account explicitly denying that human movement is an essential interest is put forth by David Miller. He thinks that movement may be a 'way of life' for some people, e.g. nomadic groups, but not as vital for most people, who live fulfilling lives in a sedentary lifestyle. He further argues that, if people are offered enough acceptable options in one place, they would not find moving essential (Miller 2007). His argument is therefore that there is a general presumption in favor of restricting movement

[33] Even 'Open Borders' theorists, such as Kieran Oberman, do not deny that there is a general presumption in favor of states restricting movement. He accepts it and argues that it is philosophically weak, and that it only provides weak *pro tanto* restriction rights to states. In arguing that there is a human right to immigration, he claims that this right is *stronger* than competing values and social goods states may legitimately advance (Oberman, 2016).

[34] The example is from the series 'La Casa del Papel'

When it comes to non-human animals, I believe the intuition that it is vital for migratory birds and other migratory animals to move in the patterns they need (seasonally, yearly, etc.), is validated by the way we frame our philosophical questions and arguments around animal movement, and specifically, given the questions we do not ask. In stark contrast, the same questions we do not ask about animal movement, motivate instead interminable philosophical discussions around human movement.

We take for granted the validity of a shared understanding about the animal realm: there is a presumption in favor of animal movement (migratory or general) *because* movement is vital in the animal realm.

As a result, we do not ask whether we should ascribe 'national belonging' to birds by restricting their movement to one specific jurisdiction or piece of land, and whether birds should be given special permission to cross from one jurisdiction to another. We would need a strong justification to restrict the migratory movement of birds. One such justification might be that birds are destroying the fauna of a territory, giving us reason to erect fences of separation (not necessarily correspondent to national borders). We also do not inquire whether we should implant microchips into birds (like a passport – containing information about that specific bird), to check whether they qualify to cross state borders into new jurisdictions (perhaps researchers may implant such microchips for research purposes, but not to hinder avian movement). We pay little heed to where birds stay, why and for how long (for a season or permanently).

Asking such questions would be comical and bizarre. Any attempts to stop birds from flying over national borders, say, based on the color of their feathers, or some other similar feature, would be hardly justifiable.

In practice, if a forest extended over two states, we would not endeavor to solve on which side of the fence the animals should live, nor whether we should divide species so that some live here and some there, absent a justification. We would also not interfere with the long

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migratory routes some birds undertake in cold seasons every year, merely because it may be in *our* interest to restrict *their* movement in such a way. We would not ask whether a newly born bird in one jurisdiction has some family member on the other side of the border, so that in crossing into that state, this specific fact would justify its specific[35] interest, as a special reason to permissibly cross (as contemporary humans are treated by states).

Aside from the comicality, one reason we do not generally ask these questions is the assumption that birds and other non-human living species *have a vital interest in movement*, just as much as they have a vital interest in reproduction, in living within animal communities, in seeking out a warmer climate and places where satisfying amounts of food can be found. In short, we accept and assume that 1) it is vital for animals to move and migrate in whichever patterns they find necessary, and 2) there is no general presumption in favor of restricting their movement.[36]

However, we ask (and respond to) all of these questions when it comes to human movement, as hinted already, the difference stems from the following: 1) no presumption in favor of movement which would correspond the one for non-human movement, and 2) a presumption in favor of restricting human movement across borders, or 3) even if (1) and (2) are false, there are sufficient compelling reasons to restrict human movement.

Before I address each of these presumptions, we should keep in mind a distinction between two importantly related and often conflated matters about state borders. First, one

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[35] I use the term 'specific"' in opposition to 'general' interest, following David Miller. He distinguishes between general matters of interest from specific ones. In terms of reasons for migration, he sees joining a family member in another state as a specific (or special) interest, and moving somewhere out of one's choosing, absent a specific reason, as a general interest. He thinks that people's specific reasons, if well justified, ground a right to migrate, but general interests do not. I will argue instead that both types of reasons, rooted in *specific* and *general* interests, are essential to humans.

[36] Some argue that having no presumption in favor of restricting movement could be understood as a) a state of non-interference, and b) the active creation of conditions in which movement can happen. I will discuss this point in depth in chapters 2 and 3. I assume here that it entails both.

inquiry assesses whether the functions of state borders to promote and protect social goods, such as distributive schemes, justify the existence of state borders. The second one assesses whether state borders, presumed legitimate for many good reasons, should restrict human movement.

I do not engage with the first question, but I largely take its affirmation to be true: state borders are necessary for maintaining social justice, democracy and other social goods. It is only the second inquiry that is called into question. There is no conceptual link between the two questions – showing one of them to be true bears no weight on the other.

To the question whether there is a general presumption in favor of human movement restriction, in view of the fact that such restrictions are necessary to protect and promote social goods, I reply: there is no such general presumption. That restricted movement is a necessary condition for protecting and promoting social goods, mistakenly presumes in principle incompatibility with a free movement regime. Consider the case of contemporary Europe. Despite socio-economic differences between EU member states, there are no exoduses of people from one country to another, and no EU member state has collapsed, nor have its social goods been undermined, because of human movement. European countries have not been shown to have less control over their main areas of governance and social goods, despite the virtually absolute regime of free movement in place.[37]

This view is compatible with the following: to protect internal goods, state borders might be set to restrict human movement, if (1) movement comes with severe costs, and (2) there is

[37] One may point at Brexit, and suggest that less control over state borders might have triggered UK citizens to vote for exiting the European Union, and its freedom of movement regime. I do not go into such a complex case here, but literature shows that neither empirically, nor normatively, can a case for substantial costs be made that is due to immigration. And even if there were such an empirically grounded argument,it remains the state's responsibility to manage immigration in a way that does not disadvantage the indigenous poor. See Fine and Sangiovanni 2014. My argument will contribute to this line of reasoning.

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no alternative to remedy the costs (Oberman 2016). Notice that even if (1) and (2) do not work in favor of freedom of movement, if for example they do not adequately protect social goods, they would be replaced by other normative arguments justifying restriction, which count as *specific substantive reasons* to restrict movement. These arguments would then bear the burden of proof for grounding a general presumption in favor of restricting movement. How is it that all these questions about human movement do not sound bizarre when we raise them? We ask such questions, *inter alia*, because we do not think that movement is an essential interest for humans, or is at least much less so than for animals. I will dispute this assumption (AEA).

1.4. The Anti-Essentialist Assumption. The debate: Movement as a Human Right or Movement Restriction?

If humans have a weighty interest in movement, a case for such an interest needs to be made. One way to go is to say that it is equally or even more important for humans to move than for non-humans. Since movement is not assumed to be an essential interest like it is for non-human animals, the debate turns to looking for 'special' and weighty reasons for why movement should be considered important for human life[38] and which would require states to minimize their interference with movement, or create conditions for it. I am not yet seeking out substantive reasons grounding free movement, as here I am only addressing the aforementioned issue whether there is a strong presumption[39] in favor or movement, or one for movement restriction.

Some argue that movement is an essential interest, such that it grounds a right to *full* mobility– right to *internal* movement, right to *exit* countries, and right to *enter* countries (Oberman 2016). The combination of the latter two rights, call it the right *to immigrate*, is the one disputed between the 'closed' and 'open' borders camps. The ongoing debate is about

[38] Open borders theories take this strategy, which I explore in chapter 2
[39] Arguing for a strong presumption entails methodologically that I begin to provide substantive reasons.

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whether immigration should be added to the moral (and legal) list of human rights. I call all these rights 'movement rights'.

Alternatively, it is argued that the grounds for free movement are not strong enough; therefore, movement is to be regulated in line with state policy goals, restricted, among other reasons, to fit sedentary communities' general interests (Miller 2016). Closed borders theories advance a variety of arguments along these lines, which I explore in chapter 3.

The entire debate goes astray, I think, as it operates on the anti-essentialist assumption (AEA). I consider this assumption mistaken at best, and unqualified at worst. The following paragraph best encapsulates the gist of the debate, and emphasizes that human movement is not viewed as an essential interest:

> "In order to argue against immigration restrictions, therefore (open borders) liberal philosophers must do more than show that there is some value to people in being able to migrate, or, as their behavior shows, that they have a strong *desire* to migrate. It needs to be demonstrated that this freedom (to migrate) has the kind of *weight* and *significance* that could turn it into a basic human right and that therefore should prohibit states from pursuing immigration policies that limit freedom of movement" (Miller, 2007, p. 204, I added the parenthesis and Italic for emphasis).

Why is movement subject to *whichever* policy restrictions *unless* arguments of 'weight' and 'significance' are produced that would validate movement as a human right?

I argue that (1) movement does have weight and significance that should be respected and protected by states. I however dispute that (2) movement shall be proven to have significance such that it grounds a human right, and that (3) absent such a justification grounding a human right, immigration as one type of movement is left to *whichever* restrictions policy goals may establish. I conclude that: *because* movement has weight and significance, as an essential interest, a weighty and significant general presumption is established in favor of movement.

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To prove that movement is an essential interest, I will have to defeat the AEA, which takes on three possible forms: 1) the assumption that there is no general presumption in favor of human movement, as is the case with non-human movement; 2) there is a general presumption in favor of restricting human movement across borders; and 3) even if (1) and (2) are false, there are sufficiently compelling reasons to restrict general human movement. Let me take on each of these points in turn.

1.4.1 There is No General Presumption in Favor of Movement

One prominent version supporting the argument (1) stated above (Oberman 2016) argues the following: Human beings have a strong interest in immigration, understood as moving anywhere and for whatever period of time (which entails taking residency, work, etc.). We have essential interests in developing our *personal* and *political* goals, such as exploring new ideas, marrying the person we love, joining a new religion or campaign for a global cause. For essential interests of the sort to obtain, people need access to *a full range of options*. Oberman thereby objects to David Miller that a merely 'good enough' set of options (2016) does not provide conditions for autonomy, and for these rights to materialize. The same 'reasons of autonomy' for moving *within* borders apply to moving *beyond* borders, since interests that human beings extend beyond borders. If Mario, the person I want to marry, lives in another country, my reasons for marrying him are the same regardless of the country he resides in, and my interest in movement is obviously justified. Our Skype relationship is no substitute for real human contact, a shared life, etc. A state limiting my partnership, religion, and personal and political options reduces my capacity for autonomy, by setting limits to the options I can access. A good enough set of options for spouses, of religions, etc. does not satisfy the interests at stake. Restrictions are therefore not permissible without strong justification: If I cannot practice the religion *I* choose, and enter in a relationship with Mario specifically, with whom I have a love

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affair, a 'good enough' set of religions and partners do not disprove the fact that it is an absolute loss to me not to be able to access the options that matter to me. Oberman thus concludes that the interest in immigrating is so strong and weighty that it grounds a human right to immigrate. This is an instrumental grounding strategy: movement is essential to other essential interests.

Oberman's account argues for immigration as a weighty interest. He does not argue in favor of movement in general as essential. The generality criterion, which is a necessary condition for showing that movement is an essential interest, does not obtain in his account, and points to its limitation. I prove this point in the following sections, where I build on parts of Oberman's view.

Oberman's account gives us good reasons to think that *immigration* (not general movement) is a human right. It lays down the grounds for movement that is morally meaningful to people (the moral relevance criterion). It argues that movement is meaningful to individuals in the form they see fit in their specific cases, which I call person-specific claims (or the subjectivity criterion); immigration places duties on others – and specifically states – not to interfere and provide conditions for movement. Lastly, the human right to immigrate is not absolute, that is, it does not override all other claims.

The generality criterion, which entails that movement in general is an essential interest, has significant implications. I will show that generality is a condition for interests to be essential, and to be considered as grounds for moral rights and that movement fulfills this condition. I lay grounds for *movement as a human right*, in opposition to the strategy of showing the strength of specific types of movement to ground distinct human rights: the human right to internal movement, the human right to exit a country, etc. Unlike Oberman's, my aim is not to extend this list with the right to immigration.

I anticipate two additions to Oberman's formulation, which strengthen both our accounts. First, if it is true that the essential interest in movement is so strong as to justify a

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human right to *general (full)* movement, there are important implications. It can plausibly be argued, along the same line as Oberman (2016), that it establishes movement that is *more just*, by adding to the range of well recognized human rights – to *internal* movement, to *exit*, to *enter* (immigrate), and to *stay* (2015). The point I advance is that all these rights are *stronger* if grounded in movement (in general) as an essential interest; as such, movement rights are stipulations protecting and promoting the same essential 'primary' interest at heart – movement.

Second, if my argument is successful, is it possible that the essential interest in movement is not strong enough to firmly ground a presumption in favor of general movement? I think not. The logical inference is that if an essential interest is strong enough to ground normatively *full* (movement in general) as well as *specific* movement rights, as with already recognized human rights (internal moment, exit), then these particular human rights cannot be morally stronger than their own grounding force – the essential interest that substantiates them.

There is one 'instrumental' response that I accept, which says that a specific moral human right, such as the right to exit, if legally accepted, more reliably outweighs other competing considerations and values restricting the interest in question. Accepting the instrumental importance of institutionalizing one or more specific human rights confirms the grounding strength a given right displays[40]. It does so in view of its grounding normative basis, the essential interest the right in question protects and promotes.

Therefore, my thesis will not argue either in favor or against the recognized specific human rights to movement (enter, exit), and it will not argue specifically in favor of a right to enter as an addition to the list. It instead provides the normative grounding to strengthen all of these rights under the umbrella of a *general human right to movement*.

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[40] Consider love as an interest for which there is no correspondent institutionalized right to love. However many sexual rights and rights to family confirm the grounding strength of the interest.

If it is true that the reason we think movement in many different patterns is so important that it should be recognized as a range of distinguished movement rights, it must be true that the validity of the essential interest does not depend on the existence of a right for its grounding strength, and its validity is persistent independently of such a right. It is the other way around – the human right flows from the essential interest it stands to defend.

This is the case both if the interest in question is instrumentally protected and advanced by one or more human rights or other types of rights, such as those guaranteed by 'customary' norms: No liberal state should tell one to have sex at 8 pm instead of 9 pm, even if the person in question does not find it problematic to obey. The point is, even if there were no specific rights protecting a freedom to have sex whenever a person so desires, we may accept this customarily. This understanding is entrenched in the essential interest we have in sexual freedom. If we understand sexual freedom as an essential interest[41], it generates a variety of sexual rights (such as to have control over one's body, not to be assaulted, etc.), under the form of moral (and legal) human rights, rights in general, policies and norms.

The work done by essential interests is guaranteeing that, unless special justification is given, say, that one may be (justifiably) restricted to have sex in some cases, people are free to do what they want. For example, during military service or certain religious practices (e.g. no sex during Ramadan), a person may not be interfered with her own choice to take part in these activities, and may as a *general matter* not be expected to justify her choice or preference. First, essential interests are resistant even in the face of justified restrictions, such as when one accepts not having sex in virtue of religious practices: one may not be sanctioned by a liberal state for having sex during Ramadan, even if in so doing the person is not respecting a religious

[41] The idea that people are free to do what they want unless there is a justification against it may be well captured by a harm principle or a liberty principle.

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commitment she has freely accepted. Second, liberal states prioritize general interests over specific interests by default. Thus, a state needs much stronger justification to restrict food in general, say via a 'communist rationing policy', than to restrict specific kinds of food, such as Norwegian salmon.

This case is one that Oberman does not argue for, as he misses out on the generality criterion. He argues that movement internal to states, exiting and entering specifically are valuable interests, without setting a definitive argument for movement in general being an essential interest. I showed, however, that these interests must be grounded in a presumption in favor of movement in general, and that therein lays the normative force of the movement rights we recognize.

I also distinguish between a weak and strong presumption for movement, as I showed that Oberman's account presses for the first. The weak presumption is not backed by the generality criterion. It is my aim to argue for a strong presumption in the next section.

1.5 There is a General Presumption in Favor of Movement Restriction (especially across borders)

In order to defeat this argument stated in the section title, I employ two strategies:

First, I conclusively prove that movement is an essential interest, which is dependent upon a full account of what qualifies x as an essential interest. A full account is the conclusion I shall reach: the interest in movement not only grounds a general presumption in favor of it, but it strongly qualifies it as 'essential'. Such an interest is pinned against very strong reasons, values and rights, interest which states may legitimately have good reasons to protect and promote.

However, having accepted Oberman's view to grounds a weak general presumption in favor of movement, I effectively ruled out that a general presumption to restrict movement

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exists. But as stated earlier, a weak presumption is not enough. A strong presumption in favor of movement, backed by further argumentation, will do the work.

Second, I demonstrate as a separate point that there is no presumption for movement restrictions. If this is true, states need strong justification for movement restrictions, in the same way they would need justification for interfering with choices in sexual life. This is not merely because sexual life is protected by rights, which act as safeguards against restrictions, but because liberal states have no legitimate right, grounded in a general presumption, to overstep specific areas of human activity.[42]

One argument favors a presumption in restricting movement, by stating that (a) there is no essential interest in movement, except for an insignificant few who move as their 'way of life'; essential interests are thus qualified to exclude most modern forms of contemporary movement as a 'way of life' (Miller 2007, 2016), and (b) we adopt very strong reasons and values, e.g. social cohesiveness and culture, the preservation of which is antithetical to movement, and which are generally assumed to be shared universally across communities.

Considering (b) first, these substantive reasons and values, even if proven not to have much strength in grounding restriction, set these grounds at least in some exceptional circumstances, such as if the social costs of migration are high. Notice, first, that restrictions for (exceptionally) good reasons are fully compatible with the presumption in favor of movement. Consider the case of Europe, where members of each state may find both values of culture and movement essential. If freedom of movement is shown to amass considerable costs, which may in itself be a significant reason to limit movement, it does not entail that the presumption in favor free movement is debunked. Instead, the cost is discussed as a special

[42] Liberals standardly accept that some specific liberties, e.g. to conscience, to associate should not be interfered with. This presumes at least negative duties of non-interference.

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reason, grounding special restrictions, according to which movement may be integrated into sedentary life, in such a way as to preserve a range of values and considerations that are at stake. This rationale is not new, as it is the same most liberal philosophers assume when it comes to specific and fundamental rights. Most liberals think that rights need to be weighed against one another, as well as against values and other considerations of justice.

Having ruled out the substantive reasons for movement restriction as grounding a strong presumption for movement restriction, I address the first argument (a) that an essential interest should be proven to be a 'way of life', in the form it is for nomadic groups. For example, consider the Sami groups who travel on a season-based pattern, depending on climate conditions (Miller 2016).

The Sami, according to Miller, have a strong reason to cross borders during their yearly migratory route, and states should not interfere with their movement. Their claim, however, cannot be recognized as a universal interest humans have, but more closely to how we conceive of culturally specific ways of life. Their way of life is *such* that movement is an *integral* part of it, which is not true for other humans. Members of non-nomadic groups may have a strong personal interest or desire to move elsewhere, but this is specific to their case, and not a universally recognized way of life.

The argument tries to show that for any x to be a good candidate to the list of moral and legal rights, the grounding essential interests for movement must be *generic*, rather than *specific to persons* (Miller 2016). I distinguish here between two lines of argument: one I call the *generality objection*, and the other, the *subjectivity objection*; I address them in order.

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1.5.1 Generality Objection

Miller thinks that movement must meet the generality criterion in order to be an essential interest. That is, *generic* movement must be shown important to human societies in the same way food and health are. I think this is true: I should not claim that my desire for raw fish is an essential interest, but certainly my interest in food in general will be. Movement fails to meet generality, he argues, given the fact that only some humans move in a pattern Miller admits is a 'way of life' that necessitates movement as an integral part of it. Others move, he thinks, because of their personal preference, which like my preference for raw fish, should not be elevated to the status of right.

This distinction is not compatible with general liberal tenets.[43] However, I bear the burden of proof for showing that if we understand movement as essential, we shall grant that movement is essential for *whichever* pattern of movement humans see fit, in accordance with their *own* ways of life.

With regard to nomadic people[44] I agree with Miller that their claim against states is strong. It is false, however, that *because* all other interests of humans in moving is not as *basic*, movement is inessential. Contemporary humans have sophisticated reasons to move elsewhere, such as reuniting with a loved one, reasons of worship, or advancing all sorts of personal and political aims. Should we view these interests as mere preferences?

I think not. First, by drawing the distinction between nomadic and non-nomadic people, Miller sets a bar for essential interests that is too high. Second, the distinction itself is problematic and spurious. Third, it does not stand to basic empirical scrutiny. Fourth, it is not

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[43] Liberals agree that what is conclusively considered essential, and recognized as a 'basic' liberty, should not be generally restricted. The burden of justification lies with the state justifying restriction. See Freiman and Hidalgo (2016) full argument.

[44] I recall call back to the distinction I set earlier between '"vital"' and '"essential"' interests.

a good normative approach for settling what is essential. I elaborate each of these objections in order.

First, the standard judgment for distinguishing between interests and preferences, as set by Miller, writes off many interests already recognized as human rights, on grounds that these interests are mere preferences. Some human rights indeed protect very basic vital interests, such as the right to subsistence, but many other interests relate to achieving important freedoms – of conscience, religious choice, education, association, privacy and so forth. Should we say that because the latter set is not as basic as survival, these interests are preferences? We should think, instead, that *because* human life is made of more sophisticated interests than those pertaining to 'life in nature', we have reasons to think that movement is essential because it pertains to interests we indeed share[45].

By placing such a high bar on what is essential about movement, bearing on the distinction between *vital* and *essential* interests, most essential interests in movement already protected under the 1948 Universal Declaration of Human Rights will be void. If we take Miller's distinction further, the recognized right to internal movement may not be so basic, unless people's basic interests 'as their way of life' are at stake. Most clearly we do not think that we should have a human right to internal movement because people should be moving internally *en masse* (similarly to Sami) as a way of life. If internal movement as a way of life does not take place to a significant extent, would we renounce this right on grounds that most inhabitants' 'way of life' is sedentary?

This would clearly be problematic. We think internal movement should be protected to a great extent, independently of whether people choose to be sedentary and never move – we

[45] My interpretation of Miller's distinction between nomad and non-nomad groups relies on his definition of the former as a culturally distinct group, to which I refer as a 'way of life' or 'life in nature' to refer to the fact that their culture is satisfied on the basis of environmental factors, such as the weather.

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choose where we work, when we visit our family, where we spend our free time. Conceivably, with no state interference, we could end up living our lives only in one neighborhood, or in many places. But it matters to us greatly that our movement is permitted and protected, not because of our basic lifestyle, but because of the interests we may wish to advance. Accordingly, limited movement of civilians over a territory (counterfactually) by checkpoints where soldiers monitor and restrict movement every few kilometers based on an arbitrary system of points (as in desert), or by communist policies exercising control over people's movement with the intent of restricting liberties is an absolute loss in terms of the essential interest in movement, even if the civilians in question do not prefer to move extensively, and would not suffer tremendous consequences in terms of other interests. For instance, we could imagine a civilian whose job, family and church are all in the same neighborhood and whose preferences are all satisfied within that area. The fact that people also prefer to move, to meet their family and friends, and to pursue their goals unimpeded, provides additional reasons why the loss is bigger, as the value of integrity is at stake (Bou-Habib, 2006, forthcoming).

Consider now the recognized human right to exit a state. Should we say that unless people's vital interests necessitate exiting countries, such a right is not grounded in essential interests? The same reasons applying to internal movement apply here too. People's many essential interests are at stake in exiting a country, although most interests are not as basic as 'a nomadic way of life'. These are grounds for elevating the nomadic life style to the status of special interest in movement, but not for proving the standard bar for defining essential interests. It is clearly too high a bar. It is precisely because modern humans have essential interests that are *beyond* survival or vital interests, those about human flourishing, that we establish more, rather than fewer protections of such interests.

Second, the very distinction between nomadic vital interests and non-nomadic essential interests is spurious. To mention a few examples, consider doctors of Medicine Sans Frontiers

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operating in remote areas of the globe; peace corps operations in areas of (armed) conflict; humanitarians and diplomats sent to various regions of the world; digital nomads, whose professional life is not linked to a specific place, and who choose to live like 'nomads' around the world with their computer in their backpack[46]; international academics for whom meeting their peers and doing field research is essential to intellectual pursuit. We can confidently say that all or some of these lifestyles[47] see movement as constitutive of to their life. It is counterintuitive that these more 'sophisticated' reasons for movement are not seen as essential in Miller's account[48] My criticism is not merely that an adequate set of options is incompatible with the more extensive need for movement (Oberman 2016), but that the distinction between nomadic and non-nomadic patterns of movement does not hold insofar as qualifying the latter as inessential.

Third, if the distinction does not hold, say between digital nomads and Sami nomads to the effect of recognizing only the latter as a 'way of life', an empirical reality kicks in and further proves my argument: generic movement is essential the same way food and health are. Currently, our societies rely on *generic movement*, as hardly any state can produce all the goods it consumes, or is completely self-sufficient in terms of technology, knowledge, independent science and industries, and so forth. Our societies depend on thousands of trains, ships and airplanes transporting our mail and goods we comfortably purchase in our local stores: clothing,

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[46] See "Digital Nomads" in Wikipedia or google
[47] Doctors without border and diplomats' job is presumably done 'at a distance'.
[48] Miller explains restrictions by endorsing the theory of basic human rights, according to which liberties are met if they reach an 'adequate set of options' after which freedom is *bare*, and people are not entitled to it by right. Miller 2005, pp 195-196. 'Immigration: The Case for Limits,' in A. Cohen and C. Wellman, eds., Contemporary Debates in Applied Ethics, Malden, MA: Blackwell, pp. 193-206. This view justifies freedom restrictions to a degree that no liberal would endorse. The argument is that no state that calls itself liberal, would establish liberties at the limit of 'sufficiency' or 'adequacy', say, for one to own only 20 books instead of 30, for one to practice a religion for 20 hours instead of 24/7, without extraordinary justifications. See Freiman and Hidalgo (2016), pp. 15-16.

gas, medicine, food. The production of most goods takes place in many parts of the globe, from the stage of acquiring raw materials, producing various pieces, to assembling them into final products and selling them on the world's markets. All of this would collapse without daily generic human movement. All the things we enjoy in our sedentary communities are moved around by humans in movement. Humans, however, do not limit their movement to the generic type, but move for personal reasons, such as leisure, worship, conscience, meaningful relationships, etc. One person in seven, globally, takes at least one international trip a year. The number of humans in movement is much higher if we consider internal movement as well. The numbers of those who move for a more significant amount of time (let us call them migrants) and for many reasons – some out of choice, some out of need – is so high that if we were to compare that number to populations of existing nation-states, this 'nation in movement' would be the fifth largest in the world. This proves that movement in general is essential to human flourishing, as well as to meeting both basic and more extensive liberties and other types of essential interests. Of course, it is not by the number of people practicing something that we deem that thing essential: we would not think voting is inessential just because many do not use their voting rights in democratic elections.
Thus even if movement were practiced by fewer people, it is not an argument against movement, just as it is not one against voting, as essential.

Fourth, I agree with Miller that some essential interests are more vital than others. Consider the universal right to subsistence. It is more fundamental as it is set to protect bare survival. Miller's distinction may plausibly establish a priority principle between essential interests, as certain interests are more urgent to address and thus more basic. A person whose life is threatened by murder places a more urgent claim than one whose liberty of conscience is at stake, although this should not make us think the latter is not 'essential enough'. I grant this type of criterion for the movement of the Sami, if a state in question must place one person out

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of two on a waiting list for transit. I would let the Sami pass before the generic tourist, the same way I would also allow women who are pregnant or carry infants to skip the long waiting line for boarding a plane.

To conclude, Miller's distinction between movement as lifestyle and movement as preference does not hold or conclusively rule out movement as an essential interest. The distinction must substantiate why my extensive movement as an international academic who needs to work with other scholars, join meetings, and spend time as a researcher in many places, is less essential to me and the lifestyle I chose than the nomadic lifestyle is to the Sami. The distinction appears more clearly problematic if it is drawn between Sami nomads and digital nomads, given that both lifestyles are nomadic, although for different reasons, the former being led primarily by natural factors (such as the weather), and the latter, by social (such as a good internet connection). I proved that no case was made against movement as an essential interest on grounds that it does not meet the generality criterion. On the contrary, the generality criterion is met because movement – internal, to exit, and enter states – is essential to people, based on the assumed empirical fact that generic movement enables our kinds of societies to exist. The variety of movement patterns humans experience stem from the idea that movement in general is essential, practiced in specific ways that are important to specific people and sensitive to their preferences and interests.

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1.5.2 Subjectivity Objection

I continue building my view contra Miller's view (2016, 2007). Some people have subjectively strong interests to move elsewhere, such as to meet a Tibetan monk and become a Buddhist or pursue a love affair with a partner. Amelie, for instance, wants to practice a religion that does not have adherents in the place where she lives. Some things, such as partners or religions cannot be replaced the same way we would replace raw fish with random species of fish. Miller

accepts that some interests are indeed by their nature very strong, but he objects to them being considered *general*, insofar as they are: "subjectively strong interests of particular persons" and "not essential interests as human beings as such", and concludes: " We all share a basic interest in having the opportunity to form a long-term loving relationship with another human being, but only I, perhaps, have an interest in forming such a relationship with Amelie specifically" (Miller 2016, p 12). Miller concludes that I am entitled to only general interests as a matter of right. And loving Amelie specifically is my personal business, not my general interest. He concludes, therefore, that movement motivated by specific interests such as loving Amelie does not qualify as a generic interest, and does not further ground a human right to immigrate elsewhere.

Oberman provides the correct reply. *Generic* interests must reflect *subjective* interests, if they are to be meaningful at all to humans (Oberman 2016). A number of examples prove this point: it is meaningless that I have an essential generic interest in love or meaningful relationships, if I cannot love Amelie specifically, or cannot spend time with my *own* family instead of *any random* family; if an essential interest is recognized in religious beliefs or practice, but I cannot practice the religion that matters *to me* specifically, or if I have an interest in health, but instead of insulin, which I supposedly need, I am offered an HIV treatment instead, such essential interests do not gain traction in real personal cases.

In other words, interests must be generic, essential to *all* humans. But generic interests are meaningless it they do not guarantee the attachments people already have, e.g. to the person one loves now, has sex with now, the religion one wishes to practice, or future attachments people may choose to have, such as a change of one's religion, philosophical standing, or

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divorce and remarrying. Such subjectively strong interests cannot be restricted without persons suffering a loss in terms of their generic interests.[49]

Notice that specific interests for movement ground widely recognized rights both within states and between states. Consider the right to live with one's family, which aims precisely at protecting the general interest in movement, in view of the qualification that human beings have an interest in joining their spouses, their parents and extended families.

One may claim that existing rights are very limited in that they allow joining one's spouse, but not a friend or a loved one with whom one does not have a formal relationship (e.g. marriage). This shows that many states fail to recognize, morally and legally, a variety of meaningful relationships beyond the most traditional. My thesis, that movement is an essential interest, suggests that these meaningful relationships are grounds for modifying existing rights so that a greater variety of meaningful relationships are protected – of same sex couples, couples who choose not to legally marry, polyamorous lovers, and friends. If states do not broaden their legal definitions of meaningful relationships, they would arguably be failing in recognizing the essential interests at stake.[50] Parenting, cohabitation, financial dependence, migration, care,

[49] Oberman's argument (2016) is correct, but he has not shown that movement in general is important to specific subjects. He showed that because it is subjectively important, it is also generally important. This strategy is problematic for two reasons. First, we normally set the ground for something of general interest and only then think of what that interest entails in terms of its content for specific people. I distinguish between replaceable interests, (tuna fish can replace expensive sushi without violating a general right to food), and non-replaceable interests (partners and religions are not replaceable without a regrettable loss). And second, deriving generality from specificity, and not the other way around, permits many content-specific interests to enter the list of essential interests, and possibly human rights. An interminable list of rights would vilify its very existence. I will explain this further in the discussion.

[50] For a full argument see Claire Chambers, 'Against Marriage. An Egalitarian Defense of the Marriage-Free State, Oxford', 2017. The author argues in short that "[s]tate-recognised marriage means treating married couples differently from unmarried couples in stable, permanent, monogamous sexual relationships. It means treating people in sexual relationships differently from those in non-sexual or caring relationships. It means treating those in couples differently from those who are single or polyamorous. It expresses the official view that sexual partnership is both the ultimate goal and the assumed norm. It expresses the assumption that central relationship practices – parenting, cohabitation, financial dependence, migration, care, next-of-kinship, inheritance, sex – are bundled together into one dominant relationship. And so it denies people rights that they need in relation to one practice unless

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next-of-kinship, inheritance, sex – all take place under a variety of social arrangements that matter to different people, in accordance with their subject-specific circumstances and preferences.

In sum, the two objections raised – generality and subjectivity – do not pose problems as long as they are proving that movement is not an essential interest. Against the first one, that the interest in movement is not essential because it does not meet the generality criterion, I argued that movement in general is an essential interest, precisely because it is important to people in general to move in any pattern they see fit. Against the second, that movement is not an essential interest because it is person-specific, I concluded that generic interests must be subject-specific, as it is clearly an absolute loss if persons cannot practice the religion they choose, unite with people they love, etc. Therefore, there is no presumption for restricting movement on these two grounds. By meeting both the generality and the subjectivity criterion, I show that movement, on a par with other essential interests, such as love, sex, and conscience, is an essential interest to be protected and promoted.

1.6 Content-Specific Interest versus Subject-Specific Interest: What to Do with Movement?

Having shown that movement in general is an essential interest, the question is what the status of an essential interest entails for movement? I suggested that it establishes a strong presumption in favor of movement. States have been provided with an argument for why movement is essential to people and this entails that state policies regulating movement should be sensitive to accommodating it in the same way they accommodate sedentariness.

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they also engage in all the others and sanctify that arrangement via the state". See https://aeon.co/essays/why-marriage-is-both-anachronistic-and-discriminatory.

Sedentariness and movement, in my account, need not rule each other out, conceptually or normatively, unless provided reasons[51].

My argument provides weighty reasons for accommodating, protecting and promoting movement, similarly to how other essential interests are cultivated. Having mentioned that movement is not absolute, i.e. it does not trump all other values and considerations, in this section I turn to qualifying what movement as an essential interest includes as a content-specific and subject-specific interest.

I continue drawing from the discussion between Oberman and Miller.

Miller insists that immigration is better understood as a personal preference than a vital interest. I argued against this view. Miller also commits a conceptual mistake, which I address now. His theory conflates two dimensions – subject-specific interests and content-specific interests. He claims:

> "Rather than there being some essential interest that could not be satisfied in the original country of residence, the reason for moving is that the new country offers an opportunity not available before (which might take the form of satisfying an essential interest in a *preferred way* – for example moving to a *better job*)" (Miller 2016, p 11, my emphasis).

Miller conflates in the above, my interest as in *my own* (a person-specific interest) and the *object of my interests* (the content-specific interest), which is reflected in his terminology "a preferred way", referring specifically to "a better job".

It is worth pausing here to explain how Oberman and Miller talk past each on this specific point. Oberman claims that *subject-specific interest*s must obtain for generic interests to obtain. Miller argues against person specific interests because, in his view, they are not generic interests like food and health, but bizarrely raises *content-specific* objections. Miller claims:

[51] See chapter 2.

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> "We all share a basic interest in having the opportunity to form a long-term loving relationship with another human being, but only I, perhaps, have an interest in forming such a relationship with Amelie *specifically*. Clearly the conditions that are required to realise the *aggregate set of such specific interests* are much more demanding than those needed to realise the shared general interest. Can a human right to be such as to fulfill those demanding conditions? Consider by the way of analogy the human right to food, and consider the position of someone in whom that basic interest takes the form of a passion for *top quality raw fish*. Are we to say that the human right to food must be understood in such a way as to include *the conditions that will make it possible for this person to obtain high class sushi*? Suppose highly restrictive legislation to preserve fish stocks is introduced, pushing the price of raw fish beyond the person's means. Has his human right to food been violated?" (Miller 2016, p 12, my emphasis)

Miller himself is aware that we would not substitute partners and religions the way we substitute foodstuffs. Our reply to his question, as soon as we substitute the content of the interest, will be "Yes". My human right to pursue my religion *is* violated if the state restricts the available religious practices so that my own religion is excluded. It would clearly be an impermissible restriction if I was interfered in loving Amelie specifically, on grounds that 'good enough' lovers are still available.

Miller is mistaken in two ways. First, he conflates two concepts, the subject-specific interest and the content-specific interest, and as a result he does not argue against person-specific interests in the first place. Oberman fails to spot his two mistakes and does not fully address the content-specific objection, i.e. the generality criterion, which I elucidated in the previous section. I propose to clarify their points of agreement and departure, and show how these serve my theory.

Following Oberman, I reply to Miller: if restrictions were to diminish my access to top quality fish, it is not a human right violation. Here the thought is that food is available in general, and this satisfies my essential interest in food, whereby food is a generic interest.

Oberman replies that it is a person's *essential* interest to fulfill generic interests as she sees fit – for example, by frequently seeing her own family friends, and/or her future spouse. Human rights protecting such interests, Oberman correctly argues against Anna Stilz (2016), must

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protect both present and future attachments, in order for us to be able to pursue new relationships, change our mind about our ideology, and divorce from an unhappy marriage in order to pursue a happy one. Oberman's position, which is compatible with mine, is that human rights, although generic, must reflect the choices of persons with regards to present and future pursuits.

However, because he does not spot Miller's conflation between person-specific and content-specific interests, Oberman fails to address whether content-specific interests 1) are essential interests, and 2) are to be added to the human rights list. One of Oberman's examples showcases my point. "When a diabetic complains against being prescribed AIDS medication and when an AIDS person complains against being prescribed insulin, they cannot be dismissed for being fussy." Oberman is right – subjectivity matters normatively for the end of achieving generic interests. That granted, suppose that the diabetic patient is provided insulin, but he has a claim for a specific brand of insulin, type B, instead of the one he is receiving, type A. Can the diabetic really say that his human rights are violated because he receives type A insulin instead of type B? Were we to think that way about human rights, everyone's human rights would be violated, as soon as the food, medication, and other content-specific items in our everyday lives do not match our preferences.

Were we to accept that interests must be content-specific in the form in which the patient requires them, Oberman's account would be implausibly conceptualized. If he suggested that content-specific interests also need to obtain for movement, that is, that he should receive caviar instead or generic food, and a Ferrari instead of access to public transportation in order to pursue a flourishing life, the right to movement so conceived would be too demanding. Oberman's account for a right to immigrate is vulnerable to these objections. I seek to remedy these shortcomings.

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Miller rightly claims that an essential interest cannot be too demanding when it is under consideration to rise to the status of human right. Overly demanding interests do not obtain as human rights. For example, notice how demanding the accommodation of movement would be if it stipulated content-specific human rights, such as a human right to fly on airplanes, a human right to be a tourist, a human right to go on vacation abroad, etc. The list of human rights would be interminable.

Oberman does not posit such demanding conditions for the essential interest in movement to obtain, but he overlooks the risk to his account coming from what we may call the content demandingness problem. His account does not reply to the two challenges raised by Miller: first, it is vulnerable to the generality objection; second, it does not place a threshold on the content-specific demandingness problem.

Oberman tries to eschew the two challenges by distinguishing between *important* interests, such as those of the same stature as recognized basic liberties, and *trivial* ones, such as the interest in raw fish instead of generic food. Only the former category qualifies as essential and grounds the human right to immigrate.

This strategy encounters two problems. Before stating them, notice that even if this distinction set the bar only to *important* content-specific interest for grounding human rights, there would be no guarantee that the content-specific important interests would not still amplify the list of human rights too extensively. Let us assume that it would not.

First, in relation to the generality problem, Oberman offered the correct roadmap for thinking about essential interests. Consider: my generic interest in health obtains if I receive the treatment *I* need, say insulin. But when it comes to movement, Oberman failed to follow his own roadmap – he did not defend the right to immigrate from the idea that *movement in general* is an essential interest, and obtains if *I* can immigrate to a specific place. He derived instead the importance of the right to immigrate mainly from *other* essential interests that obtain

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with immigration, e.g. meeting Amelie, pursuing my religion, etc. And by means of a much weaker 'cantilever strategy' (Miller 2016), i.e. that if the right to internal movement, and the one to exit are so widely recognized as human rights, it is simply logical to add the right to enter to it as well (Miller 2016).

I think Oberman's strategy resists Miller's criticism in proving nevertheless that movement is so essential to individuals. But by not arguing first for a generic interest in movement, the subject-specific interests could be very demanding as it may matter to specific people very much that they immigrate to a new planet, instead of immigrating to Canada. And they may want to go on an expensive spacecraft. A right to immigrate that would be so demanding would be implausible.

The second problem relates to the distinction Oberman draws between *trivial* and *important* interests (2016), whereby only the second are essential interests considered as additions to the human rights list. The distinction is unhelpful to his account of movement, as it still suffers from the conflation between person-specific and content-specific interests. Human beings have both *trivial* and *significant* interests from the point of view of content, and both need to obtain in order for generic interests to obtain.

For example, walking on the right side of the street instead of the left is presumably a trivial interest, whereas speaking freely in an assembly, is significant. Can we say that Gandhi was being fussy when he complained against being maltreated for simply walking on the sidewalk he randomly chose? It is true that he could have walked on the other side, yet, although trivial, Gandhi cannot be dismissed for being fussy as it is clearly essential to him to simply walk where he wants. He famously preferred to be removed by force and maltreatment, rather than to accept that others can decide which side of the road he can walk on. Can we say that Gandhi's trivial interest was less significant to him than for me to talk freely in an assembly? Ruling in my favor would be jumping the gun.

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Accordingly, both of these interests deserve protection as neither Gandhi nor I could be dismissed as fussy if restricted in our walk or speech. One way to protect these interests is to recognize them as essential, under some *general* umbrella of interests, protected by some human right(s). How might we do that?

My proposal is that Gandhi's essential interest to walk on whichever side of the road he wants, as trivial as it might be, goes under the essential interest in free movement, just as my interest to freely speak in an assembly goes under the umbrella of the essential interest in free speech. How might we protect and promote such generic interests? By instituting two human rights to protect and promote the generic interests at stake, under the human rights of free movement, and respectively, free speech.

What would be a roadmap for identifying when such human rights would be violated?

Consider the freedom of religion. Most are willing to accept its status as an essential interest. When is such a freedom violated? Do we think that if a potential adherent living in Glasgow finds it impossible to attend a small sect meeting held in London because of his low-wage job, constitutes a human right violation? I believe it can be argued that it is unjust when people do not have the conditions to pursue their creeds. Freedom of religion generates derivative duties on the side of the state to create such conditions. Miller (2016), however, is right to argue against Oberman that a human right is not violated if that specific person cannot join a meeting of his interest. But here Miller conflates four questions: whether something is so important to be essential, and thus protected as a human right, whether that right can be violated, in which conditions a violation occurs, and how it is remedied.

I offer another example: some people form essential 'attachments' to their ideology or their career. One comes to think of herself as a philosopher, and does everything in her power to achieve the necessary professional skills, e.g. a PhD, publications, a network of peers who read her work, etc.; yet despite her investment, she may not pursue it, say because only a limited

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number of people hires (say half) are hired. Now, she surely finds regrettable that she cannot pursue the career she dreamed about; rightly, it is indeed a big loss for her. Yet, she cannot claim that her human right to occupational choice is violated. She may have a claim of justice in relation to how academia distributes resources, makes careers precarious for increasingly many, etc. Her claim cannot be dismissed as fussy, as it is genuine. Yet, she cannot say that her human right to work or occupational choice is violated, on the basis that a content-specific interest in this sense her career, has not obtained. By this token, most people's human rights are violated, as soon as they cannot follow the exact path they invested in and have some genuine claims to pursue

All these examples lead to the question of whether essential interests taking the form of *content-specific interests*, e.g. pursuing a specific career, or holding onto a specific loved one, help us plausibly conceive of how to frame human rights. Human rights are problematic when contextualized as content-specific interests, and mistakenly so, but fare well if understood as person-specific interests. Surprisingly, Miller raises this criticism to Oberman by mistake, when he mentions these scenarios as a problem of person-specific interests, and on these grounds he argues that "interests requiring migration are specific to particular persons rather than generic". As I argued earlier, it is not an issue that movement interests are specific to people. The issue is not being able to set a correct threshold for limiting content-specific interests. My account is immune to this problem, as I have argued in favor of movement *in general* as an essential interest, sensitive to subjects, but not content- specific interests. Human rights best serve human interests when there are a strong few and when they are generic from the point of view of content.

Finally, how should liberal states protect and promote the general interest in movement which grounds a human right to movement? Many liberal philosophers think that liberal policies in general are enacted in such a way as to enable human flourishing, and to actively

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promote essential interests in a plurality of forms and patterns. Not only will the state not interfere and question why I love Adrian instead of Mario, or why I am a feminist instead of a Marxist, or why I have sex with my partner at 10 pm rather than 11 pm, but it will help the realization of such interests. It will, for example, provide places for sociability, such as public parks, cafes and clubs, it will provide lights at night in such areas, clean and livable spaces, and playgrounds for children, security in public spaces, and a legal system to protect such essential interests from parties who jeopardize them. The human right to movement is no different: it demands very standard treatment.

1.7 Movement as an Essential Interest. A Fuller Account in Sum

An essential interest must have a level of generality – it cannot take the form of preferences. I discussed that Oberman's account for a human right to immigrate is vulnerable to the generality objection. The content of the interest that should be protected and promoted by a human right to immigrate is too open-ended. I cannot say that because x is such an important interest to me alone, I should be accommodated or else my human right is violated. This leaves Oberman's account too vulnerable, as interests are easily written off as expensive preferences. If interests were protected by a specific human right, as Oberman wishes in arguing for a human right to immigrate, they would be violated too easily. One's interests in raw fish instead of generic food, having a Ferrari instead of cheap transportation, or immigrating to the moon, would be very difficult to fulfill, and therefore easily violated. A human right protecting such open-ended interests would be implausibly demanding.

I claimed against Miller that the argument for generality, because it applies to the content of interests and to rights that given interests generate, is not per se an argument against subjectivity. That is, it takes no issue with essential interests, as they take on different important forms to specific human beings.

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Miller's understanding conflates these two separate features of interests: content-specificity and subject-specificity. If the generality criterion alone (without subjectivity) were at play, restrictions on most human interests, such as in loving specific people, endorsing specific doctrines, having sex and reproducing with the person one chooses, would not be considered a violation of essential interests, if they were impermissibly interfered with. This is implausible. Generality, as a feature of movement, is useful for setting a threshold on the content of the interest for movement. But it does not rule out the subject specificity criterion.

While we cannot leave the content of interests to be as open-ended as in Oberman's account, we cannot endorse an overly 'minimalist' understanding of interests either, which is Miller's strategy. Miller has not provided any argument for why my interest, as a philosopher who wants to work specifically with Nils Holtug in a Scandinavian country, for which movement is essential *in the specific way I need* it, is not as essential as the interests for Sami people to move across Scandinavian borders. If a state border denies me entry on such an argument, I am not fussy if I protest that it means to me very much that I pursue *my way of life, just* as it is for the Sami to pursue theirs. The fact that it is in *my* subjective interest to structure my life the way I do does not mean my subjective interest does not reflect a generic interest in movement. I have shown that it does.

Having set up what it takes for any interest to be essential, I also argued that movement in general is an essential interest. Movement in general and in specific patterns that matter to people is invaluable in contemporary life. Reasons provided for either that movement is not so important after all, or is so minimal that it is valuable to a very small number of people did not pass scrutiny.

My thesis is that movement is essentially important when it is morally meaningful, that is, when within an assumed liberal framework it fits in with larger notions of autonomy and

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freedom.[52] What we think essential will ground extensive claims, beyond bare minimums. It is essential for example, that one is minimally interfered with by the state in some spheres (e.g. conscience), that conditions are provided for people to advance such interests (e.g. literacy and a fair amount of information about living circumstances), and that an institutional structure minimizes interferences and harms (e.g. the crippling epistemology of 'fake news'). I purposefully left indeterminate what an essential interest requires precisely in terms of generic content and in terms of what we are owed by others and specifically states. It is not straightforward how rights are properly recognized, as this depends on historical circumstances (Tousilous 2003, 2007).

Furthermore, when we consider rights violated, and how to address such violations are distinct from my main question: whether movement is an essential interest. I argued that it is essential, grounding a human right to movement.

In terms of content I argued that the generality criterion is a good benchmark to avoid overly extensive subjective interests creating lists of far too demanding movement rights. Ascertaining the content of an interest, however, is distinct from the discussion on whether x is an essential interest in the first place. I showed that movement seems essential to contemporary societies, both in general and for specific reasons.

However, what generality per se means specifically is best understood in light of a dynamic (Raz 1986) and historical (Tousilous 2003, 2007) rights account. Accordingly, what an essential interest may require in terms of its content, and what kinds of duties arise from it, is related to the given social and political order, which changes over time. For example, satisfying the widely accepted right to subsistence in a medieval agrarian society may have resulted in a duty to allot a sufficient amount of terrain for cultivation, for each extended family

[52] Joseph Raz 1986

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to survive off of it. In contemporary societies that same essential interest may result in positive duties to provide adequate wages to industrial workers (assumed arguendo to be the society's poorest), as well as derivative duties to institute structures of social welfare helping to mitigate conditions of illness, exploitation, or urban destitution, such as homelessness.

Movement is no different. In contemporary societies, people move in patterns that are significantly different from previous waves of migration.[53] It was unthinkable perhaps in the Middle Ages that it is essential for a common person to move to another continent to marry a loved one, or pursue a specific creed with a Tibetan monk, or travel around the world as many youngsters do after their studies, just to get acquainted with things, places and peoples they know little about. It is not regrettable that the interest in moving (similarly to other areas of human interest) is so much more sophisticated today than it was for more primitive communities, and we have no good reason for discarding contemporary movement as a mere preference on such grounds. Quite the contrary – if movement is not protected and promoted in our societies, we face a big loss of unfulfilled generic as well as subjective essential interest.

By demonstrating that movement is an essential interest, I showed that there is a strong general presumption in favor of movement. This means that there can be no such presumption at this level of generality against movement. Instead, there could be good and compelling reasons for movement restriction that come from both camps, advocates of open and closed borders.

My argument for movement as an essential interest strengthens Oberman's account arguing for immigration as a human right. By showing that there is a general interest in movement, I placed a much stronger burden of proof on those who want to decline that immigration (specifically) is a human right too. Now they have to argue against movement in

[53] "Exceptional people" book reference

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general as a human right. But unlike Oberman, who grounded the appeal for immigration in already accepted human rights, such as internal movement and exit, I did not simply try to add to the list of widely accepted moral (and legal) human rights. For all of these accepted movement rights, I have provided the foundation – they all stem from the interest in general movement. While Miller argues against the addition of immigration to the list, and Oberman argues for it, my solution bypasses this conversation.

The upshot is the following. By making the case for an essential interest in moving, I lay out the moral grounds for instituting all sorts of rights to protect such an interest. A human right to immigrate is one that contingently best ensures for movement today, given the 'strong' borders states have and globally poor people, whose only option to better their life is by migration. But this may not be the only right generated from the normative force of the essential interest in movement. Movement, like all interests, is better protected under more regimes of rights.

Consider the example of Rosa Parks, who said 'I just wanted to go home', when she was asked why she got herself arrested. She entered the bus, walked to the front and sat where only white people were allowed to sit, given the racial laws in place. She refused to change seats when asked to do so. She was arrested and jailed for her act of defiance to a racially segregated country. This is the most trivial type of movement, like Gandhi's case, just walking to a bus directed home. These trivial movement acts are undoubtedly essential interests. Tragically, such trivial movement interests are not fully covered either by the right to exit a state, the right to internal movement, or the right to immigrate. This is because neither the right to immigrate to a new country nor the right to move to a new city could have defended her right to 'just walk home'. The fact that she could have left the US, by exiting and being let in elsewhere, or the fact that she could have left the city and move to one that is less racially segregated, does not speak about her indisputable essential interest to walk on that very bus,

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and occupy an empty seat. In the words of Caleb Yong, her act is mere bodily locomotion. Yet, it was clearly the highest act of challenging the structural injustice of her time and as such the most autonomous act of personal movement in the context of 'scarce autonomy'. The human right to movement, grounded in a general essential interest in movement, is the best candidate right to protect and promote Rosa Parks' interests. Let me conclude by showing how her interest is a subjective interest, but rooted in a general interest.

To appreciate this point, consider the same 'Rosa Park bus' scenario with an alteration, in which there is no racial segregation. The segregation may have distorted the previous example, in making us think that racism, and not the limitation of her movement, was *the* violation. Suppose this happens in a very liberal city, say, in contemporary New York City to a person who wears pink shoes,[54] who is also 'just going home'.

This person may not have a claim that her human right to internal movement or her right to immigrate is violated. Neither can she claim that she is discriminated. But surely she has a well-founded claim that her essential interest to move freely was violated (together with other essential interests, that of not being arbitrarily jailed, etc.).[55]

Essential interests ground many moral human rights in movement (internal, exit, enter) and corresponding duties, which I leave indeterminate. Compare the essential interest in movement with the interest not to be discriminated.[56] Not only does it ground a human right not

[54] I have added the pink shoes to signal that there is nothing but a trivial detail about that person's presence on the bus.

[55] I believe one of the reasons why so much theorizing has overlooked how essential movement in general is to people is because people in the Global North enjoy it to such an extent that we take it for granted. Some shocking news shows that my attempt to make what the explicit bias hinders that movement is so essential to us. Allegedly a couple walking down the street just like bus in a liberal city in Canada was arrested, like Rosa Park (believed to being also race related discrimination). In this case, one of the rights violated was one to freedom of movement. See news: http://montrealgazette.com/news/local-news/couple-fined-444-each-for-talking-loudly

[56] It is worth noting that free movement in the sense we understand it today internal was considered essential only for white people in Rosa Parks' times. Harsher forms of restriction were in place. The "bus scenario" was probably one of the 'mildest', if compared to absolute restrictions to leave a farm,

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to be discriminated in general, but motivates a large net of moral demands for conditions that eradicate discrimination. Consider affirmative action, equal pay policies in work places, etc. It goes the same with movement: a lot of moral work needs to be done for everyone to move according to each persons' essential interest. I have established grounds for movement as an essential interest; as such, it claims many levels of protection and promotion.

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an area, a property, etc. Notice that today many consider that free movement is extensive for wild animals, but not as much for humans.

CHAPTER 2 - A CASE FOR JUST BORDERS. FREEDOM TO CHOOSE MOVEMENT VERSUS FREEDOM TO NEED MOVEMENT

In this chapter, I offer a sketch of a theory for just movement. After describing the non-ideal realm in which much contemporary movement takes place (section 1), I argue that movement is an essential interest that is to be regulated in a just manner, assuming that states have the authority to regulate it (section 2). Movement (in general) is compatible with all movement rights – to exit states, to internal movement within states, to stay, and to claim asylum. In short, the essential interests that movement as a right protects and promotes are the same that these existing rights protect (section 3), whereby movement is wider in scope than each one of the rights and has more far-reaching implications. I argue that movement is a basic liberty, while immigration is not. This argument follows up on identifying the 'liberal fallacy' (section 4), which shows that recognizing migration as a basic liberty, as contemporary arguments do, conflates *choice* and *need* and does not permit arguments for movement as a basic liberty. This is because the liberty to immigrate is premised on need (section 5), while freedom of movement is understood as freedom to immigrate by open borders theorists. I argue that if freedom of movement is to be considered a basic liberty, it is movement and *not* immigration that is to fulfill the conditions for being a basic liberty. However, much contemporary movement takes place out of dire need: people will choose the freedom to need movement (fnm) – that is freedom to immigrate. Fnm, chosen behind the veil of ignorance, is a remedial principle of justice insofar as it protects and promotes interests that are deemed vitiated. If such remedial liberty is fulfilled, only a suboptimal moral desideratum obtains.

Thus, to the extent that liberty does not reflect the subject's choice between moving and staying, which is possible under the ideal moral desideratum (section 6), the liberty that obtains

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is remedial. When it comes to substantive principles of justice for regulating movement, I argue that people would choose freedom to choose movement (FCM), whereby movement is a basic liberty (6).

The conclusion (section 7) spreads out the moral roadmap of a theory of just movement, according to which FCM protects and promotes movement as a basic liberty and a human right, and non-ideally fnm remedially suggests movement. As part of this discussion, I also clarify that extensive movement is not only instrumental to all other purposes and interests, but constitutively valuable, given that people who have *no* needs to move choose it as an option.

2.1 Non-Ideal Contemporary Movement

Before delving into philosophical reflections, I first describe the non-ideal conditions under which movement takes place for many.

Undoubtedly, when migration projects are coupled with extreme and not-so-extreme forms of poverty and other threats like war and persecution, the options from which migrants choose when undertaking migration projects, are, more often than not, morally appalling. The starting conditions of extreme scarcity and precariousness can also be said to generate (or are coupled with) a multitude of scenarios, not only because migrants depart from extremely disadvantaged situations, but because their means are too limited to face the necessary costs and obstacles that they encounter on their chosen (and less-than-fully chosen) migratory routes. Unsurprisingly, in the circumstances of murky morality presenting them unacceptable options, extreme forms of suffering are encountered: children brides, trafficked children and adults, prostitution, families devastated by separations whereby members get "stuck" in various countries, are only a few examples often cited in the empirical literature.

There are however two types of conditions that make up the "structure" in which migrants' choices are so desperately limited. One relates to their ability to move, that is, whether

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they are subject to *restrictions* on movement, such as border controls, visa denials, etc., which impede them from acting *freely*. I call this the *liberty* dilemma as it explores and settles matters related to free[57] movement. The second is related to the background injustice – the sub-optimal scenario in which the choice migrants face is extremely limited. The options of migrants are limited in their country of origin and in their attempts to settle elsewhere. I call this the *poverty* dilemma, as it inquires the conditions of dire poverty which motivate migration projects, or specific types of movements. Although in reality these questions are substantively related, and conceptually conflated, as I will show, I will now justify why we must engage with them separately.

Consider a couple which is impeded in their attempts of entering marriage, say because the state does not allow interracial couples to marry. Conversely, consider a couple which does not face similar restrictions, but both partners are extremely poor, and cannot earn enough to pay for what it takes to be married. In the case of movement, similarly, these conditions are to be separate at least on one important count – liberty is generally limited by wealthy states via restrictive policies (Gibney 2008) and affects those who move independently of their economic status, whereas poverty affects citizens of poor states independently of their moving or not moving (Pogge 2007). Migration often occurs in tragic scenarios, in which morality is "suspended", in the sense that many people's choices are such that common moral reasoning does not easily tackle such specific cases. Distinguishing between migration regimes that generate obstacles to migration from background conditions of poverty is of paramount importance, especially for correctly identifying the scope of justice. Armchair predictions and reflections in this context often seem both inadequate and dangerous. In this chapter, I try to

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[57] In chapter 3, I offer an account of how we may understand acting 'freely'. On this view, the agent acting freely can be subjected to two different sets of injustices: a) conditions impeding movement (generally imposed by wealthy states) and b) the condition of poverty.

avoid unnecessary idealizations, and apply, as best I can, principled philosophical reasoning to realistic assumptions. This does not mean that I disregard the value of rectifying such a scenario. Yet, because all cases of movement out of need are complex, I limit the scope of this chapter only to specifying a general account, thus unfolding a general roadmap. I later divide the category of migrants into refugees and migrants, and discuss each category in Chapters 4 and 5.

2.2 Movement and Movement Rights

Having argued in the previous chapter that movement is an essential interest, I set the grounds for a human right to movement[58] as a general right. Open and closed borders camps grant that movement is compatible with many accepted movement rights, which are justified on grounds of protecting and promoting very important interests, in the same fashion the human right to movement, I suggested, does. Open borders theorists have many reasons to support such a right, as they share a general understanding that people should be able to follow their pursuits in their search for happiness and personal and political projects (Carens 2014). Some closed borders theorists also agree that many interests should be protected by movement rights. An increasing number of open borders and closed borders theorists support the idea that movement is an essential interest, under a variety of formulations and qualifications,[59] although they differ in what duties they think states have vis-a-vis upholding the interests at stake. Yong, following Miller's formulations with regard to theories of justice, thinks that the duties of state towards its citizens are greater than those towards foreigners.[60] Unlike Miller, however, Yong thinks that movement is an essential interest that we cannot do without. He states:

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[58] By a 'human right', I mean a moral human right. This is further specified when I discuss legal rights.
[59] See Oberman 2016, Yong 2017
[60] Theorists that favor open borders, or less restrictive border policies, tend to also support substantive views of justice favoring equality over sufficiency. Carens was among the first in the migration field

> "To see how free travel serves individuals autonomy, consider what social conditions individuals would face absent a system of public roads and pathways. Individuals would have to seek the permission of all the landowners whose holdings their intended routes traverse in order to travel beyond their holdings of land. This would make each person's ability to pursue her personal projects and to participate in various relationships and associations dependent on these landowners' approval of (at least acquiescence in) her projects, relationships, associations […] If government officials abrogate the public character of the system of roads and pathways by preventing some persons from using that system, then similarly those individuals' personal and political autonomy will be undermined,"[61] (Yong 2017, p 8)

Yong's illustration clarifies that an assumed asymmetry in duties states may have towards citizens and non-citizens is a distinct matter from considering x an essential interest. A right to movement does not offset relevant distinctions between citizens and foreigners, say, with regard to voting, or holding office positions. Consider how states and regions are political communities to which one belongs, in terms of where one pays taxes, resides, etc. Moving from Washington to California, or from Paris to Rome neither offsets all relevant distinctions between locals and newcomers, nor does such distinction, assuming that it is worth preserving to some degree, offset the idea that movement is an essential interest. A Londoner may in fact value both residing in London, but commuting to Paris for work and other interests. Similarly, she may

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who embraced open borders and global egalitarian justice. On the opposite side of the spectrum, 'statist' views tend to endorse sufficientarian conceptions of justice, according to which states may be obligated to provide the global poor with remedial assistance up to meeting some moral minimum, corresponding to a range of basic human rights, while obligations towards citizens are much weightier (Miller 2007, Yong 2017).

[61] This illustration may indicate at first glance that a) movement is an interest because it is necessary to autonomy, and b) constitutive of another value, e.g. autonomy. But it does not follow that c) movement is in itself an essential interest. All three statements are true. To defend the last one, first notice that autonomy and movement are not easily conceptually divorced, as movement is a pre-condition of autonomy. I cannot be autonomous if I am restrained to a chair. Some may object: Stephen Hawking was largely autonomous, even if in a chair. I think we can all say that his autonomy was limited because he could not move, regardless of sophisticated technology replacing some basic functions. The fact that movement is so foundational for all human activities and essential interests, makes movement instrumentally and constitutively essential Were he to choose between movement and immobility, he would not be indifferent, and toss a coin. The reason he does not toss a coin is related, I think, to both maximizing his autonomy, which was affected, but also for the sake of movement *itself*. We all envision the possibility of running through a field, swimming in the sea, etc as desirable, even if we ultimately decide to sit on a couch.

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accept that in many relevant senses, her rights and duties are more extensively tied to London than to Paris. For instance, she will elect her local administration in London, and not in Paris.

If recognizing movement as a right is compatible with states having different sets of duties towards citizens and non-citizens, arguments for restricting movement will have to be grounded differently. One could argue against movement as an essential interest. Another could say that the duties states have towards citizens and non-citizens are *such* that justify the movement restriction of non-citizens.

First, disentangling these two distinct claims aids us in noticing that states exercising enormous discretionary power on curtailing movement (say, via immigration policies) cannot be grounded on the claim that there is no such essential interest in movement in the first place. I showed in Chapter 1 that this argument does not stand to scrutiny.

Second, and in relation to the second claim, I distinguish between what the duties toward citizens and non-citizens entail. In this chapter, I address how the duties towards non-citizens who wish to move to other states are met in principle.

Legitimacy and justice

I assume a distinction between justice and legitimacy (Carens 2014, Yong 2014). Moral scrutiny of principles and policies regulating movement means to test whether they are morally acceptable, that is whether they pose problems from the point of view of justice, yet unrelatedly from who has the authority to determine policy. Consider the significance of this distinction in relation to the justification of curtailing movement altogether via imprisonment. Without taking a position in this complex debate, I am assuming that imprisoning a person is an act that the state has authority to do, that is, the state is the legitimate 'who', but only when very strong justification is provided. This is because freedom of movement, it is argued, is one of the basic "all-purpose means" of human agency:

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> The loss of freedom of movement involved in imprisonment interferes with the exercise of agency in a distinctive way. Locomotion is a primary means of agency for human beings. It is required for any project that requires observing the world personally (i.e. not via others' reports) beyond the tiny corner of the world an individual can perceive at a given moment. It is also required for any project that involves physically altering the world by one's own efforts (i.e. not by directing others' efforts) beyond the tiny corner of the world one can reach without moving the whole of one's body […] All-purpose means of human agency are means without which major categories of human activity are foreclosed. Among the other all-purpose means of human agency are the ability to possess and to use physical objects, the ability to solicit the help of others, and the ability to draw on our own skills and talents. Though a person who has lost one of these all-purpose means of agency can still live and act, her agency is greatly impaired. Of course, the loss of a specific resource, such as a piece of property or a sum of money, can impair someone's agency. But the complete loss of access to one of the basic all-purpose means is an impairment of a different kind. Being imprisoned is less like being deprived of a specific sum of money and more like being prohibited from using money at all.[62] (Hughes, 2017, pp 91-2)

My reading of all-purpose means is that they are generic essential interests that humans (and often non-humans) have. In their generality, they are precursors of subject-related interests. Curtailing all-purpose means is a *greater* loss and of a *different kind* than other types of losses, as the loss of the former limits and impairs activities related to all other areas of life.[63] Movement then is of a higher importance, which a particular state has *legitimacy* to curtail for everyone, including fully, in the form of imprisonment. Yet, states overstep their authority if restrictions are such that they are unjustifiably applied. In this sense, justice claims and legitimacy claims are fundamentally distinct. Accepting the state's legitimacy to restrict movement, just as it restricts many other activities of utmost importance, may not entail that

[62] The author argues that a much stronger justification is required than what is presently accepted for movement restriction via imprisonment: https://www.robertchughes.com/freedom-of-movement-final-manuscript.pdf

[63] 'Orange is the New Black' series may challenge our assumptions that curtailing movement undermines all projects one may have. The example from the series is that of female inmates setting up, in violation of prison regulation, a profitable business selling dirty panties to the outside world. But the example ultimately shows how limited projects are without being able to carry it out in person, how vulnerable to deception and lies people are when they cannot exit the prison to check on their business in person and when they cannot assume control over their business venture.

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the state acts justly, neither in applying restrictions on movement in general, nor for specific types of restriction. As we have learned from Chapter 1, states have a prima facie duty to protect and promote movement given the interests in movement people have. As I will argue in the next session, movement restrictions may pose two types of unjustifiable restrictions on human movement, which need separate addressing. First, they may undermine essential interests that are morally relevant claims subjects have: whether they undermine voluntariness. And second, they may restrict options people find valuable in view of their interest: whether they undermine conditions for freedom. This distinction will be clarified in Chapter 3.

2.3. Movement is a Human Right, Compatible with All Movement Rights

Having argued for movement as an essential interest, I claimed that movement is in itself, and instrumentally important for many interests, which obtain provided that movement obtains. I now show how movement, in the form I view it, sits within the range of recognized rights protecting movement as an essential interest. The aim of this section is to demonstrate the moral advantages of a right to movement that has a justificatory foothold in the wider context of specific movement rights. In describing the main features of the most relevant movement rights, I will specify their limitations, which are overcome by the wider right to movement.

Movement as a human right is consistent with many existing movement rights, some of which open borders and closed borders theorists strongly support, although there are many disagreements on what the scope of each right is, who the duty bearers are, and what the content of specific duties is. In short, the disagreement is about when a right is violated and what the remedies are and by whom.

Movement in general is an all-purpose means, and a pre-condition for all other existing human rights, which are set to protect the same interests the all-encompassing movement right is also tailored for protecting.

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To illustrate, I begin with two rights that are universally accepted by all theorists, open and closed borders alike, as well as added to the fundamental legal lists of fundamental rights. The right to *internal movement* is thought to prevent inter alia deleterious forms of segregation of some groups by the hand of others. Like in the case of South Africa, one who is excluded from accessing certain areas is also excluded from accessing important opportunities, and from being given equal regard. Movement in this case is made universally protected and promoted for every citizen, resident or tourist. Notice that the right is *fully* extensive, as it does not apply only to specific groups, such as the various ethnic and racial groups historically wronged in South Africa. It applies to everyone, with the exception of the imprisoned.

Furthermore, the right to *exit* a state is thought to protect people who are under threat of persecution and various forms of coercion, and whose basic rights of safety are ensured *only if* their right to outward movement is protected and promoted. Like the right to internal movement, this right is also very extensive: anyone, for whichever reason, light (e.g. a tourist) or life-threatening (e.g. a refugee), wishing to exit a state does so under virtually any conditions,[64] with the exception of already having a place to go.

Independently of the initial justification for institutionalizing the above mentioned rights, both camps agree on their scope being very extensive. These rights are genuine commitments to *everyone* being able to exercise internal and outward movement.

Other two important movement rights that both camps agree on are the right to *asylum*, and the right to *non-refoulement*. The general idea behind the first right is that anyone in the world who may find herself in a position to claim protection has a right to seek asylum, that is, to file a claim against one state and move there. The rationale behind the second is that among those who move, some identify upon arrival as subjects that cannot be "refouled" under (nearly)

[64] Perhaps one could imagine a state curtailing exit rights on similar grounds it imprisons people.

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any circumstance. Such claimants cannot be sent back to the country of their origin, but only conditionally to third countries, but *only if* those countries can ensure the claimants' protection (see Chapter 5). This is a right prohibiting the originally receiving state to, for example, push away approaching boats back to sea. These movement rights differ from the former, in that they are set to protect specific types of interests, typically those of the avoidance of serious threats of persecution and coercion. Typically, these subjects, unlike the 'internal' and 'exiting' movers, must 'prove their case'. These subjects place a higher moral demand on states, as these claims are subject and content specific. The claim needs to be fulfilled for *that* specific claimant, and typically movement is coupled with a package of human rights for protection. The duties to offer asylum and of non-refoulement give rise to content-specific rights, although different accounts support different packages of rights, such as protection of a moral minimum (Miller 2007) or more extensive basic rights.

The right to *enter* states is one of the most debated in the literature. States are entered for all sorts of meaningful reasons, some of which I mentioned in Chapter 1: tourism, business, long visits related to personal and political projects, and immigration, that is, relocating somewhere to work and reside. Interestingly, however, theoretical interest is mostly towards entering, as in immigrating. Consequently, most discussion about entering revolves around the right to immigrate. It is not clear why theorists take no issue with other movement types, given that people move for many sorts of interests, including the interest in moving itself. But given that states also regulate all sorts of movement, entering (widely understood) should be properly theorized. Rarely if at all, theorists asks: Should a person be able to enter as a tourist, and consequently, does the state have a right to eradicate tourism? Should a person be able to enter on business or as a student? Does the state have a right to restrict entry to foreign students and business people? For some reason, the right to immigrate seems to be the most contentious type of entries, perhaps thought to pose more pressing normative questions about rights and duties.

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However, the right to immigrate seen in the context of all other interests in moving appears strange and unjustified. Some argue that, unlike others, migrants settle, and thus their movement poses more normative questions. But this kind of reasoning is limited. An Indian student moving to the US to do her PhD for six years will also become a part of the society in a significant way, by taking residency, being member of society, making friends and perhaps marrying and settling. Similarly, a foreign investor on a three-month long visit is as temporary as the poor migrant contracted as a seasonal laborer in agriculture. Yet, we do not treat this type of movement as immigration, or as *equally* posing questions that need addressing.[65]

While there are many theories against or in favor of temporary migration (Lenard 2016), less theoretical attention is accorded to whether there is anything wrong about the rich Arab who accesses the best type of services in London (Ypi 2016). A right to full movement, understood to protect and promote *all* interests for which one chooses a migration project (marry, advance one's religion, or better one's economic standing) captures and theorizes all movement.

From this general case for movement understood as 'entering', theorists who wish to place restrictions on immigration specifically are unjustified in doing so unless their reasoning also applies to generic movement, tourism, business, etc. They may otherwise argue why

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[65] I argued in Chapter 1 along similar lines when I discussed the questions we do not raise about animal movement, but do raise about human movement. The questions we raise in philosophy, I believe, are constrained by our empirical reality, and because many assume the realistic premise that migration is "a problem", while other types of movements are not, we import a social bias. If we think about movement closely, there is no meaningful difference between the Indian PhD student in the US and the Mexican migrant, aside from the assumed socio-economic difference. They both reside in, and may have an interest in becoming full members of society. Yet, normative theorists all problematize the case of the latter, not the former. My account does not permit such a *biased distinction*, as I allow that people may have an interest in moving for whichever project they find meaningful. However, the distinction is necessary for other purposes, such as the assessment of whether the conditions under which one moves are just and should be rectified.

immigration is a *sui generis* type of movement,[66] and thus why it's special for being permitted or restricted.

The right to *immigrate*, that is, to enter states of one's choosing, is thought to enable people to access a full range of options, which are beyond any doubt more extensive than those within the national borders of the country they find themselves in. This right is also set to protect important interests that can only obtain with movement, or would obtain sub-optimally without movement. Imagine that instead of going to see the Himalayas, one is offered to watch them on a screen, or instead of in-person romantic relationships, in-person business meetings, and in-person experiences with one's friends and family, one were only allowed such things on Skype. This restriction would constitute a major loss. Notice, however, that the right to immigrate does *not* protect all interests at stake unless one is a migrant *proper*. In other words, the interest to enter other countries is covered by an immigration right, only if the mover in question has a project that qualifies as immigration.

I want to pause here, as this right is one of the most contested between open borders and closed borders theorists. Without going into arguments backing up these presumed positions yet, I would like to flag an interesting feature affecting the debate. The one being allowed or restricted is the migrant – the poor – or in the words of Alex Sager, the migrant who is viewed as a "problem".[67] This distortion in methodology, says Sager, is accounted for in a nationalist

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[66] Notice that if the argument from the point of view of economic costs and benefits stands, one can in theory argue that tourism and immigration can both cost and benefit societies; both can affect local cultures significantly, arguably positively or negatively; from the point of view of association, a local does not agree with how many tourists she encounters in the local pub and in her neighborhood, as opposed to how many migrants, and they can equally reject associating with both the migrant and the tourist. More needs to be said about why the movement of 'entering' attracts the attention of scholars around immigration specifically, and why movement restrictions affect this category as opposed to others.

[67] To qualify the "problem", migrants are transformed in the debate either into "magic bullets" or a "harming" party. Consider the assumption that migration may cause "brain drain", or may lead to development in the communities left behind (Sager ed., 2016). Sager's charge against the terms of this discussion is that no moral and political theorist considers an ample enough, but necessary, account of

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cognitive bias that heavily affects the entire debate in migration theory and especially, but not uniquely, closed borders theories, such as David Miller's.

A second reflection is that the right to immigrate is mainly understood as a 'distributive' discretion.[68] Immigration is directly linked to global inequalities: "Many *poor* and *oppressed* people wish to leave their country of origin in the third world to come to affluent Western societies[…] there is little justification to keep them out." However, a right to move to other countries is mostly enjoyed by those who are not so poor and oppressed (Shachar 2009). Moving between countries of the Global North is relatively easy, compared to moving from the Global South to the Global North. Consider the European Union, where a regime of virtually universal freedom of movement permits the realization of all sorts of interests.

If the interests to enter are wider than the interests to immigrate, then two different rights would better reflect these two sets of interests, one wider (the former) and one narrower (the latter). First, it seems intuitive to see movement 'as one sees fit' to be understood as a liberal choice to move (such as to study Kant or join a conference), and therefore to being accommodated by an all-encompassing right for such diverse interests – a right to enter. Second, if it is empirically the case that immigration is more often coupled with conditions of need, such as dire poverty, then the holders of the interests to move will benefit from a right that is conceptualized to protect these interests, given their specificity- call it right to immigrate.

In remarking that there is a mismatch between the human right to immigrate (Oberman and Carens) and the interests it is meant to protect – most specifically *whose* interests it is meant

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harm, whereby so many factors play a role or contribute to whatever social malaise or "problem". E.g. government corruption, transparency, bad governance, unfair international trade policies etc. all cause harm. Migrants, in other words, seem to be "singled out" from a complex debate for presumably being responsible for both good and bad. And it is proposed that their movement and life plans be restricted according to the "harm" for which they are presumably responsible (pp. 225-239)

[68] Carens (1987) Aliens and Citizens. The case for Open Borders, and also in his more recent book Ethics of Immigration.

to protect – I suggest that the right to *enter* should protect the movement of anyone who moves out of *choice*, while the right to *immigrate* should protect the interest of anyone who moves out of *need*, if these rights are to be historically grounded and if these rights are to protect the interests of the legitimate right-holders. The right to immigrate will be backed by considerations of global distributive justice, which inquire about the kind of duties states have towards the poor who become migrants because of poverty. Otherwise, we end up theorizing about a right that in principle protects the right of poor movers, and ends up serving the interests of rich movers.

Following the discussion, the next movement right compatible with open and closed borders camps is the right to *stay*. It is thought to protect interests people have in not being persecuted and forced out by severe poverty from the place where they have formed important attachments and where understandably they have important interests in remaining in residence (Oberman 2015). The right is grounded in many interests that both open borders and closed borders theorists recognize, such as the right to live in and "belong" to a community. These interests are important for people, and especially so in accounts put forth by the defenders of movement restrictions. A sense of belonging to a shared culture matters to people. In addition to having a right to stay where they have formed their most important attachments, people should also be protected (if possible) to stay *in situ*. Here we may differentiate between those who are persecuted and coerced to the point of having to migrate elsewhere, and those affected by poverty, but who, according to the stipulation of the right to stay, have a primary claim to being aided *in situ*. Should they be suggested immigration, as an alternative to being aided to stay and as a strategy to address global poverty, they would be treated like “tools” (Oberman 2015), that is, their right to stay would be undermined, and as a result their freedom to move, if promoted, would be perverse.

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There is a variety of other forms of movement that fall outside of these already recognized interests that are to be protected by moral rights. One such form, *generic* movement, is the daily movement of crossing national borders for moving services and goods, in order to maintain sedentary life. Our largely unrestricted movement in society (aside from traffic lights, etc.) is also generic. Other forms of valued movement is performed by international students and researchers, who live "nomadically" for extended periods of times, but their movement does not fall under the category of 'tourist' or 'migrants' because they establish stronger ties with the community they are visiting, often in the form of formal employment, or contracts for studentships or fellowships. They cannot fall under the category of migrants, as they often do not stay long enough to be required registration in a territory as residents, they do not acquire a social security number, they do not pay taxes or claim social welfare rights (such as unemployment benefits). Further, business people, whose interests are protected and promoted yet by another pattern of movement: often reside in more than one country, but keep their residence perhaps in one where they spend the least amount of time, and have the weakest ties to the community.

Yet another group are diplomats, whose services to their country, or to their citizens, who are abroad for all the aforementioned reasons (as migrants, tourists, students, etc.), are carried out from various locations in the world. Their legal status is different from all other categories, as their diplomatic passport[69] indicates. To mention one significant way in which their presence in another country is different from all other categories is that they act as representatives of their countries, in officially protecting their interests; as such, unlike all other

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[69] It is common knowledge that the diplomatic passport is different from the "ordinary" one. The diplomatic passport is issued on special auspices only to a limited number of individuals, such as high-ranking government functionaries and bureaucrats of a state. I will not discuss varieties of passports in detail here. This is only to illustrate the interest diplomats have in movement, and how a specific type of movement is essential to them, to their citizens in the homeland and abroad.

movers, they are not allowed to participate in public demonstrations and protests, often not even as private individuals who support specific causes and rights. Their action would be perceived, given their roles, as officials of one country actively intervening in the political and public affairs of another.

The interests motivating movement make up for a much longer list than what I can explore here. When you travel the world, you meet globetrotters who move for a myriad of purposes and goals. Interests that moral movement rights protect and promote, as well as the interests that fall outside of specific moral rights, are extremely diverse and complex. The promotion of such interests includes common movement as a constitutive part, as an instrumental part, or both.

To illustrate, a Polish diplomat would not be able to do his job in protecting the interests of his citizens in Turkey if he is not allowed to enter the country and work there. A young person choosing a career in diplomacy is fond of living her entire life abroad, in various countries, learning about many communities and many languages, and values this lifestyle over a sedentary one. Movement is, however, also instrumental to her being able to carry out diplomatic missions. The two dimensions, constitutive and instrumental are not easily distinguishable, but it bears little importance for my account, because both hold true.

I now summarize the limits of movement rights. These can be addressed *only* if we recognize a human right to movement (understood as a right to *full* mobility).

First, the interests in movement are wider than the recognized list of moral rights which protect them. I argued in the previous chapter extensively that movement is a general interest manifested in a variety of patterns, depending on other interests that are associated with it. Let me put this point across with a real case scenario. An academic colleague located in Turkey was allowed to be visited by his long-term partner, who was permanently living elsewhere, in a pattern that was not suitable for their fundamental interests. After the partner exceeded the

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number of 90 days as a visitor, she was not allowed to enter the country, not even for one day, for a period of six months. Their interests as an international couple, sharing custody of children, care and financial dependency, are surely not satisfied under this regulation.[70] An account of movement which recognizes movement as an essential interest (and a moral human right) condemns such restrictions of movement as unjustified state encroachments. This is not merely because the state tailors its laws with a disregard for people's interests, but because it denies a general fundamental interest in movement in the pattern that *people themselves* see fit. For instance, if he needed emergency care, she would not be permitted to see him, even though they are each other's primary care partners.

Second, recognized moral rights are limited in scope and cover but a very specific type of interests. For instance, returning to the same couple, the woman's interests would not have been protected by a right to immigrate conventionally understood – a movement right most closely matching the type of interests she had – as she did not intend to immigrate to Turkey, take residency, work, etc. She had a job and personal attachments elsewhere. But she was also "more" than a visitor, conventionally understood, as she needed to enter for short stays, but more frequently than conventional visitors.

Third and more problematically, the interests that are meant to be protected and advanced by specific moral rights are often not correctly identified and specified normatively, as explained in the first and second point, and specifically in relation to the right to immigrate. I attribute this to the fact that, as premised in Chapter 1, rights are dynamic (Raz 1986) and historical (Tousilous 2003, 2007). This is seen clearly with the right to exit, which was initially conceived as protection for those who are oppressed and illegitimately coerced by their

[70] The regulation would have permitted her visits more freely if they were legally married, an option which they opposed ideologically.

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government. The scope of the right, however, as accepted unanimously by theorists, is much wider: one does not need to claim that she is persecuted in order to exit a state, her own or any other. She may exit, instead, for whichever reason, whimsical or important. Conversely, the right to immigrate hardly at all bears upon the interests of "real" migrants, and is understood in Oberman's account as a liberal choice to move. Making a general case for anyone to move out of choice, limits the strength of the right of those who specifically move out of need.

A human right to *full* movement does not suffer these limitations. It best promotes many fundamental interests which would remain unjustifiably outside the scope of moral (and legal) rights protection contrary to the first concern), and it better protects diverse person-specific interests than the list of "fragmented" movement rights, such as to immigrate, to exit, etc. Such "blocks of interest" clearly do not represent *all* important movement interests (recall Miller advocating Sami nomads' movement). A general movement right, against the third concern, adjusts dynamically and historically to the type of movement that people find essential.[71] A general right to movement can be adapted historically, unlike the alternative of establishing (possibly) too many movement rights. Alternative solutions are to enlarge the scope of existing movement rights, or expand the list of human's rights, both trends which, I showed, have been historically adapted. But if the argument for these trends is one I defended, that interests in movement become wider than the given rights purview (e.g. consider how extensive is the right to exit), then this is in itself an argument that validates movement in general as an essential interest- which grounds a general right to movement.

2.4 Just Borders versus Open Borders. The Liberal Fallacy

[71] See section 1.7 of Chapter 1.

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One of the most powerful open borders argument is that freedom of movement is a liberty (Carens, 1987) on a par with other basic liberties, such as freedom of occupational choice, freedom of speech and assembly, freedom of religion, etc. Carens pursues two main strategies, both rooted in the liberal tradition. First, he shows that freedom of movement is compatible with mainstream liberal theory (Rawls 1971), libertarianism (Nozick 2013) and utilitarianism.[72] None of these positions, although they differ significantly, provide any negative argument against freedom of movement; on the contrary, Carens argues, they all uphold freedom of movement. I call this, movement as a "liberal freedom".[73]

His argument, premised on liberal freedom, is that a reasonable person whose moral tradition is liberalism would make room for freedom of movement on the list of basic liberties from behind the veil of ignorance (p. 258). In considering possible restrictions on movement, one will adopt the perspective of the "*most disadvantaged* by the restrictions, in this case the perspective of the *alien* who *wants* to immigrate" (p. 258 my emphasis). The argument concludes: "In the original position, then, one would insist that the right to migrate be included in the system of basic liberties for the same reasons that one would insist that the right to religious freedom be included: it might prove essential to one's life plan" (p. 258).

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[72] I take these negative arguments for granted, as I wish to engage with the positive argument.

[73] This discussion is from 1987. In short, Carens thinks that although the liberal doctrine presupposes a "liberal people", principles do not only apply to liberals, but can be universalized, or "enlarge the franchise" (1987, pp 264-270). Carens argues (pp. 264-270) against Walzer (2008) that even if such principles would be accepted and adopted more easily in some places, we have no principled reason not to try to convince others of liberal truths. Carens notices that the franchise was previously enlarged, as some versions of liberalism, contrary to contemporary ones, failed to include women (most notably from the right to vote), people of color, and those without property. Similarly, contemporary aliens may be excluded from the liberal franchise. For a similar point, see Ypi 2018, pp. 9-10.

Oberman's (2015) view seems opposite[74] of Carens's. People who move *because* they are the worst-off, that is, the most disadvantaged, are forced[75] to do so. From their perspective, one of dire need, aliens would rather *stay* in the place where they grew up, where they belong, and have formed the most essential attachments.

Oberman's position adopts a liberal point of view. Whether the basic liberty in question is added to the list of basic liberties, it is added in a *liberal*, not a remedial way. To illustrate, a standard liberal way to conceive of marital freedom is to assume that marital freedom obtains when partners choose whether to marry, and whether to marry one another.[76] This standard reasoning for adding x to the list of liberties looms on the background of choice that can be called liberal. From a liberal standpoint, we find puzzling the scenario where young women marry rich unpleasant men (assuming the former do not like the latter) because of a dire condition of need. In the second case, we would think that both her choice whether to marry in general, and her choice to marry that specific partner, are qualitatively vitiated, so that these choices are to a lesser extent liberties proper, as conventionally understood in contemporary liberalism. Oberman calls them 'forced options'. I call them options out of need.

Oberman's view is that poor aliens too, like any rich liberal, all things being equal, may choose to *stay* and not migrate. The alien might legitimately think: if given the alternatives to move or stay, I would move, only if I could choose to also stay. As a liberal taking *his* perspective, I have no grounds to say otherwise.

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[74] Notice that Oberman does not conceptualize the perspective of aliens from a veil of ignorance, but thinks about their position from a "liberal point of view". I elaborate on this later.
[75] In chapter 3, I will argue that 'being forced' is not explained by voluntariness, and by the specific notion of voluntariness put forth by Olsaretti (See Chapter 3). Until then, I will understand the notion of 'being forced' as facing dire conditions of need.
[76] As opposed to being forced by severe ostracism due to staying single, or being forced to marry a specific person through arranged marriage.

The veil of ignorance, as a thought experiment, fails to identify a genuine choice in favor of movement as a basic liberty. The device, on Carens' interpretation, contains a liberal bias: in putting ourselves in the shoes of the worst-off, we would recognize two normative claims at work: 1) that people *choose* to move; and 2) that people *need* to move. The veil of ignorance standardly operates on claim (1), whereas Carens understands it to operate on claim (2) for the poor.

Carens's view conflates these two claims. This is a liberal fallacy in the following sense: the standard normative treatment does not justify liberties on the basis of needs. We think that liberties are recognized behind the veil of ignorance according to standard liberal reasoning. Aliens choosing to marry rich and unpleasant men out of need, not choice, as explained, is regrettable from a liberal standpoint, as liberals think that liberties have priority over distributions. In this scenario, it appears that the liberty of marital choice is traded for better resource distribution. Some may still choose diminished liberties out of need. This, however, does not account for adding the liberty in question to the list of basic liberties.

Assuming the 'standard reasoning', were we to run the 'veil of ignorance' to check what we think about marital choice, we would not begin by saying that, from the perspective of the worst-off, freedom to marital choice is a basic liberty, if one is so positioned as to obtain distributive advantages by marrying some rich and unpleasant men (out of need). As liberals, we reject this reasoning. We accept instead that we would choose marital choice behind the veil of ignorance, so that when the veil is lifted, we are free to marry, should we decide to do so, and should we decide to marry any particular person.

Let us run religious freedom through the veil of ignorance, the example Carens uses as an analogy for migration. From the perspective of the worst-off, one whose religion may be practiced by a persecuted minority would choose religious freedom so that in whichever creed one finds himself after the veil is lifted, one will have a right to practice a religion of one's

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choosing, if any at all. An implicit assumption regarding religion as a basic liberty is that religion is a *liberal choice*: one would like to practice their own religion, under their own terms, abandon religion or convert to another, as one sees fit.

The same ample space for choosing is not offered in terms of migration, because by coupling the two claims together, moving out of choice and out of need, migration is conceived as a liberty that flows from need. But one would *not* think that religion should be such a liberty that, from the perspective of the worst-off, members of a persecuted religious minority are considered protected if they can convert to another religion, out of need[77] to survive. If so, religious liberty would be conceived as a liberty that remedies unjust background conditions of need. This is not why liberties are chosen from behind the veil of ignorance, within liberalism. The idea of liberal choice is fundamental, and it should be true, both from *their* perspective, as the worst-off, and *ours*, as the best-off.

Should we now say that the veil of ignorance failed to prove that freedom of movement is important, as I suggested, because it faces the problem of liberal bias? To recapitulate my point, there are two reasons why we may reach this conclusion. First, from the perspective of the worst-off, it cannot be taken for granted whether one would prefer (*not)* to migrate, that is to leave one's family, friends and all they know behind. But one would plausibly say that, if one had a choice between *staying* and *migrating*, they would opt for the first. After all, it is an uncontroversially plausible response. Second, a liberty, conceived as remedial for the worst-off, is not a liberty proper, but one that rectifies resource distribution - is a liberal fallacy. The conclusion is then that the proposal of open borders fails to prove that the veil of ignorance shows that *we* would choose migration as a liberty. It only proves that the worst-off may choose

[77] Think for example of Jews who converted to Christianity in continental Europe under threat of persecution.

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migration out of need, which is inconsistent with standard liberal reasoning and insufficient to validate this as a liberal and legitimate decision to include movement among basic liberties, which one would make behind the veil of ignorance.

I believe that these two objections I raised against Carens' view can be addressed. Let us first find the root of the liberal bias, in order to avoid it. Carens mentions two biases – "us" and "them", where "us" is well-off liberals and "them" the worst-off aliens; presumably in *our* moral reasoning, *we* take *their* perspective. The second bias, a corollary of the first, is that "they" are understood to "want" to migrate. It is descriptively true that migrants "want" to migrate if we look at how hard they try to cross borders, and how many lives are lost in the Mediterranean for the hope of reaching Europe. But this is not a good normative basis for establishing whether migration is a liberty in a liberal sense. We need to know, within liberalism, whether we would choose migration behind the veil of ignorance, *consistently* with how we would think other liberties are chosen.

2.5 Beyond the Liberal Fallacy

In this section, I discuss how the liberal fallacy can be addressed. I also make the case for movement as constitutively important. For this I take a step back to locate the conversation in the broader argument in Chapter 1.

In Chapter 1, I argued for a strong presumption in favor of movement, insofar as it is backed by an argument, one that claims that movement is an essential interest. If there is a

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presumption in favor of movement, there cannot be one in favor of movement restriction, at that level of generality.

Some commentators may argue that I proved that movement is an essential interest instrumentally, insofar as movement is instrumental to all other meaningful activities.[78] I call this the indirect/instrumental grounding strategy. This claim aims to show that movement is unlike any other thing in that it cannot be replaced, given that it is an all-means interest (section above). However, to prove that movement (and full movement in particular) is such an essential interest that it should be added to the list of basic liberties, I shall explain why it is constitutively valuable and why all people should enjoy it extensively. This is to *directly* ground the right of movement. I will discuss this point in view of the following analogy.

One essential interest humans are recognized to have uncontroversially is in sex. Is movement like sex? All value it, but only some have sex.[79]

If movement is like sex, all value it, but only some move. We need not use but common sense to accept this empirical claim. People move in many patterns, or as Carens says: "one might fall in love with a citizen from another land, one may belong to a religion which has few followers in one's native land and many in another, one might seek cultural opportunities that are only available in another society" (, 1987, p. 258). This empirical evidence is not only true today, but historically as well, as researchers, artists and artisans have always moved from one

[78] Some closed borders theorists defend the 'choice view', according to which states may decide to satisfy the interests otherwise satisfied by movement in other ways. If aid were proven efficient in meeting the needs of the global poor, states may decide to opt for such a policy, instead of open borders. Notice that according to my argument, such a policy would only address the poverty claim, and would violate the liberty claim. As I will argue in Chapter 3, people act freely on their liberty claim unless they are proven to act unfreely, which means that they potentially advance both claims, being aided out of poverty, and non-interchangeably, retaining their liberty to move.

[79] I owe this objection to Andres Moles, who argued that saying that movement is essentially important insofar as it serves other interests only accounts for movement being instrumentally valuable. For movement to be constitutively valuable, it should be argued that not only does movement facilitate forming meaningful relationships, advancing conceptions of the good, etc., but it is of a similar level of importance in itself as those interests that ground basic liberties.

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court to another, serving this king or that lord, or relating and exchanging goods and knowledge (Goldin, Cameron & Balarajan, 2012).

With this snippet of empirical evidence at hand, we now proceed without the liberal bias: "from the perspective of the worst-off", that is "one who would be most disadvantaged by restrictions". Carens understands that the worst-off are those disadvantaged by resource distribution, and who may choose migration. The background assumption is that they need migration for that reason. On this view, movement restrictions vitiate both their choice (as a liberty claim), and their need (as a distributive claim).

I propose the veil of ignorance to be revised in such a way as to prove that *we* would choose movement, even when need does not obtain. We ask the same question from the *perspective of the best-off.* Consider the hypothesis that after the veil of ignorance is lifted, the best-off know that even if some may be extremely affluent, and some averagely affluent, *all* have *more* than sufficient resources.[80] Imagine also that behind the veil of ignorance, one does not know their religion, color, nationality, gender, etc., but knows that there will not be relevant resource inequalities once the veil is lifted. By adding this condition, I eliminate the possibility that people choose migration *out of need,* and forced the fact that they will choose in view of *being made worse-off* by movement restrictions. Now, from the perspective of *these* worst-off – one who wants to marry a person in the US, one who wants to learn from a Buddhist or a philosopher in another country, one who wants to move and live like a hermit in the Himalayas or wishes to learn about the life of a small tribe in Australia, one who wishes to join a distinct cultural group – their life is certainly made worse-off by movement restrictions. The argument

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[80] Notice that if the experiment applies to all, the worst off will be asked the same question and be given the same information, that is, that they will be well-off after the veil is lifted. Their response will be equal to that of the best off.

against movement restrictions is then advanced by people under the veil of ignorance themselves. Theirs is a liberal choice, and not one out of need.

By this, I showed two things: first, that movement is an essential interest because we value movement intrinsically, in the sense that movement, like sex, is essential for all, but not all practice it in the same patterns or to similar degrees; second, we would choose movement (and reject restrictions) even if we are not pressed by need or/and *because* we are not pressed by need: the empirical claim and the veil of ignorance prove this to be true.

Consider two scenarios below, one with movement (The Nomads), and one without (The Agrarian).The assumption is that we do not need to move, as we are the best-off, having more than an adequate set of options: we know that we may be extremely or moderately wealthy after lifting the veil. However, we still lack, as in the original experiment (Rawls 1971), the basic knowledge about our nationality, race, color, ethnicity, gender, geographical location, and so forth[81].

The Agrarians. They live in a number of sedentary state-like political communities that maintain relations of cooperation and mutual enrichment, such as an exchange of goods and knowledge, but for reasons unknown, and assuming that this is possible, they can only do so via a screen, and no movement is involved from one community to another. Assume also that a very limited amount of movement is internally permitted and promoted. The Agrarians prefer the sedentary life of living off of land (e.g. their farm), as their needs are all satisfied.

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[81] Methodologically, I follow Bou-Habib (2006) proposed way to check whether something is intrinsically valuable, when we have exhausted other lines of argumentation. That is to imagine a world in which x exists, and one in which it does not, and ask whether we would favor the scenario in which x is available as an option. E.g. a scenario for example one may imagine a right to form meaningful relationships with the person of one's choosing, which may entail that one in such a scenario may nonetheless choose to be single. My aim is to show that the world we imagine is one in which both, movement and sedentariness exist.

The Nomads. They live in a number of sedentary political communities, maintain the same relations of cooperation and mutual enrichment as the Agrarians, but they have the option of doing so in person. People move from one place to another for reasons such as visiting the Himalayas, studying some rare animal's lifestyle, attending a conference, a concert, attaining Buddhist guidance, marrying a citizen of another land, etc. These things obtain in person (not via a screen), under a regime that protects movement in a similar fashion as it protects private property.[82]

The question is not whether contemporary liberals are more like Agrarians or more like Nomads. The reply to this question would be factual, but not normative. The question is whether they should choose between these two options. I think they want both, and especially to choose one option, or change their mind, as they see fit.

Let us take a small sample of best-off individuals whose life options are unjustifiably made worse by random restrictions (such as those in communities of type A), and consider their perspective regarding what they would choose from behind the veil of ignorance. Would a *typical* academic choose movement or movement restrictions from behind the veil of ignorance? I speculate that David Miller's personal perspective would be that his career, his quest for truth, his ability to meet and discuss philosophy with others, in short and long visits, as well as his ability to meet his partner, are made unjustifiably worse by random restrictions. David Miller will *not* choose movement restrictions, although he extensively argues that some restrictions are justified.

Many would consider the same from the veil of ignorance. In light of Miller's view, consider a hypothetical Hemingway, who is only interested in living in the same block all his

[82] I owe this distinction to Andre Thiemann. Accordingly, from an anthropological perspective, humans descriptively fall under these two categories.

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life, spending time in his favorite bar, fully satisfied with this lifestyle: he is not the one who is made worse off by restrictions.[83] Persons who accept liberal tenets would not choose to limit the life plan of others behind the veil of ignorance, even if they do not directly have an interest in moving and are not made worse off by restrictions.[84] This is because they do not know if they are born as Hemingway or Miller. Notice that this reasoning applies to all liberties.

Yet, when we ask whether movement is a basic liberty, we ask two separate questions about two sets of peoples – those who *choose* movement, and those who *need* movement. Should it be liberty for all? If we believe in the liberal tenet that everyone is free and equal, we should accept the following – choosing movement meets the moral desideratum if everyone moves out of choice, not out of need. I argued that choosing movement out of need does not qualify movement as a basic liberty.

2.6 Freedom to Choose Movement (FCM) and freedom to need movement (fnm)[85]

Ideally, states and border policy would be governed by the principle of Freedom to Choose Movement, which follows directly from liberal principles. Notice that my argument speaks against conflating 'choice' and 'need' with regard to the veil of ignorance for the purpose of

[83] Ian Carter (2003, 1999) argues that even if one is not made worse off by liberty restrictions, there is still a liberty argument against restrictions.

[84] There is one argument from integrity, advanced by Bou-Habib. In short, one's 'special accommodation', say, of wearing outfits that are expressions of religion practices, e.g. a veil. It is argued that accepting that a person has a right to wear what is special to her because it is equally important for others (normally dressed) to wear what they want, as well One's religion is viewed as an important freedom, only if atheism, it is too. If this argument is correct, then Hemingway's sedentariness is only justified if he also understands (and chooses behind the veil of ignorance) the value others see in moving, irrespective of his (sedentary) life plan. Of course, most liberals would advance the standard argument that people may want to change their mind, so in view of the fact that Hemingway may possibly decide to visit Émile in Paris at some point, he would opt for movement, even if his default choice *now* is sedentariness.

[85] Freedom to choose movement appears in capital letters, purposefully to indicate that it is a higher-order principle.

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correctly identifying liberties and specifically movement as a liberty. However, my argument speaks against setting border policy in isolation from other justice considerations.

Movement is backed up by a liberty-claim (choice), not a distributive claim (need). Assuming the lexical priority of liberty over distributive principles, people's freedom to move is meaningful if they choose[86] movement. But, if they do not have a choice, which is realistic in a non-ideal scenario of vast inequalities and unjust actions of others, then people would choose, as Carens recommends, freedom to need movement as a basic liberty. If the background assumption is need (either because of persecution or because of dire poverty), people whose perspective we take will choose to be free to move. They are not choosing movement in the liberal way,[87] but whether *needed movement* shall be an option among basic liberties. I call this the freedom to immigrate.

Freedom to immigrate should not be on the list of basic liberties, as Carens (1987) suggests.[88] This proposed liberty is premised on serving the poor in need, and will not serve all equally: it

[86] "A similar concentration is evident in Hart's reflections on basic liberties. As is highlighted in the essay by Philip Pettit in this volume, "one of the principal hallmarks of any basic liberty—as understood by Hart or by Rawls—is the significance of the liberty for the typical person who possesses it. Under the approach favoured by Hart and Rawls, then, a political philosopher cannot satisfactorily classify any basic liberty as such without placing herself in the position of a typical person for whom such a liberty is to be safeguarded. Just as a satisfactory analysis of the workings of legal systems must take account of the viewpoint of a participant in the running of such a system, a satisfactory theory of justice must take account of the viewpoint of a person to whom the principles of justice assign basic desiderata." (Kramer, Grant, Colburn, Hatzistavrou eds., 2008, pp. xv- xvi)

[87] See Philip Pettit' interpretation of Rawls and Hart in Basic Liberties "To have a theory of suitable protection is not yet to have a theory as to what choices are suitable for protection. I assume that the set of choices to be protected in any society will have to be choices of the kind that we might expect any free person or citizen to be able to exercise; they will have to be choices that can define the 'freeman' of traditional republican discourse (Ibid, p. 203, referencing Skinner 2006 ; Pettit 2007). I call such a set of choices basic liberties […] By all accounts, the basic liberties are choices, each of which is distinguished by a particular, significant option. Thus, to follow a rough enumeration suggested by Rawls, there is the liberty of judging as one thinks best; speaking one's mind; associating with others; holding private property; casting a vote; and putting oneself forward for office (Rawls 1971 , 61)", p. 203.

[88] Carens (1987) uses the terms 'migration' and 'immigration', as well as "movement" interchangeably. While I take the first two to be synonyms, I clarified why movement is a wider notion, and one that qualifies as a basic liberty, unlike immigration.

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violates the principle of all being considered free and equal. To illustrate how movement as a liberty is conceptualized, consider the following questions, which similarly contain the liberal fallacy: should one have marital choice as a basic liberty, for the most disadvantaged to marry a rich and unpleasant person (they don't like) for some good distributive consequences? Here, the assumption is that one cannot marry out of choice. Again, should freedom of religion's purpose be to protect conversion to another religion out of need?

Liberty is remedial in the above illustrations as explicitly premised on how the question is formulated. The upshot is that the formulation of movement as a basic liberty is not in line with how other basic liberties are chosen behind the veil of ignorance. As argued, were we to formulate our questions about basic liberties the way Carens (1987) formulates them with regard to movement, we would only obtain remedial liberties, not basic liberties.

Rawls himself thought that the first principle of equal liberty,[89] chosen from behind the veil of ignorance, was that each person has an equal right to the most extensive liberties compatible with similar liberties for all. Regarding our binary formulation, one reflected in questions about choice and the other about need, only the first conceptualization of freedom to choose movement equally qualifies *everyone*'s claim[90] However, freedom to immigrate understood as emanating from need better qualifies as a human right, as it is conceived more similarly to the right to asylum, or the right to exit. That is, the human right to immigrate takes a similar form to exiting and claiming asylum. These rights protect and promote specific

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[89] The reader may object that Rawls's scope within which equal liberties obtain is closed communities, whereas here the assumed scope is global. I follow Carens 1987, and I will elaborate more in the chapter on closed borders

[90] My point here is different from the co-enjoyment thesis that Pettit argues for. In his own words: "We may ascribe a certain freedom of choice to someone without any suggestion that that is a degree or form of liberty that others can co-enjoy in equal measure; it may be a sort of freedom that is available only to the few. But talk of a basic liberty does suggest that it must be equally and simultaneously *accessible* to all." (p. 207 my emphasis). In other words, it is not about co-enjoyment, but about access.

interests in remedial fashion, and in a context in which these interests are considered to be unjustly undermined. The need to move because of poverty follows the same rationale, although there is no threat of persecution, as in typical cases. In short, the right to immigrate is not proven successfully on Carens's open borders account to be a basic liberty. From a perspective of justice, freedom to need movement (fnm) is the moral subdesideratum of freedom to choose movement (FCM). Given the assumed lexical priority, principles regulating movement on this subdesideratum should observe the higher-order principle FCM as the ideal to reach.

2.7. Concluding Remarks

The theory of just movement I uphold is:

1. Moral desideratum. *Freedom to choose movement (FCM)*

   Choice obtains.

2. Moral subdesideratum. *Freedom to need movement (fnm)*

   Need obtains.

3. Moral suboptimal (Bad choices). *Freedom to basic protection.*

   Need and *Voluntariness* vitiated, but obtain.

4. Suboptimal. (Morality suspense)

   Non-voluntariness.

1-4 are moral levels, where 1 is ideal, and 4 represents a suspension of morality. The ideal moral desideratum obtains when FCM: Everyone moves out of choice, and not need.

In short, FCM is a principle of justice.[91]. Movement is a basic liberty, whereas immigration is not. Immigration, as I defined it, obtains when people move out of need, and not choice.

[91] The argument needs further elaboration. For the time being the argument follows the Rawlsian methodology for individuating principles of justice. Behind the veil of ignorance, people are able to identify basic liberties that matter to them, independently of the context, as well as principles of justice to govern the social reality in such a way as to guarantee these basic liberties.

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Immigration is a remedial liberty, but not a basic liberty. In the moral subdesideratum, the principle of justice fnm is remedial, insofar as it obtains to the extent to which people will choose movement out of need.

FCM and fnm are consistent with and flow directly from the Rawlsian view (1971) of liberal justice, which advances the liberty principle and the distributive principle (difference principle) to best regulate societies in view of interests people consider valuable. This is the case even if we conceive societies as closed political communities. Contrary to the Rawlsian ideal utopia in *The Law of Peoples*, according to which democratic society, like any political society is a "complete and closed social system",[92] democratic societies are "interactive, overlapping, and fluid entities, whose boundaries are permeable or porous, whose moral visions travel across borders, are assimilated into other contexts, are then re-exported back into the home country, and so on" (Benhabib 2004, p.87). On the Rawlsian ideal, according to which we enter a society by birth and exit it by death, no concern about movement arises. However, our intuitions strongly conflict with Rawls's static world of "self-satisfied people, who are indifferent not only to each other's plight but to each other's charms as well" (92). Rather, our intuitions sway us toward the conclusion that interactions are "continuous and not episodic; […] lives and livelihoods are radically, and not only intermittently, interdependent" (97). People who will not know whether they will be born as Miller or as the hypothetical Hemingway will not see sedentariness and mobility as conflicting goals, given that our societies can and should uphold both.

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[92] (Rawls 2005, p.40) "The first is that we have assumed that a democratic society, like any political society, is to be viewed as a complete and closed social system. It is complete in that it is self-sufficient and has a place for all the main purposes of human life. It is also closed as I have said ((§2.1), in that the entry into it is only by birth and exit from it is only by death". The intuition that states are more fluid and interactive, I think, better fits commonsensical views about our lifestyle. Thus, I consider the Rawlsian assumption a merely theoretical one in discussions on ideal theory of justice.

Both movement and immigration could arguably be considered human rights protecting interests, the first general, and the second specific. In view of this, if movement is premised on a liberty claim and migration on a distributive claim, and if the former is the ideal to reach, states have a more difficult duty to accommodate migration in view of the normative ideal.[93] I only sketch a possible roadmap for this below.

When people choose options in a scenario of moral sub- optimality, where available options are bad, people act *freely* with a pervasively unjust background. Justice demands protection, because conditions for freedom are vitiated in such a way as to trigger non-voluntariness, that is, people do not act freely. I called this 'freedom to basic protection' in view of the fact that people may choose how to receive protection – whether by moving elsewhere or staying where they are.

Notice that unlike Carens (1987) claiming that when migrants are poor, there is *an even stronger* case for states accommodating their movement, I argued that there is a stronger case for protection, that is, that global poverty claims should be addressed by powerful states. This conceptual step forces us to leave open the question of whether protection should be provided in situ, or via mobility. As I claimed, it should be up to people to tailor for their life plans, even in view of dire conditions of need.

However, for us to capture the points I make about the moral levels 3 and 4, I now turn explaining movement out of choice, need, and voluntariness.

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[93] A further argument is needed to set how migration should best approximate movement. In the chapter on Refugees and Migrants, I will suggest ways in which migration places demands on the state. In the next chapter, I show the minimum conditions that should be met.

CHAPTER 3 - MOVEMENT: CHOICE, NEED, VOLUNTARINESS

This chapter discusses implications of movement as an essential interest in a murky moral terrain, in which assessment of my account is made in a highly non-ideal and tragic scenario. I will reply to the following question: what does movement as an essential interest imply in a context in which extreme poverty, war and persecution are the main motivators for movement? This question implies two sets of answers. One is about the interests in movement at stake in cases of movement in non-ideal circumstances. The other is about how states should act faced with non-ideal movement. Specifically, I argue that states should not protect and promote non-voluntary movement. But this only helps us to rule out trafficked victims, as the only non-voluntarily moving agents.

The central part of my work attempts to clarify when migration paths are *chosen*, be it out of *need* and/or *voluntarily*. I argue that although migrants choose between the most adverse options, their choice is *voluntarily* undertaken in most cases. However, their choice is not a 'choice' in the liberal sense of the word, but one out of (often desperate) need– (see Chapter 2). The definition of need that I use here refers to available options, in terms of their quality and quantity. While the notion of voluntariness is central, I will argue against most cases which conceive of migrants as being *forced* to move (that is, not undertaking movement voluntarily) are mistaken in (a) that they do not capture adequately the notion of voluntariness, but also because (b) they may provide policy recommendations that are based on a misconceived notion of voluntariness. In relation to (a), the point I make is that 'being forced' (Oberman 2015) is not captured by Olsaretti's account of voluntariness. For this reason, (b) must be conceived on a wider account.

The revised account distinguishes between two related, but separate features of migration, pressing states into two separate sets of actions: one, a just accommodation of

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movement under a general principle of Freedom to Choose Movement (FCM); and the addressing of unjust background conditions, in view of the principle of freedom to need movement (fnm),[94] specifically applying to different cases of *need*.[95] I recommend that movement should take whichever form movers see fit, and accommodation of movement be conceived accordingly.

This chapter provides the distinctions between conditions under which a choice is *genuine*. It draws attention to the fact that some choices, although genuine, are forced by circumstances of dire need. Yet, among these forced choices (e.g. by coercion, deception, etc.), some are worth protecting and promoting because they are *voluntary*, independent of the conditions under which they are made; other choices are to be protected and promoted *differently* because they are chosen under impermissible conditions, independent of whether voluntarily or not. The choice to move should always be protected, by addressing the conditions under which one moves.

I proceed in the following way: I describe the conventional account of voluntariness (Section 3.1) and explain its implications in migration theory (Section 3.2). I argue that the conventional account of voluntariness is limited insofar as it does not explain when acts are voluntarily undertaken, and I consider the case of moral heroes (Section 3.3). I then conceptualize the necessary distinctions for correctly capturing the voluntariness of actions (Section 3.4), first by claiming that in the face of bad options, some agents plausibly act

[94] I purposefully use capital letter for FCM only to indicate that this is the moral desideratum.

[95] Chapter 2 distinguishes between a liberal notion of 'choice', and 'need', that is, choosing from a condition of (dire) need as the global poor do today. Both these types of choices need to entail a minimum threshold of voluntariness, which determines whether agents are 'forced' into unacceptable options. By making the distinction between 'choice' and 'need' I remind the reader that these descriptive categories entail two separate principles, one (FCM) guiding everyone's choice to move as they see fit, and the second (fnm) regulating movement in non-ideal circumstances, in which considerations of freedom of movement come together with those of global justice as they acknowledge existing global poverty. One immediate assumption that can be made correctly is that the poor are 'forced' into movement, and the rich are not. This assumption will be further clarified.

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voluntarily and non-voluntarily, and second by showing how we distinguish between these sets of actions. I discuss the limitations of the conventional account, in view of what I call a progressive account, which captures the case of moral heroes (Section 3.5). I defend (Section 3.6) this new account for its capacity to accommodate agents who challenge the "rules of the game" as voluntary agents, e.g. moral heroes. Then I put forward the following argument: (1) One acts freely if she acts on her sense of justice, independently of options understood as conditions for freedom; and (2) For one to act freely, there must be at least one possibility that she acts freely. One acts voluntarily, iff (1) and (2). I then show (Section 3.7) that in trying to remedy the conventional account, the analysis leads us to an account in which voluntariness is 'self-defined', independently from freedom (the set of options).

While the progressive account of voluntariness does not offer a full theory of voluntariness, it revises our current understanding of voluntariness in migration theory, and adds important distinctions to the debate. In Section 3.8., I conclude that migrants act, like Gandhi, for the most part voluntarily. This shows even *more* starkly the impermissibility of conditions under which their movement takes place, conditions which need normative and empirical assessment independent of considerations of voluntariness.

3.1 The Conventional Account of Voluntariness

Here, I will first problematize how we understand 'being forced' to move, by critiquing the notion of voluntariness that is central to the debate, and second, how the notion of voluntariness is adapted to migration theory.

The structure of my argument is similar to that in Chapter 2. Agents act voluntarily[96] if:

[96] Accounts of voluntariness assume an agent, a choice to be made, and options. It is assumed that the structure of the options (that is, the conditions in which they manifest) will explain the structure of the choice made (voluntary or non-voluntary). Accordingly, when options are unacceptably bad, the agent

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I. + Moral Desideratum – obtains if *choice*

II. + Moral Subdesideratum – obtains if *need* (bad options)

III. + Moral Suboptimum – obtains if *need* and *voluntariness* (bad options)

IV. - Suboptimum ('morality suspension') - obtains if *non-voluntariness*

Olsaretti's account of voluntariness (1998) concludes that at levels II and III, if agents face unacceptably bad options, they do not act freely. I call this the *conventional account of non-voluntariness*.

This conclusion is unwarranted. I will argue that agents facing bad options act both freely and non-freely. I posit that non-voluntariness obtains when the agent *does not* freely act or/and accept the moral consequences,[97] which are preconditions for freely facing distributive consequences. I will call this the *progressive account of voluntariness*. This account defines voluntariness as follows: A person acts freely when her action reflects her sense of justice. An action that reflects her sense of justice must entail at least a possibility that the action is freely taken. This is when a person acts voluntarily.

3.2 Implications of Voluntariness in Migration Theory

A number of theorists (Oberman 2015, 2011, 2016, Torresi & Ottonelli, 2013, 2016) incorporated the conventional account of voluntariness (Olsaretti 1998) into the migration theory literature. It is important to know after all whether migration projects are voluntary or

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acts non-voluntarily. I explain and consider the argument at various levels of morality, from ideal 'Moral desideratum' to 'morality suspense'

[97] These terms will be clear at the end of the section. In short, in making a choice I assume that agents act, that is choose between A or B (even if bad options), and they accept or not "moral consequences" or/and "distributive consequences". The first pertain to the agent's moral choice (in view of any moral substantive conception the agent holds, e.g. utilitarian, etc.) and the latter pertains to the choices that are external to the agent, for example acted by others, e.g. a thief is stealing the wallet from an agent, and which shape the options the agent is faced with.

non-voluntary,[98] if we are to come up with principled ways for organizing movement. For example, it matters greatly whether one is forced to marry, planning to marry a person in general, or marry a specific person. Non-voluntariness may affect one's choosing at each of these levels. One typical example non-voluntariness in migration is that of victims of human trafficking (Torresi & Ottonelli 2016), whereby migrants' life plans are deeply affected by conditions of physical force, coercion, misinformation and deception (in this sense they lack a genuine choice). Others who enforce such conditions profit from the plight of the victims. Put simple, these migrants act non-voluntarily in moving elsewhere.

'Forced' is equal to non-voluntary in the following scenario: if faced with an unacceptable option, the agent does not choose voluntarily. The argument, then, is that migrants should not act non-voluntarily, that is, be forced to migrate, or stay.

I deem inadequate both the conventional notion of voluntariness on its own, and its application to need-driven movement. I argue for this in two steps. First, I argue for the progressive account of voluntariness, and against the conventional one. Second, I show the implications in migration theory. I advance the idea that although theorists should not abandon voluntariness, which helps us rightly investigate victims of trafficking separately from all other cases,[99] they should engage more seriously with the conditions (or what I call, the distributive consequences) that migrants face. These considerations should play an important role in migration theory, especially among theorists who relate migration to the global poverty

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[98] Olsaretti (1998) distinguishes between non-voluntariness and involuntariness. I follow her account.
[99] For example, by a principle of harm. See Willcox (year). The idea is that what is owed to those who are harmed is more than "remedial duties" of justice. She argues for a duty to restore the life options of the harmed person to their "initial stage" PAGE. This principle is too narrow, if the conditions of the victims prior to the captivity are extremely bad. Drawing from my argument at the beginning, they WHO ARE THEY are somewhere in the range of suboptimal morality, if morality is not altogether suspended. The harm principle should be further supplemented.

problem. Further I suggest that such conditions should be theorized regardless of whether the agents who face such conditions act voluntarily or non-voluntarily.

Specifically, conditions are to be evaluated *independently* from voluntariness. In other words, it is not the fact that victims face choices non-voluntarily that deserves our moral contempt. The notion of voluntariness sketched above is too basic a unit of analysis, which falls under the moral suboptimum. Liberal theories should not investigate morality in a context that is too distant from "common morality", for example, in which a mother has to choose which of her children is to be slaughtered, or a person whether to be murdered by a gun or a knife. Liberals rule out such cases as being beyond the pale of morality. The wrongness in such scenarios is what I call 'suspension of morality'. Liberals demanding that basic needs be met for everyone in the world[100] generally operate on the supposition that all agents should face options above a moral threshold, as autonomous agents able to formulate and follow their own pursuits.[101]

It is instead morally repugnant that migrants should face such dire conditions of need in contemporary arrangements. When such conditions are faced non-voluntarily, it only exposes the injustices migrants face *more* clearly. But, in my view, the injustices they face are equally or even more exposed when agents act voluntarily.[102] We can appreciate this, in view of my defense of voluntariness when people are facing bad options.

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[100] Notice that independently of the conception of justice, there is a consensus that nobody should face circumstances that are below a 'threshold of morality', absent basic subsistence, basic shelter, health, food. Most liberals agree that powerful states have a duty to distribute some of their resources to achieve this aim.

[101] Of course, suspension of morality obtains when people are completely deprived of resources, as with the desperate case for the global poor.

[102] Rippon 2014. Imagine a choice such as 'sell organ or starve'. From a moral point of view, this choice is clearly repugnant. The fact that the poor take it voluntarily, makes it even more repugnant.

My view proposes that the inquiry should investigate the conditions of facing bad options, independently of whether the choice itself is voluntary or non-voluntary choice.[103] If migrants are facing options that are so bad (like the suspension of morality in the mother example) as to render their choice non-voluntary,[104] then these are obviously impermissible. If migrants face options that are unacceptably bad, but not so that morality can be thought suspended then the inquiry is about which conditions of need and voluntariness are permissible options to hand to anyone (migrants included).

Let us first see how the conventional account of voluntariness is incorporated into the migration literature. One proposal that builds on the conventional notion of voluntariness is that a fundamental condition that must be met is "…for a person must be able to devise and pursue a life plan is that her life choices are not determined by the lack of acceptable alternatives" (Ottonelli & Torresi 2016, p. 133).

Along similar lines, Oberman argues:

> "Everyone, including the poor, has the right to cross international borders. What states cannot do is justify a failure to seek alternative means of addressing global poverty on the basis of lifting immigration restrictions instead. Acting in this way risks leaving the poor without any reasonable alternative but to migrate" (Oberman 2015, p. 240).

A full account on the voluntariness of migration specifies a number of necessary conditions in addition to the one by Oberman, that is, that migrants should have at least one acceptable

[103] For a full account arguing against the imposition of bad options on the poor see Simon Rippon (2014), 'Imposing options on people in poverty: the harm of a live donor organ market' The argument in a nutshell is that some options are not acceptable, and as such should not be proposed to the poor, independently of their selling away their kidney voluntarily in order to use the money not to starve. The reason is that by taking away a bad option, we do not make the poor worse off. I think that the author must assume a notion of voluntariness in the sense I argue for: that there must be at least one possibility that in choosing, agents act freely.

[104] I understand a mother does not want to send one of her children. Her having to choose one of them is non-voluntary, and places her in a condition of suspended morality. Why her choice is non-voluntary, however, will be clear at the end of this section.

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alternative. For a choice to be voluntary,[105] it (1) should not be carried out under threats or coercion; (2) should not be determined by a lack of acceptable alternatives; (3) should not be determined by a lack of 'exit options'; and (4) should not be made in the absence of adequate information (Ottonelli & Torresi 2013).

The notion of voluntariness does not do the job it is expected to. Specifically, the conventional notion of voluntariness, even after being made more stringent, fails to explain when an agent acts 'freely', as opposed to when an agent 'is free'. Additionally, it conflates an agent acting 'unfreely' with an agent being 'forced'. Thus, it does not account for when one is 'forced', given that one can be 'forced' into options, and still act both freely and unfreely. Furthermore, it incorrectly invalidates choices that are most obviously voluntary, by considering them non-voluntary – without proving this point, but mistakenly assuming it – on the basis that the agents did not have an acceptable alternative, or that the agents were 'forced'. Below is the argument and an illustration.

3.3 The Conventional Account of Voluntariness Leaves Out Moral Heroes

According to the conventional voluntary account, the mere existence of an alternative is insufficient to render an action voluntary. What is needed instead is that the alternative is acceptable. By way of analogy, victims of mugging have an alternative, but one that is not acceptable: to endure the violence with which the muggers threaten them. But these victims obviously do not hand over their wallets voluntarily (Olsaretti 1998, p 71).[106]

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[105] Ottonelli & Torresi adopt the same account of voluntariness in their discussion about human trafficking and smuggling, in (Sager ed. 2016), see p.141.

[106] In addition to Olsaretti's account, I paraphrased Oberman's reading of it. In the context of migration, Oberman accepts the following: "Of course, there will always be people who choose not to leave their state even when staying constitutes an unreasonable alternative, such as those who choose death or assault over exile. But this does not mean that those who do leave act voluntarily." (2015, p. 247. Both of these accounts are troubling. For starters, if those who leave act non-voluntarily, then saying that

The two cases I discussed in chapter one, that of Gandhi and Parks, show that the conclusion of Olsaretti's account is wrong. Both face unacceptable options, and both make decisions that seem voluntary, and powerfully so. Gandhi faces the option of walking on the sidewalk or being physically attacked and humiliated. Parks faces the options either to sit in an empty seat of her choosing or be physically attacked, jailed and fined.

Now, if we accept Olsaretti's conventional view, we would be pressed to accept that neither Gandhi nor Parks acted voluntarily, on the grounds that their alternatives were unacceptable. It is indeed implausible to think that such choices, reflecting the highest moral sense of justice[107] are non-voluntary. Both cases show that the assumption behind the argument is that challenging injustice by paying a very high cost must be non-voluntary. This is because the expectation is that agents *will* conform to the options offered to them, rather than challenging them, should costs be so high. This assumption is unwarranted, and the agents themselves prove it wrong. It is wrong to think that Gandhi and Parks acted non-voluntarily in the face of unacceptable options, and more generally that no one acts non-voluntarily in the face of unacceptable options.

One way to bypass this criticism is to argue that Gandhi and Parks were 'exceptional' people, moral heroes challenging the injustices of their time, and we should not base a general account of voluntariness on such cases. "Common morality" should not expect people to bear such atrocious costs for being able to act voluntarily. But this is a weak strategy.

First, this understanding would qualify all those choices which challenge 'the rules of the game', that is, the social norms and laws that result in a specific set of options (which are often

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those who stay 'choose' to stay would be inconsistent. Faced with bad choices, supposedly everyone would be "forced" independently of which options they go for.

[107] I assume that the acts of both were informed, they knew the consequences they would face, and their acts were questioning the very conditions of society.

very bad), for which agents pay high costs, as non-voluntary acts. Very many in their everyday practices challenge the rules of the game. As they prove, precisely because the costs of these choices are so unacceptably high, they are voluntary indeed. Olsaretti's view strangely fails to foresee the possibility that refusing to cooperate with the mugger is indeed costly, but voluntary. For example, one way of refusing to cooperate with the mugger is not to take any action, not move and make the mugger choose his further course of action (to attack or leave the victim). Should a victim choose this, I would think that there is a possibility that it is a voluntary choice.[108] In this sense, I call Olsaretti's assumptions conventional, and mine progressive.[109]

Further, Olsaretti posits that freedom (or 'being free') obtains when acceptable options are available (descriptive claim), and voluntariness ('acting freely') is not explained by the existence of options rendering one free or unfree (explanatory claim). In disentangling these two claims, that is, what means to 'be free', does not make for voluntariness or 'acting freely' she ends up concluding what she has tried to escape – voluntariness, or 'acting freely' is defined in virtue of conditions of freedom, i.e. having acceptable options. In other words, the agent does not act freely (voluntarily) if she is not offered at least one reasonable option (condition for freedom).

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[108] This is from a personal case. I refused to cooperate with the thief, who threatened me with a syringe infected with HIV unless I gave him my belongings. In staying still without saying 'yes' or 'no', I refused to accept either option. He could have done both – infect me with HIV and take my belongings – but he did none. While I acknowledge that some would have taken a non-voluntary course of action, mine was voluntary. My friend, also victim of the same robbery, negotiated with the thief to keep her bag, ID and all items that mattered to her, and only hand over her cash (very little money). She voluntarily chose to partially cooperate and negotiate.

[109] The terms 'progressive' and 'conventional' are technical. By progressive I mean to say that in front of bad options, some agents act non-voluntarily and others voluntarily. And by conventional I mean the view that in front of bad options, agents act non-voluntarily. My intuition supporting the first account comes from a historical observation and what Karl Marx has defined with the concept of progress: people have often challenged the range of bad options offered to them. Namely, slaves would run away even under risk of torture and death, and the suffragettes protested even after some of them were killed in the protest. In these circumstances, what holds true is a commitment to "face" the bad choices, and willingness to "pay the cost". It seems inconsistent to say that these actions are non-voluntary.

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This reasoning would not hold if we applied it to a number of cases where the cost is unacceptably high. People encounter countless circumstances in which alternatives are unacceptably bad. If this is correct, then, contrary to Olsaretti's conclusions, people facing two bad options sometimes act voluntarily.

Think of a mother who is a victim of severe workplace harassment by a person in power. If she speaks up, her alternative is to lose her job and starve, and severely endanger her family's finances and basic needs. Here too, some victims, call them 'conformist', "hand over their wallet"; they accept a choice between two options. They cannot maintain their own and their family's wellbeing unless they allow the harassment to continue. This makes them voluntary victims, who accept harassment in order to further a more important moral goal (providing for one's children). And some victims, call them 'progressive', will *not* "hand over their wallet", but will face any cost to take the abuser down. This makes them voluntary contestants of harassment.

Thus, one cannot establish the voluntariness and non-voluntariness of choice on grounds that victims face unacceptable options. Two victims, the conformist and the progressive, facing the same unacceptable options (harassment case), will be understood to act either voluntarily or non-voluntarily. On Olsaretti's account they both act non-voluntarily, and on mine, I am open to the possibility that some act voluntarily.

I now explain why both acts in the face of harassment, in my view, are voluntary, just as those of Gandhi and Parks are too. Olsaretti conflates two sets of distinct issues, which allows me to introduce a helpful distinction. One issue is about whether, faced with unacceptable alternatives, the agent acts *freely* (voluntarily). Another is about whether, faced with unacceptable options, the agent is freely accepting the consequences (or costs) that result from their acting freely.

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3.4. Acting Freely versus Freely Facing Moral and Distributive Consequences

With this distinction in mind, we are now equipped to re-evaluate our cases. Looking at the examples I mentioned, it seems plausible that Gandhi acted *freely* in walking on the sidewalk he randomly chose, and that Parks acted freely in walking to the front of the bus and sitting on an empty chair of her choosing. Both victims of harassment equally acted freely in staying silent and denouncing harassment.

Conversely, the agents have *not* freely accepted the consequences of their acting freely, in view of them picking one among two unacceptable options. Gandhi did not freely accept being mistreated and beaten up, and Parks did not freely accept being humiliated, fined and jailed. The two victims of harassment did not freely accept: one of them being exposed to continued harassment, or the other, losing her job and starving with her family.

In other words, the agents acted freely regarding their own action, and if they could, they would have avoided the costs, which they have not freely accepted, and had no power over, as these were actions that pertained to other agents.

In acting freely, by making a choice, amid two unacceptable options, some agents (not all) may be described as acting non-voluntarily as well. But for this case to be made, more needs to be said about how these choices fit with a larger conception of autonomy,[110] in view of first-order and second-order desires agents may have formed. The case for non-voluntariness is not as straightforward as Olsaretti advocates.

To illustrate the two extreme cases, Gandhi's choice is voluntary as it fits with his 'deepest convictions' (second-order desire) of mounting resistance until eradicating racial discrimination. Assume also that the act of non-violent resistance (paying the cost), that is, of

[110] See John Elster (2000), and see Olsaretti for a different assessment (1998, p.73)

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peaceful non-compliance with unjust options available to him (and to all Indians), *is* the act he sees upon reflection as the only strategically effective option (first-order desire), which honors precisely his deepest second-order convictions.

In this sense, Gandhi acts voluntarily only with regards to his own choosing (walking on the sidewalk), but not with regards to the consequences of the action (being beaten up). Conversely, a victim of harassment who speaks up is acting non-voluntarily, if she has a deeper desire to feed her family at any cost. The desire to make sure that her children are well fed and housed *before* her own wellbeing may drive her to not speak up and risk losing her job. However, suppose that the situation becomes so bad that she cannot bear the harassment any longer, and before she can find another job to ensure subsistence for her children – her first-order desire to speak up takes over the deepest one. She non-voluntarily ends up betraying her commitments. However, suppose that she does not end up in the street with her children, because, contingently, her husband becomes employed in a job that provides for all temporarily. The latter leads to the conclusion: like Gandhi's case, her voluntariness does not lie with the consequences of her choosing, which turned after all, great: she is not working for the harasser, and she is not in the street with her children. Voluntariness, and a lack thereof, lies with *her* choosing. I need one more step in order to establish the conceptual link between the consequences resulting from an action and the action itself. On a full account of voluntariness (Torresi & Ottonelli 2013), according to which an 'exit option', that is, a third acceptable option would be available.

If there is an acceptable 'exit option' on offer, does the agent still choose her course of action, incurring the given costs (or consequences)? I believe it is here that voluntariness resides, namely in whether the agent *chooses the consequences* voluntarily.

I use the example of Gandhi to illustrate this point, as the final step for my argument.

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Assume Gandhi's exit option is the following: poor Indians will remain discriminated by white people, beaten up and humiliated if walking on the sidewalk, but the middle class educated Indians like Gandhi will be permitted to walk on the same sidewalk. He is now able to walk on the sidewalk of his choosing. Gandhi, assuming, is asked whether he would want this exit option. Gandhi can reply, plausibly:

1) No, I do not want to be allowed on the sidewalk, if most other fellow Indians are still permitted only to walk in the dirt. I choose walking on the sidewalk under the previous set of bad options, and refuse this exit option;

2) Yes, I will take the exit option;

3) I am a masochist and enjoy getting beaten up, so I will always refuse an exit option.

In (1), Gandhi voluntarily chooses the original option *and* its original consequences (for a commitment to justice – he walks on the sidewalk and is beaten up).

In (2), he voluntarily chooses walking on the side walk, but not its consequences (he voluntarily walks on the sidewalk and non-voluntarily is beaten up – in view of the fact that he takes the option to avoid being bitten up).

In (3), he always chooses the course of action and its consequences (*because* of his masochism – he always walks on the sidewalk and always prefers getting beaten up).

Importantly, note that the only element that holds constant over the three cases is that the agent chooses the action voluntarily. We can only know whether the action is voluntary or non-voluntary if agents have a third, exit option. Mere bad options do not inform us definitively whether the action is voluntary or non-voluntary. Thus, on Olsaretti's account, we cannot know this information, but merely assume it. On my account, we know that some people act progressively, and that rebuts the view that all actions in the face of bad options are non-voluntary. We also know that voluntariness is determined by whether the agents accept the consequences voluntarily. I now introduce the conditions for this.

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The variation of accepting consequences is where non-voluntariness may occur. Consider a further distinction between *moral consequences* and *distributive consequences*.

The distinction between case (1) and (3) is illuminating: in case (1), voluntariness obtains *because* Gandhi chooses to face the "moral" consequences – he freely chooses peaceful resistance in the face of unacceptably unjust choices. He also accepts the 'distributive' consequences (being beaten up) only insofar as they are inevitable for the moral consequences to obtain (exposing and contesting the injustice of bad options). The masochist instead chooses the action (walking on the sidewalk) and the distributive consequences (being beaten up) irrespective of moral consequences.[111]

I call case (1) the *progressive account of voluntariness*: the agent facing two bad options acts voluntarily if she freely chooses the (a) action, (b) the moral consequences, and as a result, the (c) distributive consequences.

I call case (2) the *revised conventional account of voluntariness*: the agent acts voluntarily if she freely chooses (a) the action and (c) the distributive consequences.

3.5 The Conventional Account versus the Progressive Account of Voluntariness. The Case of Moral Heroes

The conventional account (Olsaretti 1998) stipulates that the agent acts non-voluntarily when facing two bad options. An action is voluntary only if one of the options is acceptable, or if one of the options is thoroughly bad,[112] but it happens to be the option that the person likes very much. The minor qualification according to which the agent acts voluntarily if he prefers a bad option very much (even if the option is unacceptable) would supposedly qualify Gandhi as

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[111] Many give their organs (voluntarily), for some gains (this is problematic from other perspectives, see Rippon 2014 and my supra note). Here I leave it open whether moral consequences (being beaten up) are part of the equation in the masochist case.

[112] This is to say that no reasonable person would take this option.

someone who likes being beaten up for no reason. Gandhi is understood by the conventional account to act voluntarily in walking down the street only in light of liking the option very much. This understanding does not meet common sense. Or else, the conventional account will understand Gandhi as acting non-voluntarily in walking down the street. This alternative understanding also does not meet common sense.

Both responses are mistaken. I will start with the second, which claims that Gandhi acts non-voluntarily. It is controversial to think that millions of people who are *forced* to face very bad options, and who *actively* choose very bad options, e.g. social protests, civil movements, etc., act non-voluntarily because they are forced into bad options (e.g. arrest, political persecution, etc.). Consider the case of the youngest Nobel Peace Prize winner Malala Yousafzai,[113] who was shot on her way to school. Consider thousands of suffragettes who campaign for equal rights (most notably the right to vote), facing the possibility of getting raped, beaten up and sometimes killed. In the first chapter, I mentioned Rosa Parks's disobedience through the trivial act of sitting on a seat of her choosing, which she was not allowed by laws in place. She was "the face" of the civil rights movement, although thousands of movement supporters did not gain her reputation as moral heroes, despite facing beatings, jail and sexual assault[114]: still, they chose to march, no less than Rosa Parks. Peppino Impastato[115] campaigned against and openly mocked the mafia, resulting tragically in being murdered by the mafia. It is an uncontroversial fact that the persons I am bringing up were *forced into these option*, that is, they were offered very bad options. Were they offered gender, civil, and racial equality as an

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[113] See her Biography: https://www.biography.com/people/malala-yousafzai-21362253
[114] See: http://www.politics.co.uk/comment-analysis/2018/02/08/the-sexual-assault-faced-by-the-suffragettes
[115] See https://www.rottentomatoes.com/m/the_hundred_steps

option, there would not have been a claim against abuse. They were campaigning for these rights *because* these were not provided in the first place.

The first possible objection by the conventional account is to say that Gandhi, Parks, Impastato, Malala and millions of their followers acted voluntarily because they liked the options of being jailed, beaten up, etc.. This is implausible. Of course, it can be true that some people voluntarily choose to be beaten up, arising from masochistic desires. But clearly there is a distinction between accepting to be beaten up because one is a masochist, and because one is *contesting* 'the rules of the game'. For Olsaretti to accept the distinction between Gandhi and masochists, she must first accept a conceptual difference between voluntarily acting, voluntarily facing moral consequences (e.g. facing injustice), and voluntarily facing distributive consequences (e.g. being beaten up). Olsaretti then cannot place all three relevant features under a single one, voluntarily facing x options whereby lumping together the three under the word 'options', as these are three distinct normative forces at play.

This distinction is not envisioned on the conventional account of voluntariness. It is possible on the progressive account. The fact that people act on their sense of justice, i.e., that they freely act to reject bad options, is not considered on the first account as a normative possibility; this is because Olsaretti posits that her account is (a) not based on a moralized version of voluntariness, and (b) it is not dependent on a moralized notion of freedom. I think she manages to defend a non-moralized version of voluntariness, but this is a problem for her account. She achieves the second goal, which is to have an account of voluntariness that is *not* based on a moralized version of freedom. But she achieved an account or voluntariness that is fully based on a notion of freedom (I agree, non-moralized freedom). These conclusions run into the objections I showed, and which I summarize below.

Both (a) and (b) pose problems to the consistency of Olsaretti's account. In cases like Gandhi, on her account, agents undertake action either non-voluntarily, or as masochists.

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Specifically, by saying that the action is voluntary *because* there is one acceptable option, she avoids accounts of moralized voluntariness. That is, Olsaretti explains the action not in virtue of its own value, by some property that pertains to the action itself)[116] It explains voluntariness entirely by relating it to available options – whether these are acceptable or unacceptable. Olsaretti accepts a set of three explanatory options: 1) if an option is acceptable, the agent acts voluntarily; 2) if no option is acceptable, the agent acts non-voluntarily; 3) and if an option is unacceptable, but is one for which the agent has a strong preference, the agent acts voluntarily. Only option 3 (which is an exception, rather than the main argument) admits that there is something about the content of the agent's choosing that does the work for voluntariness, namely, *her* strong preference. Otherwise, in cases (1) and (2), voluntariness is determined entirely by the quality of the options, that is, whether they are acceptable or unacceptable. This is how the account fully bypasses the possibility that Gandhi acts on a sense of justice. It shows instead that either he acts non-voluntarily, or he must be a masochist.

Assuming that people act on their sense of justice most of the time, it seems plausible that an account of voluntariness would accommodate what human beings *are like* and how they *act* in their choosing.

It is useless to point at logical possibilities of (non-)voluntariness, if such an account has no tools to understand cases like Gandhi, but could in fact be said to distort what is going on in such cases. The idea I defended against the conventional account, in sum, is that:

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[116] One common example used in the literature for advancing this point is Nozick's slavery example. If a slave is asked to do A, and as a result is spared from a beating, he cannot be understood as acting freely in doing A. Proving that the slave acts unfreely when he does A reflects our judgment that, generally speaking, we do not (morally) expect people to do A in order not to be beaten up. This is why we do not weigh the costs and benefits the slave takes upon himself in doing A, but we consider that he is coerced (and as a result he is unfree), which we consider wrong from a standpoint of morality. In other words, it is our moralized understanding of what choices are permissible to hand to people, we decide whether the agent acts freely or unfreely.

I. An agent acts freely if she acts on her sense of justice, independent of the options.

II. For an agent to freely undertake an action, there must be at least one possibility (one option) which can be acted on freely.

III. If (1) and (2) are true, then an agent acts voluntarily.

I now turn to elaborating on this account.

3.6 The Progressive Account of Voluntariness and Remedying the Conventional Account

Summarily, the conventional account explains non-voluntariness in the following way. No reasonable person freely faces options of being beaten up, killed, and jailed, and so on. They must have acted non-voluntarily, if they choose such options. Or they must be masochists as they like being beaten up. In taking the distinction I proposed earlier, between choosing moral consequences, and distributive consequences, we are now able to flesh out two features. One pertains to the progressive account, that is, the fact that Gandhi may have voluntarily walked down the street. The second pertains to a feature of the conventional account, which is true, but which can only be explained either by a moralized notion of voluntariness or one of freedom. I chose the first for the progressive account of voluntariness, while Olsaretti chose the second for her conventional account.

The two accounts converge on the following premise: the options constitute 'forcing' insofar as they are 'unacceptable'. The question Olsaretti fails to address in her account is: when are these options unacceptable *in such a way* as to undermine voluntariness? That is, when does 'forcing' amount to non-voluntariness? We accept that the options being unacceptable constitutes 'forcing', which we understand as a limitation on conditions of freedom. The only explanation of voluntariness we can give in virtue of the conventional account is one which relies entirely on criteria of freedom (whether options are acceptable or not). We have seen that

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even if we accept that voluntariness is defined in virtue of freedom, such an account is clearly insufficient. It does not tell us whether or not an act is voluntary. This theoretical construct does not explain Gandhi's case in a commonsensical way: he's neither a masochist, nor acting non-voluntarily.

Second, Olsaretti herself accepts that (moralized) freedom has no relation to voluntariness, by means of two related claims.

Claim (a) is that freedom and voluntariness are distinct to such a degree that one does not explain the other because, as she posits, there is a disjunction between the two conceptions, which carries normative implications:

1) "C is the inhabitant of a city, located in the middle of a desert, which she is free to leave. However, C who would wish to leave, knows with absolute certainty that if she leaves the city she will not be able to survive the hardship of the desert and she will die. Her choice to remain in the city is not a voluntary one."
2) "C1 is the inhabitant of an insurmountably walled city which she is unfree to leave. However, her city has all that anyone could ever ask for and *C1*, aware of this, *has no wish to leave it. She voluntarily remains in her city*." (p 71, my emphasis)

The argument Olsaretti derives from this illustration is that in the first example, freedom is not sufficient for voluntariness; in the second, unfreedom does not undermine voluntariness.

Claim (b) below argues against Nozick's position according to which some moralized rights-based conception of freedom is not the explanatory force of voluntariness. She claims:

> "(1) the rights-based definition of voluntariness means that in order to know whether an action is voluntary, we need to know whether the options facing an individual were brought about by *other individuals* acting *in accordance with their rights*;" "(2) hence, considerations of justice, i.e. respect of rights, come in before we define something as voluntary, and are indeed needed exactly in order to establish whether something is voluntary;"

However,

> "(3)once we have relied on considerations of individuals' rights in order to declare an action as voluntary, it is pointless to then refer to voluntariness in order to establish that the transaction, being voluntary, is just." (p. 62, my emphasis)

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With (3), Olsaretti explains the circularity in Nozick's conception: justice (rights of others) justifies when voluntariness obtains, but voluntariness in turn depends on others' actions (restricting the agent's choices) being just, that is, that agents act within their rights.

This step is correct, but insufficient (see emphasis in (2), claim (a). The account needs to obtain that voluntariness does not reside primarily with *others' actions* (understood as setting up walls or restricting options), in order to avoid explaining voluntariness as a notion entirely dependent on freedom.

In example (2) claim (a) above:

Inhabitant "C1 *does not wish* to leave. She stays voluntarily". In this illustration, voluntariness is explained by what the subject 'wishes', and not by whether and how her options are restricted by other agents, who, for instance, placed tall walls and compromised her freedom.

In Olsaretti's example, the notion of voluntariness is independent of freedom in that it depends solely on the subject's wishes. But, as argued extensively, this is not what the conventional account obtains. It obtains voluntariness, not dependent on moralized freedom, but entirely dependent on freedom, that is, on how others justly and unjustly force options on the agent. It posits that one acts voluntarily *because* one has an acceptable option – independently of whether that option came about justly or unjustly.

In Olsaretti's account, assuming that bad options "force" persons in the sense of undermining their voluntariness[117] – it seems rather problematic that she defines voluntariness by the value of these options, that is by how good or bad they are. By relying on conditions for freedom, the conventional account only succeeded in arguing against Nozick's anchor of

[117] Olsaretti accepts that not only coercion may constitute 'forcing', but also other things like exploitation, insofar as the end result is less or unacceptable set of options. (Independently of whether options result from direct action of specific actors or a structure like the market). I assume this point.

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voluntariness in moralized freedom. He mistakenly defined voluntariness on grounds of moralized freedom. As a result, Nozick thought that voluntariness is not undermined no matter how bad options are, as long as agents who produced such options acted within their rights. This is a rights-based (or moralized) definition of voluntariness, explained correctly by Olsaretti as a conflation of two separate ideas. One responds to whether agents, in doing x, restrict the area of freedom, i.e. the options, of agent A; the other responds to whether agents, in doing x, restrict the area of voluntariness of agent A.

But after setting Nozick's view aside, Olsaretti's account is left with equating voluntariness to freedom, that is to say that one acts voluntarily if the quality of options handed to agents is not bad. This is clearly wrong, I showed, because it misses out on facts such that Rosa Parks voluntarily sat on the bus, in the prohibited "white" row, and Gandhi voluntarily walked down the street.

3.7 Remedies to the Conventional Account

By relying entirely on the nature of options, Olsaretti's definition of voluntariness only avoids moralized freedom (Nozick's rights-based conception of freedom), but fails to avoid freedom (i.e. available options) as a conception on which voluntariness is parasitic (p. 59).

It seems that either the account endorses a moralized notion of freedom, that is, it explains why options are unacceptable *in such a way* as to affect voluntariness (or, see the alternative below). But for this step, the account must argue for and accept a strong relationship between voluntariness and freedom. It should be argued, as part of the account, that the agent acts non-voluntarily not because the options are bad, given that bad options are insufficient to explain non-voluntariness, but options are bad in *a specific way* that undermine voluntariness. Olsaretti's account argued instead, as in example, with C and C1 case: there is no relationship between freedom and voluntariness.

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Or alternatively, Olsaretti's account rejects voluntariness dependent on freedom (moralized or not), and accepts instead a (moralized) definition of voluntariness.

This is what the progressive account proposes: that voluntariness does not rule out all conceptual relation with freedom. If conditions for freedom are way too dire, plausibly voluntariness is vitiated. Consider if one is asked whether she wishes to be murdered by a gun or by a knife. If living is not an option, then the gun and the knife are not genuine choices, not even under Olsaretti's account, according to which these may be voluntarily chosen only if one had a strong preference for one of the options. But if there were a possibility that a moral hero will choose the knife – imagine a person performing the Japanese honor suicide *seppuku* –- the conventional account is not set up in a way to detect the voluntariness of the subject herself.

The conventional account is unable to gain insight into the subject's wishes for two reasons: first, because voluntariness depends on conditions of freedom entirely, which I addressed extensively; second, the account starts with a problematic premise, which would still have constituted a problem to this effect, even if all other points were plausible.

Olsaretti unjustifiably limits her view about options that people make based on her revision of Nozick's account. Let me explain. Olsaretti thinks correctly that Nozick conflates two distinct conceptual levels in his marriage example, which he later employs to demonstrate that taxation is a form of forced labor. In his example, where there are females A to Z and potential male partners A1 to Z1, Olsaretti argues that whether individuals want to marry in general is one question, and whether they want to marry specific others is another, e.g. Z marries Z1. She therefore distinguishes between the 'rules of the game', that is, whether one can opt out of marriage altogether without unacceptable costs; and 'participating in the game' that is marrying Z1 (pp. 66-69). Olsaretti is right that the marriage example is not a good analogy with the market, given that one can leave the 'game of marriage', by remaining single or becoming a nun, but one cannot leave the market without starving.

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Accepting this distinction, as I do, it does not explain why the plausible voluntary scenarios are the only ones in which the subject decides whether to participate in a game (marry Z1, and accept job Y) or opt out of the game (stay unmarried, and opt out of the market). Olsaretti misses out on one more possibility, which is to *contest* the rules of the game. I believe moral heroes voluntarily do so – they contest the entire institution of marriage, the institution of market, practices of racism, etc.

Contesting the rules of the game is a valid option, one that any account of voluntariness must explain, and cannot afford to ignore, lest we accept counterintuitive conclusions, such as that most social change was brought about by non-voluntary actors, or those who, like masochists, enjoyed being beaten up and ostracized.

3.8 Concluding Remarks: Many Migrants, Like Gandhi, Move Voluntarily

The conventional account, after adding the qualification that one acts voluntarily in the face of bad options if she strongly prefers that option, seems not to disagree substantively with my conclusions. The substantive difference is that the conventional account fails to explain the difference between Gandhi and the masochist, whom clearly seem to accept a bad option that they both prefer for different reasons. I addressed this problem. However, the two accounts differ instead with regard to how they ground voluntariness. The progressive account manages to explain Gandhi's action as voluntary. The conventional account fails. The limitation of the conventional account is due to its anchoring voluntariness entirely on freedom. I showed that we may circumvent this problem by instead grounding voluntariness in the sense of justice of the agent as well as freedom.

In making two distinctions – between action and consequences, and between moral consequences and distributive consequences – I showed that the main conclusions of the conventional argument are wrong in not fixing voluntariness on agents, and not options.

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Instead, I claimed that when facing two unacceptably bad options, people sometimes act voluntarily. Non-voluntariness occurs only if the agent faces bad distributive consequences without choosing the action and the moral consequences, which are the preconditions for freely accepting bad distributive consequences. I stated that people act freely if they act on their sense of justice. It is implausible to think that people's acts in line with their sense of justice *are* always carried out non-voluntarily. I argued the following:

(1) A person acts freely[118] when her action reflects her sense of justice.

(2) An action that reflects her sense of justice must entail at least a possibility that the action is freely undertaken.

(3) This is when a person acts voluntarily[119].

If we accept the conclusions of the progressive account of voluntariness, we accept that Gandhi, in facing an unacceptable option (being beaten up), acted voluntarily, for the reasons I explained: he freely undertook his action, and endorsed the moral and distributive consequences.

I believe contemporary migrants and refugees, like Gandhi, act voluntarily, for the most part. They are for the most part aware of what the obstacle and risks are, that is, what the

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[118] The notion of acting "freely" that I adopt is compatible with Aristotle's idea of voluntariness, as mainly pertaining to the subjects who act, and not to the circumstances they face, which can indeed restrain the options they chooses from: "A somewhat similar case is when cargo is jettisoned in a storm; apart from circumstances, no one voluntarily throws away his property, but to save his own life and that of his shipmates any sane man would do so. Acts of this kind, then, are 'mixed' or composite; but they approximate rather to the voluntary class. For at the actual time when they are done they are chosen or willed; and the end or motive of an act varies with the occasion, so that the terms 'voluntary' and 'involuntary' should be used with reference to the time of action; now the actual deed in the cases in question is done voluntarily, for the origin of the movement of the parts of the body instrumental to the act lies in the agent; and when the origin of an action is in oneself, it is in one's own power to do it or not. Such acts therefore are voluntary, though perhaps involuntary apart from circumstances—for no one would choose to do any such action in and for itself."
http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0054%3Abekker%20page%3D1110a

[119] I remind the reader that 'acting freely' is distinct from 'being free'.

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distributive consequences are (see chapter 2). They know that, together with their families, they may drown while attempting to cross the Mediterranean Sea. My thesis proposes a major shift: Instead of fixating on their voluntariness, we need to shift the theoretical focus to address whether it is permissible for states to even produce such distributive conditions[120] for anyone to face. In other words, the conditions for a just migration regime should not start from a notion of voluntariness, because it is too basic a moral unit: the suspension of morality, where accordingly, agents face too dire conditions to make sense to common morality. The equivalent to a lack of voluntariness is being abducted and trafficked, the only cases where voluntariness is obviously absent.

We should not begin from voluntariness: voluntariness is not related to the distributive consequences in a way that we can derive one from the other, and distributive consequences should be weighed independently from whether migrants move voluntarily. The argument is: Gandhi should not face being beaten up in the street as an option, independently of whether he chose to walk on the sidewalk, that is, whether he acted voluntarily or not. The argument applies to all moral heroes I discussed, including migrants.

Migration theory should therefore begin from the conditions that migrants and refugees face, independently of their voluntary and non-voluntary choosing. Their choosing between bad options, especially voluntary, is what clearly exposes that they pay an unjust distributive price, one they may non-voluntarily face.

How should a moral theory of movement begin from the distributive consequences - that is the conditions under which many people move, and motivating factors to moving? By inquiring which distributive conditions for movement states should protect and promote, I will

[120] By 'producing conditions' I mean a complex process in which many actors contribute to impoverishing, exacerbating inequalities, or via policies and other institutional mechanisms (Gibney 2015). I assume that states are not exonerated from partaking in this tendency.

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address this question more fully in the chapters 4 and 5. I conclude that states will not be asked to purchase tickets for migrants on luxurious ships. But this is a condition states are not under the obligation to ensure even for their own citizens. Conversely, in this day and age, many liberal states are clearly shown to actively protect and promote conditions for migrants and refugees in which morality is suspended. States actively promote immoral distributive consequences (or costs) for underprivileged movement. Current conditions affect migrant agency and undermine their status as human moral equals, both of which liberal states solemnly vow to defend, and systematically deceive.

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CHAPTER 4 - FREEDOM TO CHOOSE MOVEMENT (FCM) THEORY. A CASE FOR JUST BORDERS

This chapter concerns immigration and immigration policy. What should the content of immigration policies be? There is a common agreement, implicitly or explicitly stated, that policies should be just. But there is no agreement among philosophers regarding what just policies are. For it, there should be a general account on what justice in immigration demands states to do. In lack of such a general framework, therefore, whether specific policies are unjust, is generally argued from narrow perspectives, that is from other "spheres of justice", as the term used by Michael Walzer suggests[121]. For example, a policy that separates children from their families at the border as Donald Trump's contemporary policy is currently practiced[122], are unjust on grounds that the value of family unity and wellbeing is a value most societies accept.

This chapter focuses primarily on immigrants who are generally poor or extremely poor people who cross international state borders and intend to settle in some other state out of need. For some migrating may be one option to raise their life standard above a sufficiency threshold of basic decent life, while others may wish for more opportunities. Normatively the two categories are distinct in that, arguably, the first category of people may trigger stronger duties

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[121] "Complex equality" is built on the principles of pluralism distribution of social goods. Each sphere must reflect a certain principle: merit, for example, is a satisfactory criterion for the recruitment of bureaucratic jobs; need may be a criterion for allocating certain property, access to care in the health sphere, for example, must be governed by the principle of need, not creditworthiness. Thus, no principle, according to Walzer, provides a basis for general distribution, governing the distribution of total assets. Also see Yong 2014, who argues that policies should permit family reunifications, that is the member who is abroad to join their spouse or parent, on reasons that are independent from a general just policy framework: right to family.

[122] https://www.theguardian.com/us-news/video/2018/jun/30/minors-separated-from-parents-and-detained-at-us-border-tell-of-anguish-video

on behalf states that would evaluate their case for migration[123]. Even closed border theorists, such as David Miller (2007), argue that wealthy states have a remedial duty towards the former (2016), which may not entail without further argument a duty to admit them into their territory, but a duty to remedy to their absolute poverty *in loco* at least until their life is raised above the sufficiency threshold. Although much movement occurs internally to states, I here discuss only the type of movement that crosses international borders, insofar as they are subject to migration policies - set generally by another state which generally decides on the conditions of their admission and permanency.

This illustrates three main assumptions we can make about the content of migration policies. First, that migration policies are "holistic" (Miller 2016, p. 160), namely set by states in line with and alongside other national goals. This means that there cannot be one simple general response to the question what their content should be. Second, policies reflect a public character. For example, Italy may have a specific interest in setting migration policies in a non-discriminatory manner that is against specific people or races, but the content of these policies should be acceptable to the given societies. Thus policies may discriminate in welcoming some people or rejecting some others on grounds that are *permissibly* discriminatory. For instance, Miller (2016) argues that societies have a right to admit people based on their skills. Third, policies should reflect values that specific societies declare to cherish. Miller defends four values: weak cosmopolitanism, self-determination, fairness and integration. These four values promote, as Miller calls it, policies that are generally as restrictive as they can be in order to advance societies that are "communitarian" or "social democratic" that is societies which value

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[123] Depending of course on whether one endorses an egalitarian or a sufficientarian position. I defended the latter position in this thesis. Additional arguments, which I leave for another work, may make my position compatible with egaliatarianism.

social cohesion and social justice.[124] My thesis does not address explicitly these values although it touches on all the debates that surround them. It however adds one value that questions and possibly re-arranges the list of values: movement. For one thing, there is an oddity about the current literature approach, which affects most migration theory and social sciences. Interminable debates on many values, some advancing views that promote strong moral cosmopolitanism instead of weak moral cosmopolitanism, or some discussing what self-determination may legitimately entail, as to whether a thick or a thin culture to being promoted (Miller 2016). But no theory seems to seriously address the value of the main component that migration policies regulate: the value of movement.

In this chapter I want to explicitly elaborate on what is entailed by movement as a value, whereby I sketch a theory of just border that stands on two main principles: the ideal Freedom to Choose Movement (FCM), and the non-ideal reparative principle, freedom to need movement (fnm) – in Section 4.1. This theory has implications for policy design, and as such I qualify how the principles work in ideal and non-ideal circumstances, by setting an ideal moral desideratum – Section 4.2. I identify one of the main conceptual mistakes, adopted most explicitly by open border's perspectives, which I call the liberal hypocrisy paradox, and I show how my theory overcomes it conceptually and normatively (Section 4.3). I then discuss four objections to my view (Section 4.4), freedom to move out of choice: the Objection from the Jurisdictional Theory (Section 4.5), the Objection from the Freedom Associational Theory (Section 4.6), the Objection from the Community of Character and Protection of social view (Section 4.7), and the Objection from the Economic (national) interest (Section 4.8). I conclude that the four objections lie ground for considerations against in-movement, but these

[124] The argument is made through Miller's book *Strangers in our Midst*, and it is succinctly summarized in chapter 9.

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considerations are weak, because a) of their normative grounding and most importantly b) because they are constrained by the freedom to choose movement normative strength (FCM/fnm). Thus, to illustrate, a state which may want to tailor its migration policy on its national interest, may not do so, unless it has fulfilled its obligations towards poor states.

4.1 Freedom to Choose Freedom of Movement and Migrant Admission Policies

The discussion I conducted in the previous chapters suggests that the main principle to guide migration policies is Freedom to Choose Movement, hereafter FCM. It rests on the following premises:

1) Ideally, people should be able to move across state borders, for morally permissible reasons and genuine human interest (non-malicious reasons, like terrorism).
2) But, as a demand of non-ideal theory, migrants should *choose* movement, rather than being 'forced' (pressed by harsh circumstances of today's world) – which is true in the ideal theory too, except harsh circumstances do not exist[125]
3) Theoretical and empirical distinction between *need* to move and *choice* to move is needed.
4) Migration policies should be designed in a way to take into account this principle, call it Freedom to Choose Movement FCM (ideal form, as in premise (1) and freedom to need movement, fnm (non-ideal form, as in premises (2), (5) and (6).
5) The fnm demands that *to the extent to which people's livelihoods are negatively impacted* by 'external' factors (see discussion below), they should be under normative and empirical assessment for 'reparation'.

[125] A reader may ask why ideal theory should demand that people should move. Ideal theory does not demand movement or lack thereof. It demands that people choose, as it is the case with all liberties. One is not demanded to marry, but has the liberty to do so, if so she wishes.

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6) Solutions to such assessment might trigger the right to freedom of movement, institutional reform or monetary compensation (depending on the facts on the ground).

So far, I explained little about premises 3-5, which could be interpreted contentiously. To begin with premise (3), two important questions need addressing: First, can we define 'choice' and 'need' in a non-ambiguous way, in the sense that can it be said when it is the case that an individual migrates out of genuine choice rather than being pressed by need to choose so? Second, (and related to the premise 4) how can migration policies detect when it is the case for need and the case for choice in the side of individuals? I sketch the distinction between need and choice in the cases of "carers" and "NAFTA", where I establish a principle to distinguish between need and choice: the harsher the trade-offs to be migrants face, the stronger the need and lesser a choice.

Ideally, since there is an essential interest in movement, some people may decide to do so for all sorts of legitimate reasons: attend a conference, live with loved ones, explore knowledge, people and places we know little about. In the non-ideal world, many or some would not have the option to choose, but their movement is compelled (by which one can understand forced or constrained) by external circumstances: these are contemporary migrants, who move out of need. I provide an illustration of a newly explored field to explain.

4.1.1 The Carers Case

Recent work in care ethics show the conditions under which many women undertake migration generally from poorer countries towards wealthier ones, to work in the caring sector, that is "domestic work (England 2010; Hochskiled 2000, Lutz 2011), nursing (Gabrielle 2011), au pair (Cox 2010) social workers (Beddoe et al. 2012), and sex work (Agustin 2003)"[126]. According

[126] See the chapter "Migration and Feminist Care Ethics" by Parvati Raghuram, in Alex Sager ed. 2016

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to Parvati Raghuram, of the international domestic workers, 83% are women and 17% are men (2016, p. 187). Furthermore, carers are also "one of the lowest paid group of workers in current society" and" the institutionalization of care places demands on carers that no other profession does" (pp. 191-2). To mention a few ways in which carers are especially disadvantaged (if compared to workers in other sectors): first "…care givers can be dependent on their jobs and therefore vulnerable to the demands and desires of those who they are caring for. This is particularly true in the case of migrant carers for whom the care for others may come at care for oneself. Carers can be stuck in dirty and dangerous jobs without properly accessing their rights" (p. 191). Second type of disadvantage carers suffer from is the fact that they care for others (children, elderly and so on) at the expense of carrying for their *own* children and elderly. This phenomenon was named by some feminist theorist "the global heart transplant" – the global moving of caring labour (Kittai 2009, 54). Kittai's work is meaningful for pointing at this particular aspect of care: migrant women are harmed in the process of moving in spite of the noteworthy economic benefit that transnational migration brings to these women and their families. They are harmed because they are deprived from the possibility to care for the 'particular others', for example one's own children, one's own parents and partners, and further their only way to carrying for them, for example as providers, entails migrating to care for the wealthier. "A global heart transplant" occurs when women devote much of their direct caring efforts to children, elderly people and the infirm in the wealthy Western countries, while their own children and families left behind (usually, but not always) by necessity are cared for by others.

This illustration points at how a basic universal interest, which constitutes a basic moral right (as well as legal) that of carrying for particular others, like one's children is chipped away by necessity for some (the global poor) and given ample choice of care to others (the global rich). Renouncing to one's care to *particular* others in order to provide it for *generic* others is a

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demand that no moral scrutiny would deem acceptable. Morality rarely demands an effort on the part of any agent that would endanger oneself (as one's wellbeing) or one's fundamental interests, such as caring for particular others. When this occurs, even if one is shown to undertake this avenue voluntarily, one must be recognised to do it out of *need*, and not out of *choice*. This conclusion comes from the generalised understanding of the universal interest most people have to keep close contact and relationships with particular others, with their own spouse, their own children, their own friends, etc. One way to understand it is to inquiry what would be the ideal in which a right is fulfilled. Under which threshold a right gets subverted or goes unfulfilled?

I suggested that this ideal is reached when people move out of choice. It is, however, very difficult to establish a threshold that defines "choice". Theorists have tried the idea of voluntariness (see chapter 3) - that is one is shown to undertake a migratory project voluntarily, if one has at least another viable alternative. I find voluntariness incomplete and inadequate for our task at hand. Voluntariness, as understood by Oberman (2015) explains when a person is "forced" into a situation, that is, when conditions of freedom are unreasonable. But most migration, and large part of refugees' displacement is voluntary to some relevant degree, despite or in the face of these conditions. That is, most migrants have some level of choice (in the sense of alternatives), e.g. to move internally (say from rural to urban areas, and that would leave a choice between which developed areas or cities), or move internationally, which would entail some choice to some other place or places. Voluntariness only alerts us when one has no other decent alternative – and I argued – then in face of lack of reasonable alternatives, many subjects are moral heroes, that is they accept to pay unacceptably high costs that are imposed on them by dire conditions. To illustrate the idea, if Syrians fleeing the war can choose to flee to Turkey, Lebanon or Jordan, but also parts of Syria that were not (as) affected by the war (incidentally also the places hosting most displaced Syrians), they can be said to act voluntarily, because they

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have alternatives. Syrians who find refuge in some camp close to their home town, or to their neighbourhood, are also to be understood to move voluntarily. Among those who could be understood to (voluntarily) pay unreasonable costs may be some Syrians who decide to stay in their home town and physically fight against ISIS invaders, as many Kurdish civilian youth are shown in the media to choose; or some who decide to cross the Mediterranean in search for a safe haven, well knowing that thousands die during this attempt.

We must avoid two extremes - both wrong. One has no other alternative and can be said to act involuntarily because s/he has no reasonable alternative (giving my wallet to a burglar while under threat), and because he didn't have access to a *full* range of options (access all or most countries). I argued in chapter 3 that lack of unreasonable alternatives is insufficient to explain whether an agent act non-voluntarily. As Ottonelli and Torresi (2013) explained: abortions took place under and because of inadequate conditions, such as lack of reproductive prevention measures, care and education; in other words, women did not have access to a full range of options (e.g. sexually educated partners, legal access to birth control pills, legal access to the 'morning after pill', etc.). Yet, abortions were taking place voluntarily[127]. But the question is: is voluntariness useful here? Granted that most movement takes place voluntarily (except for some cases of modern slavery, understood as human trafficking). From the point of view of justice, voluntariness adds perhaps the lowest threshold: no one should be forced to undertake a migration project. A lot of migration can be taking place under unjust, unfair and even evil circumstances without being considered non-voluntary movement, despite being 'forced' by dire conditions. If the threshold is so low, and migration is voluntary in this sense, this leaves justice a lot of work to do, because clearly the fact that migration is voluntary is no guarantee for it being just.

[127] See Chapter 3 for the full discussion.

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If it is true that non-ideal conditions will not affect whether an action is voluntary, because of course then all non-ideal circumstances would risk to describe agents' action toward non-voluntariness, it is true that other criteria are needed to assess, from a moral point of view, conditions that are sound. FCM and fnm, are principles that inform (migration) policy, specifically whether *more* restrictive or *more* permissive border policies approximate justice (in both non-ideal and ideal circumstances). I now turn to explain how these principles work.

The most pressing questions concerning premise (4) are: What does it mean for policies to abide by the FCM/fnm principle? Assuming that policies *can* detect and target instances of need that 'forces' migrants out of their home countries, and instances of a somewhat more genuine choice, when should policies, which abide by the FCM/fnm principle be restrictive or permissive of movement? Perhaps not fully exhaustive, but I will provide the ideas on which the principle rests, and which is further clarified when I address the objections to my theory. I shall remind the reader that in chapter 2, I argued that *to the extent to* which movement is free from dire conditions, it is a choice, *to the extent* to which undertaking movement is conditioned by dire conditions, it is out of need. Policies should therefore address the background conditions that pushes many to move out of need, in order to permit them to move out of choice - that is to meet the ideal FCM.

One concern is that the FCM/fcm principles, at first sight, seems to support a perverse response. It seems to say that in a world similar to ours, those who can properly choose to move elsewhere (e.g. Western passports holders, as well as these starting off from a wealthy socio-economic background in their societies) should remain (and be made by policies) fully entitled to the privileges they already hold, even more so when it comes to their admission elsewhere. Whereas, those in disadvantaged positions should remain in those positions (not free to migrate) until they are put in better off circumstances, so that they can avail themselves of the freedom of movement out of their own choice, rather than sheer need. This would indeed be paternalistic

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at least[128], and morally perverse at most[129]. However, it is a too hasty interpretation. I now address this objection.

4.1.2 FCM/fnm and the Global Harm Principle

The ideal FCM principle *guides*, but does not determine uniquely by itself migration policies, which will be made clear in the NAFTA case discussion. Furthermore, it does so upon a range of considerations. Migration policies are subject, like all other policies, to a number of principles of justice. For example, the FCM is compatible with another principle of justice – which applies to migration policies, the Global Harm Principle (GHP) (Higgins 2008, Mendoza 2015, Wilcox 2007, 2009). According to the GHP societies must 1) stop imposing human rights deficits upon foreigners; and 2) compensate victims for deficits already imposed upon them. The principle can be understood as prescribing open borders only if admissions will be a necessary mandatory means of discharging the duties (1) and (2). For example, if country A is bombing country B, producing the displacement of B's citizens, or it has been doing so until recently, meaning that time will be needed to restore the level of country B to the antecedent situation, the displaced people should enjoy a right to free movement to country A, until the situation at their home is restored[130]. The GHP works as a 'reparative' principle. It distinguishes between the migrants whose livelihoods are worsened so badly by external factors (such as war, trade agreements like NAFTA (Bacon 2004) that their human rights are or will be under threat and the migrants who migrate for aspirational purposes. The principle accounts for 'reparative' duties towards the desperate migrant and not the migrant whose choice to migrate can be

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[128] See Higgins for a discussion of restrictive policies, at first sight operating on paternalistic reasons, yet, justified on grounds that they are not restricting the admission of individual A for his own good.
[129] I thank Andres Moles.
[130] GHP is necessary, but not sufficient. If A bombs B, C might have duties towards people from B, even though C didn't cause harm. But, clearly, C's duties are less weighty than A's.

understood more like an 'expensive taste'. The reader might think at this point that the GHP principle prioritizes the freedom of movement of the worst off, which is the opposite of what the FCM does. How can they be compatible?

After all, we think of people who are forced to move because of severe human rights violations, have special claims to freedom of movement and ascribe to them the legal status of refugees. A generous conception of who qualifies as a refugee can in principle accommodate all the cases of migrancy I tackle here (Wilcox 2007). Though prioritising refugees' admission is rather incontestable by my token as well, the GHP might result to be too narrow. It seems to claim: Do not harm others, and if you do, compensate them by using immigration policy in service of this 'reparatory goal' before other national goals, such as advancement of national economic interests. Whilst the GHP is demanding current states to organize admitting *substantially* many more migrants, whose lives are impacted by effects of powerful states' doings, it might still seem very undemanding that a principle regulating migration is able to address mainly those whose human rights face deficits. It addresses, in other words, admissions of those immigrants whose lives have gotten so bad already, such as individuals suffering or being under imminent threat of persecution, war, and serious subsistence deprivations, and leaves out *all* others. FCM completes the GHP in two ways: first, it prioritises the choice to migrate of would-to-be-migrants even in dire conditions, as plausibly (as explained in the Syrian case above) if every person should be aided to pursue their own goals, this may entail that some prefer to go or to stay, no matter the circumstances. States should not make the choice of how they prefer to discharge their duty, regardless of migrants' choice, for example, based on what they prefer.[131] And second, FCM provides a moral desideratum for all individuals,

[131] See Oberman's 2015 criticism of states acting on their "choice-view".

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which means that it is an all-encompassing principle. The GHP is narrower than FCM, and also narrower than fnm, as the discussion will explain.

Of course, giving priority to the desperately needed immigrants (Higgins 2008, Mendoza 2015) the GHP is a well-justified desirable moral goal. Yet, my plight regards the fact that the GHP principle encompasses the regulation of those admitted as refugees and says little about economic migrants (whose human rights are not violated *proper*). The latter, because their basic rights might not necessarily be under threat, might fall out of the scope of this principle. However, a principle defining how migration policies should be set is severely limited, if it leaves the biggest category of economic migrants unaddressed, in the sense that it provides little guidance on how their admission (if any) should be regulated. The fnm, as I conceptualised it, completes the GHP.

The GHP principle operates on similar premises as the FCM/fnm, but the second completes the former in important ways. The GHP, like the FCM, does not assume that migration is the straightforward solution to human rights deficits, but asserts that it has to be proven that granting admission to the affected persons is the best solution to avoid (more) harm. In fact, the GHP accepts that the disruption in people's lives due to fleeing their homes is the best solution often only because the situation has reached its worst, and it is the best or only solution, as it is the case with refugees. FCM complements the GHP in specifying what the "best" solution is: one that considers what migrants choose.

Both principles start from the premises that citizens from affluent Western societies share collective responsibility for the human rights deficits produced by unjust trade and the global economic policies advanced by the World Bank and other institutions, generally benefitting the

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more powerful countries[132]. This is because the representatives of Western citizens are elected to act, e.g. implement these policies, in their name and interests. But the FCM/fnm principle holds the Western states accountable also for *worsening* the livelihoods of others, even if the worse-off produced situations do not correspond yet to the worst-off, e.g. severe human rights deficits *proper*. The harms to the poor, by the FCM token, is first, that their *choice* to move is depleted, as they are left with being *forced* to move. And second, if movement is restricted, harmed by additional obstacles that further diminish their *need* to move.

FCM/fnm recognize that much contemporary migration is need-driven, rather than choice-driven, and accept that generally the conditions of the need-driven migrants should be prioritized to be restored to a presupposed status quo, taken as the status before the intervention that has made it worse for them (in our case before a war, or a specific trade agreement). FCM principle demands that policies operate toward the ideal that everyone should choose to move, whereas fnm demands that nobody should need to move, but in face of conditions of need, policies should best approximate justice in view of FCM.

In terms of migration policies, this might require freedom of movement if it is the best means to fulfil the 'reparative' duties that wealthy societies have towards worse-off ones, but it might also require institutional reconstruction or monetary compensation aimed at rebuilding and empowering those societies (e.g. building schools, hospitals and services). What constitutes a *best* solution, according to my thesis, is to empirically demand that the solution reflects what the compensated population *prefers*, an aspect that remains unaddressed by the GHP.

Due to the GHP being a principle thought to address migration in its non-ideal form, in a world as the one we live in today, the risk carried by it is to prescribe uniquely normative 'reparative'

[132] I look at migration from global south towards the global north. My theory could in principle, upon further argument, also apply to other emerging economies like China, but in the Chinese case there are many details, which I cannot adequately consider and qualify in my thesis.

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aims. As Mendoza (2015) correctly points out, if we recognize that the *need*-driven migration is 'externally' created by powerful states[133], which intervene (in)-directly in weaker societies (via unfair trade agreements, war or other forms of violent oppression), postulating principles to correct present injustices, is a modest moral goal. This, if not further supplemented by more demanding principles, risks allowing institutionalizing 'exceptional measures' types of principles and cements fundamentally unjust situations, to be taken care of when the situation has gotten so bad, reaching disastrous human rights deficits. In Mendoza's view the risk is that we do not tackle the problem at the correct level, at the level that produces the type of contemporary need-driven migration. Like in the case of affirmative action, we might agree with the forms of inequalities that we need to promote (e.g. only women to be employed) to deal with deeply entrenched racism or sexism. However, we might want to recognize that this is only a 'corrective' temporary measure. Only when we need not employ affirmative action any longer to correct injustices, or *to the extent to which we do not employ reparative principles* any longer, it *really* means that we better approximate justice. In other words, we bear in mind that our ultimate moral aim is reached *to the extent to* which we are able to abandon affirmative action, and not while we are employing it. This is one such promise that the FCM advocates.

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4.1.3 The Children of NAFTA Case

In order for us to be able to postulate the *extent to which* a principle regulating migration is meeting the established moral aims, I take FCM to be a *scalar* principle. The GHP does not

[133] Of course factors that bring such states of affairs, as global poverty, are complex. For instance, See Paul Collier (2008), who attributes it to 'internal' factors, *inter alia* to corruption.

promise this capacity as it distinguishes sharply between (dire) need-driven migrants and aspirational-migrants and regulates the first category. This entails that it intervenes in cases of human rights deficits regarding the first category. However, much economic migration falls out of the scope of the principle, as their human rights are not (yet) violated. As argued in "The children of NAFTA" (2004), populations working in the agricultural sector in various regions in the countries that entered the economic agreement (Mexico, U.S., and Canada) were affected differently 'overnight' by it. Some, but not all livelihoods plumbed the depth of economic precariousness:

> "Workers in the fields report that the growers don't raise the price rate from year to year, despite big price increases for groceries. In January 1995, the price of a gallon of milk was 7 pesos. It rose to 15 pesos a year later, and to 17.50 in 1997. A gallon of milk that year cost almost half a day's wages for an adult. In 1995, the price of a chicken went from 4 to 10 pesos. A kilo (two pounds) of beans used to cost 3.50 pesos; in 1997, it cost 9." (Bacon 2004, p.35)
>
> "What makes our country attractive to U.S. growers," López responds, "are low wages. We're told that if we make our country attractive enough for foreign investment, transnational corporations will come here to invest in greater productivity. Supposedly, that will lift us out of poverty. But does it? That investment produces wealth we never see. Meanwhile, we're stuck with miserable economic conditions." (Bacon 2004, pp.39-40).

As these short paragraphs show, effects of trade agreements harm individuals, depending on which side of the agreement they stand. Some of the poor rural Mexicans were driven into deep economic precariousness, but this might not be true for the urban Mexican elites, or for all or some U.S. citizens, in the other side of the border. Some of the effects of the trade agreement might account for human rights deficits right away and will trigger protection by the GHP, either in the form of freedom of movement or institutional reframing of those economic agreements. FCM/fnm demands more in this case. It demands that *other* cases that are not yet cases of human rights deficits be addressed in the following form: *to the extent to which*

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people's lives and livelihoods are recognized to be worsened by trade regulations (or specific policies derivative of the trades agreement), should trigger the right to freedom of movement or reforming those agreements that will eventually lead to human rights deficits. Because the FCM does not kick in only in the case of human rights violations, it would demand 'positive action' to empower the affected individuals. For example, if the conditions of some are worsened to the point that children are forced out of school, the principle demands that the right to freedom of movement immediately kicks in for those families who cannot afford schooling for their children, should the family prefer this option. This puts the family in the condition of choice, because they can say: If you do not provide adequate wages to feed my family, I have the choice to work in the other field across the border, where my children stay in school. Secondly, the measures in place (see below details about the policy that seems to be insufficient to deal with NAFTA-affected people) will be declared inadequate and demand institutional reform or potentially adviced that the lack of it might trigger the mass migration of impoverished Mexicans by such measures across the U.S. borders. The parties involved in this agreement, which bear collective responsibility and accountability[134], for producing effects that devastated some Mexicans' livelihoods are well known. Empirical investigation can settle ways in which those effects can be attenuated or even totally depleted[135].

> "Mexicali Valley agriculture, dependent on exports and the U.S. market, is a showcase for this economic policy, called structural adjustment, which is promoted by the Mexican and U.S. governments and the International Monetary Fund. The policy uses depressed wages to attract investment. To keep wages low, the government finds

[134] See distinction in Wilcox 2007, p. 281.

[135] To clarify: The Mexican worker, whose life is worsened by the new NAFTA agreements, has more options when the freedom of movement kicks in. He will be in the position of any other worker, whose situation worsens, due to his boss mobbing, bullying, harassing him, or because the structural conditions under which his employment took place changed to the point of being an unfair contract. However, I claimed that mobility out of need is not all that justice requires. Justice requires rectifications of the conditions that press people into needing mobility in the first place.

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> subsidies, López says. Some are indirect, such as meals for rural children and the stipends that keep them in school. But the government also directly subsidizes some costs for growers, such as the expense of water for irrigation, which is much cheaper in Mexicali than it is just across the border in the Imperial Valley." (Bacon 2004, p. 40)

In many cases, because of the high interconnectivity of our economies and financial systems, it can be difficult to assess who is the responsible bearer for a given harm. Note that FCM, is a normative demand, independent from harmed-harming relationships: everyone, in whichever situation should move out of choice. One more urgent normative point is: How does FCM/fnm work in order to satisfy the 'scalar condition'? The principle works as a double-edged sword.

First, the FCM presses migration policy towards the ideal moral *desiderata*. This implies that other policies should also follow this path, namely produce conditions of freedom to choose in the world of states. This need not entail that all states are equal, and all citizens of the world will be equally well off, under all aspects. But it can demand that policies are thought to provide a flourishing life for *all* individuals, who will stay or move at their discretion (choice)[136]. The need to better one's life is not (fully) absent, and perhaps it never is in the human experience. The type of need that, according to my argument needs to be depleted, is much stronger generally, in the sense of being closer to conditions of pervasive deprivation, and depends on structural conditions more than personal. Of course, every individual wants more in terms of his or her aspirations and goals and this is why FCM is fundamental. Ultimately, 'corrective' principles of justice deal with injustices, as they are principles designed for non-ideal circumstances, but they are way too modest if they do not aim at just ideals.

Second, the non-ideal fnm (lowercase letter) works also as a corrective principle in the case in which it empowers people's choices. The discussion on the Mexican labor, made increasingly precarious by the NAFTA agreement, focuses on how a person (say, a mother)

[136] This view is compatible with sufficientarian or egalitarian justice. I adopted sufficientarianism.

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negotiates her wages before pulling her children out of school. The FCM and fnm dictates that she should have an adequate range of options, and she should choose her options even if her options were adequate: in this case, if she cannot adequately sustain her family, she can move to the next field (which, if it happens to be across the state's border, it does not make a difference, because the freedom of movement has kicked in automatically to make it possible, to enlarge the set of options). The non-ideal application of the principle is instrumental to empowering people's choices. It does not however entail automatically that freedom of movement is the straightforward solution, but, as argued all throughout the paper, it licenses migrants' choice of freedom of movement.

4.2 An Ideal Moral Desideratum in Migration

The reader might find some inconsistency regarding the functioning of *primary* and *secondary* principles of justice. If we take primary principles (in Rawls' illustration the ones chosen behind the veil of ignorance[137] to have lexical priority on the secondary ones), and the secondary principles to tell us what to do if the primary ones are not complied with, we might think that choosing free movement as an ideal optimum is inconsistent with the distinction Rawls makes between the two level principles. Primary principles of justice are chosen under ideal conditions of justice, and conditions of strict compliance. As stated in *The Law of People*, Rawls' ideal theory is concerned with well "ordered peoples" only (Rawls 1999, p.11), and under these circumstances migration issues would not arise[138]. Open borders theorists start building their

[137] The "veil of ignorance" is a 'test' or a 'thought experiment' Rawls uses to identify the primary principles we choose to live by. See (Rawls 1999, Chapter 3 "The original Position").
[138] I explained this point in chapter two with reference to Carens' view. Further, it is a mistake earlier: migration out of need would perhaps diminish, but nothing in Rawls' view says whether migration out of choice will also diminish, or increase. Spaniards may still be afraid of Norwegians and Swedish citizens, who would like to join because they lack sun in their home country or because they like Spanish beer.

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cases in virtue of the non-strict compliance and non-favourable conditions, thus their open borders view is justified as attempts to rectify existing injustices.[139] In other words, it seems[140] that Carens forces Rawls' hand to introduce into ideal theory the freedom of movement as one amongst other fundamental liberties, which, in this perspective, considers movement a liberty-claim (individual choice). Carens further argues that from a nonideal theory (thus adding partial compliance and unfavourable conditions for a just society) the open border case is *even stronger* (Carens 2014, p. 556). He argues that due to vast economic disparities across the world, and states borders patrolled by guns, some individuals are confined to poverty as peasants were confined to misery in feudal times. Here, Carens believes that the case for movement is stronger because the claim is a distributive-claim (individual need). This view is too quick in advancing a link from ideal to non-ideal theorizing, and as such is unwarranted. At this point I locate the liberal hypocrisy: loosening borders according to open borders view is justified, because 1) movement is a basic liberty, and 2) of the redistributive benefits to those who are less well-off (Carens 1987). Technically, the problem arises insofar as a liberty claim is traded off as a distributive claim. Accepting movement of need as a desirable moral goal because it is good for the poor[141], it is like accepting young girls entering marriages out of need, because there are redistributive benefits, or people endorsing new religions out of need because of redistributive benefits (see Chapter 2).

Contrary to this view, migration arises in the ideal world as well, insofar as people cherish freedom of movement (they are supposedly freed from dire need), *simpliciter*. Freedom

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139 See the section on open borders.

140 Schaub (2014) argues that secondary principles with the primary ones should be constitutive part of a complete ideal theory, regulating by a perfectly just society.

141 I grant that Carens is not explicit on whether migrating is sufficient or necessary for justice. Independently, my work is, at the least complementary, by arguing in favor of a choice to move, instead of merely moving.

of movement, if a liberty and a right, is not chosen out of *need*, generated by injustice, but as a freedom we might want to have at our disposal in the same way we want other freedoms. Missing out on this distinction, produces what I call the "liberal hypocrisy paradox": one accepts the importance of a right (e.g. right to marry, or to movement), yet it deems permissible that some people are *forced* into exercising the given right, which constitutes the denial of the right as such, by practices and policies that misread this fact.

4.3 Liberal Hypocrisy Paradox: the solution is FCM

Carens (1987) *enlarges* the franchise: he wonders *whose perspective* should be considered about whether movement is a liberty. The veil of ignorance, he argues, must have a global scope, so that the poor also have a say about movement[142] . Most likely, given the pervasive conditions of need, the poor will want to choose movement as a liberty; states not respecting their need to move, would condemn them, like in the feudal order, to be stuck onto an underprivileged class. The only way, however, to advocate a global scope, as a matter of consistency to liberal tenets, is if everyone *chooses* a liberty. In other words, it is necessary, but not sufficient to *enlarge* the franchise to a global scope, for movement to be a liberty for all; it is also necessary to *deepen* the franchise: any liberty must be an object of choice for everyone. For it:

1. FCM (freedom to choose movement) obtains to the extent to which agents *choose* the object of freedom: movement, marriage, love, conscience, a conception of good.
2. Fnm (freedom to need movement) obtains to the extent to which *agents* need the candidate objects of freedom. One principle to assess need is to look at the trade-offs agents are shown to face: e.g. they choose between caring for the kids of the rich instead

[142] See also Abizadeh 2007 for a fuller discussion on the scope of justice.

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of caring for their own, in exchange of redistributive benefits, which perhaps helps to offer in turn, the possibility to pay for an education to their children (see the section on care). Thus, if you face the trade-off, it would consist of the direct care for your children being traded against you offering your children an education. The poor who may choose movement as a liberty, with this tradeoff in mind, in the veil of ignorance, are choosing a redistributive claim to move, not a liberty claim to move.

Why should freedom of movement be a chosen fundamental freedom?[143] *Anyone* would argue that being captive in a room, even if a person is kept well fed, well dressed, with satellite TV, and all the conditions that would make someone happy, anyone would still opt for being *free* out there. It is not enough to give people what they supposedly *need* to satisfy their basic needs, or even *in extremis,* their expensive tastes, but freedom to move is what we choose nevertheless. That is, people will want freedom of movement even if basic needs are met. In fact, liberty claims are distinct from distributive claims, and, by standard understanding, the former has lexical priority over the latter.

To appreciate this claim, one must endorse an account of interest-based, rather than basic-needs-based to ground freedoms, including the freedom of movement. Having a range of options that is *decent* enough is not a sufficient condition to fulfil the freedom to pursue what matters to me; e.g., two convincing illustrations (Oberman 2012), such as love and health: I am not *really* free to love, if I am not free to love the person I love; and if I am given a headache pill I am not helped if I need insulin for my diabetes instead.[144] To conclude this point, liberty

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[143] One might value freedom to X because a) one values X-ing, b) because one values being free to X even if will never X, or c) because one might X in the future. Ian Carter calls b the specific value of liberty. Some people think that you're made worse off when you are not free to do something that you would never do anyway. For instance attending an Abba concert. I think, all the reasons to value x apply to migration.

[144] To justify this freedom as a right, more needs to be said. Here I defend only a presumption of liberty.

claims (and in this sense freedom of movement if it is added to the list of fundamental freedoms) are "claim-maximising", and are not fulfilled simply by a decent sets of options. Consider the case of a journalist who is facing imprisonment in contemporary Turkey: The Turkish government will tell this person that he can write and criticize anything he wishes, *but* the government's agenda (suppose criticizing the latter will be considered an act of treason). Speech, as a freedom is not satisfied by the Turkish's government position: the journalist is right in claiming that *even if* he can write about anything at all (and therefore can be understood to enjoy a generous amount of freedom; perhaps if he is comparing his position with journalists in Egypt, whose situation is much worse off, supposedly, he is much better off), he is *not* free to speak. His freedom is compromised, and goes unfulfilled. It is a mistake to think the journalist to enjoy freedom of speech *because* he has an adequate range[145] of things to write about without facing harsh consequences. To make this claim in favor of freedom of speech or expression for the journalist and against the government's stance, freedoms should be viewed from an interests-based account – that is, understood as demanding a lot more than bare minimums, and demanding of specific things - even if the conceptualization of any freedom is generic "freedom to x". This is true for all the interests at the basis of the freedoms we can think of, e.g. one should love the person he loves and it is not good enough to be offered to love someone else instead[146], one should receive the type of care she needs, not some generic care that helps her neighbor's condition, but not hers. But most importantly, I claimed, one may not express her thoughts in a particular way (for example, as the government wishes her to do), pressed by a condition of need, and be said to be free to hold her views.

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[145] There are two possible interpretations, depending on whether the reader takes adequacy to only be met when 100 thinks (suppose all) obtain, or a minimum, suppose 20 out of 100. Liberalism suggests that the threshold should be closer to the maximum, rather than the minimum. E.g. a journalism should be able to criticize his and any government.

[146] See Miller versus Oberman discussion in Chapter 1

This understanding is fundamental in the field of migration, because the Turkish journalist would have a case for refugeehood (he is persecuted by his own government) in light of the understanding I endorsed only. If supposedly he has enough good options in his country, suppose he is middle class, educated, relatively well off, he has a job for a main news outlet, he would not have an argument that his (human) rights are violated. Yet, on my understanding, his complaint, that he is not permitted to criticize the government, is valid because as I claimed, for his freedom of speech to be a fundamental liberty and a right, he must talk about and against as a journalist (within of course some universally accepted ethical codes) in *full*, and not partial truth (as the government forces him to do).

I contend that if freedom of movement is a basic right, this must be for some intrinsic reason for movement beyond that of being instrumentally necessary for fulfilling other human interests (to love, to health). Even if my interest to love is fulfilled, say that I have been lucky enough to find the person I love in my neighborhood (and moving is therefore not necessary to fulfil the interest to love Amelie), and so all other fundamental interests are fulfilled, my freedom of movement should still stand as an important freedom. Ideally, if I am not forced or constrained to move, but I want to move, I shall then move. Just as in the case of the Turkish journalist: he should be able to criticize the government (if he is to exercise his freedom of speech at full extent), independently of whether he may be content with endorsing the government's agenda instead, for redistributive benefits, and independently of whether other important interests are fulfilled. Movement must be understood in line with how we think about other freedoms.

Would this mean that because we have this freedom we would most likely use it, all of us and at the same time could move around the world? Not necessarily. It presumes that most people are sedentary. Take the example of Western Europe, which, although has guaranteed free movement for its citizens for the past half century (and later also enlarged to Eastern

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Europe), only a small percentage, under 5% of the population[147], has migrated and settled elsewhere in the European Union[148]. It works the same with other basic freedoms. I have the right to marry, but can I decide not to. It is not a violation of this freedom, the fact that one third of the world's population, or even possibly a majority of it, might not marry, if it is out of their choice. It is instead a violation of the freedom to marry, being forced to do so, either by dire circumstances or because a gang is forcing you. Similarly, I have a right to free speech, but I don't spend all day going around shouting what I think about *everything*[149]. On the contrary, I do speak on the occasion in which communicating my viewpoint matters to me. It is the same as freedom of association. One might decide not to associate with a sport club, or a political party and stay at home and watch TV in his free time. It goes similarly with the right to free movement; some may well not migrate if allowed or encouraged. Notice that the presumption that most people are sedentary, namely that people might not move over the course of their lives elsewhere, is an empirical observation. It can of course change significantly should the structure of our world be differently designed. This presumption, however, cannot be philosophically settled and cannot be further scrutinized in this chapter, although it is one such facts of the world that matters in migration studies. It seems importantly distinct in determining whether people do or do not cross borders because of the existence of states borders, or because they

[147] Interestingly, countries receiving or sending migration are not, contrary to common beliefs, distributed between richer receiver and poorer senders of migration (in fact the major countries exporting migration are the UK, Italy on top of poorer Eastern counterparts), although there is a recognized trend in difference of migration 'skills'. While most Eastern European migrants take on lower jobs in Western Europe, the same trend is not verified opposite ways. (check this info and link)

[148] Different sources report around 2 or 3 % internal migration in Europe, thus the number of 5% I use is for the purpose of the argument. "The provisions easing mobility have not, however, led to a much higher occurrence of mobility within the European Union. Only about two percent of EU citizens live and work in another EU member state. This figure has remained stable for about 30 years, on which even the EU eastward enlargement has had little effect."
http://www.bpb.de/gesellschaft/migration/kurzdossiers/157035/eu-internal-migration

[149] I suggested in Chapter 1 that there are limitations that are permissible on movement, which I did not discuss, just as there are when it comes to speech. One's freedom of speech is not undermined if she is asked to stop talking in the cinema, when the movie begins.

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would or wouldn't *anyway*. Either way, the inquiry is not about whether one *will move,* but whether *one wants* to have this liberty available a) for the sake of moving itself, b) for the sake of having it, even if one would never using it, and c) for the sake of moving in the future, should one suddenly have this desire. If movement is a basic liberty, then these are the reasons why one generally, proclaim any candidate to the list, a basic liberty.

According to Carens (2014), if a primary principle demands free movement, lexically, the secondary principles articulating what to do with injustices generated by unfavourable circumstances (e.g. peoples in need of decent lives), should be even more in favour of freedom of movement (e.g. by states' borders). In conditions of partial compliance, which means that not all societies are well ordered, people from minimally decent societies are *forced*[150] to move in order to access opportunities, rather than free to move if they wish so. But the assumption that the secondary principles implementing *somehow* freedom of movement are understood as a demand of the primary principles, is too hasty. One can think that under non favourable conditions, therefore at the level of nonideal theory, one can either advocate opening borders (implementing freedom of movement), or address the *reasons* constituting the unjust background whereby some individuals are in need and therefore prescribe secondary principles to bring about the ideal order of well-ordered societies, so that individuals move because they *choose* to do so, rather than because they are *forced*. Thus, it is plausible that primary principles demand freedom of movement (ideally, why not?), and that secondary ones demand non-freedom of movement when transitioning towards the ideal order. An independent argument is needed for why freedom of movement, which is desirable under ideal and favourable conditions, *is* even more desirable under unfavourable conditions.

[150] "Forced" in its commonsensical understanding.

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Today, moving across borders is not a matter of *inner* aspiration (e.g. loving Kant), but for most, it is a matter of *need*: the need to improve ones' chances, opportunities, feed one's family, from an inadequate level to rarely a fully adequate level of life. The kind of migration we deal with today is primarily need-driven (Pogge 1992, Beitz 1979, Wilcox 2007, Grande 2012).

In other words, conceptions of movement as a basic freedom, in par with freedom of conscience, the work in the field of nonideal theory, should be concentrated in regulating ways in which these freedoms must be guaranteed (for example, by abolishing states' borders, or identifying those patterns producing injustice, or having produced injustice in the past and lasting up until the present day). To recapitulate, I argued against the assumption that if in ideal circumstances freedom of movement is a fundamental right, in less ideal circumstances (e.g., economic need of some) freedom of movement should be even more demanded[151].

It is not immediately evident that migration will *help* those in need, even if it happens under the fairest procedures (admission and membership) – consider the carers' case. We could for example find out that economic disparities between societies are due to trade patterns, which benefit those already powerful and impede the flourishing of these disadvantaged people, *anyway*[152]. In such a case, justice might as well demand rectifications of such patterns before considering migration as *the* solution. From my perspective, having the poor stuck in a feudal-order-like pattern of disadvantage, either 'stuck in mobility' or 'stuck in poverty back home' –

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[151] Andres Moles particularly stressed the point that it might be contradictory that a basic right would not be even more demanding in case of unfavorable conditions. My reply is: it is more demanding, but demanding of *what*? It is surely not the case that if a young girl marries out of bad circumstances, she should be even freer to do so. Perhaps, the demandingness here is about addressing the 'initial bad conditions'. My reply to this question is clearer in the last section of this chapter, where I address objections.

[152] Unless we subscribe to sufficiency, like David Miller does, we will not accept this as a solution.

should such a pattern be the end result of restrictive or permissive migration policies as a solution to poverty - it is equally morally repugnant.

Upon an empirical evaluation, it is most likely that migration is *one* of the solutions, among others (rather than *the* solution). And it could be also assessed that in the process of migration, while migrants have redistributive benefit, they pay with the loss in value of their liberties, and face impermissible distributive trade-offs; perhaps others, already well-off would benefit even more alongside both these dimensions. Imagine a German egalitarian couple, where both parents are equally involved in their profession, their social life and rearing of their children. Suppose they can only advance their egalitarian relationship if poor Agata from Poland covers for much of the care needed to the family, house and children, at the expense of leaving her own family and children unattended back home. The German couple's equality is achieved at the expense of Agata's unacceptably high cost, even if Agata chose voluntarily to migrate.

In this case, if the economic structure is the migration generator, generally maintaining a few countries in power to serve their interests over others - prescribing migration as a justice claim, may result in legitimizing a very unjust pattern, besides not offering a solution to global poverty. It uses global poverty, to perpetuate the systematic undermining of liberty and distributive claims of the poor. From my perspective, the FCM, this is not a solution of justice, but an affront to justice.

Thus, the conclusion to the question 'which policies in migration are just', must be consistent with the ideal of "free choice to move" insofar as my case demands that people should have both the right to stay in decent conditions where they have their families, community and interests, and should have the *choice* to move elsewhere, rather than being *forced* to do either one. FCM may demand, given its lexical priority, other forms of

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distributions, either as alternatives or supplements to cope with inequalities amongst peoples at the non-ideal level.

Last, I do not abandon the basic structure of society, as viewed by Rawls, made of a world of states. I abandoned Rawls' 'closed communities', and advocated 'porous communities', as the states we currently have. States are theoretically and empirically able to accommodate migration, understood as a *moderate*[153] amount of people moving elsewhere without malicious intentions, taking residence and settling temporarily or permanently elsewhere.

My plight was towards: (1) Assuming that if we accept the structure of the well-ordered society in ideal terms, we assume closed communities. We should assume porous communities and not exclude migration as a constitutive part of the well-ordered society. By this I mean that, even if movement (migration) out of need would be depleted, migration out of choice would not, reason why we think of movement as constitutive, and not an "anomaly" that happens because of reasons of non-ideal world (poverty, inequality, etc.). Even if empirically it would be true that there would be no movement in an ideal order, I see no normative arguments why this should be the case. And (2) not jumping to the conclusion that the lexical order existing among primary and secondary principles of justice demands that freedom of movement desirable in ideal theory is even more desirable in nonideal theory. I argued that it might not be the case, or might as well be, but an independent argument is needed to settle the issue.

I pursue argumentation towards (1) avoiding the liberal hypocrisy paradox flagged earlier and (2) establishing strong grounds for movement as a right. In this sense, my theory is

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[153] Thomas Christiano claims that states could accommodate up to 50% more immigration added to the existing demographics. Some would claim that far smaller percentages are possible without other losses (culture, social welfare). This point is debatable empirically, and normatively. (Rijeka Summer School)

a contribution to the open border literature, which posits that freedom of movement is something so valuable contemporarily that should be defended as a human right[154].

I now turn to objections.

4.4 Objections

So far my thesis holds that movement should be protected and promoted by states. I proposed that this should be done in view of the FCM and fnm distinction, which presses states to address via a holistic policy approach, each claim separately. Restricting a liberty claim to movement constitutes a moral wrong, and as such it needs a justification. Restricting the distributive claim, that is accessing life options that have a redistributive benefit, it is also wrong, especially when basic needs are not met, and there is no alternative policy to address them. What may be the reasons for restriction, objecting to my theory? I examine four objections, and follow a similar structure, given the limit of space. Although I accept that each perspective may offer some normative material for exclusion, none offers a strong argument that overrides FCM and fnm.

I categorize these arguments under the classical term "self-determination", by which I mean that independently of whether one takes a community to be of value, and independently on which grounds each thinker takes that this is the case, all such arguments start with a premise: communities have a legitimate claim (and some argue right) to establish, maintain and advance

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[154] Carens, "Migration and Morality: a Liberal Egalitarian Perspective" in Brian Barry and Robert E. Goodin (eds. 1992), Beitz, "Free Movement: Ethical Issues in the Transnational Migration of People and of Money" (1993), Joseph H Carens, "A reply to Meilaender: Reconsidering Open Borders," International Migration Review 33 (1999), Carens, The Ethics of Immigration (2013). Open Borders views uphold freedom of movement via a variety of strategies, including that borders should be open if equality of opportunity is to be realized, or that states lack the authority to exclude immigrants, or to compensate poor countries that are made poorer by the global structure of the world, where the 'rules of the game' are established by the powerful states in their own interest, etc. However, freedom of movement as a human right, grounds the strongest case for opening borders Oberman (2016). Also, see chapter 1 discussion.

its (national) interest and set goals for itself[155]. There is a variety of arguments, presented and defended on many grounds. In this section, I aim to summarize them as typologies, and in showing how I reply to each of them, I aim to show the way my theory fits with and stands, also in view of other arguments which do not fit in this section.

In order, I consider the first category, which I call "legitimate self-determination" and present two versions of such objections: one is the "jurisdictional right" (Blake 2013, 2014); the second "associational freedom" (Wellman and Cole 2011). Both are premised on the widely held assumption that a state, equally to a person, has a right to decline *unwanted relationships* with others. Given the plausibility of the claim that indeed, it is my right to befriend, marry a person or invite her to my home as I see fit, states (understood as collective bodies) should similarly act with exclusionary policies, at least sometimes, on this right.

For the second category, hereafter "just self-determination", I present two typologies of objections: "community of character" and "economic (national) interest". These objections are premised on the idea that communities, however understood, produce some important human goods that are of value to its members. As such, members have a claim (or a right) to maintain and advance such goods (Walzer 1983, Kymlica 1991, 1996, Miller 2000, 2005). For the purpose of simplicity, I distinguish between social goods and economic goods. Defenders of the first category claim that language, (political and social) culture, institutions, etc. are all goods that are potentially threatened by (fast) mutations, say when large groups of people join in.

Defenders of the second category see the economy as a "machine" that is at work at maintaining an equilibrium between economic burdens and benefits and how they are

[155] I put into brackets the term 'national' because I want to avoid the discussion on 'who' is the community. I assume that these communities are formed through time, and are ethnically, racially, linguistically fairly diverse, which poses no problem to them having common goals.

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distributed in the society. In this sense, the objection is not specifically against people moving in, but against people who do not fit the economic interest of the host community moving in.

These four objections have in common the normative importance of the community and its legitimate goals; and the correspondent right to self-determine immigration policies towards "shaping" these community goals. I now turn to responding to each one of the four objections, and show that although such considerations may amount to a right, this right is indeed a week one, one that does not offset the essential interest in movement.

4.5 Jurisdictional Theory and the Right to Exclude

Self-determination, in light of the jurisdictional theory objection, as well as the freedom of association objection (see next section) consists in the "right of a legitimate state to decide its future for itself - and that freedom includes the right to be free from unwanted associations" (Blake 2014, p. 529). Both theories are premised on the right to *not* entering unwanted relationships, which flows from the right *to choosing* relationships we want: the jurisdictional theory focuses on the rejection of unwanted *legal* relationships[156], whereas, the associational theory rejects unwanted *social* relationships.

In opposition to Wellman who argues that we are permitted to use the force of law to enforce *social* exclusion, such as when we do not want to join with a newcomer in our street or marketplace, Blake argues that:

[156] Pevnik's theory (2011) of exclusion based on collective rights of properties is premised on the legal rights individuals have collectively. I find Blake's criticism of Pevnik convincing (pp. 530-31): if to ground exclusion is the fact that one has labored over a good and built institutions, one acquired a set of property rights within those institutions. Then, the handicapped are permissibly expelled from equal rights under the institutions by the able-bodied members of the society. The difference between the jurisdictional (Blake 2014), the associative freedom (Wellman 2011), and the historical property rights (Pevnik 2011) theories is helpful to continue my critique of the first theory: "what is shared (by only fellow members) is not best understood in terms of historical property acquisition, nor through the idea of associative freedom. Those who are members of the same society share liability to the same network of legal rights and obligations; we ought to focus on that, in our analysis of the right to exclude" (Blake 2014, p. 531)

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> "… what is *primary is the legal relationship* itself. One who crosses into my jurisdiction joins in a relationship of mutual obligation with me, whereby we are each duty bound to act in particular ways in defense of one another's rights … What is changed when such an immigrant crosses the border is not *necessarily social*, though it may be; it is, however, *necessarily legal*, given the legal importance to simple territorial presence" (Blake, 2014, p. 531, my emphasis).

The theory holds that entering a new territory is normatively significant insofar as it puts current members in a position of obligation towards newcomers, to protect the latter's rights[157]. To explain this normatively significant fact the theory relies on the tri-part distinction of human rights, which generates three distinct obligations: to *respect*, to *protect* and *fulfill* human rights. While the former is universal in scope, the second and the third obligation are local. That is each state is responsible to its portion of human rights protection and fulfillment of basic rights and interests – of those within its jurisdiction.

This theory, although may provide grounds for exclusion of those who are not in the jurisdiction and may wish to join, is weak. Two qualifications, which Blake himself accepts makes it so. Exclusion is justified: 1) if there is no human right to immigrate; and 2) if the rights of newcomers are adequately protected[158] in the jurisdiction of origin (p. 532). I elaborate on these two points.

If there is a right to immigrate, then, respecting such a right demand no exclusion, unless there is a justification. The theory, however, given the second constrain, holds that a stronger obligation of non-exclusion applies to those whose rights are not adequately protected, independently of (1): refugees' rights are certainly not protected, and many migrants' rights may plausibly be under the sufficiency level.

[157] It is dubious that it is the community to protect the newcomer's rights, when to many it may be obvious to think correct that in a newly formed relationship of rights and obligations, both parties protect each other's rights. I leave this aside for now.

[158] This qualification is introduced when Blake argues that the jurisdictional theory applies only when "each society does its job, and every person is provided the space within which most basic human needs and interests are adequately defended" (p. 532).

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Thus, only if no human right to immigrate exist, and everyone's rights are adequately protected, if someone wants to move *between* societies:

> "What this person is seeking is a new relationship of rights protection – one in which a new state, and hence new persons, will bear the burden of protecting that individual's basic rights. Would the state to which he seeks admission have an obligation to admit him? I fail to see why it would; his rights are adequately protected in his own society, by hypothesis, and he is proposing to burden's that society's citizens with the obligation to act as the protecting agent to whom all his future claims will be addressed". (p. 532)

This conclusion, although, as Blake claims makes for a weak right to exclude, it is still too stringent. The reason is that the theory envisions legal relationships as *primary* with regards to the social dimension of relationships. I think the conceptualization runs into a dilemma. Suppose that a large number of 'newcomers', like one hundred thousand babies are born in a given year in America. Should America deport them all out of the jurisdiction to a place where all their rights are properly guarded, on the grounds that it does not want to have a new legal relationship with newcomers? After all, it is undoubtedly true that these babies 'burden' citizens to take charge of their human rights for a very long period of time, at least until they turn 18, or possibly for their entire life. No matter the costs, America clearly raises children to maturity, and has no legitimate right to decide whether such newcomers are to be *legally* excluded (such as via deportation).

Here Blake may reply that the children in question are bound by legal relationships to their parents, on the first day of their arrival into the world, say by receiving a surname, a birth certificate, etc. This only proves that the (social) meaningfulness of mother child bounding results in moral right to protection (e.g. rights and duties), which states must guard; but the social relationship, that is mother-child bond, is *prior* to legal arrangements, and offsets any attempt to legally enforce mechanisms of exclusion.

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In fact, if half of the babies in question were adopted from abroad, they were bound in relationships to their parents no less than the biological children: surely legally it is the case. Given the analogy, there is hardly a case that there is a justification for a state to refuse a legal relationship to any children who are in a relation with their parents, except for cases that provide serious reasons to remove children from parents.

The main problem of any theory that begins with legal relationships as primary to the social one is that it invalidates too hastily relationships that are *socially* meaningful. This seems wrong. Most of us date a person before we marry them. When and if we marry them (enter in a legal relationship) the legal relationship is secondary to a supposedly meaningful social relationship of love, care, etc. The reason why there should not be any difference of exclusion of the mentioned newborns, the ones given birth to and the adopted ones, is the fact that, independently of the legal relationship between parents and children, *socially* recognizing a family, results into ascribing fundamental legal protection to it as a meaningful relationship. It would be bizarre for the state to consider me in a legal relationship with my therapist (for example, legally married to her), on the basis that I enter her office. I would not be fussy in protesting that I have a professional relationship with her.

This leads to the next point: not only my relationships should not be *legally prior* to being socially meaningful, as I see fit, but they should not be *collectively prior*. For example, if my lover and I decide over having one or three children, *collective* reproductive control should not impose us the number of children we should have. No less than collective control deciding over whom the father of my child is, for example that I should have a child with my therapist (instead of with my lover). In the face of using collective control to reduce costs, which a society generally bears based on the socially meaningful relationships that obtain within it, Blake has to choose between accepting collective control over reproductive rights, since one

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hundred thousand newborn are very costly or he gives up the costs of protecting newcomers' rights, as a reason to exclude them.

In virtue of socially meaningful relationships, and not independently of it or prior to it, we make laws that permits these newcomers to join the community, and relationships to 'naturally' form. And we have no good reasons, if my argument was persuasive in previous chapters, to think that movement and accessing options elsewhere, which movement facilitates, is less of a social interest, for both locals and newcomers themselves. In fact, the observation that most countries in the world have a percentage, some higher than others, of migrant population is a sign that we seek these social relationships[159], in spite of how strong are the legal barriers imposed by contemporary states.

However, this argument, as it is conceptualized, does not yet show the weakness of the right to exclude. Thus, I address the same point, by considering the illustration put forth by Blake:

> "Imagine that violinists require the blood of a healthy person to live. Imagine further that they can successfully oblige bystanders to provide that blood simply by latching on (…) imagine that there is no right to detach the violinist once he is attached. Imagine, finally, that the violinist is adequately protected by someone else – but he desires to be protected by you. Do you have the right to say no? I believe you do." (Blake, 2014, p. 533)

If hypothetically, the violinist is *your* child, it seems to me that he has a stronger case to be protected *by you* – his parent[160]. The illustration, however, I shall presuppose, describes *any*

[159] Of course, historically much migration was forced by dire conditions, and many migrants were slaved and indentured laborers. My theory is stronger than competing views in that it praises the cultural these migrants imported into the adoptive societies, e.g. Aretha Franklin as one of the best singers in the US; but it also scrutinizes the conditions under which they moved, or properly said were moved by others, to the new country. From the point of view the normative desideratum, that everyone should choose whether and where to move, we can read historical cases, accordingly.

[160] I object to this 'abstract' moral argument, insofar as it is not socially situated: we only know that the violinist is a generic other, but this does not settle the issue. It omits the entire structure of the jurisdictional theory Blake puts forth, according to which states owe specific things to specific people and for good reasons *because* of the division of responsibility based on ways in which the world is

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violinist, one who is in no determinate relationship to you[161]. Thus, whether the violinist should be protected *by you* depends on a variety of existing legal structures designed to protect socially meaningful relations. For example, already knowing that the violinist is *not* your child, that he is not in a socially meaningful relationship of the type that would put you in a situation of special moral obligations towards him, proves my point: I believe that even Blake's reply, that you have a right to say no to the violinist is based not on considerations related to whether you have *legal* obligation towards him, but on his intuition that you (as in bystander) are not in a social relationship *such* that morally obliges you in specific ways. In fact, should the unknown violinist be close to death, all things being equal - you are morally obliged to protect him. Even more so, if you were a close-by doctor, supposedly under the oath to offer medical assistance to anyone - then it is *you* to protect him.

The last point I am skeptical about in regards to the jurisdictional theory is the fact that those whose rights are protected in their home state are understood to seek *primarily* a relation of *rights-protection* in a new state. I see why it is the case with the person whose rights are *not* respected, protected and fulfilled, as the case with refugees clearly show: their entire life is left behind, often starting their life from conditions of extreme deprivation, mental illness, and need of basic care until they can socially and otherwise be integrated as members of a new society. But this cannot be said about Miller whose rights are protected in his home country and moves

socially and legally organized: each state minds its business. But unless Blake assumes that only the jurisdictional relationship exists, or that it is a superior relation to all others, both which are clearly false, then the reply to whether one may decline a legal relationship must depend on the structure of that relationship: e.g. my state official may not decline providing me a passport, and a country I visit may not decline me to access the emergency room. If Alex Sager (2014) is right, considering the roles of non-state agents and of transnational economic, social and political structures is of fundamental importance, insofar as these agents and structures contribute to the asymmetrical distribution of goods and opportunities; and thus have implications for debates about migration and distributive justice.

[161] This runs into the indeterminacy problem, which I tackle in the next chapter. To anticipate, principles should define what type of relationships should bound the distribution of responsibility. Some may be drawn based on existing legal relationships, and others on existing social relationships, or on what is desirable socially.

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from Oxford to NY, out of personal interest. The typical illustration of such a scenario, instead, is that Miller[162] would immediately work, accrue and consume goods, contribute to social goods, create knowledge, foster invaluable love, friendship and professional relationships, immediately upon arrival. Perhaps the only right-protection he demands is to file a police report when his wallet is stolen in the metro[163]. Such right protection seems to me the lowest 'burden', especially if compared to the benefits a newcomer potentially produces. When social institutions are in place, there is no significant additional costs for protection because one or more persons join a community; it is incorrect conceptualizing mobility in terms of "burdens", certainly not without a calculus that shows that to burdens follow, and outcompete benefits[164].

It is the case that immigrants accrue overall benefits[165]. Therefore, it is not justifiable to conceive their relationship to a new country in terms of burdening the country with *primarily* a protection- seeking relationship, even if it is the case that human rights protection is one of the main, or most basic, duty of states.

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[162] Here I follow Blakes' example, mentioning somebody "like him" moving to the United States, and concluding that it would be a pity if the US did not want to enter in legal a relationship with him, but it is not so obliged to do so.

[163] It is true that general things such as defense, police and legal enforcement of property rights, are in place, but they are in place regardless of Miller joining the community, and whether he joins in need of protection like a refugee, or like a rich expat (whom I understand to immediately enter in a mutual relationship, where he "pays" immediately for the protection he receives).

[164] Explicitly, if more newcomers join, it means that the state will have to build more housing, hospitals, trains to ensure rights-protection of all; then it does so from taxation, which is also presumably available proportionately to these newcomers' expected contribution. It is the same concept if the newcomers are babies of the natives: they do not only consume, but are also at some point fully productive members of a society. Unlike babies, however, many migrants to not need 18 years of schooling before being productive members of a society; and if migrant children go to school, they cannot be called right-burdens, insofar as their parents, generally, like all members of the society, contribute to the society they join.

[165] In view of the benefits migrants accrue in a new place, then Blakes' concern with costs could be understood as very weak. Presumably, if 1 migrant adds no cost, 2 migrants add no costs, there will be a point where n migrant will add costs (which outweigh benefits). This leaves ample space to movement, at least until is proven costly. In this time T (supposedly when it becomes costly), it has to be proven why the cost argument amount to restriction. It is not the case, I argued earlier, that collectives decide on newcomers joining the legal community.

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Thus, whilst it is true that states guarantee the protection of human rights, I find mistaken not to see that states are responsible for a well-ordered social life[166], to which citizens and newcomers contribute. The language of contribution, and not of burden, is one that a theory of exclusion should focus on[167]: if the rights of a person are adequately protected in her country, and therefore, she is not seeking effective protection (it does not need "your blood" like in the violinist case), but she is seeking to enter in socially and mutually beneficial relationships with a member (say she wants to dance Tango with you, or work in hospitals where blood is transferred), or an institution in your state (to join the Tango Dance Academy), what rights does the state has to exclude her? Considering that the exclusion produces irreversible harm, namely, the Tanguera's plans to become a world champion are shattered, her lover is in tears, and the institution she aspired to join suffers a big loss of an opportunity to art development: what right does the state have to exclude her? In light of the jurisdictional theory, I think, if there is one, it is weak, and in need of a justification.

Legal relationships, whether entering them or not, are not prior to social ones, and not the primary locus of our analysis for exclusion. I now turn to the social dimension as a possible ground for exclusion – the associative freedom theory.

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[166] Notably, social justice, democracy, etc. Mine it is not a perfectionist argument.

[167] I follow Blake claiming that we need to start from what the citizens of states have in common, as the main locus of an analysis for exclusion. Thus, accordingly, the jurisdictional theory claims that citizens share the legal space of the jurisdiction, the historical property theory – the shared historical interaction, and the associational freedom – the association of which one is a part of together with other citizens. My point is that citizens have an interest in flourishing (supra note) - while many commitments are of local scope, others are clearly of universal scope (Benhabib 2004) - which is only possible if an equilibrium between local and universal commitments exists. For example, theorists (Lenard 2016, 2012 Lenard and Straehle 2012), show that not respecting and adequately protecting universal commitments in designing migration policies - pressing migrants in a condition of "second class citizens" - it is detrimental to human flourishing, to democracy itself. From this perspective, the conceptual focus shifts significantly from the interest of citizens versus foreigners', towards interests, which citizens and foreigners have together against opposing views, e.g. partisan conservative views. E.g. A professor who wants to employ foreign faculty, or marry their foreign partner, has interests and commitments that are universal, as he thinks that surely he is not betraying his country in so thinking or doing, or he cannot be outlined as a foreigner on the basis of his commitments.

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4.6 Freedom of Association and Exclusion

According to this view (Wellman 2011), the right to exclude newcomers is derivative of the freedom to associate, which is recognized as a fundamental freedom. The argument is intuitively powerful, and it is simple: individuals and thereby states have a right to *socially* associate and decline unwanted associations. After all, we think plausible that I choose whom I befriend or I marry. The freedom to associate must imply the freedom to *not* associate.

According to Wellman wider collectives and states have a similar right to self-determination regarding whom they associate with or decline associating with similarly, to the right of association individuals have.

It is questionable whether - even if we take the freedom of association to be a good ground for a right to exclude - it is the case that this freedom provides sufficient material to ground a strong right (Blake 2012a) for exclusion. Blake argues that freedom of association is, and has been overridden by other important purposes, and as such there is not much material to exclude newcomers[168]. Accordingly, the right to association provides a weak right to exclude. One can think of a myriad of examples in which a person, and indeed a state, may impermissibly decline

[168] Sune Laegaard (2013) criticizes freedom of association argument on grounds that dissociating from migrants is not the same as from other states, which wish to annex our state. Wellman's argument, he argues, conflates the state as an institution and the people as a political collective and elides the difference between territorial jurisdiction and associational freedom. Sarah Fine (2010) finds a more elaborate internal critique, rendering the right to associate insufficient to stand for exclusion, unless it is justified in relation to a territory. Philip Cole raises other plausible criticisms: 1) whether one can refuse an association depends on her roles and duties: e.g. a doctor cannot refuse to associate with some patient, or a university lecturer with some of his students, but also a club has different permissible exclusionary rules from ones that private persons or states have: a club may exclude all women, but a state may not do so, permissibly; 2) the marriage example, used by Wellman to make the case for the powerful right of freedom of association, that is that one has a right to reject unwanted partners, does not apply to exclusions of the type states advance, insofar as one may lead a fully content life as a celibate, having been turned down by the love of his life, but one cannot live without one citizenship, or without being admitted somewhere, if her human rights are violated. The first implication is that the remedial duty to aid others is weightier that the right to non-associate, and the second, that free association *is* and *should be* constrained significantly by competing considerations. Michael Blake accepts these implications as well, as he thinks that only people whose rights are adequately protected may be excluded from a legal relationship they may seek to enter.

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to associate on the grounds of the freedom of association. A person may decline adopting an orphaned child, but not to let him drown. A police office/r may decline associating with me, say not marry me, but not to decline intervening in a robbery of which I am victim. A state official may not decline registering my newborn and provide a birth certificate, unless a justification is provided not to do their duty. These examples prove that freedom of association is easily overridden, but they also show why: choosing whom I befriend, marry, have sex with is a *personal* choice, whereas officials, doctors, police officers, who cannot permissibly choose which newborn they register, which victim they assist, etc. act of norms of *public* character. This means that outside of their private life, they necessarily act on 'non-voluntary' associations' principle (from the personal perspective). Whether they personally like or not a victim is irrelevant to the fact that they must associate with her, commensurate to the assigned duty. States, therefore, act on public norms, and not on norms that apply to private personal type associations. Thus, private citizens, collectives and states are different types of associations, whereby the latter are bound by duties, which the former are not. The question is then, what is the duty or rights of states to associate?

The associational freedom which states may employ to exclude others can only be done legitimately in the name of the people the states represent, and not in the name of some remote or imagined ideals. For example, a state, say Germany may not recall its Nazi past and apply contemporarily exclusionary policy based on it. Its citizens surely reject such a policy, for good reasons, chief of all, because they accepted the wrongness of the given ideological construct and its political materialization. The point flowing from this is that, by liberal democratic tenets, if Germany as a state has a right to exclude in virtue of its association freedom, it cannot operate such a freedom by harming the fundamental freedoms neither of its own citizens, nor of others, which it is bound to respect. That is, the citizens who wish to associate in meaningful relations with others, such as have family and friends visiting them, attend their wedding, colleagues

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joining their conferences, and coming for long or permanent stays in their universities to develop science and knowledge, have a right that must be respected by states officials who design (migration) policies.

Further, liberal states more than illiberal ones, accept that the fundamental freedoms recognized as basic liberties and correspondent rights, such as freedom to movement, marry, association, conscience, etc., are freedoms that everyone should have protected: outsiders as well. A liberal state endorsing such a statement, cannot invoke its freedom of association, to exclude migrants from walking in the park (no matter how trivial the interest to walk in the park may be), or joining their spouse or friends. His freedom of association is harmed, if unjustifiably restricted. Oberman (2016) explains this point, by drawing a normatively salient distinction between states and individuals. Consider the example where, the German citizen, say Mary, declining Giovanni's marriage proposal, and Germany (as a state) declining Giovanni's marriage proposal to Mary. In declining Giovanni, Mary surely acts upon her freedom of association, whereas Germany oversteps its authority. This argument is powerful as it states that in their social life, people want to associate with other people, and given that we think association a fundamental freedom, states are obliged to guarantee social interactions that protect and promote rights of the associational parties.

By this argument, states may exclude Giovanni, *if* Mary declines marrying him, as Giovanni who intended to associate with Mary, now has no associational anchor in Germany anymore. In so doing, the state is not violating any associational right (either Mary's or Giovanni's), given that the state must protect Mary's freedom to not marry Giovanni, and Giovanni's to choose his spouse. The state does not deny Giovanni entrance to protect her, but *she* refused the marriage proposals. The 'if' shows that individuals' association has weighty priority over state's associational freedom.

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Thus, if Giovanni still wants to move to Germany, even if he is not invoking his freedom of association right with Mary, given Mary's rejection, he has to justify his willingness to associate with Germany, by either (a) invoking his association right towards Germany this time, or (b) invoking other fundamental freedom from the list (to association, conscience, marry, occupational choice, etc.) which would be violated should he not access a larger sets of options than the options in his country, some of which happen to be in Germany (Oberman 2016). Theoretically, it is easy to imagine that Giovanni proves that another option present in Germany is of interest to pursue. But what this shows is that his movement is subject to the limitations that the options impose. In the case of Mary, the option disappeared for Giovanni, the moment she declined marrying him. This scenario is a plausible possibility in all circumstances regarding many options. If a foreign student at CEU is caught plagiarizing, and gets expelled from the program of study, he leaves Hungary as well, because his stay in the country is linked to an option and its terms. After my attending the conference expires in the US or shortly after, I may return.

In this sense, Oberman's view of immigrating is limited: by tying movement to options that are present in the place to which movement takes place, then, movement is determined *inter alia* by what these options entail and how they constrain the terms of the association. It is therefore not true, that on his account, the argument for a human right to immigrate shows that people will move as *they please*. On this argument, the US may not deny me an entry visa to all the socially meaningful interactions, e.g. to meet my colleagues and attend the conference (the option I want to pursue), but may expect me to exit shortly after the terms of my option expired. However, even if we accept such limitations to this options view, the account of associational ground between individuals is very strong- as people can have infinitely many reasons to associate - still shows how limited is the right of states to decline associations, based on the associational freedom of individuals, as conceived by Wellman.

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I conclude by rehearsing the chief rejection of associational grounds states may employ to exclude. The argument I advanced in chapters 1-3: movement is an essential interest and a basic liberty. People move to pursue options, but the normative force requiring conditions for freedom are not the pursued options only (Oberman's view), but the movement itself. It is intuitively true to think that if I want to take a purposeless walk just for the sake of walking, I shall be free to do so, even if I am not directed towards some important option, such as to work or worship. This is why only very serious reasons justify restricting movement, such as restricting people's movement to small areas, such as in camps, or prisons. This applies to states' restrictions, too.

This means that the state, and not Giovanni, owes a justification for exclusion. Compatibly with my argument, Giovanni says that 'If movement is a basic liberty, I need to inform the host state of my arrival, register 'in their books'. But I do not justify my entry regarding the options in Germany because it is not the state's business, whether or not I marry Mary, I study Kant. I just want to go and decide as I go.'

This is the strongest argument for movement[169], for which I argued extensively. Given its compatibility with associational individual rights, my account shows the weakness of invoking associational rights for states to exclude.

4.7 Community of Character

[169] Movement entails choosing: x-ing or *not* x-ing. See the example of a student, who by refusing to move to her sit and take a sit in the plane, forced the airport officials into 2 options: either to physically remove her from the flight or force her on her sit (forcing her into movement), or cooperate with her demand: let out of the flight a passenger, who was being deported, according to the student, in violation of his basic rights. In this sense, the student refusing x-ing (moving), which resulted into blocking all passengers from moving, she forbade the state into forcing the movement of an asylum seeker. Hers is an exercise of free movement, exercised as a protest, against the denial of his freedom of movement. https://www.theguardian.com/world/2018/jul/25/swedish-student-plane-protest-stops-mans-deportation-afghanistan

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Arguments in favor of maintaining some important goods that are produced within communities of character (Walzer 1983, Kymlicka 1996, Miller 2005) follow two directions: a thick and a thin argument. A *thick* argument is that *the type* of the community that includes a set of practices, in terms of produced goods, such as a certain description in the media, landscapes, institutions' design and character of public space are intrinsically valuable. From this perspective, maintaining communities of character from external influence is *in itself* valuable. A *thin* argument is that maintaining some of the valuable goods, which the community cherishes, is *instrumentally* valuable to preserve functioning democratic institutions. For example, one version of this argument states that diversity is detrimental to social cohesion, and social cohesion is fundamental to functioning institutions, as institutions must count on their citizens to cooperate to *inter alia* redistributive schemes. Having good functioning institutions, therefore, is the opposite endpoint of high immigration rates. Immigration should be restricted accordingly to protect such social goods.

First, I consider two replies, one empirical and one theoretical, to both versions, the thick and the thin one. I build on Michael Blake's (2014, p. 528-529) critique[170]. Empirically, it is not shown that communities like Seattle compared to communities like Miami are fundamentally different under relevant aspects, in a way that we can show that the latter has lost some meaningful character. From a thick perspective, Miami cannot be assumed to have less meaningful character in the way that matters to its inhabitants by comparison with Seattle and what matters to its inhabitants, even if more than two-thirds of its population consists of Spanish-speaking citizens. From the thick argument, it matters that *from their own* perspective, citizens feel that the landscape and description of their community represents them. Miami has reached this general description at this point T in time presumably out of voluntary associations

[170] Blake makes his point by referring to the United States Census 2000.

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of citizens from other places with those who were already locals, for all sorts of meaningful reasons. From Miami's inhabitant perspective, the values of the community, which includes acceptance of high inward mobility, are materialized into what one can see today an evident case of a community of character[171].

One objector could claim that the English speaking guy, John from Alabama, finds regretful that Miami has changed character so much, and from *his* perspective, it is a loss of community character[172]. He also finds regretful that NY is "modernized", which also constitutes a loss of community character. Now, is there a difference between Miami, where the cause of the change is demographics, and NY where the cause is technological advancement (as opposed to multiculturalism)?

To reply to these question in defense of 'conserving' a community of character, a liberal theorist will endorse either an essentialist view, or a partisan view, of whatever one may imagine a community of character to be. An essentialist view would try to argue why it is regretful that Miami does not look like Alabama or some other "American" state[173]; it would find impossible to show what is so invaluable about Alabama *in itself* as to be maintained as a character across all other states. This is because, even if we accept that it is a regrettable loss in

[171] A different perspective would be one where a country is invaded or colonized, where these who arrive use force, coercion and other murderous practices to eradicate and oppress locals. One can think of European colonization of new continents, as incompatible with the idea I defend here.

[172] Even if we assume that his perspective is legitimate, and that it applies to a generalized feeling in America, it is unclear why this perspective amounts to excluding migrants *tout court*; and not, for example, to policies fostering integration of migrant populations, such as language schools. States have many legitimate democratic mechanisms to tackle the issue of overpopulation, or dramatic change in culture, especially to tackle social problems, such as "gang" cultures, "segregated" cultures, for example, by creating incentives for specific inhabitants to move to various areas. For example, by offering better paid jobs, scholarships, or better services, such as housing and public transportation. In fact, such policies are constantly employed by states to organize the social and economic life; e.g. states build new highways, say to increase industrialization in an area, new financial districts to attract people of this sector moving in, new schools and campuses to create university towns.

[173] This is the case, nonetheless, because Alabama may be 'more' foreign to an American New Yorker, than a Canadian or European state.

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character from John's perspective, or even a larger perspective, additional argument is needed to prove that it is unjust.

A partisan view, is one that assumes for example that the conservative view point held by some citizens, for example that 'we want to maintain the crucifix in school rooms', is the legitimate viewpoint (in the sense, the view of the whole community) over a more progressive one, such as 'we don't want religious signs in public buildings' (Ypi 2018). There is no place for such unjustified partisan argument for restriction either, given that both are possible imagined ways of the character of the public space of a given community. From this perspective, migrants cannot be excluded because they do not endorse views of the first or the second camp of arguments. These are two among many views a liberal society may accommodate, regarding specific practices and its public space and understanding of the community's general descriptions.

There is, however, one type of a community that may have a stronger right to protect itself from outside interference, and exclude migrants on this basis: one in which *all* its inhabitants share very thick and homogeneous views about the goods to be maintained for the community of character. This community, unlike all the above ones, will have a right to exclude outsiders, according to this perspective. But here too, there is no guarantee that such communities will ever plausibly be of the sizes of current nation-states. The only communities that would satisfy such criteria I know of, may be some small nomadic groups, whose practices are indeed very insular, and there is no guarantee that they are sedentarily connected to a territory from which to exclude others; or some small Amish enclaves, which rarely makes up for more than a community town.

What about the instrumental value of the community of character? The view that communities of character are needed to maintain institutions, I argue, makes up for a very ambiguous and loose claim. If we observe actual communities, there is no evidence that Miami

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does not cooperate with Seattle (or other states), or that Miami is for reason of its character, less politically functioning (internally) than Alabama. Having showed that evident cases do not ground empirically a view of communities of character considered valuable from a specific perspective, the theoretical argument for exclusion, I show, is also very week in its justification of migrant exclusion.

The theoretical structure of this argument is problematic insofar as it does not show that there is a right to exclude in the first place, as it heavily replies on controversial empirical premises; it shows that there may or may not be some goods important to the community, which the community may legitimately want to maintain. But this type of argument[174] amounts to saying that some goods - even if we accept that they are intrinsically or instrumentally valuable - are to be weighed against other goods, which some or all members of the society may equally value.

In my thesis, I argued, with the illustration of Miller and Hemingway (chapters 1& 2), and compatibly with the Miami case, that people may predominantly value movement, and respectively with Alabama, that people may predominantly value sedentariness. I further showed that these are not mutually exclusive goals, and certainly not social and political goals that one part of the community can force on the other, in liberal democratic politics.

To conclude, maintaining specific goods that are valuable to the community of character does not ground a right to exclusion. It only grounds the view that some members of a given community may value sedentariness as a way of life and *specific* views of the goods that should be maintained and advanced (e.g. conservative), and which indeed may demand movement restriction. Given the partisan and essentialist foundation of these arguments, I argued, they do not provide sufficient normative material for a strong general argument for exclusion, for

[174] See, in chapter 1. I adopted this theoretical structure.

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contemporary state to mobilize its coercive power to restrict movement, neither as a strong right, nor as legitimate defense of a community of character[175].

4.8 Economic (National) Interest

In this section I consider the national economic interest objection to the idea of movement as a human value, and its chief implication, that people should be free to choose movement. The national interest argument contends that even if we accept that justifications for restrictions are fairly narrow, as I argued in regards to previous objections, states nonetheless have a right to enact policies that reflect its national economic interest, in all areas of life: trade, education, energy, etc. It is no different with regards to immigration policy. Immigration policy affects all areas of life of a community, as migrants typically consume, receive an education, or labor. In other words, they enter in an economic relationship with some members of the community (e.g. employers, landowners) and the community as a whole, via taxation, welfare and pension schemes.

Policies enacted by states in their interest fall under two main categories: international and national policies. Migration policies are on the one hand similar to international trade policies, and on the other, similar to national policies. For example, in stipulating an

[175] As I am finalizing my dissertation, I observe on a daily basis this 'conflict of views' in contemporary politics and media, where various circles of people adopt a variety of reasons for migrant admission and exclusion. Countering my view, call it 'democratic disagreement', Carens in "Migration and Morality" (1992, p. 37), argues that it is the case that some communities would prefer to maintain their culture. If Japan's wants to maintain its culture, as it seems plausible to Carens that this is what all Japanese people may desire (whereas I think this implausible), culture is a good that trumps the presumption in favor of movement. Even if this argument is correct, it only proves that some countries, to my knowledge, a minority of them, will have such views. Europe has long ago rendered the regime of freedom of movement *a status quo* without fearing a cultural loss, but on the contrary, trying to foster a common European culture, through studentships exchanges, such as Erasmus Program. It seems obvious to anyone that cultural differences maintain in European countries despite the regime of virtually universal freedom of movement.

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international trade agreement, Germans buy gas from Russians, and Americans imports agricultural products from Thailand, while selling American potatoes to Europe. A *national* policy on education will establish, on the other hand, a principle by which resources are distributed to education, and how they are accessed by all in the territory of the state.

When migrants join from abroad, they are subject to policies that resemble trade policies between Russia and Germany: Germany decides what it needs based on its shortages, and offers to purchase gas from Russia with stipulations and conditionalities. When migrants are present within the territory, some conditionalities (under the form of restrictions) may apply, but in general, they are subject to similar laws as citizens. For instance, migrants' stay may be temporary, and temporary migrants may be prohibited to bring their families with them, which Miller thinks permissible[176] (2016, p. 98).

Now, in cutting deals with other states, states use their bargain power to reach agreements that are most favorable for its own population. Given the unbalance of power between states, some states will cut worse deals, including some extremely unfair deals, and others will be perpetuating winners[177]. This thumbnail sketch should suffice to let us move further to the question.

With regards to migration policies, as an analogy with other policies that are also tailored to meet the national interest, the question is: can states permissibly set their migration policies, on the "national interest" realistic premise? Specifically, can states permissibly set

[176] Miller (2016) considers that if migration is temporary, restricting access to the family of migrants is compatible with the human rights of children and migrants. I, on the other hand, find this suggestion morally repugnant, in view of the liberal hypocrisy paradox, I explained earlier. Since I cannot further engage with what constitutes human rights violations, I will grant that "the human right to family does not have to be protected in the usual way in the host country" (Miller 2016, p. 98), leaving open what this may entail.

[177] Of course, the economic global market is not the only reason why some countries are perpetual winners and others perpetually poor. Paul Collier (2013) argues that there are other factors such as corruption, weak political institutions to also contribute to some countries or segments of societies within poor countries remaining poor.

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migration policies affecting *people* in ways that reflect their own national interest in the same fashion I described that they seem to do with *merchandise*? Most theorists' reply is no[178]. States' obligation to protect the human rights of migrants is the first condition that differentiate the relationships states establish with migrants from the economic relations over merchandise[179]. How do states (still) act on their economic interest? States advance their (alleged) interests, in short, by deciding:

a) Who is admitted and via which selection processes: states may decline admission to a non-citizen and permit entry to another, based merely on their added potential to the economy. For example, a state may need caretakers, braceros and IT specialists, but not teachers. The selection will further define who enters: strong young men as braceros, women as caretakers, etc..

b) Types of Constraints: the most discussed constraint in the literature is one that applies to the *time* (or thereof lack of permanency) of migrants in a country, which is generally limited to their job assignment, e.g. a seasonal bracero. It is commonly called "temporary migration". Further, during their employment, migrants are not permitted *inter alia* to change employer, industry and upon finishing a job contract, migrants are not permitted to stay longer. (Lenard, 2016)

I will not be able to address in depth the kind of policies states should implement, as this is the topic for another thesis, but I will argue that the realistic assumption of national interest as a

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[178] Most theorists agree with this reply. Miller (2006, p 98) argues that migrant human rights should be guarded.

[179] First, most agree that even if it is costly for states to admit refugees, costs in itself are not a general argument for exclusion. Note that most states signed the 1951 Refugee Convention. Second, economic gains are generally also secondary to other important rights, such as family reunification. But outside of these "special" claims, when states define the type of economic relationship they have with migrants, there is more room for disagreements regarding what states should provide, which restrictions are permissible.

principle guiding the migration regime, is very weak, as arguments deployed in favor of restrictions, justified on grounds that they boost the national interest, are empirically and normatively flawed.

Three arguments will show the limitation of the national interest objection: exploitation, democratic justice, and liberal justice. In a nutshell, state produced restrictions of the kind I described above, (a) and (b) impermissibly legitimize forms of harm by the hand of locals (citizens or permanent residents) over migrants, which in turn give rise to moral wrongs that are not consistent with liberal democratic values – and therefore undermine the wellbeing of liberal democratic societies. Thus, the weakness of the national interest objection leaves room for the Freedom to Choose Movement argument: people should move out of choice to the places where they wish to develop their life plans. I end this section by positing how in fact states acting *less* in ones' own national economic interest, results *de facto* in acting in both citizens' and migrants' interest.

Empirically, restrictions produce forms of exploitation, which, even if they were compatible with human rights, are unjust: temporary migrants often cannot change an abusive employer because they are obliged to leave the country – which violate the fundamental right to occupational choice. Succinctly it ties the migrant to a working relationship that is more similar to feudal working relations than contemporary one. Migrants often end up with an illegal status because their plan, for example staying longer after their temporary working contract ended, results in them staying and being employed irregularly: according to my view, migrants, like everyone, are morally entitled to their choice, and so are citizens who wish to further employ, befriend, etc. the migrants in question. States overstep their authority in denying such options, and second become complicit in the exploitative resulting relations. The irregularity of migrant status generates additional exploitation and vulnerability of migrants, which can be imposed by those in more powerful positions (e.g. citizens, or migrant long term residents).

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Further, restricting migrants' family rights, e.g. children, to join their primary care taker, even if 'officially' only temporarily, violates the fundamental interests and rights of children and families – and results in curtailing fundamental rights.[180]

The harm done by restricting policies is unjustifiable on the argument that the given states wants to advance its economic interest, especially over poor migrants moving to wealthier states. Robert Mayer (2002, 2005, 2007) argues that the poor are *exploitable* and as a result exploited. Wealthy migrants are not exploitable, and as a result, even if they are restricted to temporary permission of stay, they are not exploited, not even if they are not permitted to access citizenship and full political rights[181]. Mayer looks at how wealthy citizens of wealthy countries (e.g. Americans) undertake temporary migration projects to wealthy countries (e.g. Emirates). Even if they are not permitted to integrate permanently in the society and to acquire political rights, and even if they are paid less than locals, but nonetheless conspicuous salaries, they are not exploitable because: a) they have alternative options and b) they are above the sufficiency level when they plan their projects.

Thus, by this token, restrictions of this kind applying to cases like the caretakers or braceros, which I described earlier in the chapter, not only on occasion violate human rights, which was my first complaint against restrictions, but impermissibly produce systematized forms of exploitation (and often abuse) of local employers over migrants.

When such restrictions are coupled also with restrictions to political rights – for example, if *ex hypothesis* temporary working contracts do not yield the necessary legal

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[180] I packed many controversial and complex issues in this paragraph. Some are related to the problem of regularization. See Adam Hosein (2016) for a detailed elaboration on reasons to regularize migrants. See Patti Lenard (2016) for a critique of temporary programs.
[181] Walzer (1987) argues for *full* inclusion of migrants within the host society.

continuity[182] for migrants to qualify for citizenship, even after many years of continuous "temporary" stays, it is argued (Lenard 2016, 2012 a,b) that the state 'officially' creates a category of long term or permanent residents, who *de facto* are second-class citizens – the end result is direct harm to democratic justice. Democratic justice is not compatible with *some groups* being long-term subjects of coercive powers of states, without being able to politically influence its laws. From this perspective, consistently with their values, liberal democrats and egalitarians, may suggest that the alternative contemporary states could take, is to curb down migration altogether. That is to restrict admittance, but to a few, say the fewer migrants who have family members in the host states, who they intend to fully (and permanently) integrate[183].

The reader may now argue that the interruption of temporary migration programs drastically harm migrants[184], whom, even if exploited or unjustly treated, still enter in some form of *mutual* beneficial relationship with the host state. The fact that migration yields some net economic gains to all parties involved is the prevalent view in the literature: it can be assessed by both the positive economic impact most states experience because of migration (Lenard 2012), and the large amount of remittances migrants send back home (Oberman 2015).

My theory, FCM does not settle so hastily for this policy suggestion. The option wealthy states face is *not* between 1) the programs *of admittance* that benefits state's economic interest

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[182] I refer to continuity on the territory, but also continuity of legal employment, income, which are conditions, differently set by each state, to advance from temporariness towards a fuller membership, such as permanent residence, or citizenship.

[183] The implication is that states trade-off numbers wise, according with their economic interest: either *more* migrants on a temporary basis and scarcer rights, or *fewer* on a permanent basis and more rights. Lenard (2016) discusses and rejects this line of reasoning. Normative arguments are most robust than merely numerical assessment, and she makes room for her view on democratic justice.

[184] Many liberals (Lenard 2012 a,b, Miller 2016) argue that temporary migration should be re-conceptualized in a way as to afford more rights to migrants and minimize exploitation, rather than abandoning these temporary programs altogether – which are thought to still be good for migrants.

the most, and 2) the programs *of exclusion* that benefit state's economic interest the most[185]. First, because in so doing, the value of movement is undermined, which I defined an essential interest of all human beings, and which provide enough normative strength for a human right to movement. Second, this solution, even if morally sound, is formulated on the dichotomous view that freedom of movement is fulfilled *if* migrants are admitted, and unfulfilled, if declined. In my view instead - positing the freedom to *choose* movement - this freedom is fulfilled through a holistic policy approach, whereby the *choice* to movement (or non-movement) is *realistically* enhanced. It is about enhancing the conditions of freedom, instead of conditions of voluntariness: specifically, tackling the unacceptable costs the poor bears when choosing their paths, independently of whether they *move* or they *stay* (see chapter 3).

For it, states should consider many approaches to satisfy FCM. My view rather suggests what many liberals, open and close borders theorists, consider a correct way to discharge obligations. David Miller, as it is endorsed by Kieran Oberman, who also supports this view, argue that: "in cases where because of *scarcity* we cannot meet our direct obligations to protect A's right, we can still act on background duties that help to secure that right will be fulfilled in time" (Oberman 2016, p. 51, Miller 2007, p. 194, my emphasis).[186] Thus, rights do not disappear, but must be taken seriously as "residual source of other duties and obligations" (Waldron, p. 512).

These "background duties" could be plausibly met through a variety of policies that would protect the free movement. I follow Oberman's suggestions, that to alleviate the cost of

[185] Scarcity, instead of national interest, I assume, is the correct reason and threshold line, after which to states may deny basic rights fulfillment. One cannot decline taking to the hospital the victim of a grave car accident, on the argument that she will miss 10 minutes of her favorite TV show.

[186] I reference the example from Oberman to clarify the point: "Thus if there is a shortage of medical resources (say), we may have no duty, at the present moment, to attend to everyone's needs, but we may still have duties to raise production of medical resources, train more doctors, or launch an inquiry into the state of health services" (p.51).

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lifting migration restrictions, states could put forth a number of policies: create more opportunities in poor states, tackle corruption, fairer terms of trade between rich and poor states, cancel debts, more or better targeted aid, etc. I consider then correct the expectation that migratory pressure will be drastically reduced and it would be 'safe' for rich states to open borders on fairer terms.

However, while I too endorse, like Miller and Oberman, the view that rights are not to be fulfilled in a one-to-one fashion[187], I reject the view that in the context of migration, "background duties" will protect the right to movement. Oberman endorses this view on the premise that the *number* of migrants may be too high, should the human right to movement be legally recognized, which would press states to open their borders to newcomers. Whereas, from my perspective, independently of whether there will be many or few migrants, I argued that, the normative problem lies with poor migrants' endemic *lack of choice*. This problem exists today, as most poor people travel at morally unacceptable costs, whereas rich potentially go unimpeded anywhere as they please. And this injustice would (potentially) persist even if migration restrictions were all lifted: the poor would not choose to move, and will face unacceptable costs in doing so[188].

I, therefore, suggest that these remedial policies should stem instead from *foreground* duties. Most liberal thinkers, including closed border theorists, believe that states have such obligations towards the poor[189]. It is precisely because wealthy states do not take their

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[187] "As Jeremy Waldron notes, it is a mistake to think that rights correspond to duties, in a one-to-one fashion. Rather, rights generate a series of duties, including *background* duties that help to secure the right." (Waldron 1989, pp. 503 – 19, my emphasis)

[188] I explained in chapter 3, that unacceptable costs affect conditions for freedom, instead as conditions for voluntariness. From my perspective, if such conditions are not seriously addressed from a justice perspective, our world will still be divided between those who are free, and those who are unfree.

[189] See for example David Miller 2007, arguing that everyone should be above the level of sufficiency, that is that their basic needs are met. Wealthy states have the remedial obligation to act to this effect. From this perspective, my account suggests, without a complete argument, that in fact being sufficientarians is less efficient than being global egalitarians (E.g. Holtug's perspective), as follows: if

foreground duties seriously, that is to remedially protect everyone's human rights in countries of origin that migration may plausibly be of a superior size to what wealthy states are willing to admit (and certainly wrong from FCM perspective). If this assessment is correct, in light of FCM, then wealthy states wrong poor would-be-migrants in a twofold manner: 1) for not doing sufficiently about their initial conditions in the home countries, which 'forces' them out of their home; and 2) for imposing additional restrictions to their movement and conditions for movement, which further makes migrants vulnerable and exploitable.

The number of people moving in various scenarios is speculative, as, in reality, we cannot anticipate how many people would move if they were put in such conditions to choose. The case of the European Union confirms that Oberman's policy suggestions, plausibly correspond to relatively 'contained' migration size:

> "… the history of free movement within the EU has, on the whole, been a history of low migration despite the persistence of sizeable wage inequalities between member states. Two factors help to explain this." (Flanagan, p.184)

First, poorer members like Spain and Ireland experienced development, due to the fact that states received together with freedom of movement, also aid and free trade[190]. And second, a perspective also endorsed by Joseph Carens: "Some people love novelty and adventure, but most people are not keen to leave family and friends … Most consider doing it when they have a lot to gain" (Carens, 2010, p. 13)

The difference though between the freedom of movement as posited by the right to immigrate (Oberman's and Caren's views) and FCM (my view), is that the latter demands that

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it is true that most people would prefer sedentariness, that is staying where they formed their most important attachments, if they have good development and perspectives, their need to move will be depleted, and only a few may choose to move. The European context may be an example of that.

[190] For empirical arguments, see Baldwin and Wyplosz 2006, pp. 166-9; Castells and Espasa, 2003, pp. 167-77

people's rights should be protected and promoted, *because* people should choose if we *all are* to have the basic liberty to move[191].

The ideal I think the most coherent from a point of view of liberal justice with migrants' rights and our societies' values is one in which *everyone*, including migrants move out of choice, to gain a lot that is potentially gained with movement, from a position in which their rights are protected. Not only will poor not move in dire need, and be subjected to impermissible forms of exploitation, but the states themselves would not trade away the liberal-democratic values they stand for in enacting such policies. For this to happen, states should then see that acting in one's national economic interest at the detriment of others, or in indifference of others' plight, should be a much weaker goal than it currently is. If to be traded off in the process of building any migration regime are the very values that found liberal democratic nation states, I showed it is, mistakenly, in our general interest. I also showed in this section another way to - normatively and empirically – understand ways to limit our economic interest, compatible with values many states uphold. Most notably democracy and liberalism.

4.9 Concluding Remarks

In the course of this chapter I addressed the following question: what is the desirable moral balancing between concerns towards *everyone*[192]'s interests and the legitimate interests of states. From a justice perspective, much migration today is need-driven, rather than choice-

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[191] My view is compatible with Oberman (2015) where he too argues that people have a right to stay, and as a result states should not choose how to tackle global poverty out of mere preference: to tradeoff aiding the poor in his home, and therefore not respect her right to stay, with tackling the issue via migration policy instead, on grounds that this is (potentially) an option wealthy states prefer. My view is more demanding: states' choices and interest should respect the poor's choice to move by creating conditions for freedom, as the soundest solution, from a justice perspective.

[192] Note that the 'migrant' is distinct from 'everyone': the migrant is the person who wishes to enter a state other than her own, has the means to embark in the migratory process, whereas the poorest billion people in the world do not have means to migrate.

driven, which triggers distinct justice-based arguments on the side of the worse-off. Respectively, liberty-claims and distributive claim to movement, help us descriptively distinguish between *need* and *choice*, and normatively show distinct demands on states.

The double-sword principle guiding migration policy, which I argued for, the 'freedom to *choose* movement' (FCM/fnm) places migrants in a better condition of choice, owed to them by affluent societies. My theory, however, will not inform the migration debate precisely on whether migration policies should be *automatically* more restrictive or more permissive. Settling ways in which FCM and fnm should result in specific policy design can be done after many more considerations, normative and empirical, are properly assessed. But FCM/fnm, suggests already in this inceptive form a new conceptual way forward that has normative implications: FCM has the capacity to drive migration policy towards a desirable moral *optimum*, the choice we *all* are entitled to, if we all are to enjoy basic liberties that are essential to all humans – and free movement is one of them; and fnm provides some guidance to actual policy, when it comes to its instrumental application at the non-ideal level, at which policy is today designed: people's *need* should be properly assessed and targeted, as a demand of justice, constrained and guided by FCM.

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CHAPTER 5 - FREEDOM OF MOVEMENT AND PROTECTION. THE SYRIAN REFUGEE CASE[193]

This chapter engages with two widely held conflicting intuitions arising from the Syrian refugee crisis. The first is the intuition that whenever a Syrian refugee claims the protection of a state, he should receive protection by being admitted into its territories, or being declined entry only conditional upon being hosted by a third country, where his human rights are protected. This I call justice to refugees, based on the refugee's point of view. The second is that the distribution of responsibility for protection between states should be fair. I call this the fair share ideal, based on the state's point of view. Analysing David Miller's arguments around the second intuition, I argue that taking the state point of view entails pernicious implications, such as that we cannot properly argue against technical violation of the non-refoulement principle.[194]

"The Syrian conflict has triggered the world's largest humanitarian crisis since World War II. Humanitarian needs continue to rise, population displacements are increasing, and an entire generation of children is being exposed to war and violence, increasingly deprived of basic services, education and protection."[195] Since 2011, when the war started in Syria, refugees fleeing to other countries are mostly confined to the region of origin, in Turkey, Lebanon and Jordan: Turkey currently hosts about 2.5 million,[196] while smaller Lebanon and Jordan have the highest percentage rates per capita, respectively 26% and 9.8%. Europe,[197] however, is

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[193] I thank Alexander Sager, Kim Angell, Andres Moles, Viktor Ivankovic, Patti Lenard, John Harbor, Ibrahim Halil Kalkan, Sune Laegaard, and Nils Holtug for their comments on earlier versions of this chapter.

[194] Most theorists observe that Western states deter refugees from reaching their safe territories via various policies and mechanisms. Gibney's work (2005, 2004, 2015) is the most well-known in portraying this phenomenon.

[195]Turkish Confederation of Employer Association, December 2015 http://tisk.org.tr/wp-content/uploads/2016/01/goc-rapor-ing.pdf . In 2017, there were around t million Syrians in Turkey.

[196] By 'Europe' I refer to countries of the European Union (EU).

[197] By 'Europe' I refer to countries of the European Union (EU).

arranging a bilateral agreement with Turkey, which in essence is aimed at stopping the flow of refugees to Europe in return for political and financial concessions for Turkey.[198]

A relevant question arises for political philosophers, state representatives and policy makers – how should duties of justice be discharged by states taking responsibility for refugee protection in a *realistic* (non-ideal) scenario, lacking any global arrangements for states sharing responsibilities for refugee protection? Posing the question this way implies that there is a great deal of international non-compliance. For instance, Turkey alone offers protection to more refugees than the sum of all EU countries.[199]

A fair-share ideal intuitively demands EU countries to do much more than they currently do, even in the absence of a distributive model of responsibility for protection, specifying the precise *share* each should take. Faced with such a humanitarian crisis and unequal distribution of refugees between states, many of which have little capacity to offer protection, solutions for a rapid reassessment of fair distribution between states is needed. But is this all that justice[200] requires?

In events like the Syrian war, which generates a massive outflow of refugees, normative premises establish how responsibility for protection is assigned to particular states, and shared

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[198] Aljazeera, March 2016 http://www.aljazeera.com/news/2016/03/refugee-crisis-eu-pitch-plan-turkey-160318041007574.html

[199] I thank an anonymous reviewer clarifying that this question entails many complex philosophical formulations, all of which need philosophical scrutiny: What are our duties of justice towards refugees? How should we understand these duties in our global political situation, in which there are no generally agreed criteria of justice to determine how states should share their commonly held duties to protect refugees? How should states discharge these duties given that there are no global institutions to enforce the law?

[200] In this chapter I do not engage with what justice in protection may require, but with how we may think the scope of justice should be limited, which has implications on how we think justice is grounded in the first place. A view I am sympathetic of, which I have no space to defend, is one of R. E. Goodin, who defends the vulnerability principle (1985). According to this view, responsibilities of protection should be assigned in proportion to vulnerabilities. The more vulnerable R is to S, the greater A's responsibility to protect R from harm. This principle is compatible with the capacity principle, according to which the greater the capacity of S1, the bigger the impact on R, and therefore the greater the responsibility to protect others from harm.

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between states. The intuition motivating this chapter is that justice requires refugees not to have their human rights violated by parties that are capable of helping them. The main implication is that states' interests need to be subordinated to refugees' interests, e.g., the appeal to 'safe-third-countries' needs considerable justification in order for states to not honor an obligation to asylum and non-refoulement toward refugees who land at their border or file an asylum claim.

I analyze David Miller's state *centrist* view, according to which refugees may be denied protection *in their own territory* on grounds that other states are willing to accept them, and when a given state has done its fair share. The intuition is supported by an argument built on four premises: (1) There is no universal human right to move freely across borders. (2) There is a much more limited right to freedom of movement, the right to non-refoulement, namely the right to enter society S1, when this provides the only way of escaping human rights violations in society S2. (3) Society S1 can refuse entry to people fleeing from society S2 so long as some other society is willing to take them in (Miller 2013a, 2016). (4) In cases of non-compliance (say, a state is doing unfairly more than others equally well equipped), the state can refuse to accept disproportionate costs, or more refugees. It has, however, a duty to pressure the non-compliant state into doing its fair share (Miller 2013 a, b).

I discuss whether states' obligations of justice are limited to a fair-share (section 5.1) and whether the indeterminacy of the relationship between refugee R and state S1 leads to a strong state centrist view (in section 5.2), as assumed in premises (3) and (4). I problematize the relationship between free movement and non-refoulement (section 5.3), assumed in premises (1) and (2). Much weaker arguments for *state's point of view* is justified, because fair share is inadequate to establish the scope of justice (section 5.1). The indeterminacy of the relationship between R and S1 does not lead to an argument in favour of a strong point of view of state (section 5.2) because the right of a refugee to choose where to file her asylum claim to a country of her choice is distinct from the right to migrate to a country of her choice (5.3). There is

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thereby room for the first intuition to place a more stringent requirement on states refusing refugees' entry in its territory.

5.1 Fairness between States over Justice to Refugees

There is an assumption that *a fair share between states* will trigger more justice for refugees in the sense that binding models will force refugee quotas on states who are unwilling to take any refugees in. I show that arguments in this direction are limited. These arguments show why a fair share principle leaves a "human rights gap",[201] as human needs are unjustifiably unaddressed from a justice-based perspective. These arguments do not persuasively demonstrate that fair share is a sufficient condition for showing what justice requires. Fairness-based solutions, such as David Miller's (2007, 2013a, 2013b, 2015), strongly conflict with our intuitions when tested on real case scenarios.

However minimal or non-existent the protection that Turkey or Lebanon can offer Syrian refugees, and however disproportionate the effort of these countries compared to that of the EU, we nevertheless think that it would be morally impermissible for Turkey and other *frontline* countries like Italy or Greece to refuse Syrian refugees seeking protection. If these countries denied refugees entry and protection, the refugees would face the disastrous consequence of being returned to the place where their human rights and lives are at grave risk.[202] The intuition is that justice to refugees should be ensured even when fairness[203] between

[201] By 'human rights gap', I shall mean that if a person is found at the door in dire need of help, and there are agents able to provide such help, the need of the former should be met by these agents, either directly, or by calling an ambulance or some other services to help. Notice that in 2018 the 'EU-Turkey' agreement is already in place. See Turculet (2017). Note that in offering resources in exchange of offering protection within Turkish territories, the EU can be said to have fulfilled towards fairness, that is towards refugee protection and towards Turkey, who was largely shouldering protection on its own.

[202] Joseph Carens (2013, Ch.10) argues that sending the Louis boat with Jewish refugees on board, in the attempt of helping them escape from Nazi Germany and find refuge elsewhere was a morally unacceptable act on the side of the US, Cuba and Canada.

[203] I use the term fairness in opposition with fair share, in the following sense: I understand fair share as a model that is agreed to by states, whether complied with or not. Fairness precedes this model in the

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states is lacking.[204] It is well known that in 2015, Turkey invested the most for the protection of refugees.[205] Within the EU, Mediterranean countries like Greece and Italy are, like Turkey, on the geographical *frontline*. They admit large numbers of refugees seeking asylum, whereas many northern EU countries, due to geographical distance, lack the experience of refugees at their borders approaching them for asylum, and often do not feel compelled to contribute more than what they consider to be their fair share.[206]

Due to a lack of fairness between states, we commonly reject the scenario in which Syrians are not admitted and offered protection in states they approach. It is unfair that Turkey, Lebanon and Greece do so much more than better-off states like the UK or Belgium, but we nevertheless

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sense that it establishes the principles such a model should follow. Fairness may demand equal share, or share according to one's capability, which I do not discuss yet. However, fairness is also independent from a fair share, as in the absence of such a model, fairness may add constraints as to how states acquire duties of justice, or what is the content of the duty. I assume Miller's view: states are understood to permit access to refugees approaching them with an asylum claim from afar, or by approaching their borders and claiming not to be refouled, which obligates the states in question to offer minimal protection of human rights, hereby 'minimal protection'. In Miller's view, this is true at least up to reaching an agreed fair share. I will elaborate on this.

[204] I rely on Miller's discussion on justice and fairness (Miller 2013b), engaging with the demands fairness places on agents undertaking extra efforts due to others not doing their fair-share. Justice demands them to do their fair-share, and no more. Special circumstances may demand doing more, not as a duty of justice, but unrelated reasons or humanitarian duties.

[205] A state can provide protection 1) by hosting refugees in its territory and 2) by paying off other countries to do it. Turkey in 2015 was the leading country in refugee protection in both ways: it hosted most refugees, and it declared to have used mostly its own domestic resources. With the later "Turkey-EU" agreement, Turkey has received resources from Europe to continue hosting over three million refugees in its territory and accept "returning" refugees which attempt to cross into Europe (Turculet 2017).

[206] Each country acts *ad hoc* with regard to accepting a fair share. Oxfam, February 2016 https://www.oxfam.org/en/campaigns/rights-crisis-lebanon-jordan-crisis-syria/syria-refugee-crisis-your-country-doing-its-fair. Also see Turculet & Baycan (2016). In short, these countries face the question of whether to refuse refugees entry, thereby violating their non-refoulement and what I defined as justice for refugees, or allocate disproportionate amount of resources compared to, say the UK, in view of the fact that other countries 1) agreed on an intra-EU fair share model that does not meet what justice requiers, or 2) refuse to offer protection, independently of their fair share. For how the EU tries to establish a fair share as a distributional scheme, see http://www.europarl.europa.eu/news/en/headlines/priorities/refugees/20171016IPR86161/all-eu-countries-must-take-their-fair-share-of-asylum-seekers For the decision of the European Parliament, see http://www.europarl.europa.eu/pdfs/news/expert/background/20171019BKG86403/20171019BKG86403_en.pdf

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cannot accept that disproportionately burdened[207] states should shut their doors on grounds that other countries do little or less than their supposed share. Two strong underlying conflicting intuitions are that: we care about fairness (e.g. Greece should not be 'swamped' while the United Kingdom does not step in to help), but we also care about justice for refugees (that they should be offered protection no matter who offers it overburdened countries included).

I suggest in this chapter that justice should obtain as much as possible, even when fairness falls short.

Opponents of this intuition, including Miller, argue that we can hope that:

> […] the number of people entitled to claim asylum remains small enough that a fair system of burden-sharing can accommodate them all. But supposing this hope is unfounded: then it is better to say honestly that not everyone can be rescued, just as in the other cases where human rights are at stake […] we may want to acknowledge a gap between the rights of the vulnerable and the obligations of those who might protect them. (Miller 2015: 151)

According to Miller, states collectively owe refugees protection as a matter of justice (Miller 2013 a,b, 2016). Fairness, however, in his view plays a fundamental role in ascribing responsibilities to *specific* states; that is, it distributes refugee R to state S. Only then does S have a duty of justice towards R. In the lack of (fair) task distribution among responsible parties, justice 'hangs in the air', in that it is not clear who has specific duties towards whom. I call this the indeterminacy problem.

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5.1.1 Fairness versus Indeterminacy Problem

There are three arguments that run in the indeterminacy problem.[208] In a nutshell, when there are many responsible actors helping out those in need, when this is not too costly, it is

[207] I reject the idea that refugees are 'burdens'. I do not address it, but use the term in view of the common terminology readers are familiar with.

[208] The reader can intuitively see this problem in opposition to a family, that shares a 'special relationship': parents are understood to be the responsible party for caretaking, the children are correctly

empirically proven that each hopes that someone else will help (Miller 2011). Normatively, however, the problem lies with the lack of a clear relation between the claimant and the responsible party, as well as with the indeterminacy of the duty's content. Thus, a state may try to refuse offering asylum to a refugee, R1, on three normative grounds:

(a) "Why me?";

(b) "What exactly do I owe?";

(c) "Why R1 (and not R2)?".

A state may reject asylum, if normative grounding is not provided to bind that state to the specific refugee in a special relationship.[209] It cannot be said that this state did not fulfill its duty of justice towards refugees, even if it reduces its offer of protection to those in need.

One example of this problem is the recent event of the *Aquarius* boat approaching Italian shores in June 2018, which was not permitted entry to Italian and Maltese ports with hundreds of migrants and asylum seekers onboard. The argument of one Italian official was that "it is nowhere written that migrants should enter a *specific* port".[210] By saying this, he is not denying that Italy or other states are responsible for international protection, but it was not clear why Italy specifically owed protection to the people onboard. Others, the arguments go, could have taken responsibility (other states or the British NGO in charge of rescuing migrants onboard its

understood to be at the receiving end of care, and although the content of responsibility is differently interpreted by different theories, it is understood that parental care will meet at least some minimum. In the case of states and foreign parties in need, e.g. refugees, this relationship is either inexistent or loose to the point that without normative specification, parties are not morally obligated to perform specific tasks; a gap between need and moral obligations is thus produced and without qualifying these instances as unjust. This example already conceptually distinguishes between two issues – *indeterminacy* of parties, and *distribution* of tasks.

[209] For a counter analogy, consider the traditional family, where it is known that the mother and father are the responsible parties for their children. This is not true for refugee protection, where millions are displaced and hundreds could do something to help.

[210] https://www.huffingtonpost.it/2018/06/12/toninelli-al-termine-del-vertice-sullimmigrazione-non-e-detto-che-i-migranti-debbano-sbarcare-in-un-porto_a_23456816/ After staying for days in international waters, Aquarius was permitted to enter Spain. (my translation from Italian and emphasis of the quote).

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ship), and directed the boat elsewhere. Another popular argument was that Italy has done more than most EU countries. On grounds of unfairness to which Italy is exposed to by other states which do little and slack, Italy refuses to let the boat enter.

Assuming that states are the primary actors to be held collectively responsible for the plight of those in need of protection, and that their responsibility towards refugees is remedial,[211] a principle or a set of principles is needed to distribute responsibilities among states. One value that appears to play a fundamental role in grounding such a distribution is fairness (Miller 2016); supposedly, it should motivate actors to find formal agreements for fairly dividing the burdens with other actors, or in the absence of such agreements, to estimate in good faith what would be a state's fair share in a given situation (Miller 2016 pp. 162-3).

We may point to three issues raised by the statement of the Italian official. I now turn to each of them. I want to isolate in this section these arguments as derivative from the indeterminacy problem. Any state could in principle and in practice contest Aquarius entering its port, by asking:

a) "Why me?" (the specificity condition). This problem arises when it is not clear whose responsibility[212] it is to carry out a certain task, or when it is clear (e.g. other EU states who did disproportionately less than Italy, such as the UK), but the responsible agent is

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[211] See for full argument David Miller, The Responsibility to Protect Human Rights and Distributing Responsibilities.

[212] Miller makes explicit in what way a moral obligation is different from responsibility. "I shall take it for granted that where large-scale violations of human rights are occurring, everyone who is able to do something to prevent that happening has a responsibility to do so: it would be morally wrong – a denial of equal human worth – simply to stand by and do nothing. This basic premise does not, however, settle either the extent of this responsibility or how it should be distributed among persons. For that reason I use the language of responsibility rather than obligation – obligations are concrete moral requirements that arise when the two issues just canvassed have been settled" (Miller 2009, 233)

not complying, leaving others with the moral dilemma of whether to take up someone else's slack (Miller 2013 a, b).

b) "What is my duty?" (the distributive condition). This condition concerns three issues: first, which conception of human rights will define the content of protection owed – a minimum or a more generous one[213]; and two, upon establishing the first, what is the extent of protection owed, and to how many people (a smaller or a larger group, one that is a fair-share or more, as a matter of justice)[214]; a third, very incendiary issue in current politics relates to whether protection entails hosting refuges or financially compensating other countries to host them instead (Turculet, a, b, 2017).

c) "Why R1 specifically?" (the particularity condition). This refers to the fact that states may not feel inclined to offer protection to R1 specifically, but have a greater interest in R2[215], a refugee who is for whatever reason more desirable to that particular state.

These are distinct problems. I argue that Miller conceptually conflates (a) and (b) and (b) and (c) in his elaboration of the fair share ideal.

When it comes to aiding refugees, the problem of "diffused" responsibility[216], is further complicated by the indeterminacy problem. Assigning special responsibilities to actors, normatively, must rely on clarifying (a) and (c), which are indeterminate given the hundreds of

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[213] For the sake of argument, I follow Miller's minimum conception of human rights as basic needs.

[214] Independently of which principle of responsibility is chosen, e.g. capacity, community or causality, there is a need of weighing *effectiveness* against *costs* ((Miller 2009, p. 461). On the one hand, the idea that the need will be met and means should be employed to this end, for example the best swimmer will rescue the drowning child; and on the other hand, the idea that the cost of the mission may not be excessive. For example, a less good swimmer is responsible instead of the best one, if the best swimmer will suffer a severe form of anxiety because of the rescue mission.

[215] I am here assuming legitimate discriminatory grounds, such that the state genuinely owes protection to R2.

[216] E.g. imagine three potential helpers and one drowning child (Miller 2011, 2009, 2013).

state actors[217] responsible[218] for aiding refugees, and the full scale of human displacement across various geographical areas.

In a context, in which the determinacy of *who* should aid *whom* (a and c) is not straightforward, it is also difficult to establish *what* is required in terms of distribution of tasks among actors (b). The distribution of responsibility needs normative clarification in two main respects: 1) the indeterminacy of the relationship between S1 and R1 (solving (a) and (c), and 2) the distribution of tasks among actors (b). These issues should not be conflated.

Returning to Miller (2016), justice may not cover all those in need of protection, because states are left to act on their duty to protect according to their citizens' *willingness* to take on that duty. Citizens can be legitimately coerced by their states to admit refugees, if this is a demand of justice, namely if this is consistent with what an established *fair share* requires of them (and they accept doing). Justice does not require admitting some refugees, if they are left unprotected by some other states not taking their fair share.

The state cannot coerce its citizens, as part of a requirement of justice, to take up someone else's slack, as in the first case, in which the fair share indicated an obligation of justice (Miller 2016).

[217] There are a number of non-state actors as well. For a discussion on these additional concerns see Miller 2009, 2011.

[218] I follow David Owen's (2016) criticism of the analogy between refugee aid interventions and "pond cases", on which most of Miller's theory of responsibility to aid leans on. I only flag a few counts on which the analogy fails. States are not related to refugees the same way they are related to drowning children in pond scenarios. First, states observe protracted humanitarian disasters for many years. If states were predisposed to help refugees, they would know exactly which zones need aid, such as areas near territorial borders, or the Mediterranean, where thousands of refugees drown. In this sense, states are more like life-saving guards in resorts where people swim. Second, states have signed numerous international treaties like the 1951 Convention, binding them to aid displaced people, unlike persons running into drowning children, who do not normally find themselves in such conditions. Therefore, in terms of the character of their responsibility, states are more similar to policemen or doctors who have accepted additional duties, training, and made oaths. Signing international treaties may not specify how exactly (b) and (c) are to be defined, but it does make (a) somewhat more determinate. Every state that signs owes protection to refugees.

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It might attempt to persuade them to act on a humanitarian duty to be generous and save lives otherwise threatened (Miller 2013b: 206-27, 2016).

5.1.2 Fairness versus Non-Compliance

Refugees are the result of state non-compliance, like that of Syria, which violates human rights of its citizens, and for this, these citizens are owed protection from other states. When duties of justice are assigned to specific states, they are said to have a *special responsibility* with particular refugees. Special responsibilities arise when states are assigned responsibilities to meet the fair share of protection owed: each has responsibility for *its share*, and no more (Miller 2007, 2013b). But Miller's suggestion here is counterintuitive and mistaken, as it suggests that from the point of view of justice, some refugees' human rights may be violated and those who are capable to help may refuse to offer it:

> The best hope is that over time conventions will emerge that distribute responsibilities in such a way that refugees from particular places become the responsibility of one state in particular (or a coalition of states). There can be no guarantee, however, that every bona fide refugee will find a state willing to take her in. The *final judgment must rest with the members of the receiving state*, who may decide that they may have already done their fair share or refugee settlement. (Miller 2007: 226-7, my emphasis)

Miller condemns how states deal with the current 'refugee crisis' and the many human rights violations associated with it, on the grounds that their efforts to come to agreements leading to states *taking their fair share* are unjustifiably scarce. But is determining a fair share *all* that justice requires?

Opponents of fair share object to relying on fair arrangements because even if generous arrangements for refugees were reached, the *partial* compliance of states may still lead to injustice to refugees. These authors argue that even if the fair share ideal were in place, justice may require states to do more, namely to take up the slack whenever non-compliant states do

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not do their fair share[219]. Duties of justice, such as duties to aid or remedy, require states to respond to the dire need of refugees in the *best* possible way, even if this means doing more than their fair share. I leave these views aside now, and focus on the justification Miller gives for ascribing special responsibility to states based mainly on criteria of fairness.[220]

The question to ask in a realistic scenario is not whether states may do more than their fair share, but whether meeting a fair share is a sufficient condition to settle duties of justice.

Some may find it counterintuitive to accept fairness as the main criterion for determining what justice for refugee's demands, in that it requires us to tolerate systematic human rights violations, as in the current situation where states, absent a distributional model, act mainly *at their own discretion.* Miller accepts that a fair distributional model between states may be impossible to achieve for *political* reasons. Even if fairness obtained in spite of the political reasons bounded political communities have, non-compliance still emerges, if only some actors, although willing to do take their duties seriously, simply cannot discharge their duties. Imagine a person who is asked to save a drowning child, without being able to swim.

Miller's view seems to suggest that fairness precedes justice. Let me qualify this. One argument for fairness preceding justice is a lack of any special relationship of responsibility between refugee R and state S1 (argument a). Although refugees are generally entitled to protection, protection is provided by S1 specifically when the relationship between R and S1 is justified. Only then is S1 compelled to act. In the absence of such a relationship, refugees'

[219] See David Owen (2016), Zofia Stemplowska (2016). There is a tension between effectiveness and costs. Both authors' arguments seem to claim that effectiveness may demand an agent to incur more cost, or change the content of the duty. While showing that justice in this sense, in meeting effectiveness, is more demanding than fairness, which is satisfied upon meeting a fair share, the assumption these arguments are compatible is the one Miller and I assume. That justice may not demand that costs be excessive.

[220] In short, Miller argues that although states collectively owe international protection to refugees, each state is said to have a duty of justice only with regard to its fair share, decided either through the procedures of an international regime or a *bona fide* estimation of what the duty would be, absent formal agreements. I thank an anonymous referee for pressing me to clarify this point.

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protection lacks a specific duty bearer, thus S1 is not blameworthy for not offering protection to a given group of refugees. Consider the analogy: I am not acting unjustly if I do not return $100 to Emel (Emel's money), which were stolen by Nicklas.[221]

The counterintuitiveness relied on, to justify that I don't owe Emel anything as a matter of fairness, as I did not steal from her (but another person, Nicklas stole) is correctly rejected by Stemplowska in her discussion of Miller's view (2016, 598-99). It cannot hold true for a liberal egalitarian, who holds that a broad range of welfare programs are derived from taxation. By this token, men are taxed to support police and medical staff for female rape victims, or orphaned children, even if they are not themselves blameworthy for such violations and occurrences.[222]The point made by Stemplowska also helps advance the claim that even if there is a degree of indeterminacy between two or more agents (e.g. between Emel and I), fairness binds these agents in some way. In this sense, solving the indeterminacy problem is a demand of fairness, and not an argument for reducing agents' duties to act fairly.

Below, I challenge the idea that fairness is the default principle on which justice rests by arguing that when a special relationship between R and S1 fails to obtain, justice need not be assessed from the point of view of states, but should instead be assessed from the point of view of refugees (in section 5.2).

But what is fairness? For Miller, it seems to be a necessary condition for justice in that it 1) motivates fair-share models for duty bearers, in the case of states; 2) ascribes special responsibilities to duty bearers, who, as in the case of Emel's money being stolen, will not bear

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[221] "Taking up the slack: responsibility and justice in situations of partial compliance" (2011b, p. 239), Miller appeals to a similar example, with which he states that it is counterintuitive to ask an agent who has not caused damage to pay instead of the one who did. Stemplowska (2016, 598-599) finds that this example holds only if one assumes a welfare state in the background, in which if a person is not held responsible to aid a specific victim, the welfare state aids those who fall under some basic threshold of wellbeing.

[222] See supranote.

any specific or special relationship to ground a duty to refund her money. If (1) and (2) obtain, then justice obtains. I think that this is false. Against (1), justice cannot be settled by any model that suggests only partial fulfillment of justice, and allows human rights violations (assuming that Emel will starve). Against (2), states can become duty bearers of specific distributive amounts, but cannot establish a special relationship to R1 specifically by means of this criterion.

In relation to (2), Miller's argument that S1 takes on a special responsibility and accepts a fair share it owes to a particular refugee (or group of refugees) is limited: fairness, as understood by Miller, can only indicate *distributive amounts*, assigned for example to France or Germany, rather than establish special relationships between particular groups of particular individuals and their receiving states. In fact, even if a fair share model was established, and such conditions for justice to refugees met, it is still not clear why R1 ought to go to Greece rather than France and why any party should accept this special relationship[223]. Plausibly, states may agree on the sizes of distributive shares, and still disagree on special relationships, just as I may wish to marry a person, but not R1. Disagreements can be settled by considerations of justice states or refugees may advance, and which trump fairness. For instance, it is widely held that justice prohibits ascribing fair shares to states that will not respect the human rights of refugees.

Miller takes a strong 'state centrist' view to back up limitations of fairness and explain the special relationship between R1 and France[224]. Claiming that state S1 has a special

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[223] Fairness concerns distributions of duties, e.g. five adults will each save one of five drowning children. Justice settles permissible relationship preferences, e.g. it is widely held that it prohibits race as a criterion.

[224] A commentator may claim correctly that the problem of indeterminacy is independent from non-compliance, in that it is a problem even if all comply. Noticing that this is a separate issue, as I indicated on the outset, helps me now point to the fact that it is often the indeterminacy problem to generate non-compliance and to specify fair-shares. This problem cannot be addressed as a problem of what fairness demands agents to intake as their fair share, as the debate is set.

responsibility for *any* specific group of refugees that fairness may allocate is insufficient, in that the specific group may not be of the size that the state accepts as its fair share; furthermore, the members of the receiving society may feel less inclined to host the specific group for reasons of cultural incompatibility. Miller claims, therefore, that the members of S1' *willingness* normatively establishes whether the specific group of refugees becomes *S1*'s special responsibility. I understand this to indicate for Miller that special responsibilities are unilaterally established by the choice of a receiving state. Suppose there are 90 asylum claimants, and the state's duty is to take 10. R1 can be rejected by the state as the first claimant on the grounds that it wants to admit claimants 10 to 20.

Thus far I showed that even if fairness obtained ideally, it still faces the problem of indeterminacy. Miller therefore has to convince us that a state accepting its share is indicative not only of a fair share, but specifically of R1 moving to France. It must be true that a fair share (1) limits the scope of justice, and (2) establishes special responsibilities to particular claimants. I call this the 'states' *point of view*' approach (discussion in section 5. 2).

5.1.3 Indeterminacy, Non-Compliance, Fairness and Justice

Taking the point of view of states has pernicious implications in view of non-compliance. It relies on an *ideal* fair distribution, the attractiveness of which is that one need not address instances of non-compliance with regard to justice. This is because the duties are specified under the assumption of strict compliance. Testing this on real case scenarios results in a morally dubious conclusion: that refugees receive protection only if states willingly come together and agree on fair shares. It seems unacceptable that refugees should be deprived of protection because states *cannot* agree on a fair solution. As argued earlier, even if reached, the fair agreement on *amounts* cannot establish special relationships, which must be settled for justice to obtain.

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Miller's discussion of instances in which states violate the human rights of citizens, like in the case of Syria, show how states may in fact acquire duties of justice independently from fair agreements. Such cases trigger a duty of justice – capable states must protect refugees. Miller does not hold that justice does not kick in *because* the Syrian state, aside from being unjust against its citizens, results in unfairly *burdening* other states to protect those made vulnerable by the Syrian dictatorship. In other words, Syria is the first non-compliant state, which non-compliance has displaced around half of its population. But when *does* non-compliance trigger a duty of justice on Miller's view? He accepts that the duty to protect refugees from Syria in Italy (call this 'first-level' non-compliance) is a duty of justice. Why then Italy has a duty to take Syria's slack, but no duty of justice to 'take the slack', due say to the UK's non-compliance? Here Italy, call it 'second-level non-compliance', performs a humanitarian duty entirely dependent on its good will.[225] If justice is triggered on the first level of non-compliance, why not on the second? Both are cases of non-compliance *unfairly* generating remedial duties of justice for others.

If justice is triggered only by considerations of fairness, it is unclear why the first instance of non-compliance (e.g. Syria), a case involving unfairness against other states (mainly Lebanon, Turkey, Greece), triggers duties of justice in the first place. If non-compliance is all we need to invalidate justice, states do not have duties of justice to protect *any* refugee, but humanitarian duties at most. But Miller denies this (2016): he believes instead that states do have duties of justice to protect refugees. It thus follows on Miller's account that mere non-compliance is insufficient to invalidate duties of justice. That is, if we accept that Italy has a duty of justice in general towards refugees due to Syria's non-compliance with justice and

[225] This point is derived from Miller's fairness account (2013b). Accordingly, Italy may pressure the UK to fulfill its duty, but it is not responsible for it.

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fairness, we must accept that Italy has a duty of justice on the first level of non-compliance, and at least in other cases, such as when the UK does not do its fair share.[226]

In short, it is questionable whether partial compliance generating unfairness between states is all we need in order to justify that a given state's duty of justice mutates into a humanitarian one. Most accounts, including Miller's, suggest that states, particularly those in a *good* position to help, owe refugees protection as a matter of justice, and that the duty is owed independently from criteria of fairness. The latter is obvious from the fact that remedial justice to victims motivates in the first place discussions around what is to be remedied and how and who should discharge these duties. Therefore, because fairness does not solely determine and limit the scope of justice, a strong justification needs to be given when it is claimed to do so.

If an ideal obtained, by which most states complied with fairness and few did not, my argument suggests that Italy cannot refuse a duty of justice and 'slack', simply by pointing to some third party's non-compliance. Italy must instead act on its duty of justice, and pressure other states to act on their duties to meet certain fairness criteria. This is because Italy has a justice-based claim against other states, the inaction of which results in Italy doing its part and theirs.

Thus, Italy is not in a position to employ the indeterminacy argument, that is, to ask "why me?", because it is clearly its responsibility to offer protection. It is, however, in a position to advance a fairness-based argument against non-compliant states, like the UK. In so doing, Italy accepts its responsibility and presses no argument against those in need of protection, and further advances its distributional claims against the appointed collective duty-bearers[227].

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[226] Owen (2016) advances an account compatible with this kind of reasoning. In addition to his view, states may not only aim at offering effective protection, but as I argued, they are not in a position to withdraw from their responsibility in light of distributional or indeterminacy arguments.
[227] See the parents' analogy below, for how justice should be discharged in face of 1) indeterminacy, 2) non-compliance.

If a fair distributional ideal is far from being realized, as with our current refugee regime, do states owe refugees a humanitarian duty? Miller suggests that justice to refugees is dependent on the existence of a fair share ideal and a distributional scheme allowing states to identify and agree on their fair share, beyond which all states owe refugees humanitarian duties. It is also dependent on states complying with their fair share. One way to avoid this conclusion is to claim that states owe refugees protection as a matter of justice. Consequently, we first accept that non-compliance with fairness is not enough to invalidate duties of justice, and second that the scope of justice may be wider than that of fairness.

One problem signaled by Miller that needs addressing is that duties of justice cannot 'hang in the air': a state cannot discharge them if it does not have specific duties to specific people. I showed that fairness is unhelpful to settle the indeterminacy problem that is to assign refugee R1 to state S1.What does justice suggest then?

Consider the analogy of states, owing duties of justice to refugees, and families, in which parents are more or less evenly invested in rearing their children. In which situation may those children not receive parental care without justice being upset? One will hardly find any scenario in which justice does not remain plausibly demanding of that care. If one parent does not fulfill some duties, for whatever reason, the other is bound to do *more*, to maintain adequate childcare (e.g. keep children in school, well fed, offer them affection) and when possible would receive help (e.g. from relatives, services from the state) in carrying out those duties. Of course, it is unfortunate and unfair to become a single parent, and thus work much harder in caring for one's children. It would be odd, however, to think that justice demands that the parent in charge does her share and no more on the grounds that parents agreed that she will hypothetically care for the first child and he will care for the second. Whilst it seems plausible that the single parent will try, out of reasons unrelated to justice such as love for their children, to do as much as possible for them both, we cannot rule out that she should be also compelled by the duty,

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perceived as greater if the other parent is absent.[228] If both parents failed in their duties, normally we expect other relatives (including say the godmother) or social services to step in and make sure children receive care. We hardly accept, however, that the basic needs of children should simply go unmet, without justice being upset. In *all* cases where it is hard to draw relationships of special responsibility, including cases where children are orphaned, lost, or their parents unknown, this stems from the idea of justice that we must do more when *more* is needed. If the child was lost in a forest, I will not leave him there unsafe, on the grounds that I look after my own children already (do my share), or that there is no special relationship between the child and me. I must find solutions for the child to find his parents, or new parents (if needed), or in a long run make sure that a system is in place to provide lost children with due care.

Fairness is one criterion indicating a distributive ideal, but does not limit the duty of justice, since justice seems to *persist* even in the face of unfairness (one parent non fulfilling his duties), or the existence of duty-bearers (unknown parents).

If Miller is not convincing in arguing that duties of justice to specific bearers are only and mainly ascribed by appealing to fair share criteria, the link between fairness and states' point of view is loose, and on closer inspection, unjustified.

5.2 Human Rights Discourse: From States' to Refugees' Point of View

Unlike considerations of fairness, which are limited to indicating distributive amounts, justice seems to be *persistent*, because it is by its very nature related to the point of view of the refugees, namely the protection they seek. What does justice say, though, about the indeterminacy problem: R's claim against the duty bearer's S1 over Sn?

[228] See fuller discussion in Miller 2013b.

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Duties of justice towards refugees are held *globally*, and individual states will be carrying out this duty of *international protection*[229] in the current system of states. The world as a whole must ensure that protection is met. States should provide individually, and cooperatively,[230] a prompt response to outflows of refugees, generally, but not exclusively, by admitting refugees in their *safe* territories and protecting their human rights. Shortcomings on the end of states to offer protection, by pushing back the 'boat people' approaching the shore, are impermissible. Although states are not the direct perpetrators, they partake indirectly in human rights violations, even if the refugees in question are not a designated share for whom the specific state had special responsibility. States may not engage in measures that repel refugees who approach them in need of protection.

States, accordingly, bear a prima facie duty to cover *all* arising needs, or minimize the gap; otherwise, they fatally fail morality. Those instances in which states may refuse protection when approached by refugees in need require strong justification. One justification may be that a state has no (further) capacity for protection.[231] It is virtually impossible to make this claim, when developing countries like Lebanon and Turkey receive millions of refugees without *collapsing or being swamped*. We also see how inflated this empirical claim is in both political and academic circles. Compatibly, Miller claims that S1 may not automatically host R1, in which case S1 is responsible for finding another state to offer a 'safe haven' instead. The implication is that when R approaches S1, a strong duty of protection kicks in.

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[229] We should not break the link between where one requests asylum and where one receives it (Carens, 2013, p. 362), as this would incentivize states to send refugees elsewhere as their first option. I am also mostly discussing the duty states have in the first place, and it is for this purpose sufficient to narrow the definition of protection down to the genuine refugee receiving a procedural hearing of his case, and protection for as long as needed; resettlement to a third state may also be an option.
[230] See Miller 2013a, 2015 for a discussion on states cooperative models.
[231] Carens 2013, ch. 10.

When a refugee R approaches state S1 demanding protection, the state may not ask 'Why me?' because it has committed, together with all other states, to offer protection in such events. Indeed, the refugee may reply 'Why *not* you? If I need protection and we are mutually committed[232] to provide it to one another in such events, it is you, S1, who must justify not honoring your commitment to non-refoulement, and not me to make a special case for claiming protection'. The state is hardly justified in posing this question to the refugee, just as the parent may not ask the child 'Why me?' in the absence of the other parent. The parent instead complains against the missing partner, or claims more support (from the state, relatives, charities, etc.). If Italy has a justice-based complaint, distributive in nature, such as 'why do I offer protection to so many refugees compared to other states?', then justice is properly invoked if it demands rectification by other states who are not doing their share (like the UK). Note that the justice complaint has shifted from the refugee who proves no other point than that he is a *genuine* refugee. Justice blocks the state from eventually refusing to minimize or cover up the human rights gap and at the same time demands rectification, one that may appear as a legitimate call of S1 on Sn.

I now signal where there is a conflation between arguments (b) and (c)[233][234] in Miller's conception. The distributive claim (b), either real or perceived, that a state is doing disproportionately more than others, is conflated with the claim that refugees must prove that they are particularity claimants (c) in order to enter into S1. Here, Italy may claim that even if

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[232] I refer to a moral commitment states have from recognizing and signing international treaties, such as the "1951 Convention" on refugee protection; and not a commitment on shares allocation.
[233] (b) and (c), refer respectively to the distributive, and particularity problem, which are arguments states may invoke under the questions "what is exactly the content of my duty" and "why do I owe something specifically to R1?". Miller lumps these two problems in his discussion of fair share.
[234] I remind the reader that (b) stands for the distributional condition, and (c) for particularity condition, whereby both belong to what I defined the indeterminacy problem. In the first section I justified that (a), the specificity condition should not be invoked by states.

it was responsible towards Aquarius people, there was no grounds for why it should take refugees with no specific asylum claim in Italy, which again procures a moral stringency regarding as to whether R1 can prove that Italy is the country that must offer her asylum. As the argument goes, a refugee has a right to receive protection *somewhere*, but not in a particular state, S1 (Miller 2013, 2015). This implies that the refugee can claim protection (and obtain it) in S1, if S1 is the only state available, and if all other states were to reach their full capacity,[235] or some counterfactuals such as that this is the only existing state not at war, or the only existing other state. The refugee may also have a *specific* claim against S1, if S1 is directly involved with the cause endangering her life, such as in the case of an Afghan civilian who has collaborated with the US and now needs to be protected against those who constitute a threat for that reason. Contrary to this, in *any* other situation, in which there are many states out there capable to offer protection, it is unclear, on Miller's view, why a particular state S1 bears special responsibility to protect the refugee (in other word he raises the particularity objection). At most, states bear responsibility to accept an established number of refugees – an agreed fair share – but even in this case, do not owe protection specifically to the refugee R1. Instead, they choose *which refugees* to protect (Miller 2013a, 2015).

The refugee claiming protection should receive it, but not necessarily in S1, unless S1 is willing, and in that case in the arrangement that best suits S1. S1 therefore may also decide on *whether* and *how* to offer protection, bounded by the limitation that no human right shall go unmet. Note that there is no human right gap in Miller's conception here, as he accepts that when the refugee approaches S1 either by filing a claim or by arriving on its shore, S1 is bound to protect the refugee, or else find another state that takes up that duty.

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[235] I thank Kim Angell for this point.

Three distinct questions need not conflate. First, 'whose duty is it to protect?' is distinct from 'how the duty should be fulfilled?' (E.g. what kind of protection should be provided), and who is a legitimate claimant of that duty. Second, even if we establish who owes a duty to the refugee, we may then further inquire whether the way in which the duty is carried out meets commitments to justice. This is because duties may be allocated to proper duty bearers by fair agreements agreed upon by states. However, justice to refugees ultimately establishes whether that distribution is just, or duties justly carried out, and where rectification is needed.

Thus, the requirement that a refugee must show that he is a particularity claimant (c), in a specific place, say Italy, is too stringent. This is true in view of most theories, which accept that genuine refugees are the legitimate claimants of protection. Imagine a victim of a robbery, who attempts to receive help from the agents who are so disposed for such occasions, such as the police station, to report the robbery. Would the officer be acting justly had he asked the victim whether she has some relative working in the police, or whether she is qualified to ask to be helped by this specific police officer? This is a clear case of high indeterminacy, where agents, such as the police, are responsible for providing aid, and victims are often not in a position even to prove their identity, if their belongings were stolen. The only claim the police officer is permitted to advance against the victim is distributive. He can say that he can only document and pass on the duty of further assistance to more competent agents, such as the embassy if the victim is a foreigner, a social insurance company, or the doctor if the victim is injured, etc.. The officer may also claim that he is busy dealing with three robberies, so another colleague will be called to help with procedures. But in no case can the officer justly demand that the victim prove that she has a claim that can only be pressed against that officer specifically. This is not to say that particularity claimants are put in the same position as those who are not. One can plausibly imagine that one may have a stronger claim on the basis of their residency or where they pay taxes to claim schooling or specific local services in that area. This

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may, upon justification, create a justified priority line, but not an argument against the non-particularity claimant.

In the real scenario, if Turkey offered insufficient protection, the EU-Turkey agreement mentioned at the outset may be impermissible from a point of view of justice. Justice trumps fair distribution, even if this bilateral agreement is the fairest obtainable. The Turkey-EU agreement may be accepted from the point of view of justice, on the condition that human rights are *properly* met in Turkey, otherwise the share of refugees hosted in Europe should be much higher than in Turkey.

In line with this distinction between distribution and particularity, Miller accepts that S1 has a duty to procedurally assess the refugee claim and substantially offer protection in one of two ways. I call these 1) best protection: admitting the refugee; or 2) worst protection: transferring her to a sufficiently safe country willing to take her in. Notice that Miller accepts S1 to have a duty to protect the refugee derived from the fact that this is just any refugee.[236] It can opt for the worst protection[237], option (2), namely send her to another country *only conditional* upon that country's willingness to accept her and offer a safe haven.

At this point, Miller defends two conflicting commitments:

1) S1 has a duty to protect the refugee if S1 is the *only safe haven*: S1 has *large discretion* not to admit any refugee, unless it is the only safe haven. Under this definition, a 'human rights gap' is possible because S1 may consider that it has done its share (for any

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[236] Fair-share distribution cannot establish special relationships (previous section).

[237] I use the qualifier 'worse' protection at least with respect to one aspect: refugees, like any person in the world have a right to choose whether to move. If Italy sent refugees to Norway, (assuming in a regime of a better, if not the best, protection), it is worse, if refugees unwillingly move to the third country, and are not permitted to choose. In the real case scenario, of course, this scenario is much worse under other aspects, that is, because refugees who are rejected or transferred, remain confined to third countries: the poorest states in the world host the highest numbers of refugees.

number of refugees) and is not willing to do more, and will therefore not take responsibility for the protection that went unmet. I call this approach the 'states' point of view'.

2) S1 has a duty to ensure that there is *no human rights gap*, and therefore to admit the refugee, or ensure the refugee is admitted in another state. This entails S1's *minimum discretion*, because it accepts a strong constraint of justice, possibly implying that it must admit all refugees claiming protection if it does not find other states willing to offer protection. We call this approach the 'refugees' point of view'.

The question is: if refugees approach a state, e.g. Turkey, should they receive protection? If the reply is that they should, unless the capacity of that state is exhausted, (2) is true, and strongly constrains (1). Concretely, S1 may not refuse the refugee protection if this leads to violation of some or all of her human rights. S1 has strong duties from which it cannot bail out easily. Notice that argument one is strong, only if the particularity objection (c) could be raised against refugees demanding protection, but I argued, it should not be raised.

On Miller's premises, the "gap" arises *technically*[238] because the refugee does not approach *the world* owing her protection, but *a particular state*, S1 (either with a visa request, or at the border). The problem is that while the *human rights discourse proper* demands any state offer protection to those in need, it does not justify the extent of the duty particular states have toward particular individuals. Miller describes this *vagueness* as a 'generality problem'.

Simply put, it entails that it is unclear which state does what for whom. Inevitably, this leads to what we see in our world, namely that states act *ad hoc*, generally withdrawing from their responsibilities by minimizing them or offloading their duties to third countries. The

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[238] A typical 'technical violation of human rights' is the complex action taken by wealthy states forcing refugees to stay in third countries, by impeding refugees to either arrive at these countries borders. Gibney has called the complex action that leads to technical violation of the non refoulement engineered regionalism, whereby refugees are confined to their own region. Here I use the term to indicate that refugees are not *de facto* denied protection, but technically they are.

criteria states operate on from their point of view might be unfair or minimally fair towards other states, which perhaps cannot withdraw from their duty in the same way, like Lebanon, geographically bordering the Syrian conflict.

However, if my arguments are correct, and a state cannot say 'Why me?' and 'Why this refugee specifically', then the only argument a specific state can plausibly press is distributive, relating to facing disproportional costs. This argument is not permissibly pressed against refugees, but against other states. It claims that the content of protection should be based, for example, on a 'basic needs' human rights account. It also argues that other things such as social cohesion and culture suffer in the face of large influxes of refugees (Miller 2016, Refugee chapter). But all these distributive arguments are to be weighed against the claims of other states, which comparatively pay some costs. They are not to be balanced against refugees' claim to protection and their bare needs for survival. Owen (2016) argues that states have *a duty* to foster distributive schemes to ensure protection. My addition is that states have *an interest* in doing so, in order to cooperatively face proportional costs.

Accordingly, as it happens with contemporary states, generally inclined to minimize their duty, they often take ad hoc actions of their own accord, and not only fail morality towards refugees, but act against their own interest, the interests of other states, and the collective interest. This is apparent in the Mediterranean, where in three days, 200 dead bodies (including children) emerged floating lifeless on the shores.[239] The frontline states face disproportionate costs, and the alliances of states, such as the European Union, betrays its stated values (Turculet 2017 a, b, 2016 a, b).

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[239] https://www.theguardian.com/world/2018/jul/03/mediterranean-migrants-drown-three-days-libya-italy?CMP=share_btn_tw

Miller is very cautious, however, in placing the 'no human right gap' constraint on states when he claims that S1 can only refuse to admit the refugee only when another state, equally safe, is willing to offer the same protection[240]. The point is also made when he criticizes Western states for *technically* violating the non-refoulement principle, and denying protection to refugees, by introducing various mechanisms and border policies, such as visa regulations, to prevent refugees from approaching their borders. States appear not to violate non-refoulement, because *de facto* refugees are never refouled (returned) to where protection is unmet. These states deliberately deterred refugees from ever making it to a safe place. The result is that Western states partake in human rights violations. How can Miller justify this?

If he stands primarily by 'the point of view of states', he accepts that it is regrettable that the non-refoulement *largely* goes unmet. If some fair-share distribution were in place, and a state had done its share, it may well be justified in using deterring mechanisms, even if human rights violations occur. Miller's view thus does not condemn such violations of non-refoulement. If my reading it right, Miller's view conflicts with the only morally sound solution from a human rights proper discourse, which is that Syrians should receive protection in capable states. Without taking the point of view of refugees, Miller may condemn the current state of affair, not because wealthy Western states contravene non-refoulement, but because of the injustice to the citizens of those countries that take the disproportionate slack. Implausibly then, countries which are swamped, for reasons of unfair distribution would be even more justified in imposing mechanisms to technically violate non-refoulement. This would result in millions of refugees being returned to dangerous places, which is a morally impermissible conclusion.

For Miller to sustain these complaints, he must be *primarily* committed to (2), namely take the point of view of refugees. Commitment (1), namely taking the point of view of states,

[240] This point is compatible with point 2, the point of view of refugees.

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is too weak to ensure that we can criticize states' action beyond their own consideration of their responsibility regarding the size and quality of protection they offer[241].

Let us now dig deeper into how Miller settles the problem of *vague* relations, which he takes to work specifically against the refugee having a claim to receiving protection in S1, and in favor of the state's point of view.

5.3 A Pure Case of Non-Refoulement

The refugee needs to specify why S1 owes him a special duty, otherwise his claim does not bind S1. Unless the special duty is assigned to S1, the refugee generally does not have a choice between S1 and S2, as long as he is safe *somewhere*. I called this the specificity problem. Miller's argument is that S1 is responsible for X – a fair share (for *any* agreed number of refugees) – but not for any *particular* refugee. Of course, there can be cases where a particular refugee has a claim for receiving protection from a particular state S1, e.g. when the refugee is a particularity claimant, such as that the refugee has family members there. Apart from particularity claimants, no individual (other refugees included) has a recognized human right to move to a country of her choice (right to migrate). As a result, a much more limited right, non-refoulement, entitles refugees to some safe haven that they do not get to choose (Miller 2013a).

In this section I discuss whether taking the refugees' point of view justifies refugees in choosing the country where they receive protection, and whether the non-refoulement principle is as limited as Miller conceives it. I scrutinize specifically whether in view of the duty to respect non-refoulement, S1 may transfer its duty of justice to other countries. The point I add, is that S1 may choose this option, but is required to justify it.

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[241] Commitment (1) and (2) are summarized in p. 209.

In the previous section, I argued that S1 cannot say 'Why me?' on grounds that S1 is collectively responsible and owes refugees a duty of justice,[242] one that is not limited to an ideal fair-share. This is because fairness, as a distributive ideal protecting from incurring disproportionate costs in cases of other agents not doing their share, is a claim against other agents and not refugees. It can be a case against refugees only if costs are excessive to the agent. It seems morally repugnant to ask the drowning child to dry-clean my suit before I save him, as a fair distribution of costs, determining whether I will jump in the lake to save him.

I also argued that S1 cannot ask "Why this refugee?" the same way a police officer cannot ask a victim of robbery 'Why should I assist you?' on grounds that the victim has no particularity claim against him specifically as opposed to other police officers, assuming all officers are equally responsible and capable to help. This discussion is narrowed down then uniquely to (b) a distributive problem *between agents* capable to help.

Consider the following. If my household is not as wealthy as my neighbours', Eylem's or Murat's households,[243] this alone does not entitle me to jump from my window into one of their flats, making use of their living space. Besides infringing many of their rights, if I moved into one of their homes without their permission, in the first place I have no such right to enter

[242] This is conceptualized as a problem of the structure of the duty, that is, the indeterminacy of a collective duty being ascribed to individual agents, and as a problem of substantive fairness. See Stemplowska's (2016, pp 593-598) discussion of Miller's and Murphy's arguments and limitations. My point is compatible in the following way. Against the structure of the duty, Stemplowska raises two concerns. First, that it is odd to think that A has a duty to protect B when B is harmed by C (say C steals B's textbooks), but not a duty to protect B if C is left unassisted by B (say, C slacks in his duty to assist B and leaves his responsibilities to be taken up by others). Second, it seems right that duty bearers should be protected against the unfairness of others who may not be doing their fair share; but it is wrong to say that compliant A's duty of justice is limited only to his fair share, and thus suggest that fairness has lexical priority over other concerns, e.g. the duty to protect. Against substantive fairness – that there should not be inequality among duty bearers, this proves only that equality matters. But even egalitarians agree that equality is not the only value that matters, another certainly being efficiency, in virtue of which inequality may in fact be justified (see Holtug 2011). To these arguments, I added that indeterminacy as an argument does not favor any substantive conception of fairness in protection. An additional argument is required for this purpose.

[243] I assume Murat and Eylem live in separate houses, equidistant from mine.

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someone's flat. However, if there is a fire in my home, and to save my life I need to jump into one of their homes from my back window, I have a *prima facie* right to do so to save my life. My neighbours Eylem and Murat would then be morally responsible not to let me perish in the fire, allowing me to jump from the window into their home. For Eylem to say "I am sorry, I will not allow you in!", she would have to convince Murat to accept me instead.[244] The upshot is that S1 is not morally obliged to its fair share only, because it cannot say 'Why me?' and "Why this refugee" *against* the refugee in view of the indeterminacy problem that blocks relationships between S1 and the refugee. It can question in view of the distributive problem the size and the form in which it distributes shares of responsibility, in view of effectiveness and costs,[245] a claim that is pressed *against* other capable agents.

This example portrays the difference between the lack of an *absolute* and *general* right[246] to move (immigrate) in cases of socioeconomic disparity, and a *prima facie qualified* right to move elsewhere in cases where life, bodily integrity, or other basic rights are under threat.[247] Of course, if movement is of value as I argued in the first three chapters, then it is of value *consistently* for all, those who undertake it as a liberal choice, and those who undertake

[244] One may argue that I do not have a choice between my neighbors, if my choice is motivated by comfort, rather than protection per se. In the realistic scenario, most refugees are confined to their regions, belonging to some of the poorest countries in the world (Gibney, 2007). The refugee chooses from a scarcity of means and options, and an abundance of urgency and fear, rather than a "fully liberal" choice, e.g. between playing the piano or the harp. The refugee must go somewhere, which entails a choice between bad options, or tossing a coin (making his choice arbitrary). No argument in the literature has argued persuasively that the refugee (or anybody) should toss a coin to decide their direction. On the contrary, I argued that refugees, just like the poor and the rich, should choose whether to move and where to move.

[245] I earlier defined effectiveness as a principle for distributing aid as required in specific circumstances. Cost on the other hand can be related to economic costs, but also other values, such as community culture and cohesion, which some, notably Miller (2016), believe to be undermined if a country's population increases significantly.

[246] See Miller, 2013a.

[247] See Benhabib, 2004: The fundamental human right to admission regards the admission of the asylee and refugee and not that of immigrants, whose admission remains "a privilege", in the sense that it is up to the sovereign to grant such "contract of beneficence".

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it out of desperate need. But let us now set this argument aside and look into Miller's proposal that non-refoulement is a much weaker right than freedom of movement.

Miller claims that since there is no human right to move unimpeded across borders, one can justify a much more limited right, namely the right to non-refoulement (Miller 2013a: 7-14),[248] which allows for entering S1 when this provides the *only way* of escaping human rights violations occurring in S2. S1 can refuse entry to people fleeing from S2 only as long as some other reasonably safe society is willing to take them in (7-8).

For this restrictive view, Miller provides two justifications. One is that refugees are not entitled in view of non-refoulement to move to a country of their choice, but only to *some* country. I call this the choice argument. The other is that refugees are entitled to minimum protection of their human rights (Miller 2007), which can be offered *anywhere*. The implication is that refugees' basic rights are not violated if their rights are protected in country A as opposed to B. Thus, accordingly, if A refuses the refugee entry by asking B to take up the protection of human rights, refugees' rights are protected, without the choice between A and B. I call this the moral minimum argument. Both these arguments are limited in the face of my argumentation in the previous section.

First, regarding the choice argument, it is unclear why Miller defines the non-refoulement principle as dependent on the general right to move freely across borders to the country of ones' choice (right to immigrate). This 'cantilever argument'[249] makes the non-refoulement principle a logical extension of the right to immigrate. If citizens have the right to guard their borders against prospective migrants, why is it that the same practice cannot be applied with refugees? The response most theorists would agree with is that non-refoulement

[248] See, Miller 2013, pp. 9-10 for a philosophical discussion on non-refoulement.
[249] Miller 2016, ch 3.

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is a widely recognised right, morally, and also legally by most existing states, in spite of the fact that a human right to immigrate is legally recognised by no country in the world.

As the illustration suggests, an 'absolute' right to immigrate has no bearing on the right to non-refoulement[250] for the latter to be recognized as bearing a *special* force on its own. It is *precisely* because the right to immigrate is not recognised, that non-refoulement is a special justified right.[251] What we conceive as a human right to immigrate and the right to non-refoulement are separate debates.[252] Turkey may not reject a Syrian approaching it for protection, but may scrutinize the reasons of an Italian like myself immigrating to Turkey. While it may refuse me the right of stay, it may not the refugee. Turkey's duty to protect refugees is derived from its collective international responsibility to offer protection, which it has accepted by signing the 1951 Refugee Convention. This duty is binding even if we accept that countries do not have a duty to respect a universal human right to movement, presumably because there is no recognized human right to movement. Refugees approaching a state either physically at the border, or by filling out an application, claim protection – they do not claim a human right to universal movement, even if their protection entails movement. When they file an asylum claim, it is often the case that protection entails their movement, as they can no longer reside in their country without their human rights being threatened. In refusing entry to a Syrian refugee, thus, Turkey (or any other country) is acting like a police officer or a doctor turning away a victim of an accident in need of help.

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[250] I do not claim that non-refoulement is adequate as the sole basis for allocating the responsibility for refugee protection, but it does set a constraint upon the morally acceptable alternatives of how to carry out this duty, and in this sense I see it as special.

[251] The distinction between 'special' and 'specific' is important for the remaining part of the chapter. By 'special', I mean that non-refoulement, if understood as a right, is derivative, in the sense that its main purpose is to protect the basic rights under threat.

[252] One can support the human right to immigrate and non-refoulement, or remain agnostic on the first and support the second.

If we disentangle the right to non-refoulement as the logical continuation of a lack of freedom to immigrate, there are no convincing reasons for transferring the normative justification for why one may not arbitrarily immigrate to a country of one's *choice*. How may we understand the non-refoulement principle claiming that one moves to *a* country where one is *safe*?[253] This, per se, does not speak *for* or *against* the refugee having to justify his choice of a given country, even less so when both countries available (in our case Murat's and Eylem's houses) are equally well equipped to provide reasonable protection (justice to refugees), and neither would be overburdened (substantive fairness condition). Further, refugee seeking asylum cannot apply to the world as a whole, but must approach a specific agent, that is, another state. They *are forced to* make a choice. Refugees often choose under morally excruciating circumstances due to background conditions of war, persecution and limited means, and the fact that most capable states apply severe limitations to their movement and to filing asylum applications. In forced situations, I argued in Chapter 3, agents are acting not on a moral desideratum of choice, but barely voluntarily, on a moral suboptimal desideratum. That is, they are forced by circumstances to pay impermissibly high costs no matter what option they take (e.g. drown in the Mediterranean Sea in an attempt to cross to a safer country, get dispossessed or murdered by the ISIS in Syria, or marry their children to some local in Turkey).

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[253] Assuming that border controls are legitimate, the argument accepted by most theorists is that even if states could reject immigrants, they must not deny protection to refugees (Wellman is the only author who claims that states may refuse refugee's protection). The reader may object that if I think there is a general human rights to movement, then non-refoulement is redundant, on the assumption that everyone can move. I reply to this objection only by listing a few main reasons: non-refoulement guarantees people's moral minimum, and in this sense, even in a regime of free movement, refugees may have a justified priority entry lane, for example, refugees should enter before rich tourists (assuming there is a cap on entries for justified reasons). Further, refugees may be understood as legitimate claimants not only of free movement, but protection of human rights for an indeterminate amount of time. Since the latter generate potential costs, societies need to plan accordingly to the type of need. This is why fundamental to understand each right distinctively: to provide claimants with what is needed to justly fulfill their claim. In this sense, the non-refoulement is not redundant or unnecessary.

When Italy refuses entry to the Aquarius boat, Italy is not dealing with people who *choose* Italy per se. Note that these people in fact approach Italy for protection, but their choice, if there ever was one, may be to move to Germany or Sweden (Turculet & Baycan 2016).

With this scenario in mind, should people in need of protection choose their destination? Theorists, like me, who are convinced that movement should be driven by people's choice (see Chapter 1), support the idea that if movement is of value, then anyone, including the desperately poor, should be able to choose whether to move, where to move, and for which reasons (Oberman 2015, 2016, Carens 2013).

However, theorists who think of movement as a preference that should not be costly to others (Miller 2016, Wellman 2011), unless there is an independent argument why people should move, will accept a broad distinction between *rescuing* and *protecting* in the long run. Rescuing individuals from, say, drowning, is bound by criteria of urgency, and in such situation a "connection theory" (Miller 2001) may offer some guidance on how agents may act responsibly. However, Serena Pareth (2017) argues against Miller (2016, p. 84) that a theory of protection should seriously consider the plights of all those in need of (urgent) protection – approximately 65 million refugees, many of whom cannot 'connect' with particular states and make direct asylum claims. Thus, connection theory frames the states' obligation to protect too narrowly, encompassing only the few refugees who make connections to particular states (Parekh, 2017, p. 311). There are refugees lacking connections, and in urgent need of protection of the same type as in rescue cases.

Regarding medium and long term protection[254], when urgency is less of a concern, there is arguably more room for distributing refugees to various countries, while showing less regard

[254] The discussion on whether protection is due for a short, medium or long term influences the types of policies a states should undertake (Turculet 2017 b). In the case of Syria, I argued that Turkey has acted

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to the refugees' choices. Here, only particularity claimants can press a claim against a specific state. Against this view, I argued that refugees have a special claim, without having to prove particularity, the same way an indeterminate victim of robbery does not need to prove that the police officer should assist her on grounds that she has relatives in the police force.

However, my argument is weaker against long-term arrangements, especially for long-term mass settlement. Even then, there is no need to think that refugees' choices carry no weight. If we accept that, say, from 10 million people, one million goes to each of 10 countries, until the cap of 1 million is reached in each, we have no principled reason to think that refugees should not press a claim to be admitted in an available state of their choosing.

The question of choice may then admittedly be more contentious if too many refugees intend to move in the same state, or to states that fulfilled their fair share. But in practice, this point is almost irrelevant. In a context in which most wealthy countries control the movement of people from afar, most refugees end up in nearby countries, which happen to be the poorest in the world, where neither refugees nor these countries can be said to have had a "choice" in the proper sense. The choice is forced by the connection made mostly on criteria of urgency and other arbitrary factors such as geographical vicinity and power of Western states placing mechanisms to prevent the movement of refugees (Gibney 2015).

I now turn to the second argument, the 'moral minimum'. Miller construes non-refoulement as a much more limited right as how my illustration portrays it: a refugee might flee to S1, *only if* this is the *only way* to have his human rights protected (2013a: 7), and he bears the burden of proof for why S1 is the *only acceptable* country. He relies on the 'moral minimum' theory of human rights (2013a: 1-9), whereby states have broad discretionary

in the first years of Syrian mass displacement entering Turkey, as if the 'refugee crises' was temporary. I set this complex discussion aside.

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authority to interpret protection as securing the conditions under which right holders may lead minimally decent lives.[255] Your right to food places on me the demand to feed you, but not to feed you the kind of food you may prefer, only that which is most convenient for me to provide. This discretion applies also to states not to automatically admit refugees, whereby offer protection in the territory or commission other states to do it.

Accordingly, the refugee might make a special case, such as that he has family members in S1, and thus a specific claim against S1 that it owes him special responsibility. In this sense, the *generic* human right to form meaningful relationships can only be fulfilled by entering a *specific* country, S1. If no good reasons build such a case, Miller argues, it is not enough for non-refoulement (as I portrayed it) to build a strong case for entry in S1; however, it has to be explained why the refugee specifically demands protection from S1 and not some other state (specificity condition).

Miller argues that S1, which is in a position to help, may decline entry to the refugee, by transferring him to another country *willing* to take him (7). This view is problematic. It does not suggest that the refugee who is declined entry on a whim by S1 should be transferred to S3 *because* S3 is in some way responsible *specifically* for that refugee. Why is *specificity* a reason for denying protection in the first country, yet not in the second? Miller must decide whether specificity matters as a ground to refuse entry to refugees, or it does not, consistently. My reply is that specificity is a problem I conceptualised as indeterminacy. Justice must hold in face of indeterminacy; and agents, such a states should refrain from using one of the three versions of the indeterminacy problem (a,b,c) in order to not take their responsibility as seriously as they should. This is a general argument, which is even more stringently binding, when basic human rights are at stake.

[255] For a fuller account, see Miller (2007) ch. 7 and Miller (2012)

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I argued in Chapter 1 that Miller conflates two distinct conceptual matters – whether human rights should be content-specific, and allow for requesting specific items, like a particular type of food (generality criterion), and whether human rights should be person-specific (subject-specific criterion), and reflect a specific person's choices. Accordingly, it is true that the content may well be generic, which is, an offer of food and health, instead of caviar and a particular brand of insulin. However, it is false that human rights are fulfilled independently of individual choices (independently of the subject-specific criterion): my rights are not respected if I am provided an HIV treatment instead of insulin, assuming I need the latter or if I am provided a generic range of spouses instead of being unrestricted to marry the person I love. I concluded that Miller' argumentation was successful only with regards to placing a cap on the content that each right suggests, but has not provided argumentation against the subjectivity criterion, which is the criterion that enables everyone, refugees included, to choose whether they move and where to move, but also to other relatedly fundamental choices, reflecting personal and political interests and values.

Miller acknowledges that it might be empirically impossible to find the relations of responsibility between a specific state and a specific refugee. In complex cases like Syria, where many countries in the region and the world have interests, or have intervened, by arming local combatants against one another, or with airstrikes, by the time those specific relations of responsibility are found, most refugees will have been declined protection, and will have had their human rights fatally violated. Aside from the empirical impossibility that Miller surely acknowledges, he is also aware that not *all* refugees have *specific claims* against specific states, whereas all have the *special* claim of non-refoulement. Thus, a refugee approaching S1 normally needs no specific claim for his right to non-refoulement to kick in.

Which reasons for denying refugees then does Miller accept as justifiable in cases where the *unwillingness* of S1 to allow entry coincides with the *willingness* of S3 to do so? He argues

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that states might willingly enter into certain agreements to find some system of fair distribution of refugees, and assesses from a moral point of view three cases which might be called 'fair-share-between-states', 'bilateral-agreements-between-states', 'status-quo-pass-on-responsibility' (Miller 2013a: 9-14). Without discussing these models in detail, it is clear from the names of these cases that the willingness of states to decline refugees is conclusively assessed in Miller's view mainly by fairness considerations, which (as argued) also leaves special relationships unaddressed, e.g. why R1 moved to France, and not to Germany. Fairness at most establishes distributive amounts. In fact, even after accepting a principled distributional model and committing to it, when faced with this specific refugee, states can still ask the question: "Why should the refugee enter S1?". The specificity criterion, aside from the few cases where one encounters it (like the refugee having family members in S1), rarely obtains empirically, and places refugees in a perennial search for protection. Miller is right, however, that whenever claims for a specific S1 arise, they should be prioritized to unite separated families. But this does not amount to refugees being required to prove a specific claim to move to S1 in any of the possible distributive models which operate on fairness. If the refugee does not need a specific claim to enter S1, and he has a special claim, backed by non-refoulement, it is up to S1 to elaborate and justify why the refugee is not admitted. I argued that, contrary to this view, this 'specificity' or 'particularity' is in fact a relationship that need not result in states acting in their interests as they see fit.

To sum up, contrary to Miller's view, the refugee does not need to build a specific case to receive protection from S1. I depart from an 'agnostic' position[256] without refuting the

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[256] One can alternatively depart from the premise that there is a human right to freedom of movement (Carens 2013), or that there is a *qualified* right to immigrate across borders (Fine&Sangiovanni 2014). I argued instead that independently of what we think about the right of freedom of movement and the strength of its qualification, the right to non-refoulement needs independent scrutiny.

premise that there is no human right to immigrate, but also without attaching its normative force – that no person can choose arbitrarily the country to move to – onto the right to non-refoulement (Miller's strategy). Further, the non-refoulement principle amounts to a *special* right bearing its own force, independently from the existence of a human right to immigrate. If we agree with Miller that non-refoulement is a *general* right in that it does not speak about which refugee moves to which state, then I conclude, against Miller, that the refugee does not bear the burden of justification when he claims protection in S1 of S1 being *the only* safe place. The justification based on that there is no right to immigrate is then much weaker. What does this imply?

According to the non-refoulement principle, I just need *somewhere* to go, and S1 is one such place due to proximity, urgency, preference, or feasibility. However, the non-refoulement principle does not guarantee an absolute right in the sense that it trumps all other rights and all other moral considerations that may reasonably stand against it, unless one proves this point. It is not my aim to argue in favour of *absolute* non-refoulement, but a strong one that states need to take seriously. States that are compliant with justice to refugees have the authority to decide on the influx of refugees. Contrary to Miller's view, states need to justify why they deny entry, because they deny refugees who are prima facie entitled to enter, and are not required to prove their case (as stringently as he argued they ought), other than that they are genuine refugees.

The right to non-refoulement therefore says nothing about whether I can choose which neighbor to go to, but it also says nothing against it, as long as I am in a 'safe and secure' temporary home. I may then be re-settled elsewhere if other things we value, such as fairness, demand it, with a proper justification at hand. The difference between Miller's view and mine is that respectively, 'somewhere' is a restricted safe heaven, whereas I argued that restrictions are unjust, and need justifications.

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5.4 Concluding Remarks

I have argued that duties of justice require prioritizing the protection of refugees over considerations of fairness on how to share the duty between willing and able states. I approached this question from one specific angle: *how much* and *what kind* of protection do states owe refugees? When 'testing' normative thinking on real case scenarios, our 'considered judgments' encourage us to shift from the traditional "state-centrist" view according to which justice is carried out by states as they see fit, to the view of justice to refugees.

I argued that even if we grant that fairness is a value for helping to organize and distribute tasks so that protection is effectively provided by state and non-state agents, it is not clear, however, on Miller's account, why this value is superior to justice to refugees, that is, why states should fulfill their fair share and no more, as a matter of justice. Claiming that states are responsible for protection, but that their duty of justice is limited to their fair share, conflates distributive arguments of fairness which are to be pressed against other states, and indeterminacy arguments of justice, which are *not* to be pressed against refugees. On my view, distributive arguments can be pressed against refugees only if it is not possible to press them against other capable state agents, and only if the given state can prove that the costs it is incurring are too high to bear. To illustrate, even if Italy as a frontline country is doing more than the UK, it cannot push the Aquarius boat back into international waters (that is, deny protection to refugees) by arguing that the UK is not partaking fairly in protection. It can do so only if Italians are suffering excessively for offering protection, which is a cost that cannot be permissibly pressed against any agent.

To make this argument, I distinguished between distributive claims and indeterminacy claims, on which I found the idea of fair share to be grounded. I have not proven that justice in protection trumps other values, such as community and social cohesion (Miller 2016). I leave this for future research. But in showing that fair shares are not all that morally requires the

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attention of states, I established that fairness neither precedes justice, nor does it settle its scope. Fairness is indeed an important value, but in cases of high indeterminacy of 'who does what for whom'. In the case of millions of refugees in need of protection, fairness suggests how to solve distributional problems. These problems are exacerbated in the real case scenario, inter alia, as generally powerless states are unfairly treated by wealthy states (Gibney 2015). Contemporary states, in practice, invoke indeterminacy to avoid the distributive problem, like when Italy says it is nowhere written that Aquarius must enter an Italian port. Such states fail morality, in that the duty to protect goes unfulfilled on a mere excuse from responsibility.

However, this is not the critique I mounted against fair-share arguments, like Miller's. I argued instead that fairness, an important value supported by many arguments, offers way too little for helping genuine victims, even if agents cooperate more fairly than they do today. There is always a possibility of some non-compliant state. Such a possibility is realistic; if it were not, we would hardly put so much energy into moral discussions over our duties for refugee protection. It seems obvious, after all, that helping all the victims of an earthquake is a superior moral desideratum to satisfying fair shares and leaving the possibility of allowing half the victims die in the wreckage. To say that a state can simply claim that it has done its fair share and owes no more is morally repugnant. Consider the illustration.

Draughts may hit some rural areas, a sector of the economy may collapse, or the overall economy may collapse. It may badly affect only the poor and the poorest (not the rich). Some future children will not be equally endowed as others, some women will be victims of rape. And we do not have information which one will be the victim. For all these cases, marked by high indeterminacy, there is a duty of justice to protect the victims, according to liberal egalitarian tokens. I take that it must hold by Miller's account as well. When it is unknown who will have to do what for whom at point 1 in time, call it t1, it is built in the idea of justice, that a duty to protect will distribute burdens and benefits, despite the indeterminacy problem, or

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precisely in the face of it. If it is true that a police officer cannot ask a victim to prove that she is a particularity claimant, and why the given officer is a direct duty bearer to ascertain her robbery case (e.g. by sending off the victim unassisted to some other place), then such a stringent requirement seems harsh and unjustified for refugees to face. Were it to apply within societies, such societies would collapse, and social justice would implode.[257]

I argued in favor of two points. Fairness is a valuable distributive principle, as fairness-based claims are directed against responsible agents who do too little. The duty to protect, on the other hand, is independent from fairness, although fairness helps with the practical distribution of tasks. For this reason, the indeterminacy problem does not justify *tout court* advancing state-centrist values, like self-determination and social cohesion. The problem of indeterminacy is often a problem even *within* socially cohesive communities (Miller 2016).

Miller's view, that when it comes to protecting human rights, states' actions should reflect primarily the terms of states, as they see fit regarding whether to admit refugees and how to share their responsibility with other states (Miller, 2013a), may incur pernicious implications in the form of technical violations of non-refoulement. To refute these instances of violation requires invoking considerations of justice to refugees, because fairness is insufficient. States

[257] Even if we assume that social justice is distinct from global justice, for example by following Miller (2007) on claiming that special obligations apply within communities and not across them, note that the indeterminacy problem is identical on both dimensions. Also, see discussion of global and social justice in Miller 2005 and Holtug 2007. When I see a permanently homeless person in a bad shape in the street, it is not clear whether I am the first, second, or the twentieth person passing by in the morning that has a duty to do something about it. Should the richest, the kindest, and the closest do something, and on which grounds? This is all highly indeterminate. The reason why none may have a duty, arguendo, to take him home, offer him a shower, food and shelter, temporarily or permanently, is because through taxation citizens pay for a range of social services for people in such circumstances. Assuming this reason (that this is not *my* duty) means that we face the indeterminacy problem, which we have a duty to solve *because* we are responsible for it, and we are required to find a distributive model (taxation, social services, shelter structures, etc.). It is no different across communities, even if we accept special (egalitarian) obligations among citizens only. Even on Miller's account, fully compatible with my argument, refugees are owed remedial responsibility, which can be carried out on sufficientarian justice, or protection of a moral minimum.

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that do disproportionally more than others might feel wronged. Their claim is fair and needs rectification, even if there are no global arrangements between states regarding what a fair share might entail and even if a fair share would obtain somewhat more than in real politics. They have a fairness-based complaint against other states, particularly those that are able but unwilling to contribute. In the face of unfairness, it is not the refugees who should pay, by being denied protection, at least not automatically. It is rather the duty of states that comply to pressure others to help, on the basis that international protection is a joint enterprise, to which supposedly *all* countries are committed and on the basis that invoking the indeterminacy problem is immoral. This rationale sets grounds for an obligation to aim at the fairest arrangements possible between states in offering protection to refugees, as a demand of justice to refugees. This chapter thus proposes a conceptual twist, from the state-centrist point of view (much present in real politics and academic circles) to the refugees' point of view.

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CONCLUSION

My theory of just borders put forward a number of contributions. I summarize the main points and indicate new research avenues that stem from the major conceptual twist I propose in the philosophical migration literature. Upon advancing an account of movement as an essential interest, I defended the idea that everyone should move out of choice, and not need, as the highest moral desideratum compatible with the liberal doctrine. My proposal departed from the mainstream debate crystalized on complex considerations about whether migration policies should be more permissive or more restrictive. It conceptually steered the wheel towards thinking more deeply about what freedom to do anything that is essential to us demands in the first place. Liberal justice's chief commitment is after all to theorize ways in which everyone has the same freedom they grant that others should have.

First, upon rejecting arguments from the close border camp, in opposition to which I showed that movement is an essential interest, I suggested that views that set aside the value of movement are severely limited, and at the most, they present much narrower substantive grounds for movement restrictions than presently thought. I therefore, opened new research space on the value of human movement, which I outline below.

Second, I suggested that open borders accounts advocating movement as a basic liberty, suffer from an inconsistency that erodes the liberal tenets from which they stem, which I call the 'liberal hypocrisy paradox'. In short, movement, if a basic liberty, should be standardly conceptualized in line with other basic liberties. The principle FCM is the first answer to this problem – and has its first level of validity, which is provided by its consistency with the liberal doctrine. More normative work should be done in this direction.

Third, to my knowledge, my thesis is the first account that argues for two principles of just movement, on which migration policies should be based, and which takes into

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consideration the interest of people who are sedentary and in movement (in lieu of the assumed distinction between citizens and migrants—in view of the fact that people who move or have sedentary lives do not overlap perfectly with the categories of 'citizen' and 'migrant', if we think of movement in terms of interest). Specifically, I offered a perspective that is better accommodated within the liberal thought than alternative accounts, latter which *enlarged* the franchise of liberalism, but failed to consistently *deepen* it, that is, to argue for movement as a basic liberty in line with all basic liberties. It is, therefore, the first account that argues for it upon taking into consideration the most basic element of migration projects: the value of movement itself.

Further research should concentrate on accommodating my view with notions of legitimacy, which I set aside as further work. I showed in my thesis what justice demands to legitimate states, which legitimacy, I assume, is (at least partially) derived from acting justly towards citizens and towards everyone. However, as I implied in the assumptions section and in various parts in the text, the discussion between considerations of justice and legitimacy should be accommodated within a larger framework that takes into account various state and non-state actors playing a role in migration. Thus, whichever notion of justice or legitimacy one adopts, further normative and empirical considerations should clarify which types of relations of responsibility should obtain, the content of duties and which principles should define how duties of justice should be practically and effectively discharged.

Second, further research should establish which practical implications flow out of the general principles of justice I proposed, FCM and fnm. While I preliminarily suggested that FCM demands that everyone, rich, poor and persecuted, should choose whether to move or not, and where to move, further work is needed to show what kind of policies should capture these principles, and which are to be abandoned. In my work, I built this idea more explicitly on the caretakers' case, and the problem of the 'heart transplant'. From this case, we could already

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derive that one primary implication of FCM justifies a set of policies that protect the status of women migrants *inter alia* insofar as mothers. That is, although migrant women gain from migration, they are observed to be harmed in ways that should be remedied. The context of choice within which they pursue their plans is summarily restrained to either not directly caring for their primary special others (e.g. their own children and elderly) or providing basic goods to them, while caring directly for the global rich instead. Remedies can be understood as a set of policies that provide a 'time bonus', that is a regular leave of absence from work to unite with families, or a 'monetary bonus', such as a family allowance, whereby migrant women can pay for the costs of bringing their families along, similarly to how privileged categories of workers receive bonuses that compensate for the costs they incur with movement. These policies, although reflect a more demanding duty of justice, if compared to what current theories suggest, are still too modest in my account, as they are conceived to only reply to fnm principle: to movement out of need. Fnm must approximate the FCM. Whether these policies should be managed or implemented independently by each state, or through an international or global fund, or by local organizations advocating the protection of human rights, or by a principled combination of all these possible candidates, is a question to be replied in further research. These are only examples, until more normative reasoning and empirical findings assess specific trends of migration and the justice concerns, which each trend triggers. In this work I justified only the underpinning moral reasoning justifying this new direction.

Third, while I conceptualized 'choice' and 'need' to move, and I showed ways in which these are best accommodated within liberalism, I consider this work at its inception, as it needs more thorough philosophical precision and inquiry. The possible benefit of further work on the liberal hypocrisy paradox in the context of migration is that of generalizing this innovative theoretical construct to other essential interests that are guaranteed under the purview of liberalism. Essential interests - to form a conception of good, meaningful sexual and intimate

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relationships, to pursue our own plans and inclinations independently of gender - are liberties that are increasingly endangered in our liberal societies. While this is largely because our societies are *de facto* not as liberal as they could be, in my view, it is too hasty to account this to factors of non-compliance with a just liberal doctrine and to unjust circumstances alone. I suggested instead, that there are inconsistencies at the very basis of the liberal doctrine itself. I proposed that the liberal hypocrisy is one of them. I, therefore, recommend further work to be done in two directions: first, assess whether egalitarianism is the best suited theory of justice to accommodate liberty-claims, consistently with liberalism; and, whether egalitarianism is the best to accommodate distributive-claims in view of the lexical priority between liberty and distribution. This work would possibly ground the idea I implicitly suggested but not argued for, that *freedom to choose*, which in my view is the minimum threshold above which basic liberties obtain, only obtains with equality. Even if I showed that movement is an essential interest I have not given a full account of its relative value to other essential interests.

To conclude, the aim in my PhD dissertation was to show new research avenues in the philosophical field of migration. I believe that I accomplished it by combining normative and empirical knowledge, ideal and non-ideal methodology, and by connecting the new theoretical concepts and principles – which my theory of just borders put forward – to practical implications, that is to policy-making.

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