

SYMPOSIUM
MIGRATION AND JUSTICE FOR PEOPLE ON THE MOVE



JUSTICE FOR PEOPLE ON THE MOVE:
MIGRATION IN CHALLENGING TIMES
A PRÉCIS

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*Justice for People on the Move:
Migration in Challenging Times*
A Précis

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In *Justice for People on the Move* I address contemporary migration justice challenges and present a comprehensive framework that can assist in responding to these.

I

The Justice Framework

After briefly reviewing some salient history concerning human migration, I begin to develop my normative framework, starting with important reflections on what just arrangements for human beings involve. Just arrangements require that we should pay special attention to our human needs, protecting basic liberties, fair terms of co-operation, and relevant social and political support necessary to sustain justice in diverse communities. Practices for delivering on justice will develop in particular locations. These practices and people's located life plans deserve respect, but this is

complicated by the located life plans of others, histories of injustice and the right to continued occupation of territory. This last issue involving rightful claims to occupy territory is particularly pressing if anyone is to have a defensible right to exclude others, as many migration policies presuppose. How can any current occupants of territory justifiably prevent anyone from migrating into their space, given how most settlements came into being? Perhaps no one has the legitimate authority to exclude anyone from moving into particular places? So, our attention shifts to this question: Is there a plausible case for states and the boundaries they vigilantly guard?

Delivering on our lofty justice ambitions requires attention to some quite practical details. For instance, competent administration is important for adequate planning associated with meeting needs, protecting basic liberties, securing fair terms of co-operation, along with promoting the relevant conditions necessary to sustain enduring co-operative communities. The state can play a valuable role in delivering on justice. As we see then, in our contemporary world, states perform central administrative functions, though various configurations could do what is required. States currently exist within a state system that is the main administrative structure governing the people of the world. It is worthwhile to consider whether our contemporary arrangements – our state system – is just and, if not, what modifications are required. So, Chapter 3 seeks a justification for states' claims to have rights to self-determination that entail the right to control admission to their territory. Currently we live in states that assume they have certain rights and that agents of the state may act in certain ways that privilege the interests of their citizens. What compelling justification can be offered for these assumptions? And, importantly, what compelling justification can be offered to "outsiders", those who currently find themselves beyond those borders and who might like to cross them?

In seeking a justification, we discover that in order for states to have robust rights to self-determination within a state system, they will also have many responsibilities. States have responsibilities to promote conditions which support self-determining, just communities. A state's ability to exercise political power legitimately depends on its respecting human rights adequately and co-operating in a host of trans-border activities, programs, and institutions that have as their aim securing robust arrangements capable of effective human rights protection. So, as I develop these ideas, there are important human rights standards that constrain legitimate states' abilities to act, and I develop these ideas further as internal and contribution requirements. Performance on these dimensions affects whether or not we have a legitimate state system, along with whether there are adequate contingency arrangements in place to deal with important shortfalls. Contribution to the legitimacy of the state system is an especially under-appreciated area that is also importantly relevant to whether states have robust rights to self-determination. And without such rights, states may not have the justified rights they think they do have concerning control over who enters and remains on their territory.

As I develop the argument, respect for human rights plays a key role in understanding many levels of responsibilities. I consider which human rights and other important features of contemporary human rights practice play this important role. Having defended some core theoretical elements needed over Chapters 2 and 3, I begin to address contemporary challenges, using key parts of the framework and developing others.

II

Some Applications to Contemporary Migration Issues

Is a Muslim ban in migration policy permissible? Chapter 4 focuses on migration policy that seeks to exclude by limiting those who practice certain religions from gaining admission to a territory. Drawing on core elements of the human rights practice, I argue such policies are impermissible because they violate key legitimacy requirements, by failing to meet both internal and contribution criteria. For instance, I show why such policies have important repercussions for citizens, threatening a range of rights including the right to freedom of religion and non-discrimination. In addition, such policies violate core contribution requirements, such as accountability standards, according to which states are accountable for human rights protection, both to internal and external stakeholders. Furthermore, agents of the state have responsibilities to protect and promote the necessary conditions for a legitimate state system. The right of a state to self-determination is conditional on its discharging its responsibilities to promote conditions which can support self-determining, just communities. Too many of these conditions would be violated by Muslim ban policies.

Under what conditions (if any) may a state deport those who do not formally enjoy the legal status of citizen, but rather are classed as “undocumented”, “irregular” or “illegal” migrants? In my analysis aimed at answering this question I differentiate between five kinds of cases that raise slightly different issues even though there is some commonality. I show why deportation, or even threats of deportation, for the long-settled involve grave injustices on a par with violating some of our most basic human rights. Indeed, evicting long-settled members would undermine legitimacy in several ways. This takes care of several of the kinds of cases, but there are others that require special analysis. One

important such case comprises of those who are, in an important sense, victims trying to escape a failed state system.

In Chapter 6 I argue for some new approaches to addressing refugee assistance, ones that combine insights from development and post-conflict studies.

As I highlight, our current institutions are failing many refugees and internally displaced people. These institutions need to be dramatically re-oriented. For example, we need to allow for relevant beneficial partnerships, such as making policy space for business and civil society actors to play important roles, along with state actors, in securing access to labour markets. We need to ensure that local partners who have innovative and effective ideas about how to assist in specific contexts can be included in relevant programs that the international community helps support. Other desirable institutional changes include managing our refugee processing more fairly, so that refugees may apply for asylum in processing centers that are more proximate to the high need areas. I discuss a range of reforms that would better safeguard the human rights of displaced people or those vulnerable to displacement. In the absence of good faith and credible efforts at making such changes, our current arrangements for assisting refugees cannot be regarded as adequate. A state system that offered these up as the ways for dealing with refugees cannot be legitimate.

Chapter 7 focuses on justice for temporary labor migrants. In some countries foreign nationals make up over 50% of the labor force, and frequently more than 80% in countries in the Middle East. Though I survey a range of relevant normative issues concerning temporary labor migration, I also examine new sources of concern, such as the role private recruitment companies have played in exacerbating exploitation through serious deception, fraud, and abuse. We also see how destination and home countries must take responsibility to protect migrants in various ways, such

as through appropriate oversight measures. Labor migration is often characterized as beneficial to the migrants, along with both sending and receiving countries. While the logic of mutual advantage has a place in considering labor migration justice, especially considering the scale of global unemployment and vulnerable employment, there should be important constraints on such programs. We should ensure good measures are in place that can offer reasonable human rights protections for migrant workers. As we discuss which rights deserve protection, we notice that there is some scope for migrants to trade off protection of certain rights in exchange for labor market access, if they so choose. I develop principles to help us navigate which rights are tradable and which deserve rigorous protection.

In Chapter 8 I discuss how to deal with alleged new terrorism and security threats posed by migration. I analyze why security threats get to be so readily coupled with migration issues. Here we find some familiar dynamics along with some new developments. Politicians have often been successful in adopting strategies such as scapegoating and exclusionary constructions of national identity. New developments include changing demographics and structural changes that have resulted in limitations on long-time residents' upward mobility, which can promote conflict and resentment. These sentiments can be amplified and harnessed to promote an anti-immigrant ethos in which unwise policies can flourish. While each legitimate state has the right to have its own conversation about how best to combat terrorism and to make policy decisions accordingly, there are justice constraints on how that dialogue may permissibly unfold. Making good decisions about public funding should start with an accurate assessment of risks, for instance. In general, excessive spending on shoring up some human rights where further important gains are unlikely to materialize, especially when other human rights are neglected or not yet sufficiently secure, is relevant to how we evaluate society's behavior against a

justice standard. So, ineffective spending on the right to security, when rights to basic education, food, housing and health care remain unfulfilled would lack justification. I also show why there are many obstacles to having a more informed conversation about these matters, such as the many interests that converge on perpetuating a fearful environment. In trying to understand why people are so afraid, we see that there are psychological, cultural and economic components, which are all tractable.

III

Open Borders, Migrants' Core Rights, and the State System

In Chapter 9, I cover several important issues, including these two questions: How open should states be to more migrants? What responsibilities do states and citizens have in connection with reducing migration injustices? I also respond to key objections to my migration justice account and recommendations.

As I argue, states have important obligations to support institutions that can exercise effective oversight and regulate migration matters in ways that align with the robust human rights practice for which I argue. Impressive international policy gains show that there is an emerging willingness to support such a practice. As evidence, I outline the ground-breaking initiative, *The Global Compact for Safe, Orderly and Regular Migration*, adopted by 85% of the world's states at the end of 2018. While the compact is a good start, in at least one area it fails to offer sufficient progressive guidance. I argue that a legitimate state system must include rights to a fair process for determining migrants' rights, especially concerning rights to admission and to remain. I also argue that this would generally lead to an opening of borders, but very important constraints on such opening would still remain, such as those that are relevant to respecting, protecting and fulfilling the human

rights of those already residing on the territory. My position might be characterized as a human-rights oriented middle ground between the positions of those who argue for open borders and their critics.

Finally, I argue that as matters currently stand, the state system cannot yet pass a basic legitimacy test, but I also show, through my analysis, that there are some important corrective mechanisms now in view. If these are implemented, this constellation of arrangements might well significantly reduce migration injustices. Particular attention should be placed on measures that hold states to account for their actions and decisions. I highlight the direction we must take if we aspire to a legitimate state system capable of supporting justice for people on the move.

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