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**FSS**

# **Open and Closed Borders**

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# Open and Closed Borders

- Sovereignty
- There is no Human Right to Immigrate (Miller)
- Immigration as a Human Right (Oberman)

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# Sovereignty

## (1) Sovereignty of the State

- (a) Internal (its own unlimited power X privatization, constitutions and fundamental rights, Europeanisation)
- (b) External (classical and contemporary international law: states are bound by treaties)

## (2) Sovereignty in the State

- (a) The existence of s Sovereign (the quality of the highest organ in the state)
- (b) The holder of Sovereignty (the people or the nation)

# What is the Right to Immigrate?

= universal right to cross the borders of any state and remain within them for as long as one chooses.

- held against all states. Open borders unless the admission of specific individuals poses a threat to the human rights of other persons.

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- states' right to control their borders. If there were a human right to immigrate, this would be unacceptable.

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# No HR to Immigrate

- no HR to immigrate in standard HRs documents
- rarely discussed by the main treatments of the idea of HRs
- 3 justificatory strategies:
  - (a) direct (from the grounding feature to the right)
  - (b) instrumental (to other HRs in the list)
  - (c) cantilever (a logical extension of HRs already recognized)
- reasons for control immigration

# Direct Justificatory Strategy

- direct argument: grounding, feasibility, compatibility
- subjectively strong interests of particular persons X essential interests of human beings as such
- a range of opportunities adequate to meet my generic human interests X specific interests that give only a reason, but not a full-blown right (...)



# Instrumental Justificatory Strategy

- why do people who move across borders do so?
- the fulfilment of other human rights X the limits of this argument:
  - (1) Can these HRs be secured without migration?
  - (2) Brain drain effect
  - (3) Societies that already provide their members with an adequate range of opportunities

# Cantilever Justificatory Strategy

- given the HRs we already recognize, it is inconsistent not recognize this one X responsibility for protecting the HRs of the excluded rests primarily with the states that the immigrants are seeking to leave.
- political life is not fully free if people are prevented from meeting, organizing, and protesting as they wish X disanalogies between domestic and international free movement.
- what is desirable vs. what can be claimed as a HR (...)

# Reasons for Control Immigration

- why the analogy between the domestic right to free movement and the putative corresponding international right does not hold.

## Reasons to control movement:

- (1) overall numbers
- (2) cultural shifts: (a) some degree of cultural convergence, (b) external vs. internal sources of change
- (3) the composition of the citizen body

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# Immigration as a HR

- moral, rather than a legal, human right
- an interest account of moral HRs: the interest claim and the duty claim
- is a non-absolute right

# The Underlying Interests

- underlying the HR to internal freedom of movement are 2 interests:
- (1) the personal interest: being free to access the full range of existence life options
- (2) the political interest: enjoying a free and effective political process

# The Inadequacy of an Adequate Range

- a smaller range of life options is sufficient (...)
- (1) attachments that lie beyond the adequate range (universal interests vs claims to generic objects, the rights of refusal)
- (2) possibilities: we may be interested in it in pursuing either now or in the future (conscience, independence, the political interest)

# Objections from Culture and Distributive Justice

- ok, but states have a right to exclude foreigners if they so wish
- (1) exclusion can be justified to avoid deepening distributive injustice X we are unwilling to make any incursions into the important freedoms for the sake of further gains in distributive justice
- (2) exclusion can be justified to preserve a host state's culture X different levels of impact. Integration.



# The Objection from Scarcity

- vast numbers would want to migrate, far more that rich states can accommodate

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- it is not clear how many people would move
- background duties that make it more likely that the right will be fulfilled in time... The creation of greater opportunities in poor states, which, in the long term, should reduce migratory pressure.