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Department of Philosophy

Who merits admittance?

The fairness of skills-based migration criteria

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Table of Contents

Abstract	viii
Sammendrag	ix
Acknowledgments	x
1 Introduction.....	1
1.1 The structure of this text.....	2
1.2 Research question	3
2 Philosophy of migration	7
2.1 Key terms.....	7
2.1.1 Refugees and migrants.....	7
2.1.2 Labour migrants, economic migrants, and skills-based selection.....	11
2.2 Arguments concerning the right to limit migration	14
2.2.1 Arguments for the right to limit immigration	15
2.2.2 Arguments for open borders.....	19
2.2.3 Old and new open borders debate.....	22
2.2.4 Skills-based restrictions	23
2.3 Solutions to migration injustice.....	27
2.3.1 Emigration and immigration restrictions	27
2.3.2 Different admission rules	31
2.3.3 Remittances, taxes and levies	33
2.3.4 Rectifying specific harms	35
2.3.5 Temporary labour migration	36
2.4 Normative foundations	39
2.4.1 Global justice	39
2.4.2 Equality of opportunity	41
3 Method.....	47
3.1 Positionality.....	47
3.2 Ideal vs. non-ideal theory.....	51
3.3 Normative ideals in philosophy of migration.....	54
4 Summary of articles.....	61
4.1 Towards fairer borders: Alleviating global inequality of opportunity.....	61
4.2 Statements on race and class: The fairness of skills-based immigration restrictions.....	62
4.3 Structural justice and labour migration: The scope of responsibility	64
5 Discussion and conclusion.....	67
5.1 What do the articles contribute to the field?.....	67

5.2 Policy implications and avenues for future research	69
Bibliography:.....	72
Appendix i: Towards fairer borders: Alleviating global inequality of opportunity. <i>Etikk I Praksis – Nordic Journal of Applied Ethics</i> , (2018) 12(2), 11-26.....	77
Abstract	77
Introduction: Why is migration relevant to questions of global equality of opportunity?.....	77
Nationalist objections to global equality of opportunity	80
One cannot compare opportunities across cultures.....	81
One should not compare opportunities across cultures.....	83
Why might migration be relevant to alleviate global inequality of opportunity?	85
What kind of migration criteria would alleviate global inequality of opportunity?	88
Brain drain, the effects on receiving country and individual migrant.....	89
What would a fairer migration model look like?.....	90
Conclusion	93
Acknowledgements	94
References.....	95
Appendix ii: Statements on race and class: the fairness of skills-based immigration criteria, <i>Ethics & Global Politics</i> , (2020) 13:2, 108-122.	97
Abstract	97
Introduction: Skills-based immigration	98
What is skills-based selection?.....	98
The arguments for skills-based migration	101
Blake’s argument against racial selection	102
Skills-based selection revisited.....	106
Statements of preference on skills.....	106
Practical effects: Power entrenchment and educational opportunities	111
Conclusion	114
References.....	114
Appendix iii: Structural injustice and labour migration – From individual responsibility to collective action, <i>Theoria</i> , Forthcoming	117
Abstract:	117
1. Introduction.....	117
2. Structural injustice	120
3. The case for why migration is structurally unjust	123
4. Individual responsibility and collective action	128
4.1. Privileged migrants.....	129

4.2. People that benefit from migrant labour	132
4.3. The responsibility of disadvantaged migrants and disruptive politics	133
5. Conclusion	137
Acknowledgements	138
References	138

Abstract

The last few decades have seen an increasing use of merit-based immigration systems, whereby migrants are treated differently on the basis of their skills, education, and wealth. In this thesis I argue that there are justice-based reasons to be sceptical of such policies. While I agree that there are good grounds for states to control their own borders, related to self-determination and the welfare of their citizens, I argue that there are also contribution- and benefit-based reasons for states to take global inequality of opportunity and structural injustice into account when deciding on their admissions policies and treatment of migrants. The core of the thesis is made up of three articles. The first argues that states have an obligation to consider global equality of opportunity in relation to immigration requirements and proposes a fairer migration model that takes equality of opportunity into account. The second argues that skills-based restrictions can have adverse effects on the citizens in states employing such policies. The third article shows how a lack of opportunities to migrate, and unequal treatment of migrants, is a structural injustice, and how individuals have a responsibility to remedy such an injustice. I finally argue that the value of these arguments does not merely consist in clarifying the implications of normative ideals for admissions policies and treatment of migrants, but that they can help us to reimagine the current global migration structure, and thereby make us better equipped to change it.

Sammendrag

De siste tiårene har stadig flere land tatt i bruk ferdighetsbaserte innvandringskriterier. Slike kriterier forskjellsbehandler migranter på bakgrunn av deres ferdigheter, utdanning og velstand. I denne avhandlingen argumenterer jeg for at slike kriterier kan være urettferdige. Samtidig som jeg er enig i at det er gode grunner til at stater skal kunne kontrollere innvandring, for å opprettholde sin selvbestemmelse og beskytte velferden til sine innbyggere, argumenterer jeg for at stater også bør ta hensyn til globale forskjeller i folks muligheter og strukturell urettferdighet når de bestemmer seg for hvilke innvandrere de slipper inn og hvordan de behandles. Kjernen av avhandlingen består av tre artikler. I den første artikkelen argumenterer jeg for at stater har en forpliktelse til å vurdere hvordan deres innvandringspolitikk påvirker globale forskjeller i folks muligheter, og foreslår innvandringskriterier som tar hensyn til dette. I den andre artikkelen viser jeg hvordan ferdighetsbasert innvandring også kan ha negative følger for borgerne i land som bruker slike kriterier. I den tredje artikkelen hevder jeg at manglende muligheter til å migrere, og ulik behandling av migranter, er en strukturell urettferdighet, og argumenterer for at individer også har et ansvar til å bekjempe slik urettferdighet. Avslutningsvis konkluderer jeg med at verdien av disse artiklene ikke kun består i at det klargjør hvilke moralske forpliktelser vi har i innvandringspolitikken, men at det også hjelper oss å gjenfortolke det internasjonale migrasjonssystemet, og dermed gjør oss bedre i stand til å endre det.

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1 Introduction

Migration is one of few constant features in the history of humankind. Yet, despite the fact that only a small percentage of human beings migrate internationally – around 272 million migrants in 2019, or about 3.5 percent of the world's population (United Nations, 2019, p. 245) – migration is one of the most controversial political topics in many countries. Migrants are often blamed for a society's ills, yet many are highly sought after. Some are deemed praised, and welcomed, while others are vilified, put in camps and expelled.

While migration is nothing new, the nature of migration has changed due to globalisation and technological change. Easier travel has increased the distance and global scope of migration, at the same time as demographic changes are giving rise to different needs for workers, and policy changes are altering how states evaluate these workers. In recent decades many states have begun employing sophisticated admission systems in order to accommodate such needs and to attract the kind of migrants states need to satisfy their labour requirements. These systems rank and evaluate migrants according to such criteria as their skills, education and wealth. They are often thought of as meritocratic and fair, since they are, at least in principle, transparent, do not discriminate based on race or ethnicity, and are open to all applicants. Yet these migrant selections take place in a world of extreme inequalities, both with regards to the wealth of states and the opportunities of the individuals within them.

In the case of some migrants, such as refugees fleeing war-torn countries, it is quite clear that both states and individuals have a moral responsibility to help them. How to discharge this responsibility, and how much one owes refugees, is much debated in the philosophical literature on migration. But few would dispute the existence of some kind of responsibility towards these migrants. On the other hand, the responsibilities states have with respect to other migrants, often on the move for economic reasons and in search of new opportunities, are much less clear, and here there is little consensus. After all, many of them arrive voluntarily, are not subject to persecution, and willingly submit to the state they migrate to. It is therefore often taken for granted that states are free to decide which so-called 'economic migrants' they admit. This common view of state's policies on economic migrants rightly being at their own discretion, whereas they have a moral responsibility for refugees, is one of the issues that sparked my interest in the philosophy of migration. Against the background of global inequalities and the harsh treatment many migrants receive, something seemed morally problematic with this view.

In this thesis, I consider the fairness of skills-based admission rules in the light of theories on equality of opportunity and structural injustice. By skills-based selection, I mean admissions policies that differentiate admission and treatment of migrants based on criteria such as skills, education, and wealth. While I agree that states have good reasons to control immigration stemming from their interest in collective self-determination and the welfare of their citizens, it is also necessary to investigate the normative status of skills-based admission requirements. More specifically, do states have obligations to global justice that require that such policies need to be altered, and if so, how can this be done while still taking into account their right to control immigration? The three articles I have written present three novel arguments which aim to contribute towards answering this question. But before I expand on the specific questions I discuss, I will give a brief outline of the present text that situates the articles in the appendices within the relevant literature.

1.1 The structure of this text

I begin in Chapter 2 by giving an overview of some of the literature on philosophy of migration, in order to introduce the main types of arguments in the debate and situate my contributions. In 2.1 I discuss some of the key terms used, such as ‘migrant’, ‘refugee’, ‘economic migrants’ and ‘skills-based selection’, and highlight the contentious nature of these terms. I then, in 2.2, introduce philosophy of migration, by considering the main arguments for states’ rights to control migration and for more extensive freedom of movement, before discussing some of the philosophical arguments on skills-based selection in particular. In section 2.3 I summarise and categorise solutions philosophers have suggested to remedy migration injustices, such as limiting the emigration of skilled professionals, and prioritising poorer migrants in admissions. In section 2.4 I briefly consider the variety of normative ideals that underlie many of the evaluations of what constitutes fairness in migration, and clarify what I mean by fairness. I here defend my focus on equality of opportunity as a relevant theoretical tool to assess the fairness of migration rules.

In Chapter 3 I consider methodological issues. I begin by considering two issues of positionality: firstly in section 3.1 how my particular life circumstances might influence the normative evaluations I make, and how I can attempt to remedy the role of any underlying prejudices I might have. I continue, in section 3.2, to discuss the distinction between ideal and non-ideal theory, before in section 3.3, applying it to philosophy of migration. Here I clarify which feasibility constraints I take into account in the various articles, before arguing for a

balanced approach which relies on shifting presuppositions, and consider the implications of incommensurability in considerations of justice and migration.

In Chapter 4, I briefly summarise each article and their conclusions. This lays the foundation for Chapter 5, where I summarise my research findings. I argue that taken together my conclusions mean that: (1) there are good justice-based reasons to be wary of skills-based migration policies, (2) that such policies are not normatively neutral or meritocratic, (3) that particularly countries in the Global North ought to take migrants' needs and opportunities into account with admissions policies in general, (4) that responsibility for migration injustice ought to be considered much more broadly, and (5) that individuals also have responsibilities towards alleviating migration injustice. Before I proceed in chapter 2 to define some key terms and give an overview of the philosophy of migration, I will in section 1.2 state my overall research question, and the particular questions each of the articles addresses.

1.2 Research question

Faced with increased use of skills-based admission policies, the contested political nature of immigration in many countries, and the vastly unequal treatment migrants receive, there is a need for increased normative discussion on migration policies. My thesis can be formulated as asking one overarching question, with three sub-questions, answered in the three articles in the appendices. While my overarching question concerns the normative status of skills-based restrictions on migrants, the three sub-questions consider various aspects of skills-based admission policies. Together they contribute to the philosophical debate on the fairness of admission requirements in general, and skills-based selection in particular.

Main research question: To what extent are skills-based migration restrictions fair, and how can they be made fairer?

Sub-questions:

1. *Why should states care about global equality of opportunity in relation to migration, and if they did, what would their admission policies look like?*

This question is addressed in Egan, M. (2018). Towards fairer borders: Alleviating global inequality of opportunity. *Etikk I Praksis - Nordic Journal of Applied Ethics*, 12(2), 11-26. doi:10.5324/eip.v12i2.2421

2. *Are skills-based admission policies fair for the citizens in states employing such policies?*

This question is addressed in Egan, M. (2020) Statements on race and class: the fairness of skills-based immigration criteria, *Ethics & Global Politics*, 1761192. doi:10.1080/16544951.2020.1761192

3. *Do inequalities in opportunities to migrate and treatment of migrants constitute a structural injustice, and if so, what responsibility do individuals have to fix it?*

This question is addressed in Egan, M. (Forthcoming). Structural injustice and labour migration: From individual responsibility to collective action, *Theoria*

In the first article, I consider why states should take global quality of opportunity into account when considering their immigration rules, and show what that would mean for their admission policies. This article concludes by sketching out an admission policy that gives weight to not only how much a country stands to gain from admitting a migrant, but also the effects on the sending country and the improved opportunities for the migrants themselves. The second article considers the effects of skills-based admission policies on the citizens of the states the migrants are moving to, using an analogy to race based selection criteria. Here I argue that skills-based admission policies send out a statement of preference to the citizens in states employing such policies, and that this can have an adverse effect on their social bases of self-respect and educational opportunities, which also need to be taken into account in a normative evaluation of such policies. In the third article, I argue that the vast inequalities in migration opportunities constitute a structural injustice, and consider what moral responsibility individuals have to ameliorate this.

What ties these articles together is their subject matter and normative commitments. All three focus on the differentiated treatment of migrants based on their skills, education, and wealth. I evaluate the fairness of such policies on the basis of how they impact people's opportunities. I use both relational and luck-egalitarian arguments to argue for why fairness involves equalising people's opportunities. And while I find that there are good reasons that states have the right to control immigration policy, such as protecting self-determination and welfare, I argue that such concerns need to be balanced against a responsibility for global justice. In short, I find that there are good reasons to be wary of skills-based admissions policies.

The first and the third article focus on global justice and mobility, through the lenses of global equality of opportunity and structural injustice, respectively. The second supplements this by focusing on the effects of such admissions policies on people in receiving states. The overall aim of this thesis is to contribute to the discussion about which types of regulations on

economic migration are fair, what demands global justice place on the policies of individual states, and what responsibility states and individual citizens might have to improve current conditions for migrants.

The articles consider what global justice for migrants entails, as well as how such fairness can be practically achieved. They present three novel arguments contributing to the overall question of the fairness of skills-based migration restrictions. In the following, I situate these arguments in a broader theoretical framework, introduce some of the prior research on the topic, describe my methodological assumptions, discuss different solutions to migration injustice, and outline what my suggestions, if implemented, would mean for immigration policy.

2 Philosophy of migration

What types of arguments have been advanced for states' control over migration admissions, and on the other hand what arguments are there for people being able to migrate freely? What types of restrictions are fair? What solutions have philosophers proposed to remedy migration injustices? In this chapter I give an overview of the philosophical work on migration, situating my contributions within the existing literature. I move from more general and abstract arguments concerning the justifications of border control, to the more specific arguments concerning skills-based admission policies. But before I proceed to give an overview of some main arguments in migration philosophy, we must consider who the debate is about by defining a few key terms. I therefore begin section 2.1 by discussing terms such as 'migrant', 'the migrant-refugee distinction', 'economic migration', and 'skills-based selection'. Subsequently in section 2.2, I discuss some of the normative philosophical work on migration, focusing on the division between cosmopolitan and state-centred positions, which form the backdrop of many current debates. I then consider some of the work on skills-based regulations, before in section 2.3 discussing different solutions philosophers have proposed to ameliorate migration injustices. Finally in section 2.4 I consider the normative foundations for the various philosophical positions, such as luck egalitarian and relational arguments, and argue for the relevance of global equality of opportunity when considering the fairness of migration rules.

2.1 Key terms

Who are migrants? What is the difference between a migrant and a refugee? What are skills-based admission criteria? When considering the fairness of migration admittance it is important to nail down the meaning of key terms. Let me therefore begin by discussing a few of these. It is worth mentioning at the outset that the categories under consideration are not fixed and often highly contentious. How one interprets the various terms can often also have severe consequences in real-world situations, for example in the case of someone who deserves protection as a refugee and is therefore given asylum, or who is denied it and deported. Let us therefore turn to how one might define 'migrant', 'refugee', 'economic migrants', and 'skills-based'.

2.1.1 Refugees and migrants

A common way to define a migrant is to distinguish between a migrant and a refugee. Whereas the former is often used as a catch-all term for people who cross borders for lengthier periods of time, the latter seems, at least on the face of it, to be quite a narrow

category. According to the 1951 Refugee Convention a refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion” (UNHCR, 1951). In short, a refugee is someone fleeing persecution. Yet, on closer scrutiny the refugee definition raises difficult conceptual, normative and pragmatic questions. Who counts as someone fleeing persecution? Who deserves refugee protection, perhaps people fleeing other dangers? And, in a politically charged environment, how should we use the term refugee to ensure that those who deserve protection get it?

According to Andrew Shacknove a conception of a refugee is something different from a definition (Shacknove, 1985). States and organisations around the world operate with different definitions, and as refugee status also confers rights to the migrants and obligations for states, states often use a narrow definition in order to limit their obligations. Shacknove argues that when considering how we should conceptualise ‘refugee’, we should consider what is essential about refugeehood. This is that their “basic needs are unprotected by their country of origin” (Shacknove, 1985, p. 277), and that they therefore require international assistance to meet such needs. This would of course mean that many more people are refugees than according to the UN definition, but that is partly the point. According to this line of thought, it should not matter what the reasons for someone’s basic needs going unfulfilled are - whether they be persecution, incompetent governance, extreme poverty or climate change - what matters is that people’s basic needs are not being met by the state.¹

Matthew Lister has objected to such a wide definition, arguing that it fails both practically and methodologically (Lister, 2013). He argues that practically it fails because it “does not help us to meet the needs of those in danger” (Lister, 2013, p. 658), and methodologically it fails because “basic principles of justice give rise [...] to significantly different duties in different situations” (Lister, 2013, p. 659). Lister believes that Shacknove’s account obscures this last point, and while acknowledging the difficulty of defining a refugee, he argues that an account of who is a refugee cannot be determined independently of an inquiry into what duties we have to them. Lister settles for a narrower definition, closer to the one espoused by the UNHCR.

¹ Other notable contributions to expanding the refugee definition include Luara Ferracioli (2014), Matthew Gibney (2015) and Serena Parekh (2020).

Another response to the difficulty of drawing a distinction between migrants and refugees, is to argue that it is a fruitless endeavour. As Chandran Kukathas argues: “the history of the development of an institutional framework to deal with the plight of refugees does not suggest that it is even remotely possible to do justice to the people in question. Making refugees special neither makes sense conceptually, nor looks possible practically on the evidence we have to date” (Kukathas, 2016, p. 265). Kukathas therefore think we instead need to get rid of strict distinctions between citizens and foreigners, and therefore argues for an open borders position. It seems clear that one’s view on whether and how we can define a refugee is intimately linked with what duties we think we have towards them. And, as Serena Parekh notes, while it is difficult to conceptually arrive at a definition, and any distinction will at best be blurry, there is some consensus in the literature (2020). Parekh argues that this consensus involves the idea that “states have stronger obligations to refugees than they do to immigrants in general” (Parekh, 2020, p. 42), “that persecution by one’s government should not be the only ground for refugee status” (Parekh, 2020, p. 43), and that “there is a growing recognition that we must take seriously the harm individuals are fleeing from, rather than the source of the harm, and broaden our definition accordingly” (Parekh, 2020, p. 43).

A migrant, however, is more broadly defined in the literature, and is usually considered as someone who moves habitual residence for some reason or another. The reasons for their movement, whether they have to move across international borders, and how long they have to stay, in order to be considered a migrant, can vary according to the definition one subscribes to. The lines of this definition are also likely to be blurry, but usually a migrant is thought to be someone who crosses international borders, and settles for a protracted period of time. Whether or not one should, for pragmatic reasons, include refugees in the category of migrant, is also disputed. As Jørgen Carling has noted, one can distinguish between an inclusivist or a residualist definition of a migrant, the former including refugees, and the latter excluding them. Some maintain that diluting the term ‘refugee’ can lead to worse protection for refugees and that is what has led the UNHCR to argue that “refugees are not migrants” (Carling, 2016). The argument seems to be that as migrants are often not deemed to be deserving of protection, whereas refugees are, describing refugees as migrants will make it easier for states to limit their protection of refugees. As Carling has argued however, this can become a self-fulfilling prophecy, whereby such a distinction is reinforced, and states are able to limit their protection of people who need protection, whether or not they are granted refugee status. He argues that: “an inclusive definition of migrants means recognising that

anyone on the move may have a well-founded fear of persecution and be entitled to international protection. The circumstances of refugees are specific ones – but so are those of victims of trafficking and undocumented migrants, for instance” (2016).

So while on the surface the distinction between who is a migrant and who is a refugee appears clear, in theory and practise it is less so. Indeed, refugees are not only admitted according to their need for protection, but are sometimes also subject to the same kinds of selection criteria as other migrants. Antje Ellermann has shown how ‘market fundamentalist practices’ and skill ranking are increasingly being used on all migration streams, including refugees (Ellermann, 2019b). Furthermore, countries interpret refugee criteria very differently, and the categories often fail to correspond to the lived experiences of those categorised by them. As Heaven Crawley and Dimitris Skleparis argue, the way one interprets the term ‘refugee’ often reflects national interests: “This means that the seemingly neutral and objective category of ‘refugee’ is in fact being constantly formed, transformed and reformed in response to shift in political allegiances or interests on the part of refugee receiving countries and the evolution of policy and law” (Crawley & Skleparis, 2018, p. 51). By exploring the lives of people who crossed the Mediterranean in 2015, they show how the categories of ‘migrants’ and ‘refugees’ are deeply problematic, highly politicised and do not match the lives of the people they are used to describe. Many people can find themselves shifting between different externally imposed categories, both in relation to their own situation and in the country they find themselves in. Crawley and Skleparis therefore recommend researchers to be aware of the problematic nature of the categories, and to maintain a critical perspective on them. While agreeing that it is reasonable to be concerned that an expansion of refugee protection to other people might limit the rights of those fleeing war and conflict, they argue that a strict adherence to the semantic distinction reinforces a dichotomy that discriminates against migrants.

The distinction between refugee and non-refugee migrants is also problematic because it is often implied that the latter migrate voluntarily. Ottonelli and Torresi argue that such a distinction also plays into the normative evaluations: “Political theorists have also often employed the notion of voluntariness in discussing the phenomenon of migration and, specifically, as contributing to defining what duties states may have toward migrants, and, correspondingly, the extent of migrants’ justified claims against receiving and sending states” (Ottonelli & Torresi, 2013, p. 784). They argue that the understanding of ‘voluntary’ that is employed is often under-defined, and point to four factors that are important for migration to

be considered voluntary: non-coercion, sufficiency, exit options and information. In short, voluntary migrants cannot be forced, must have enough, must be able to leave, and have adequate prior knowledge of where they are going (Ottonelli & Torresi, 2013, pp. 796-804). This of course limits the group we can consider voluntary migrants, and there will be degrees of non-voluntariness.

In short, how one should define the terms refugee and migrant is contested. Theorists disagree on how we should understand the different terms, as well as what the practical effects of using the different terms might be. This does not mean that the terms should not be used, but rather that we should be aware of the politicised and contentious aspects of their use. If the distinction is not clear-cut in practice between who is a refugee and deserving of protection, and who migrates of their own volition, then we should keep that in mind when considering the normative conclusions we reach when using these categories. I.e. if the lived experience and vulnerability of someone classified as a migrant and someone classified as a refugee are similar, it is not readily apparent why they do not deserve similar protection. Yet, whether we subscribe to the inclusivist or the residualist definition, this thesis is mainly concerned with migrants in the non-refugee sense. That is, the normative arguments I am examining do not rely on the kinds of arguments offered as reasons the state has to protect refugees. In short, I am concerned with people who are not fleeing persecution but migrate for other reasons, and who are thus not commonly classified as refugees.

2.1.2 Labour migrants, economic migrants, and skills-based selection

In the three articles in the Appendix I mainly use the terms ‘migrants’, ‘economic migrants’, and ‘labour migrants’. These terms are used to emphasise that I am concerned with people who migrate for economic or labour related reasons, and are not fleeing persecution. That said, it is mainly the treatment of migrants and the arguments for differentiated treatment, I am concerned with, rather than a particular group of migrants. The use of such terms as ‘economic migrant’ can be contentious as it is often emotively loaded in the public discourse. Indeed, ‘economic migrant’, is sometimes used as a pejorative, often in contrast to ‘refugee’ (Ruz, 2015). Yet, people who are referred to as economic migrants do not just migrate for economic reasons. We can therefore distinguish between reasons people are migrating and the ways they are treated. As we have already seen these designations and their use is likely to be fluid. So let us consider why people migrate, and how migration regulations are changing.

Stephen Castles et. al. have identified six general tendencies in migratory patterns: “1. The *globalisation of migration* [...] 2. The *changing direction of dominant migration flows* [...] 3. The *differentiation of migration* [...] 4. The *proliferation of migration transition* [...] 5. The *feminisation of labour migration* [...] and] 6. The *growing politicisation of migration*” (Castles, 2014, p. 16). Migration has become more global, people migrate over longer distances, and there has been a change in the direction of migration. For example many former countries of emigration, such as England, Italy, Spain, and Portugal, have become major destinations for migrants. These migrants often follow a reverse trajectory of earlier colonialist migration flows. ‘Migration transition’ refers to the changed nature of migration flows, as countries of emigration, such as Poland and Mexico also become countries of immigration. In addition to these changing dynamics and movements, most countries also have many types of migrants and are differentiating their treatment of them. There is also a growing politicisation of migration. Furthermore, more women are migrating for labour, for example to work in the health care and hospitality industries. When it comes to the differentiation, Castles et. al. point out that: “most countries are not dominated by one type of migration, such as labour migration, family reunion, refugee movement or permanent settlement, but experience a whole range of types at once” (Castles, 2014, p. 16). Groups are perceived differently, treated differently and often given different rights according to their background. “ ‘Professional transients’ – that is, highly skilled personnel who move temporarily within specialized labour markets – are rarely seen as presenting an integration problem, although, ironically enough, such groups often hardly integrate” (Castles, 2014, p. 19).

More countries are employing sophisticated measures to attract such ‘desirable’ migrants. As Castles has shown: “Today, official policies in the EU (and indeed throughout the developed world) target the highly skilled, while less skilled workers are admitted only in limited numbers through temporary and seasonal labour programs” (Castles, 2006, p. 760). In addition to this, many countries such as the US, rely on a high number of undocumented migrants in their agricultural sector. Castles et. al. also refer to how the perception of migration often does not match the realities: “One of the dominant, but empirically unjustified, images in highly developed countries today is that of masses of people flowing in from the poor South and the turbulent East, taking away jobs, pushing up housing prices and overloading social services” (Castles, 2014, p. 19). In fact, more migration takes place within the Global North and within the Global South, than between them. Furthermore, immigrants

are frequently, and unjustifiably, blamed for many of society's ills, yet "migrants are generally a symptom of change rather than its cause. For many people, immigration is the concrete manifestation of rather intangible processes such as globalization and neoliberal economic policies" (Castles, 2014, p. 19).

As neoliberal economic policy has become more prevalent, it has also impacted migration regulations. As Antje Ellerman argues, neoliberalism has also imbued migration regulations with a "market fundamentalism" (Ellermann, 2019b). According to this logic migrants are (primarily) seen as having a certain labour market value, and are accorded rights and citizenship accordingly. Ellerman argues that the human capital market fundamentalism over the last couple of decades of the 20th century has led to two major developments: the differentiation of rights according to the 'value' of migrants, and human capital logic being applied to other streams of migrants. This can be seen by wage requirements for family integration or skills criteria being applied to refugees. The rights citizens are being granted are often the result of an evaluation of their skills or market value.

I consider what is meant by skills-based admission policies, low- and high-skilled migrants, in the article "Statements on race and class: the fairness of skills-based immigration criteria (Egan, 2020, pp. 2-4) (see App. ii). In short, the definition of skills is much debated, and in practice the definitions of low-skilled and high-skilled vary a lot as they correspond to classifications in admissions regulations which vary from country to country. However, some general patterns do obtain: people who qualify as highly skilled often have a tertiary education, meet certain wage and wealth requirements, and are employed as for example doctors or engineers. On the other hand, those who are designated as low-skilled or unskilled typically do not have tertiary education and/or do not meet the wage or wealth requirements. There are also some contested categories, such as care workers, who while often educated do not meet the wage requirements to be classified as highly skilled. What is important to note for our purpose here, is the trend towards increased differentiation of treatment of migrants based on their skills, the contentious nature of the central terms, the sophistication of skills-based criteria, and the precariousness of some migrants' rights, particularly those who are deemed low-skilled or unskilled.

It is against this backdrop; the increased differentiation of migrants, neoliberal economic policies, and problems with defining who counts as a migrant, that we are faced with normative questions regarding the justification of such admission policies. It is important to

be aware of the problematic nature of some of these key terms when discussing the philosophy of migration. We should also remember the contentious use of the terms when considering the scope and conclusions of normative arguments. For example, a philosophical argument that concludes that states have a responsibility to protect refugees, can in practice imply a lot of different policies depending on who is considered a refugee.

2.2 Arguments concerning the right to limit migration

Before I present some of the proposed solutions to migration injustice, I will briefly consider the philosophical discussion on migration. Migration does not feature much in western philosophy before the 20th century. And while some philosophers, such as Mill and Kant, did occasionally touch on migration, they were mainly concerned with justifying colonialism (Sager, 2016a, p. 4). Following increasing globalisation, the end of the cold war, and increased interest in global justice in general, migration has towards the end of the 20th century become an important topic in political philosophy.

Much of the philosophical debate on migration during the last few decades has centred on arguments between those who defend a state's right to control its borders and those who want more extensive freedom of movement. The most central question has been the justifiability of controls on migration. In short: what, if anything, justifies a state's control over borders? On the one hand, philosophers such as Michael Walzer (1983), Michael Blake (2002, 2005, 2008, 2013), Andrew Altman and Christopher Wellman (2011), and David Miller (2007, 2014, 2016) have argued that states have quite extensive legitimate rights to control their borders. While there are considerable differences between their various arguments, they are sometimes referred to as nationalist, statist or state-centred positions. On the other hand, philosophers such as Joseph Carens (1987, 2013), Phillip Cole (2000), Seyla Benhabib (2004) and Chandran Kukathas (2017) have argued that people should be able to migrate freely. These types of arguments are sometimes referred to as cosmopolitan or open borders positions.

In section 2.2.1 I will briefly describe the main arguments put forward for states to be able to control borders, and in section 2.2.2 the main arguments for more extensive freedom of migration, and with what counter-arguments these are often met. These arguments form the backdrop of much of the subsequent debate and my own contributions. I will then move on to consider skills-based migration, and suggestions as to how to remedy migration injustice. It is worth noting at the outset that I will not dispute many of the reasons given for states to limit immigration, but rather argue that they should be balanced against other concerns, such as

global equality of opportunity and structural injustice. Let us begin by looking in 2.2.1 at the types of arguments that have been used to defend a state's right to limit immigration.

2.2.1 Arguments for the right to limit immigration

There most common reasons given for states to be able to restrict immigration are linked to factors such as the protecting the economy, welfare, security, culture, and self-determination of citizens, as well as indirect cosmopolitanism.² Some argue that states need to be able to restrict immigration in order to protect a nation's economy, the security or welfare of its citizens, and/or its specific culture. Others emphasise that the ability to restrict immigration is needed in order to ensure political self-determination, while indirect cosmopolitans argue that states with the ability to control their borders are most likely to be able to contribute towards global justice. Most theorist who defend the right of states to control their borders rely a combination of some of these arguments. Let us briefly consider these reasons, and some of the counter-arguments they are typically met with.

Walzer sparked much of the recent debate on state's right to control borders in 1983 (Walzer, 1983), and before this it was commonly assumed that states had the right to control their borders without explicitly arguing for why this was the case (Song, 2018, p. 387). Walzer argued that since people have different kinds of social relations within a state, they have different kinds of rights and duties: "People who do share a common life have much stronger duties" (Walzer, 1983, p. 33). Using a series of analogies with neighbourhoods, clubs and families, Walzer tries to sketch out what constitute appropriate rights and duties within a political community. As entry into such a community is a social good, according to Walzer, it is rightly distributed by the members. He also argues that the foundation of a distinct cultural life, which is valuable, relies on the ability to exclude. The state therefore has vast powers to exclude, though, according to Walzer, once someone is granted residential status they should be treated as a potential citizen (Walzer, 1983, p. 52). There has since been a lot of debate on whether it is legitimate to differentiate between the rights of guest workers and citizens.

Walzer is against this, as he believes it is illegitimate to have a two-tier society.³

² For other useful overviews of reasons for and against state's right to control borders, see for example Christine Straehle (2018), Sarah Song (2018) and Christopher Wellman (2020). There is also a set of arguments that rely on libertarian tradition, property rights and associate ownership, but as they have less bearing on the topic of this thesis, I will not discuss them here. These can be used both to argue for open borders and for a states right to control borders. For more on these positions see for example Joseph Carens (1987), Ryan Pevnick (2011) and Sarah Song (2017).

³ For more on this discussion see section 2.3.5 on temporary labour migrants, and the third article in the appendix "Structural injustice and labour migration: The scope of responsibility".

In a similar vein to Walzer, David Miller argues that extensive immigration controls are needed in order to protect a state's ability for "self-determination, the functioning of democracy, and population size" (Miller, 2016, p. 75). He also argues that self-determination is needed to be able to maintain a collective national identity (Miller, 2016, p. 69). So, according to Miller we need to be able to control borders in order to control the population size, which impacts public expenditure on welfare, and a collective-identity, which is needed to maintain societal and interpersonal trust. The arguments that build on cultural and collective-identity, can be met with different types of counter-arguments. Firstly, one can argue that the importance of cultural distinctness is exaggerated, that states are multicultural, and that a mono-cultural understanding whitewashes many states' repression of minorities. Secondly, the argument from culture and social trust would only seem to justify limiting migration of people who are significantly different, so placing limits on the number of migrants from a similar culture seems more difficult. And thirdly, that the argument oversimplifies the relationship between collective identity and social trust, and that many of the arguments that build on culture are not empirically justified (Holtug, 2010, 2017a).

The arguments for states' right to limit immigration that build on the economy, can also be criticised based on their empirical presuppositions. For while it is indubitable that migration can affect a state's economy, it is less clear whether that effect may be positive or negative, and who it will be positive or negative for. After all, foreign labour might benefit corporations and a state's Gross Domestic Product, but might also lead to more competition and lower wages on the job market. However, while there is disagreement on the effects of labour migration on the economy and job market, and the effects are likely to vary from setting to setting, someone defending the right to restrict immigration could respond that it should be up to states to make such calls, and limit migration in the interest of the state and its citizens. Furthermore, protecting the economy is not merely thought to be important in itself, but often also as a means to be able to provide for welfare for the citizens in a state. If the state is inundated with new benefit claimants, the argument goes, the state will no longer be able to provide welfare for its own citizens. Once again the arguments based on economy and welfare rely on not only the empirical assumptions being true, but also that such negative effects justify immigration restrictions. Melina Duarte, for example, has argued that this necessary connection between restrictive immigration policies and welfare benefits is empirically unjustified, and that welfare states and open borders are compatible (2018). Furthermore, most open borders positions, which we will return to in the next section (2.2.2), acknowledge

that while immigration can affect the economy of a state and the welfare of its citizens, there are other overriding concerns that outweigh these.

The argument concerning political self-determination is one of the weightiest arguments for a state's right to control borders. The right to self-determination is recognised as a fundamental right by the UN, and as Song shows it has both an internal and an external dimension:

The internal dimension is the idea of popular sovereignty: The people are the ultimate source of political authority, and they must authorize the binding collective decisions that the government makes in their name. The external dimension finds its expression in international law: The people have a right to significant independent control over their collective life without the interference of those outside the collective. (Song, 2018, p. 395)

So it would seem like the state has good reasons to control their borders in order to accommodate collective self-determination. However, as Song discusses and Sarah Fine has shown, the argument from self-determination needs to meet three challenges (Fine, 2013). Firstly, while a group is entitled to self-determination, what gives a group control over access to a particular territory? Secondly, why do citizens' interest in self-determination outweigh prospective migrants' interests in inclusion? Thirdly, how can we identify the "self" that is supposed to be self-determining? Some states encompass many nations, some groups are transnational, and what constitutes the "self" can also become difficult to establish in relation to legacy of colonialism. Now, while counter-arguments for state's right to control immigration based on economy and self-determination are challenging, I do not think they are insurmountable. But perhaps more importantly they point to why the needs for self-determination and protecting the economy should be balanced against other concerns. But which concerns might override such needs, and which might not?

While both Walzer and Miller argue that states have some duties to admit refugees, they say that admittance and selection of economic migrants is rightly a matter of state discretion, so long as states give valid reasons for their practice. In other words, they argue that states do not have a duty to admit economic migrants. "The receiving state has certain policy goals - for example, it is aiming for economic growth or to provide its citizens with generous welfare services - and it is entitled to use immigration policy as one of the means to achieve such goals" (Miller, 2016, p. 105). Miller qualifies this right to restriction by way of what he calls

“weak cosmopolitanism”, and argues that the state must give moral weight to any prospective immigrant, and give relevant reasons for refusal: “the reasons the state gives for its selective admissions policy must be good reasons, reasons that the immigrants *ought* to accept give that the general aims of the policy are legitimate ones” (2016, p. 105). This is a common qualification made by theorists who defend states’ right to exclude prospective migrants: that they only apply to legitimate states who are working towards legitimate policy goals. What are considered legitimate policy goals and how to weigh various concerns is of course up for debate. For example, Miller argues that this excludes selection of migrants based on race and national origin (2016, p. 106). Michael Blake similarly argues that this excludes racial selection, as this also negatively affects the citizens in the states employing such criteria (Blake, 2002). In my second article I examine whether such an argument might also be made against skills-based selection (see section 4.2. and appendix 2). We will get back to this issue when we consider skills-based selection in section 2.2.4.

Before moving on to the arguments for open borders, it is also worth mentioning the argument from indirect cosmopolitanism. It builds on the idea, as argued by Thomas Christiano, that “the modern democratic state embodies the best hope we have of ultimately bringing justice to the whole of humanity” (Christiano, 2008, p. 934). So, while moral cosmopolitanism might seemingly imply open borders, Christiano thinks that controls on migration are justified given that they are arguably the best way to bring about cosmopolitan justice. However, as Christopher Wellman makes clear, this argument relies on a series of controversial premises, amongst others that liberal democratic states are actually likely to favour, and be interested in, bringing about moral cosmopolitanism (Wellman, 2020).

In sum, there are many ways in which one can ground states’ right to exclude prospective migrants. While I think the argument based on culture has a lot of weaknesses, namely that it often exaggerates and oversimplifies cultural distinctness, I think the arguments concerning economy, welfare of citizens and collective self-determination, carry more weight. However, such concerns also need to be balanced against other considerations, in particular prospective migrants’ interest in being admitted. So before we move on to consider skills-based migration in particular, let us consider some of the arguments generally put forward for open borders and more extensive freedom of movement.

2.2.2 Arguments for open borders

Arguments for open borders, or more extensive freedom of movement, typically rely on the cosmopolitan idea that every human being has equal worth, and that this realisation should have implications for admissions policies. In a seminal article Joseph Carens (1987) lays out some of these arguments, building on Nozick, Rawls' original position and utilitarianism. While acknowledging that immigration can effect a nation's culture, economy and state sovereignty, Carens argues that this does not outweigh the principle of liberty, and the interests of migrants in being admitted:

Free migration may not be immediately achievable, but it is a goal toward which we should strive. And we have an obligation to open our borders much more fully than we do now. The current restrictions on immigration in Western democracies [...] are not justifiable. Like feudal barriers to mobility, they protect unjust privilege (Carens, 1987, p. 270).

Arguments for open borders or more extensive freedom of movement typically utilize two types of arguments: (1) that immigration restrictions are inconsistent with liberal values, and (2) that vast global inequalities lead to moral demands, which can be met in part by open borders or less stringent immigration policies. Let me first consider four examples of the first type of argument, before considering the second.

A well-known description of the inconsistency argument is made by Phillip Cole, who questions the asymmetry between the right to exit and the right to entry (Cole, 2000). In short, he argues liberal states cannot police strict immigration requirements without using illiberal principles against the migrants. They thereby contravene the liberal principle of moral equality between persons by restricting immigration. Furthermore, Cole disagrees with the state-centred justifications based on the particular relationship between citizens. He points out that the shared cultural life, and national values they refer to, are neither as shared nor as necessary as they claim, and that any selection of criteria will be somewhat arbitrary. Cole therefore argues that selection criteria cannot be compatible with liberal democratic principles, as they cannot respect the moral equality of humanity (Cole, 2000, p. 81).

It should be noted that there are many different ways people have fleshed out the argument concerning the inconsistency of migration restrictions with liberal values. Julie Arrildt (2018), for example, focuses on Blake's argument which establishes that states have a right to exclude immigrants based on the state being a legal community and citizens within it being under

coercion, with particular rights and obligations. As Arrildt points out, coercion also applies to would-be immigrants, and Blake “can therefore not justify weighing the moral claims of residence above the moral claims of would-be immigrants or placing a heavier burden of justification on would-be immigrants” (Arrildt, 2018, p. 518). Patti Lenard has also pointed to problems with the asymmetry between the right people have to exit a state, and states’ lack of obligation to admit migrants (Lenard, 2015). For whereas the right to exit is commonly taken for granted as a basic human right, people do not have a corresponding right to entry. In order for the right to exit to be a real, people must be able to enter somewhere. While acknowledging here that states may have a right to exclude migrants, Lenard argues that they have a duty to contribute towards migrants having the ability to enter. “It may be that exiters cannot find admittance in the first choice of state, but it is incumbent on states in general to ensure that exiters can exercise their right to at least some degree” (Lenard, 2015, p. 16).

Finally, Kukathas has also argued that border controls are inconsistent with liberal values, and points out that this applies not only to immigrants, but also to citizens more broadly (Kukathas, 2017). Immigration control measures also take place within a domestic state, and the freedom of citizens is impacted by such control. Kukathas shows how this is often the case along ethnic and cultural lines, with US citizens of Mexican origin being deported because they are suspected of being illegal immigrants. Another such example is the Windrush scandal in the UK, with British citizens wrongly deported to Caribbean countries because they lacked the required paperwork. Since states in practice also apply border control measures on their citizens, this treatment clearly violates the liberal rights of their citizens.

When it comes to the second kind of cosmopolitan arguments that build on global inequalities, Joseph Carens’ arguments have received a lot of attention. He points out that the combination of vast global inequalities and strict migration regulations, is part of an international order which is analogous to medieval feudalism (Carens, 2013, p. 226). Migration restrictions limit people’s freedom and opportunities, and keep people “in their place” by way of borders, in the same way as feudal birthright limited people’s access to opportunities according to the estate they were born into. They are therefore unfair and people should be able to migrate. Carens also argues, according to the incoherence line of argument, that restrictions on migration contradict deeply held democratic principles and freedoms (Carens, 2013, pp. 225-254). Briefly put, since people are equally morally valuable they

should all have equal access to opportunities and therefore be able to migrate freely.⁴ Before we move on to consider skills-based migration restrictions in particular, it is worth noting the responses which the inconsistency and global inequality arguments are typically met with.

State-centred theorists, such as Walzer, Miller and Blake, typically respond to these arguments by arguing (1) that liberal values do in fact open for immigration restrictions, based on the arguments discussed in section 2.2.1, and that (2) there are better ways to address global inequalities than by changing border policies. There are also some disagreements over the causes of global inequalities, what responsibility states have for these inequalities, and how easy it is to measure differences between states. Cosmopolitan theorists more commonly emphasise international reasons for inequalities, whereas state-centred theorists often highlight domestic reasons. After all, if you have a relational understanding of responsibility, and responsibility is based on how much you contribute to inequality, it is important to note how inequality comes about. This is part of the focus of my first article, where I argue that states have a responsibility to alleviate global inequality of opportunity (see 4.1 and App. i). I will also return this point in section 2.4., when discussing how relational and remedial accounts of global justice rely on causal explanations of how injustice comes about, and in section 3.1 when discussing methodological and explanatory nationalism.

For our purposes here we should note that even when acknowledging these vast global differences, and that Western states might have a role in bringing them about, state-centred theorists typically reject migration as a way to address them. They argue that the mere existence of such differences should not lead one to embracing open borders, or to letting in more poor and unskilled migrants. As Blake puts it: “Where injustice exists - and especially where our society has had a historical role in perpetuating it - we have a duty to effectuate institutional change so as to overcome that injustice. Nothing in this, however, requires us to think of entry into our society as the favoured institutional response” (Blake, 2008, p. 973). However, this denial of using migration to solve global inequalities is not absolute, as Blake elsewhere argues that extreme global inequalities, immiseration and destitution mean that states have moral duties, and that while not as extensive as domestically, a state does need to consider these duties in relation to immigration policy: “Restrictions on immigration which help perpetuate such poverty - as, I think, those of all Western liberal democracies now do –

⁴ It should be noted that Carens also relies on the inconsistency argument, pointing out how important we value freedom of migration in a domestic setting, and argues that it just as essential internationally.

are illegitimate. If this is correct, then the category of those whose claim to immigration may not be refused is wider than we usually think; in particular those fleeing famine and extreme poverty have legitimate claims to entry” (Blake, 2005, p. 236). However, Blake does not believe this demand extends more broadly, as many cosmopolitan theorists would argue.

2.2.3 Old and new open borders debate

The debate between those who defend states’ rights to restrict migration and those who argue for more extensive freedom of movement, outlined in the two preceding sections, is what forms the background for much of the current debate on the fairness of migration regulations. So before we proceed to discuss the fairness of skills-based migration and proposed solutions to migration injustice, it is worth noting some general features of the arguments presented above. Amy Reed-Sandoval makes a useful distinction between the “classical open borders debate” and the “new open borders debate” (Reed-Sandoval, 2016, pp. 13-21). The former debate is seen as characterised by its being an abstract, general, and principled discussion. As such, the philosophers are generally discussing principles and rights that should apply to all states. The arguments are often framed as for or against open borders. As opposed to this, the “new open borders debate” draws on real world situations, such as colonial history, tries to weigh specific solutions, and draws on descriptions of inequalities or specific injustices done to groups. Reed-Sandoval ties this distinction to a difference between ideal and non-ideal theory. We will return to ideal and non-ideal theory and its connection to the normative arguments concerning migration in section 3.3, so let us just initially consider the distinction between different strands in the debate, and the level of abstraction.

While I am not sure that a strict division between these debates is warranted – after all many “classical” debaters use some real world examples and as we will see below many “new” debaters use classical abstract arguments – Reed-Sandoval is undoubtedly correct in asserting that there are relevant differences in the types of arguments being employed. There seems to be a range of various positions within the debate, distinguished by their level of abstraction, generality and use of specific real world issues. However, most theorists find themselves somewhere in between, as most open borders theories agree that some restrictions on migration are warranted, and most state-centred theorists agree that states have responsibility to let in some people, notably refugees. As I point out in my first article (App. i), Kollar argues this point: “A more desirable task for the political philosophy of immigration is to find

ways in which the *joint requirement* of global equality of opportunity *and* collective self-determination can be coherently upheld”(Kollar, 2017, p. 733).

In order to accomplish this task one needs to balance various factors. After all, it is perfectly possible to agree with both the need of states to determine their own immigration policies, due to collective-self-determination and protecting their citizens’ welfare, and argue that they should also consider global justice when deciding who to admit. It is therefore important to consider what types of immigration restrictions are just, and how admissions policies and treatment of migrants might be improved. This is largely the goal of the articles I have written (see chapter 4 and the appendices), which focus on the fairness of differentiated treatment of migrants on the basis of their skills and education. The evaluations of what is considered fair in these articles is based on ideas of global equality of opportunity and structural injustice. In order to contextualise this contribution, I consider in section 2.3 various suggestions about how we might alter admission policies to bring about fairer migration regulations, but first we need to consider what skills-based restrictions actually entail, and the reasons put forward for such differentiated treatment.

2.2.4 Skills-based restrictions

Before moving on to suggestions on how to reform current admission rules, I here briefly consider some of the research on skills-based selection in particular. In short, what are skills based admission policies, how did they come about, and what might be their advantages and disadvantages? It is worth first spelling out the argument in favour of such policies. Broadly speaking if we agree that states have the right to decide their own admissions policies, for reasons related to culture, economy or collective self-determination, then education and skills seem like a relevant way to decide admission and differentiate treatment of migrants. As I also point to in the article “Statements on race and class” in appendix ii, David Miller puts the argument in the following manner:

The receiving state has certain policy goals - for example, it is aiming for economic growth or to provide its citizens with generous welfare services - and it is entitled to use immigration policy as one of the means to achieve such goals. This explains why selecting immigrants according to particular skills that they can deploy is a justifiable criterion. [...] In contrast, selection by race or national background is unjustifiable, since these attributes cannot be linked (except by wholly spurious reasoning) to any

goals that a democratic state might legitimately wish to pursue (Miller, 2016, pp. 105-106).

In short, if you do not believe the state has a particular responsibility towards non-refugee migrants, then you can admit them according to a justifiable criterion. Skills and education are generally seen as such justifiable criteria (Egan, 2020, pp. 111-112; Tannock, 2011, pp. 1338-1339). As I discuss skills- and education based differentiated treatment in all three articles, I will not expand on these arguments here, but rather briefly summarise the origins of such differentiated treatment, and some of criticisms that have been raised against such policies.

Let us begin with how such admission requirements for migrants came about. Many of the modern systems of border control have their origins in the wish to exclude specific ethnic groups. As Sarah Fine puts it: “It is no exaggeration to claim that the modern system of immigration controls, so much a part of the present political landscape in liberal democracies, was born of racism - of hostility to those perceived as inferior races” (Fine, 2016a, p. 129). This concern to keep out unwanted ethnic groups is also mirrored in the first skills- and education based immigration criteria. As Stuart Tannock has shown, education and skills have long been used as a proxy requirement in order to exclude unwanted foreign immigrants:

The government of Canada passed an amendment to the immigration act in 1919 that instantiated mandatory literacy test for immigrants that would keep out the illiterate and uneducated: similar tests had already been passed in the USA, Natal/South Africa, New Zealand, and Australia. The invocation of education as a barrier to immigration, as has so often been the case, was strongly racialized. (Tannock, 2011, p. 1332)

Skills- and education based criteria were thereby originally a way to exclude unwanted nationalities and ethnic groups. Indeed, many people from countries in Northern Europe were not be subject to the same requirements (Tannock, 2011, p. 1332). We should therefore keep in mind that many of the skills or education-based systems for migrant admissions are born from racism. That is not to say that they are currently racist – after all they no longer have explicit racial criteria – and, at least most of the time, people are subject to the same criteria regardless of their ethnic background. Indeed, one of the merits of such criteria is that they do not discriminate based on ethnicity and nationality.

However, some argue that skill-based criteria might still be used in this manner. As Tannock argues on this point, the Global North spends far more on education and a higher percentage of its young people are highly educated than in the Global South. “All else being equal, any immigration system based on skill and education will discriminate against the populations of poorer nations (which are predominantly non-white) as a whole” (Tannock, 2011, p. 1336). I discuss and compare racial and skills-based admission criteria in the article “Statements on race and class: the fairness of skills-based immigration criteria” (see 4.2 and app. ii). For the time being, it suffices to say that it matters for evaluations of the fairness of such admission rules whether one believes they should not discriminate in practise, or whether it is enough that they formally do not discriminate on racial grounds.

But what do I mean by skills, in skills-based policies? It turns out that what counts as “skill” in relation to migration, is very contentious. As Anne Katherine Boucher has made clear there are vast differences between how both different states and academic studies define skills. Skills can for example mean tertiary education, wages in certain occupations, work experience, employer sponsorship, and language abilities, or any combination of these and other factors (Boucher, 2019, p. 6). Skills-based admission policies are often tailored to let in people qualified for certain occupations. Points-based admission policies are a subset of skills-based policies and refer to systems that rank people according to such criteria as are listed above, giving a certain number of points for each criterion. If a person gets above a certain number of points, they are eligible to apply for a visa. It is important to note that skills-based admissions policies are not a simple phenomenon; rather they refer to a set of interrelated and highly diverse admissions policies, and visa systems, that differentiate treatment according to such factors as education, language abilities, and work experience. It should therefore be clear that any discussion of the fairness of such policies must be wary of the danger of overgeneralising.

If we put aside potential proxy effects concerning race and ethnicity, what other effects might skills-based admission policies have? Well, rather than offer group based criteria, these types of policies were meant to evaluate people on an individual level: “As the rise of skill-based immigration selection came to be hailed as the epitome of non-discrimination, inclusion and exclusion were seen to operate solely on the basis of individualist, rather than collectivist, criteria” (Ellermann, 2019a, p. 1). Rather than evaluating migrants according to their national origin, such criteria are meant to be more meritocratic and evaluate people on the basis of

their achievements. However, such a view seems to deny the role of class as a collective criteria. Indeed, as Ellermann argues, there is a lack of class based scholarship in the discourse on migration: “The lack of analytical integration of cultural attributes and economic factors in the politics of belonging is indicative of a broader reluctance within migration scholarship to recognise the significance of class as an axis of belonging” (Ellermann, 2019b, p. 4). This is one of the issues I address in the article “Statements on race and class: the fairness of skills-based immigration criteria” (see 4.2 and app. ii).

One of the main criticisms philosophers have raised against skills-based selection is the issue of emigration of skilled professionals. Frequently referred to as a “brain drain”, this emigration contributes to a shortage of skilled professionals in many countries in the Global South. There is some discussion about the degree to which brain drain is actually a problem, and some argue that the net effect of skilled emigration is mostly positive, due to remittances and knowledge exchanges, for example. Whereas Gillian Brock (2009, pp. 204-209) is sceptical that remittances offset the negative effects of brain drain, Christian Barry is more positive that this is the case (2011, pp. 32-39).⁵ However, regardless of what view one might have on compensatory effects, there is little doubt that many countries in the Global South have a high rate of high-skilled emigration, and that this impacts their ability to provide public services (Brock & Blake, 2015, pp. 1-3; Oberman, 2013, pp. 428-429).

In summation, arguments against skills-based selection can be divided into three kinds, based on whether the criticism focuses on the effect on the sending society, the receiving society, or the differentiated treatment of migrants. These kinds of concerns form the backdrop of the three articles I have submitted as part of this dissertation. The first article considers skills-based selection in the light of global equality of opportunity, and takes into account effects on the sending society, the receiving society and the treatment of migrants (see section 4.1 and app. i). The second article focuses on the effect on citizens in the receiving society, and draws an analogy to Blake’s argument against racial selection (see section 4.2 and app. ii). The third article considers differentiated treatment of migrants in light of Iris Young’s theory of structural injustice (see section 4.3 and app. iii). As such they use different normative frameworks and vary their focus while discussing similar policies. But before we turn to the normative foundations and methodology I use, it is worth considering various suggestions

⁵ For a financial overview of the positive and negative effects of remittances see Ratha and Mohapatra (2012).

philosophers have made to rectify migration injustices, which will help situate my own contributions discussed in section 4 and the appendices.

2.3 Solutions to migration injustice

Moving from the general to the more specific, I now turn from the general arguments for and against states' right to control borders, and arguments concerning skills-based selection, to specific solutions philosophers have proposed to remedy migration injustices. As we will see many of these solutions address the problem of brain drain, though some also address unequal access to migration opportunities and global inequalities more broadly. I begin in 2.3.1 by looking at the problem of brain drain, and how emigration and immigration restrictions might help alleviate it. I then (2.3.2) discuss suggestions for different migration rules, before considering indirect solutions such as remittances, taxes and levies (2.3.3). I proceed to briefly consider rectificatory migration responses (2.3.4), before finally turning to temporary labour migration, and altered terms for guest workers (2.3.5). Throughout this overview, I will also indicate the varying normative foundations for these different positions, before discussing these normative foundations and arguing for my focus on equality of opportunity in section 2.4.

2.3.1 Emigration and immigration restrictions

As mentioned in section 2.2.4., one of the main problems philosophers have considered in relation to labour migration, has been the emigration of highly skilled individuals from developing countries. This emigration can affect the living conditions, welfare provisions, and opportunities of people in these countries. As a response to this, philosophers have come up with solutions to limit the emigration of skilled professionals, and the effects such emigration might have on the countries these migrants are leaving.

Gillian Brock (Brock, 2016a, 2016b; Brock & Blake, 2015) argues that most philosophical investigations of labour migration focus on migrants and receiving states. She instead focuses on the relationship between migrants and the states they have left, and considers when and how developing states may restrict the emigration of skilled professionals. Brock argues that there are two legitimate ways of doing so, compulsory service and taxation of emigrants, and argues that both these solutions are acceptable under certain conditions.

Brock's argument is based on a cosmopolitan egalitarianism, a description of the negative effects of brain drain, and an argument concerning the limits of states' control on individuals. Her cosmopolitan account draws on the imperative that all human beings should count

equally, and that everyone should be able to meet their basic needs, and enjoy basic liberties, fair cooperation, and the societal background conditions to support a decent life (Brock & Blake, 2015, p. 25).⁶ While Brock's normative argument rests on an ideal of moral equality, her arguments for specific solutions are often illustrated by examples of the desperately poor, referencing lack of access to decent health care. She points out that such problems are exacerbated by the emigration of skilled professionals. As a solution, Brock argues:

[...] carefully designed compulsory service and taxation programs can be justified under certain kinds of conditions, such as when poor, responsible, legitimate developing states are making good faith efforts to supply core goods and services that citizens need for a minimally decent life, under severe budgetary constraints, and where there is full information about those constraints and what is expected when students accept opportunities for tertiary-level training. (Brock, 2016a, p. 8)

Brock argues that states are legitimate in limiting emigration in these instances. However, there are many ways in which one might go about limiting brain drain. Whereas Brock focuses on the responsibility of states of emigration, Luara Ferracioli has considered what wealthy countries can do. The problem Ferracioli seeks to solve is similar, namely the departure of skilled professionals, more specifically the cases "in which professional skills are essential for the protection of basic rights in resources deprived settings" (Ferracioli, 2015, p. 105). However, she argues for a receiving state's duty to exclude high-skilled migrants on this similar foundation: "I argue that states have a negative duty to exclude prospective immigrants whose departure could be expected to contribute to severe deprivation in their countries of origin" (Ferracioli, 2015). While Brock's argument is normatively justified by a state's positive duty to cosmopolitan egalitarianism, Ferracioli's argument is justified by a negative duty: not to cause harm in developing countries.

So the difference between Brock and Ferracioli's arguments is not merely the focus on different agents, countries of emigration and receiving countries, but also the underlying normative justification for policy change. It should be pointed out that, as both Brock and Ferracioli mention, the emigration of skilled professionals does have positive effects, such as increased autonomy for the migrants in question and increased remittances sent to the countries they emigrate from. Furthermore, Ferracioli points out that the duty to exclude only

⁶ For a more complete overview of Brock's cosmopolitan account see Brock (2009).

arises if the transfer of resources from a rich to a poor country is not sufficient to alleviate the deprivation caused by emigration. This is a common, and reasonable, reservation in proposals to improve labour migration injustice. After all, if the motivating factor is the improvement of social goods for the people in the country of origin, any solution to brain drain must at least have a net positive effect for them.

Kieran Oberman (2013) has also offered arguments for immigration restrictions to limit brain drain, stating that while coercion is very troubling, it might be legitimate in a limited range of cases. That is, if the migrant owes assistance in their home country, can provide such assistance, and no other remedy is readily available. As Oberman and Brock both mention though, this duty can only arise in free and democratic states, as such duties cannot be owed to autocratic and illegitimate states. Therefore, if we agree with this stipulation, which I think seems reasonable, this solution will only work for some of the “brain drain”, as many countries skilled people are emigrating from cannot be regarded as democratic and free.

However, there are other actors involved in the problem of brain drain than the receiving states and the countries of origin, namely the employers. In the light of this, some national health services, such as the UK’s, have codes for best practice in order to avoid their recruitment of skilled health workers negatively impacting the countries these migrants are moving from (Brock, 2009, pp. 201-202). These systems are voluntary, but the underlying problem they seek to solve is similar to the emigration and immigration restrictions discussed above, in that they seek to control immigration in order to not adversely affect health care services elsewhere. However, as Brock has shown, these guidelines are quite limited. In order to effectively contribute to limiting brain drain one would need an international code, an international agency, coordination among countries, and would also need to address the underlying cause, namely the “seemingly insatiable demand for healthcare in developed countries” (Brock, 2009, p. 202).

Most of the literature on brain drain and other migration injustices focuses on the role of the state, so there is a room and need for an increased focus on other agents as well. As little has been written on individual responsibilities in relation to migration inequalities, this is one of the reasons I address individual responsibility in particular in the third article concerning structural injustice (See section 4.3 and App. iii).

All these proposed solutions to limiting the brain drain, limiting emigration, a duty to exclude, and best practice in recruitment, have run up against the following objection: namely, that they put an undue burden on or coercion of the migrant. For example, Michael Blake has argued that “The action of this state, in prohibiting the would-be emigrant from leaving, is morally equal to preventing a useful tourist from departing; the cases of kidnapped tourist and prevented emigrant are equally morally prohibited” (Brock & Blake, 2015, p. 209). Yet, this only seems to apply if the state does not allow for exit visas, as Blake does say that Brock’s example of compulsory service and taxation might be legitimate, if the state is non-coercive and the skilled-professional entered into the agreement freely. Blake, however, offers a more damning critique of the suggestion that wealthy states should limit immigration of skilled professionals. As Blake puts it regarding the suggestion “to exclude highly talented people from our own societies. This is politically unpalatable to most parties except for the furthest right wing, but it would at the very least stop some of the worst injustices of the brain drain” (Brock & Blake, 2015, pp. 219-220). Firstly, he argues that the right to exclude is limited, secondly, that exclusion can lead to increased undocumented migration, and thirdly, that it is objectionably paternalistic. Instead he suggests more ethical recruitment and better cooperation, but he is somewhat sceptical about our ability to limit brain drain, as it is based on other fundamental global inequalities. It should be pointed out that while Blake argues strongly against limiting the immigration of skilled professionals for social justice reasons, he does not seem to have the same qualms about restricting the immigration of unskilled migrants.

Luis Cabrera has also pointed out how restrictions on the movement of skilled professionals puts undue restrictions on them: “to impose such rigid limitations on the physical and social mobility of individuals could be to make the ‘luck of birth’ doubly disadvantaged to them”(Cabrera, 2014). Not only would the skilled professionals be disadvantaged by fewer possibilities in their country of origin, they would face more restrictions in leaving these countries than others born elsewhere.

A solution to brain drain that might overcome these objections would be for skilled personnel in developed countries to recruit from developing countries, for the purpose of training them and their subsequent returning to their country of origin (Brock, 2009, p. 209). While only briefly discussed by Brock, this solution would have the benefit of not limiting the agency of migrants from developing countries. Furthermore, if states in the Global North subsidised

such arrangements, this might also contribute to alleviating global differences in access to health care and the like. However, if the migrants are required to return it would also impact their agency, and if the underlying inequalities that cause brain drain are not addressed, this solution might have a very limited effect.

2.3.2 Different admission rules

Moving on from emigration and immigration restrictions, there are a set of solutions that consider altering admissions criteria as a way to address brain drain. In the article discussed in 2.2.2, Joseph Carens suggests that in non-ideal circumstances, one way to address brain drain would be: “that we should give priority to the least skilled among potential immigrants because their departure would presumably have little or no harmful effect on those left behind” (Carens, 1987, p. 261) Lucas Stanczyk (2016) also suggests that instead of stopping the flow of *skilled migrants*, the problem of brain drain can be addressed by developed states prioritising *different migrant groups*. “[The] problem could be addressed by governments in wealthy societies choosing to prioritise the poorest and least skilled applicants for immigrant visas, giving them strict priority over their more advantaged compatriots with advanced skills and professional degrees” (Stanczyk, 2016, p. 2). Stanczyk argues that most forms of taxation and limitations on emigration would be detrimental to fundamental liberties, but that receiving countries prioritising differently would be much less problematic. In addition to prioritising the poorest and least skilled migrants, he considers the case of a migration lottery. Let us consider prioritisation of poor and unskilled migrants, before returning to the idea of a migration lottery.

Stanczyk and Carens do not offer a comprehensive model for how this different prioritisation could be made. For such a model we can look to Peter Higgins’ Priority of Disadvantage Principle (2013) (hereafter PDP), or my own suggestion for a ‘fairer migration model’ (see section 4.1 and app. i). The latter proposes to select migrants according to how much their movement increases their overall opportunities, and the opportunities for others in the countries of emigration and immigration. The solutions discussed in 2.3.1 have focused on ameliorating the bad effects of brain drain. However, some solutions, such as Carens’, Stanczyk’s, Higgins’ and my own, also attempt to solve the problem of less opportunities for some groups of migrants.

Higgins has suggested a model which seeks to prioritise disadvantaged groups. The moral foundation for the solution is the duty to avoid harm to disadvantaged groups, and a

cosmopolitan ideal of equality. Rather than a specific policy suggestion, Higgins' model is used to evaluate immigration policies. If they, on balance, give priority to disadvantaged social groups, they are just, whereas if they disadvantage already disadvantaged groups they are unjust. The model does not argue that a state should just give priority to disadvantaged groups in admissions, but that it should consider the effects on "the residents of receiving countries, prospective migrants, and the non-migrating residents of foreign countries" (Higgins, 2013, p. 229). In other words, the PDP is context specific, and more of a general framework for interpreting fairness than a specific policy suggestion.

On the basis of this PDP Higgins considers a long list of policies, including admission criteria. Cultural dissimilarity are seen as unjust selection criteria, as it most often disadvantages already disadvantaged groups. Higgins' PDP would also allow for limiting the immigration of skilled professionals, in those cases where it would harm social groups in the countries they emigrate from. When it comes to emigration, Higgins argues that PDP is incompatible with emigration compensation by rich states, as the compensation is unlikely to be adequate. However, he argues PDP can be compatible with emigration restrictions, and in most cases emigrant taxation. While there is no space here to evaluate all of the arguments behind these evaluations, it should be noted that the moral foundation of seeking not to disadvantage already disadvantaged social groups might allow for different interpretations than those Higgins makes. The model might support different policies, depending on how one defines the social groups in question, and the impact one thinks policies might have on the disadvantaged groups. For example, one might contend that if emigration compensation proves to be adequate, one could use PDP to argue for other conclusions than those Higgins reaches.

While models such as Higgins' are compatible with several of the solutions to brain drain mentioned above, they would also have broader impacts on the migration system. One practical drawback is that both examining adverse effects to disadvantaged groups, and evaluating improvements in access to opportunities, is liable to be costly, contested and difficult to implement. Therefore, some philosophers have suggested a migration lottery (Bhattacharya, 2014; Stanczyk, 2016; Woodward, 1992):

[The] natural way of respecting the force of this right [to equality of opportunity], within an egalitarian framework, would be some policy that can be justified in terms of the equal treatment of all who wish to exercise that right (e.g. a lottery system that

gives every prospective migrant, rich or poor, an equal chance to enter, or some other system that embodies some other notion of opportunity or access). (Woodward, 1992, p. 51)

Both Woodward and Bhaattacharya refer to equality of opportunity as the normative foundation of their arguments, although Bhaattacharya argues that freedom of movement, approximating open borders, would be a better solution than a migration lottery. Yet, a lottery has the merits of being less bureaucratic, while still limiting the effects of a brain drain, and reducing the negative treatment of already disadvantaged groups. Furthermore, it would allow equal opportunities for migrants, whether they are skilled or unskilled, and be completely neutral in regards to race, religion, gender, etc. Nevertheless, unlike both Higgins', Stanczyk's, and my own suggested solutions, it would likely not contribute to as much positive change; at least in the sense of remedying inequalities of opportunity or alleviating other forms of structural inequality. For that to be the case, one would have to give priority to those, either individuals or social groups, who stand to benefit the most. However, it should be kept in mind that while perhaps having less of an impact on inequalities, a migration lottery might be less bureaucratic and perhaps easier to implement than solutions that seek to prioritise disadvantaged social groups or unskilled migrants.

2.3.3 Remittances, taxes and levies

In sections 2.3.1. and 2.3.2., I have considered solutions to labour injustices which mainly focus on changing emigration and immigration rules. In this section, I discuss solutions that would instead seek to mitigate the effects of migration injustice by other measures. These suggestions include improving remittances, emigration compensation, and a birth right privilege levy. As mentioned in section 2.2.4., some philosophers have suggested using monetary compensation as a means to make amends for brain drain. For example Brock suggests giving funds to developing nations because of the emigration of health care workers: “For recruiting healthcare workers trained in a developing country (‘Developing’), the developed country (‘Developed’) pays compensation to Developing at the rate of (say) five times what it costs to train that worker in Developing”(Brock, 2009, p. 208). As she points out, this would contribute to the countries of emigration being able to fund, at least in principle, more skilled workers. Yet, as Brock also mentions, it can be questioned whether the people who are trained with these increased funds might not also emigrate as well.

As remittances are one of the largest resource transfers between the Global North and the Global South, several theorists have suggested measures to improve remittances in order to compensate for brain drain. On a practical level Ratha and Riedberg (2005) have in a World Bank report suggested a series of measures, such as harmonising regulations between governments, increasing competition to lower cost of transfers, and improving the ease of financial transfers. These suggestions, while limited in scope, could clearly increase the effectiveness of remittances, as more money would reach the intended recipients.

Another suggestion by Christian Barry and Gerhard Overland, is to give tax exemptions on remittances (Barry & Overland, 2009). They argue that the normative foundation for such a policy is extreme poverty, and give three distinct moral reasons why affluent countries need to address global differences: assistance-based reasons, contribution-based reasons, and beneficiary-based reasons. Briefly put, affluent countries have the ability and duty to assist people who are suffering, they contribute to poverty in developing countries, partly through a brain drain, and they benefit from global differences, by taking advantage of migrants being available as cheap labour. Therefore, Barry and Overland argue that affluent countries should partially remedy the situation by making remittances exempt from taxation. Some of the objections to this suggestion are that the migrants will contribute less to public services in the country they are moving to, and the remittances may not reach the people who need them most in the countries they are moving from. While accepting that both of these objections have some merit, Barry and Overland argue that on balance their solution is still justified. In general, Barry is sceptical to placing limits on migration generally, and positive to migration as a way for people to meet their basic needs (Barry, 2011). He is therefore sceptical of Brock's proposals of using emigration restrictions, and suggests compensation from rich to poor states, and a more equitable distribution of migration opportunities between skilled and unskilled migrants (Barry, 2011, p. 38).

Brock also highlights the valuable contribution of remittances, for example in relation to systems in Mexico where remittances are being used for public works, and matched by public funding (2009, pp. 206-207). By this joint effort of remittances and public funding, remittances do not merely contribute to the economy of the person or family receiving the money. However, Brock also points to reasons to be sceptical of these systems. Remittances can contribute to a state of dependence, remittances reduce over time, and the system may be self-perpetuating and may increase demand for labour migrants. Perhaps most importantly,

while remittances might reduce poverty in the short term, they are not likely to impact longer term poverty and structural inequalities. These arguments concerning compensation and remittances, by Brock, and by Barry and Overland, are aimed at injustices brought about by emigration. Yet they are perhaps somewhat limited in scope, as they have little to offer the various groups of labour migrants who bear the brunt of unequal treatment. In other words, such solutions would have to be supplemented by solutions such as those in section 2.3.2, concerning different admission rules, if one also wanted to address the issue of differentiated treatment.

Another compensatory suggestion which has received a lot of attention, is Ayelet Shachar and Ran Hirschl's proposal of a birthright privilege levy (Shachar & Hirschl, 2007). Similarly to how Carens argues that citizenship can be seen as comparable to feudal birthright privilege in how it distributes people's opportunities (Carens, 2013, p. 226), Shachar and Hirschl argue that citizenship "distributes opportunity on a global scale" (Shachar & Hirschl, 2007, p. 254). By using an analogy to inherited wealth, they argue that "the intergenerational transfer of property allows us to use existing qualifications found in the realm of inheritance as a model for imposing restrictions on the unlimited and perpetual transmission of membership - with the aim of ameliorating its most glaring opportunity inequalities" (Shachar & Hirschl, 2007, p. 253). They suggest a progressive tax or a birthright levy that can help rectify some of the global inequalities in opportunities. While not specifically addressing the differentiated treatment of different groups in immigration admission or the effect of brain drain, this addresses the underlying inequalities which closed borders and different citizenship entail.

2.3.4 Rectifying specific harms

Some philosophers have also suggested to rectify migration injustices by targeting particular injustices. These solutions aim to give privileged access to particular groups due to injustices caused by particular states. More commonly, these types of solutions are used in grounding duties to receive refugees, such as states being obliged to accept refugees from wars they have taken part in (Souter, 2014). These solutions are less general in scope than the ones discussed above, and provide models to address specific groups of migrants, and the specific injustices done to them. These are to varying degrees also compatible with the theories discussed above, particularly Higgins' PDP.

One example is Wilcox, who builds his idea on the "Global harm principle" (hereafter GHP) (Reed-Sandoval, 2016, pp. 21-22; Wilcox, 2007). This principle entails that "societies should

not harm foreigners; and societies that violate this duty must: (1) stop harming foreigners immediately; and (2) compensate their victims for the harm they have already caused them” (Wilcox, 2007, p. 277). As such this is an example of a broadly liberal notion of global justice, focusing on the negative duty to avoid harm. However, interesting for our purpose here are Wilcox’ reflections on how this applies to immigration. While her examples primarily focus on the effects of the US wars in Vietnam and Iraq, her conclusions for immigration admissions apply more broadly. In short, if a society causes harm somewhere else in the world, and does not stop harming foreigners, then that society has a duty to admit people from these countries: “it must be emphasised that duty to provide admission is borne solely by the society that is collectively accountable for producing the conditions that necessitate resettlement, not the global community” (Wilcox, 2007, p. 286).

Another wrong to be addressed by rectificatory solutions, discussed by Sarah Fine, is the impact of racism on immigration systems (Fine, 2016a). As Fine argues, it is not enough to have formally non-racist immigration criteria: “even policies which are seemingly “neutral” with regard to race and ethnicity frequently have entirely foreseeable discriminatory effects, as in the well-documented British attempts to close legal migration channels to non-skilled non-EU citizens” (Fine, 2016a, p. 133). Here Fine is referring to the kinds of proxy effects discussed above (section 2.2.4.), and argues that there is a need for rectificatory justice in relation to immigration controls. Now, one way to solve this problem is to open borders, but as Fine argues many political philosophers want to defend a state’s right to limit and control migration. She therefore argues that states need to specifically acknowledge racial discrimination, diagnose the problem and offer a prescription to solve it (Fine, 2016a, pp. 134-135). Fine stops short of offering particular policy proposals, but uses this model to analyse whether other philosophical theories of migration address and rectify racist injustices.

2.3.5 Temporary labour migration

One final strand within the literature on solutions to migration injustice focuses on temporary labour migration and guest worker programs. Here the main question concerns whether giving lesser rights to some immigrants is permissible, given the increased migration this might lead to, and the positive effects this would have on migrants’ opportunities and on reducing economic inequalities through remittances. And if this is the case, what kinds of rights restrictions are permissible? Martin Ruhs for example puts the argument for differentiating rights in the following manner:

[...] I contend that there is a strong normative case for tolerating the selective, evidence-based, temporary restriction of a few specific rights under new and expanded TMPs that help liberalise international labour migration, especially of lower-skilled workers whose international movement is currently most restricted and who would therefore reap large human development gains from employment abroad. (Ruhs, 2013, p. 9)

In addition to this positive effect on the mobility and access to opportunities for low-skilled workers, such programs can have a positive impact on reducing global inequalities through migrants sending remittances home. Furthermore, such temporary programs can also be defended by reference to the general arguments for open borders, that restrictions on migration are incompatible with a fundamental right to free movement, and that open borders reduce global inequalities (for more on this see section 2.2.) As I discuss in the article ““Structural injustice and labour migration” (section 4.3 and App. iii), the main objection to using temporary migrant programs are their effects on domestic equality. Walzer for example argues that having such a permanent underclass in society is impermissible. “As a group, they constitute a disenfranchised class. They are typically an exploited and oppressed class as well, and they are exploited or oppressed at least in part because they are disenfranchised, incapable of organizing effectively for self-defence” (Walzer, 1983, p. 59). Walzer therefore describes having guest workers as a form of tyranny, as long as there is no right of naturalisation after a certain period of time. Patti Lenard and Christina Straehle similarly argue that while TLMs can have many positive effects through migrants’ increased opportunities and remittances, they also lead to many harms, and that without the ability to gain citizenship and participate as equals, such systems are impermissible (Lenard & Straehle, 2012).

There are various responses that have been made against the objections to guest worker programs. Firstly, one can argue that the state does not owe prospective migrants equal rights, as they arrive voluntarily. Secondly, one can nuance the position by differentiating between different kinds of rights restrictions, and point out that certain limited rights restrictions might be compatible with domestic equality. And thirdly, one can say that while such rights restrictions are unfair, and have the kinds of negative effects Walzer points to, the benefits outweigh the costs.

For example, Robert Mayer argues that even when guest worker programs are exploitative: “the unfairness should be tolerated if the exploitation is modest, not severe, and if the most

likely nonexploitative alternative worsens the plight of the disadvantaged” (Mayer, 2005, p. 311). He builds his argument on a sufficiency standard: would a person who has enough in the country of emigration accept the terms offered. This would mean that different terms would be acceptable, based on the country of emigration. Mayer argues that in the current political climate it is not realistic to think that states would increase immigration of disadvantaged foreigners, so that guest worker arrangements are preferable as they help reduce deprivation overall. Anna Stilz similarly argues that some rights restrictions are permissible, and that the citizenship rights Walzer refers to will not necessarily affect the exploitation they are subject to (Stilz, 2010, p. 305). She points to the importance of economic rights, like the ability to change employer, and argues that so long as migrants do not have to surrender basic rights, and are not forced into dominating social relationships, guest worker programs are acceptable.

Some scholars have also pointed out that temporary migrants often have need of different rights than permanent residents. As Ottonelli and Torresi put it, many current practices have a “sedentariness bias” (Ottonelli & Torresi, 2019, p. 272). They argue that TLM is a valuable trade-off for many, and if we take the migrants’ specific needs and circumstances seriously we should give them access to special and differentiated rights. For example, labour migrants who spend time away from their family may want to work longer hours for shorter periods of time, and would benefit from portable welfare rights (Ottonelli & Torresi, 2019, p. 273). Therefore the migrants themselves would not necessarily want access to the same sets of rights as citizens.

All in all, while potentially useful in the short term to remedy inequalities, and desirable for many migrants, I believe there are also good reasons to be sceptical of the use of TLMs and guest worker programs as a way to remedy global inequalities. As Lenard and Straehle argue it is a mistake to distinguish between domestic and global justice: “since considerations of domestic justice and considerations of global justice are interdependent in ways that make establishing a hierarchy of normative objectives, absent the relevant contextual considerations, impossible” (Lenard & Straehle, 2012, p. 216). This points to the difficulty with general arguments that propose prioritising one injustice. And it does not seem clear that more temporary migration will actually reduce global inequalities. In fact, it may merely institutionalise and make more permanent ways of treating people differently. Furthermore, as Nils Holtug argues, if we really base our evaluations on a global luck egalitarian account, we should perhaps instead reduce the rights for all people in a country in order to allow for more

labour migrants (Holtug, 2017b, p. 139). Why, if we base our argument for guest workers on a global egalitarian account, is it merely the guest workers who get fewer rights?

As I also point out in the article “Structural injustice and labour migration: From individual responsibility to collective action” (see section 4.3 and App. iii), while allowing for more temporary migration with less access to rights might be beneficial for the migrants in the short term, it can still be unjust. That is, such measures can be justified in a non-ideal situation, due to the positive effects on some migrants’ opportunities and alleviating global inequality, and yet be objectionable if the way migrants are treated is structurally unjust.

2.4 Normative foundations

As we have seen, most researchers agree that states should treat migrants fairly, but what constitutes “fairness” is a matter of much dispute. The differing views are often based on different conceptions of justice, as well as the implications one thinks justice should have on migration policies. I will now briefly consider the normative foundations of the evaluations of what migration systems are fair, before turning to methodological issues. Due to the necessarily limited scope of this text I do not aim to give a comprehensive overview of different theories of global justice, or a full defence of one particular view, but rather to clarify the normative foundations of some of the arguments that follow and provide some useful distinctions. All three articles in the appendix rely on the value of opportunity, so that will be my focus. I also primarily rely on luck egalitarian arguments and relational arguments to support an ideal of global equality of opportunity. In the following I give an outline of the reasons for this choice of normative ideals, and discuss some potential problems.

2.4.1 Global justice

Global justice theories agree that vast global disparities are unwanted and should be rectified, but there are disagreements on *what* is unfair, *why* it is so unfair, and *how* one can and should rectify such differences.⁷ Accounts of global justice often begin by referring to vast global disparities in factors such as life expectancy, wealth, earnings, and literacy. They draw attention to these vast differences as a means to show how the world is very unequal, and appeal to the intuition that this is something we can and should do something about. Most also agree that something needs to be redistributed, for example, wealth, power, resources, welfare, capabilities or opportunities. As Armstrong writes, we can classify justice theories according to two issues, the “currency” of justice and the “subjects” of justice (Armstrong,

⁷ For helpful overviews of global justice see Armstrong (2012) and Brock (2009).

2012, p. 43). As such, theories of global justice agree that something needs to be fairly distributed amongst all the worlds' nations or people, but differ as to what exactly needs redistribution. Furthermore, many global justice theories agree that the primary subject under consideration, or unit of concern, is the individual (Armstrong, 2012, p. 45).

In addition to the currency and subjects of justice, justice theorists in general often differ on the scope, reasons, target and goals of justice. By scope I mean whether justice should be local, domestic or global. By reasons, I mean why something is unjust, for example for relational or non-relational reasons. Is it due to our interactions with each other that something is unfair or merely because of the existence of vast differences in how much we have? By target, I mean whether justice should apply to procedures and/or distribution. And lastly, by goal, I refer to the issue that if justice is conceived of as some kind of distribution, should it aim towards sufficiency, equality or something else? Summarily then, theories differ on the currency, subjects, scope, reasons, target and goals of justice.

What also complicates the picture is that most theorists operate with slightly different distinctions and definitions of key concepts, and many, such as myself, draw on several types of arguments when discussing an issue. As the foregoing overview makes clear, different theorists rely on different normative ideals and reach different conclusions. For example, as I discussed in section 3.4., Brock builds her argument concerning limiting emigration on broad cosmopolitan assumptions (2015, p. 25), Ferracioli argues for obligations on receiving states to be based on a negative duty to avoid harm (2016), and Mayer builds his pragmatic arguments in favour of some guest worker programs on a sufficiency threshold (Mayer, 2005).

The main ideal I use for normative evaluations in the articles in the Appendix is equality of opportunity. In the first article (see section 4.1 and app. i), I take my point of departure from Joseph Carens argument for why global equality of opportunity implies open borders. I respond to David Miller's objections to global equality of opportunity, that it cannot and should not hold globally. In the second article (see section 4.2 and app. ii), I bracket global issues to consider the impact of skills-based migration on the people in the receiving state. Here I evaluate this impact based on how such policies affect their opportunities, as well as their social bases of self-respect. The third article (see section 4.3 and app. iii), considers individual responsibility for labour migration in the light of structural injustice. While the theoretical framework here is structural injustice, what I argue is structurally unjust is the

unequal access to migration opportunities and the differentiated treatment of migrants. Therefore, in addition to the focus on skills-based selection, what ties these articles together is their commitment to equality of opportunity, and I will therefore in the next section focus on the choice of opportunity as the currency. In general, I draw on both luck egalitarian and relational arguments to support the ideal of global equality of opportunity. I point to how where you are born is a matter of chance, as well as two types of relational arguments: that the current international migration regime helps perpetuate global inequalities, and that global differences rely on forms of trade and interaction, which give rise to moral demands that can in part be remedied by altering our migration arrangements.

2.4.2 Equality of opportunity

In general, the scope of my arguments is global, the goal is equality, and the currency is opportunity. So, in my articles and in the arguments below, the something which should be fairly distributed is ‘opportunity’. Before I argue for why this unit has been chosen, let me first explain what this notion entails. The understanding of equality of opportunity, which I am committed to in this thesis, can be traced to John Rawls. More than merely the notion of “careers open to talents”, it is rather the idea that “positions are to be not only open in a formal sense, but that all should have a fair chance to attain them” (Rawls, 1971, p. 73).

Rawls specifies this further by stating that:

More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. (Rawls, 1971, p. 73)

This position builds on a broadly held idea that people should have an equal chance to attain social positions and their life goals, subject to their willingness to work hard to attain them. We should all have a fair shake at living a good life, regardless of our religion, race or class. It gets somewhat more complicated when we ask what is necessary for this to be the case. In other words, how can we arrange society in such a way that everyone gets a fair shake?

Rawls’ notion of justice specifically applies to a single society, and is intimately linked with his view of a fair society governed by the principles of justice. As he puts it “the role of the principle of fair opportunity is to ensure that the system of cooperation is one of pure procedural justice”(Rawls, 1971, p. 87). So, equality of opportunity is not meant merely to be

a good in itself, but also allow for the cooperative functioning of society. Furthermore, ensuring equality of opportunity is also key in allowing for people to develop self-respect. As Richard Arneson puts it “Another consideration is that self-respect is of utmost importance for any individual, so one should give priority to sustaining the social bases of self-respect, and a society that strictly protects basic liberties and [fair equality of opportunity] sustains the social bases of self-respect” (Arneson, 2015). So, equality of opportunity is not merely important for society to function, but can also be viewed as necessary to sustain our self-respect.

Furthermore, equality of opportunity is also tied to the principles governing the basic structure of society, perhaps most importantly those concerning social- and economic inequalities. For example, if social and economic inequalities are too large, it is immediately clear that people will have vastly different chances to attain positions. It is therefore important to note that a normative argument based on equality of opportunity does not negate other distributive justice issues, but is intimately tied to them.

Now, Rawls’ theory was only meant to apply within one relatively confined society, and he did not think the scope of equality of opportunity, and other obligations of justice as fairness, extended globally. Several problems must be overcome in order for this scope to be extended. One must give reasons both for why such obligations to justice have a global scope, and that the currency of justice, in this instance “opportunity”, is globally applicable. The second objection is put by Brock in the following manner: “One problem we face in trying to extend the notion of equality of opportunity from the state to the global arena is that different cultures value different ends or goods, and the desirability of the position will often vary in accordance with these different valuations” (Brock, 2009, p. 59).

I address these questions quite extensively in the first article (see section 4.1 and App. I) where I argue that even if one cannot make exact comparisons, one can make valuable and useful comparisons in the global arena. Furthermore, I draw on both luck-egalitarian arguments and relational arguments to extend the scope globally. Many global justice theories are forms of global luck egalitarianism (Holtug, 2017b). The luck egalitarian argument is based on the intuitively appealing idea that people should not be worse off because of bad luck. As Nils Holtug puts it: “According to luck egalitarianism, it is unfair for some individuals to have lower levels of advantages than others, through no responsibility of their own” (Holtug, 2017b, p. 127). So, as people’s opportunities are often due to factors such as

where they are born, this is a matter of brute luck, and such differences are unfair. It follows that these are differences we should attempt to remedy.

It should be noted that luck egalitarianism is sometimes taken to denote a comprehensive account of global justice, rather than an argument for why we should remedy inequalities. As Kim Angell and Robert Huseby write: “Note also that we intend by *luck egalitarianism*, domestically or globally, something other than equality of *opportunity* (for welfare). This comes in many versions, but the main point [...] is that we assume that it is (responsibility-adjusted) welfare that should be distributed equally and not opportunities for welfare, or simply opportunities as such” (Angell & Huseby, 2019, p. 180). The reason for this distinction is that equality of opportunity is understood by Angell and Huseby to be a kind of starting-gate theory, whereas luck egalitarianism is taken to compensate for cases of brute luck. However, regardless of the particular theory of global luck egalitarianism or global equality of opportunity one subscribes to, it is quite clear that they favour more extensive freedom of movement. In short, if it is unfair that people have fewer opportunities due to what country they are born in, and inequalities due to such arbitrary factors are something we should strive towards remedying. People should be able to migrate to find more opportunities. I expand on this argument in the first article (see section 4.1 and App. i).

It should be noted that David Miller objects to this argument, by distinguishing between two meanings of ‘arbitrary’. As he argues, you can distinguish between two senses of how something can be arbitrary: firstly, it can mean that it does not result from choice, and, secondly, that it is irrelevant to a policy choice. “[Cosmopolitan theorists] simply assumed that because people did not (standardly) choose their national memberships, inequalities that stemmed from membership must be morally arbitrary, hence objectionable, in the second sense” (Miller, 2011, p. 166). He points out that for state-centred theorists, citizenship is non-arbitrary in the second sense, and therefore relevantly non-arbitrary. However, this brings us back to the question of whether the nature of our intra-state interactions are such that we are justified in having a different degree of responsibility for other citizens, as opposed to foreigners.

In addition to luck egalitarian arguments for global bonds of responsibility, I also point to relational arguments in the articles, such as how the world is increasingly financially and politically integrated. Many of the global differences are due to past or present transfers of wealth and resources. In other words, one can have a responsibility to remedy such

differences, as many agents, particularly states, have helped not only to bring these differences about, but keep perpetuating them. This is therefore a contribution-based and beneficiary-based model of justice. Responsibility for justice is here derived both from contributing to create inequalities, and from continuing to benefit from unequal structures.

Now, while on the face of it equality of opportunity might appear less encompassing than other currencies of justice, as Darrel Moellendorf has argued it can be quite demanding:

A great deal would have to be spent on infrastructure among the world's poor. Educational opportunities would have to be equalised across the globe and between the sexes, health care access and facilities would have to be approximately equal, and all persons would have to be free of persecution on the basis of race, ethnicity, gender, religion and political affiliation. (Moellendorf, 2002, p. 79)

So, while opportunity on its own might seem like quite a limited standard, for equality of opportunity to exist vast differences must be overcome.

There are several reasons why I believe equality of opportunity is an appropriate normative yardstick to use when discussing the fairness of immigration regulations, in addition to being a valuable and intuitively appealing normative ideal. Firstly, one of the most important reasons people migrate, is for opportunities. This is certainly the case for most non-refugee migrants, who I focus on in this thesis. Secondly, equality of opportunity is at least on the face of it less encompassing than other global distributive theories, for example global resource justice. People who might not agree on a complete global redistribution of resources, might agree on to the principle of global equality of opportunity. One might ask why what people might agree on should matter; after all, people might be wrong? Yet, if we think that political philosophy does not discover independent moral truths, but subscribe to some form of constructivism or deliberative democratic theory, whereby moral facts are derived respectively from rational judgements on justice, or shared deliberations on justice, then people's intuitions regarding justice are important, and a congruence of opinion might carry weight. Thirdly and related to the latter point, in order to agree to global equality of opportunity one does not need to endorse equality of outcome, or any specific account of distributive justice. That is not to say that equality of opportunity might not be an exacting standard, but rather that people with varying views on distributive issues might agree on it. Fourthly, there is also a theoretical precedent for considering migration justice in relation to

equality of opportunity. Recall Joseph Carens' argument for open borders in section 2.2. As he argues, freedom of movement is a prerequisite for equality of opportunity, and this is also the departure point of my first article (see section 4.1 and app. i). But before I discuss the particular arguments I make concerning justice and migration, we should briefly consider how I arrive from some broad normative ideas to the conclusions I reach; namely the philosophical method that is employed.

3 Method

Theory is artful abstraction. It draws our attention away from the welter of ‘confusing details’, directing it towards what is ‘most important’ to the case at hand. Theories are beacons, lenses or filters that direct us to what, according to the theory, is essential for understanding some part of the world. (Donnelly, 2001, p. 30)

The main thrust of this thesis is normative, not descriptive. I am not mainly concerned with describing what kinds of admission policies states have and their impact on people, but rather morally evaluating admissions policies. Though as we will see, the view one has of the former, will influence the latter. We have already considered the normative bases I use for making evaluative judgements, namely equality of opportunity and structural injustice, but by what method can I balance various normative commitments? How do I get from some general descriptions of global justice, such as global equality of opportunity, to an evaluation of immigration criteria? And what are appropriate theoretical tools to conduct such a deliberation? These are the questions I discuss in this section. I start by considering the issue of implicit bias and positioning myself (3.1), both personally, as a dual-national, middle-class Norwegian, and theoretically within a mostly Western and Northern perspective. I continue by discussing philosophical methods of ideal and non-ideal theory (3.2), before finally discussing the application of such a methodological framework to the philosophy of migration (3.3). I maintain that I take both ideal and non-ideal considerations into account, and discuss my use abstraction and the feasibility of my proffered solutions.

3.1 Positionality

Often considerations of personal positionality are not included in philosophical enquiry. Indeed, sometimes they are avoided altogether, as theory, moral reasoning and explicit arguments are thought to speak for themselves. Some might ask, particularly within an analytic tradition, what is the point of including anything on the author’s biography. If rigorous philosophical method can show replicable, objective and universal truths, a person’s background is surely irrelevant and distracting. However, if, as I believe, philosophical enquiry is more hermeneutic, a kind of artful abstraction, seeking not eternal truths, but clearer, fairer and more interesting arguments, then far from a distraction, personal details can make us aware of how personal prejudices and individual idiosyncrasies might inform the questions we ask and the conclusions we reach.

So let me put my cards on the table. I am a 35 year old, cisgendered, male, middle-class, highly educated citizen of a Western liberal democracy, Norway. Of perhaps particular pertinence to the topic at hand, I am Irish-Norwegian, having a multicultural background and bilingual upbringing. I have lived in England, Norway, and Denmark, and enjoy quite extensive freedom to travel, particularly in Europe, as Norway is a member of the Schengen free travel area. In short, when it comes to the issue of migration, I am privileged. I know little, at least personally, of the kinds of challenges people face due to border controls.

I believe that these facts about myself might make me positively disposed towards broadly cosmopolitan ideas of equality, such as those discussed in section 2.4. I am probably less hostile to foreign culture, as my experience has done nothing but strengthen my beliefs that most people are just people, and that the supposed dangers of multiculturalism are largely overblown. I believe people should morally be counted as equals, and that a large influx of foreigners poses little risk to our ways of life, whether they be “skilled” or not. This might also make me predisposed to accept more readily some studies that confirm these ideas, as opposed to studies which contradict my view. However, I believe my awareness of such a predisposition makes me more liable to consider contrary evidence. Everyone is prejudiced in one way or another, which means that an awareness of our prejudices is important.

It should be noted that awareness of prejudice does not in itself mean that one is not susceptible to it. As Jennifer Saul (2017) discusses in relation to gender prejudice, and Clarissa Hayward (2017) discusses with regards to race and structural injustice, being made aware of our prejudices does not necessarily mean we change our minds. Indeed, sometimes such prejudices operate at a subconscious level and are not susceptible to explicit contradiction. While this might be the case, in the cases Saul and Hayward consider - gender and race - the prejudices are often used to prop up systems of privilege. Such prejudice can reproduce power hierarchies. I do not personally stand to gain anything by the kinds of proposals I make in the articles, and I believe I am questioning rather than perpetuating power hierarchies. Of course, my objection to these types of power hierarchies might also be seen as a prejudice, and there might be other subconscious preferences and mechanisms at play. Although if they are subconscious, and not susceptible to explicit scrutiny, it seems difficult for me, personally, to be able to access and challenge them.

I believe it will be up to others to consider whether these personal facts about myself have slanted my normative evaluations. It will be up to the reader to judge whether one can and

should arrive at the conclusions I do based on the premises I give. To make this process easier I have tried to be explicit, both in the articles and this introductory text, about the premises on which my arguments are based. These premises are broadly cosmopolitan and liberal. They are that every person is of equal moral worth, and that this insight should make us consider what such principles mean for state policies and individual responsibility. Specifically, I use luck-egalitarian and relational arguments to justify the focus on equality of opportunity and structural injustice, as discussed in section 2.4. Now, before we get to the question of how we go from these broad premises to conclusions about what they should mean for our immigration policies, there are two potentially problematic aspects of my thesis thus far that are worth considering, as they relate to my theoretical positionality, in particular my choice of subject matter and theoretical focus. These are the northern and western focus, and the focus on nation states.

Firstly, most of the examples I use in the discussions in the articles and that inform my normative conclusions, are examples of migration between the Global South and the Global North. Furthermore, most of the examples given are of the very poor and the very privileged. In fact, most global migration does not actually occur between such countries. It might therefore be objected that this perspective overlooks much of migration, and one might also question whether conclusions reached from discussing extreme inequalities, are relevant to lesser ones. I would argue that this focus is justifiable, given that these differences are both more clear-cut and more normatively significant. They are more clear-cut because the contrasts in wealth and opportunities are starker, and they are more normatively significant because the differences are greater. The greater the inequality the more morally significant it is. And as I do not operate with a threshold view of justice, but rather an ideal of equality, I believe that conclusions of discussions on greater inequalities are also relevant to lesser ones. That being said, it also follows that greater and lesser inequalities will not weigh equally on the normative scales in deliberations on policy choices. That is, if the difference between two countries in levels of opportunities is very small, it is more likely that concerns such as collective self-determination and welfare might override obligations of global equality of opportunity, than if such differences are very large.

Secondly, most normative philosophical approaches to migration focus on the responsibility of states, and this is my main concern in the first two articles (see section 4.1, 4.2, App. i and App. ii). The most common concern addressed is the issue of when migrants have a justifiable

right to enter, and what rights they are entitled to. Now, this focus on states is understandable, given that these regulate admission policies. However, a drawback of this focus is that it can lead to the roles of other agents in the migration system being undertheorized and underappreciated by philosophers. An excessive focus on states can also be seen as an expression of methodological nationalism. Alex Sager defines this as: “[...] a stance in the social sciences that unjustifiably presupposes the nation state, uncritically treats it as a natural form of social organization and/or reifies it” (Sager, 2016b, p. 2). By focusing too much on states, we might risk taking their powers and legitimacy for granted. We might also be overlooking the responsibility of other agents, who are let off the hook with respect to structural injustices they contribute to sustaining.

Methodological nationalism is also connected to explanatory and prescriptive nationalism. While methodological nationalism presupposes the structure of the nation state, explanatory nationalism traces most of the reasons for domestic conditions to reasons within a state, as opposed to foreign influence. This term is used by Thomas Pogge to describe explanations of poverty which focus on intrastate reasons (2008b). So explanatory nationalism will typically explain poverty in relation to domestic policies, corruption or incompetence, rather than as a result of global factors. Lastly, prescriptive nationalism argues that the state should choose immigration policy in the national interest (Higgins, 2013, p. 22; Reed-Sandoval, 2016, p. 16). When it comes to the philosophy of migration then, methodological nationalism uncritically assumes nation-state powers, explanatory nationalism explains migration in relation to the nation states, and prescriptive nationalism argues that the nation state should choose migration rules in the national interest.

While there are good reasons for this focus on states, it can also impact the conclusions one reaches. As Janine Dahinden argues “migration and integration research originates in a historically, institutionalised nation-state migration apparatus and is thus entangled with the particular normalisation discourse” (2016, p. 2207). This kind of normalisation can be problematic for several reasons. Firstly, as previously mentioned, it can leave the responsibility of other agents undertheorised. Yet I think we can consider a focus on the nation state in two ways: as an important agent when discussing migration responsibility, or as naturally justified in controlling and limiting migration. For while the nation-state powers should not be taken too much for granted, there is no doubt that nation-states do set immigration policy. I believe it is in this manner I consider states in the first two articles. In

other words, one might possibly object that the first two articles (see sections 4.1, 4.2, App. i and App. ii) are susceptible to a charge of methodological nationalism, as I do here assume that the state is justified in controlling immigration. However, I do not uncritically assume it, and I argue that states ought to take into account other factors than their national interest. Furthermore, one of the aims of my third article, on structural injustice and individual responsibility, is to contribute to rectifying this overemphasis on states within the philosophy of migration. With this in mind, the third article attempts to look beyond the responsibility of nation states and considers the responsibility of individuals for structural migration injustice (see section 4.3 and App. iii).

3.2 Ideal vs. non-ideal theory

One of the most central themes of political philosophy concerns the methods by which one is able to conceive of a better society. Should we in general terms consider what might be the best social arrangements, and subsequently consider how we might make society conform to these? Or are we better served by examining particular instances of injustice, comparing them, and using such comparisons to consider the merits and drawbacks of various social arrangements? These are the kinds of questions that are raised within the debate on ideal and non-ideal theory. While I here cannot do justice to all the myriad of views and positions raised in this debate, I point to its modern origins in Rawls, consider some of the criticisms of the distinction by Amartya Sen and Charles Mills, before discussing Alan Hamlin and Zofia Stemplowska description of the debate as a multidimensional terrain. In the following section (3.3) I apply this framework to philosophy of migration, discuss which ideal and non-ideal considerations I take, and argue for the merits of using a plurality of methodological perspectives in such a normative enquiry.

As with the discussion on equality of opportunity, and many other contemporary debates in the liberal philosophical tradition, we can trace this debate back to a distinction Rawls makes in *A Theory of Justice*. When Rawls refers to ideal theory he means the principles regulating “a well-ordered society under favorable circumstances” (1971, p. 244), and under “strict compliance” (1971, p. 245). This kind of theory is meant to hold in general for human life, under some conditions, which “issue from the more or less permanent conditions of political life” (1971, p. 244), and are meant to “set up an aim to guide the course of social reform”. Non-ideal theory then considers which principles we should follow when “injustice already exists, either in social arrangements or in the conduct of individuals” (1971, p. 245). As Rawls

puts it these are two different kinds of inquiries since “how justice requires us to meet injustice is a very different problem from how best to cope with the inevitable limitations and contingencies of human life” (1971, p. 245). In short then, at least when writing *A Theory of Justice*, Rawls thought we could describe a just society for humans in general, a fair basic structure, wherein we assume people comply with the principles of justice, given that they have the favourable conditions needed to organise it. This ideal, arrived at by using his original position, can then serve as a yardstick for us when considering how to arrive at such a structure. So, we first settle the issue of what is just, and we can then consider how we can approximate this ideal. Many have since questioned and criticised this distinction, yet, as we will see, it remains an important reference point for political philosophers in discussions on method. Let us consider the criticisms by Amartya Sen and Charles Mills.

Amartya Sen characterises Rawls approach as transcendental, in that it seeks to identify “perfectly just social arrangements” (Sen, 2006, p. 216). He has argued that such a transcendental approach is not only unfeasible, but also unhelpful when evaluating between various non-ideal circumstances: “A transcendental approach is neither necessary nor sufficient for answering questions on the advancement of justice that urgently demand our attention, which call for a robustly comparative approach” (2006, p. 237). Sen argues that the latter comparative approach is much more feasible in a global perspective, and would allow not only for incompleteness in information about a given topic, but also the incompleteness of judgements on justice: “Incompleteness can arise from unbridgeable gaps in information, but also from decisional unresolvability involving disparate considerations that may resist gradation, even with full information” (2006, p. 237). That is, in addition to an incompleteness, there might be incommensurability at play, with competing views on justice that cannot be resolved.

Charles Mills has criticised Rawls’ ideal approach by questioning whether the assumptions made in the original position are as impartial as Rawls believes them to be, and whether providing such an ideal theory of society as a starting yardstick is a good idea. In his words: “Why should anyone think that abstaining from theorising about oppression and its consequences is the best way to bring about an end to oppression?” (Mills, 2017, p. 79). While acknowledging that Rawls has a different focus and that “Justice as Fairness” is not meant to address pressing problems, but rather to clarify an ideal of justice, Mills argues that this explanation is unsatisfactory, and that abstracting away salient facts about current

structures of oppression, such as race, is unhelpful, and might even be harmful if our aim is to overcome such unjust structures (2017, pp. 157-159). Mills therefore argues that ideal theory instead is a form of ideology that masks implicit biases. If your goal is to overcome racist subjugation and injustice, why assume that abstracting away race from your ideal theory is useful? It should be noted that Mills does not dismiss using ideals, but rather ideal theory, as any normative theory needs to make recourse to ethical ideals (2017, p. 73). What Mills is objecting to is using generalised, abstract, and simplified models of fair society, as a yardstick when trying to solve questions of injustice. He furthermore argues that these kinds of liberal models, exemplified by Rawls, actually embody a racial contract, rather than a neutral one. Ignoring pressing racial injustice in the formation of ideal theory and using that as our yardstick, makes it harder to adequately grasp and examine racial injustice.

Now, there are several ways one can respond to these criticisms of Rawls' use of ideal theory. For example Laura Valentini argues that Sen misses the mark, that Rawls' account is more flexible and less "transcendental" than Sen makes it out to be, and that you do need some kinds of ideals in order to accomplish the kind of comparisons Sen wants us to make about justice (Valentini, 2011). After all, how are we to compare societies and social arrangements if we have no standard to compare them to? Comparing them to each other tells us little on its own about which society is most just. Valentini also points to Rawls' use of reflective equilibrium and argues that what might appear as a fixed view of justice is only provisionally so, and that "we have to go back-and-forth between general principles and considered judgements in search of overall balance" (2011, p. 19).

What complicates the ideal-non-ideal debate further is that different theorists define the central terms ideal and non-ideal differently. As Hamlin and Stemplowska put it "there is no single, categorical and useful distinction to be found and what we see is a multiplicity of different ideas and debates which sit within a multidimensional terrain" (2012, p. 48). Yet, they point to four relevant aspects of the debate: (1) compliance, (2) abstraction, (3) fact-sensitivity, and (4) perfect vs. comparative judgements (2012).⁸ These refer to questions such as: (1) Do we assume that people comply with what they should do? (2) To what degree do we use abstraction to simplify an issue and focus on its most important parts? (3) How much do we let the facts impact our normative judgements? And (4) are we aiming for a perfectly just social arrangement or merely comparative improvements? One way of approaching this

⁸ For other useful overviews of the debate see Simmons (2010), Valentini (2012) and Volacu (2018).

latter point in the ideal/non-ideal debate is the distinction between an end-state theory of justice and transitional justice.

Now, as Hamlin and Stemplowska suggest, it seems sensible to consider these issues as more a matter of a continuum than a strict division. They furthermore argue that ideal and non-ideal theory study different things, and that while ideal theory is concerned with specification and grounding of ideals, non-ideal theory is more concerned with institutional design and feasibility. Most theorists will therefore find themselves somewhere on the spectrum between ideal and non-ideal. No theory can be completely fact-insensitive, as it would be useless in addressing real human concerns.⁹ The degree of fact-sensitivity is here taken to mean “the more facts it recognises and incorporates as elements of the model or as constraints on the model” (Hamlin & Stemplowska, 2012, p. 51). And as Volacu argues “no model is fact-sensitive for every assumption, since at the very least it needs to make some abstractions or idealisations in order to be operational” (Volacu, 2018, p. 889). All theories must therefore make choices about which assumptions to make, and which level of abstraction to employ.

Faced with questions of global justice, few begin with a description of a perfectly just international order, and then seek to show how real world situations can approximate this ideal. However, that is not to say that there are not genuine disagreements within philosophy of migration about how to apply our ideals, what counts as appropriate levels of abstraction, and how fact-sensitive our proffered solutions ought to be. When applied to the normative ideals presented in section 2.4, we can now formulate the methodological question as: How can and should we apply ideals, such as global equality of opportunity, to practical, real-world, issues, such as migration?

3.3 Normative ideals in philosophy of migration

If we now consider the arguments presented in chapter 2 in the context of this short methodological overview, we can see how many of the questions raised in relation to the ideal/non-ideal debate can be raised with respect to philosophy of migration. How should such reflections on the ideal and non-ideal affect work in philosophy of migration? And which ideal and non-ideal considerations do I use in my theory?

⁹ Notably G. A. Cohen would disagree with this, as he argues that fundamental principles should be fact-insensitive (2008). While Cohen’s view is intriguing, this meta-ethical position is beyond the scope of the present thesis. For more on the topic see for example Thomas Pogge (2008a), Robert Jubb (2009) and Kyle Johannsen (2017).

Firstly, I think it is worth stating that I believe Sen is right in thinking that there is often likely to be an incompleteness and an incommensurability at play in questions of justice, in particular when it comes to global justice. I address the issue of incompleteness of information in the article “Towards fairer borders: Alleviating global inequality of opportunity” (section 4.1 and app. iii), where I argue that while there will be an incompleteness in knowledge about the relative value of different opportunities across societies, I think reasonable and valuable comparisons can be made. In relation to incommensurability, and as I write in section 2.2, I think there are good reasons both for states to be able to control their borders, and for states to take responsibility for global justice in relation to migration. The former include security reasons, collective self-determination and protecting the welfare of their own citizens. The latter include how such admissions criteria and treatment of migrants affect global justice, and specifically in the case of my thesis equality of opportunity and structural injustice. It is not given that all claims can be met at the same time, so a better question, as discussed in section 2.2.3, is how we can balance such considerations. Furthermore, it is not given that we will be able to find such a balance. In this, as in many other issues of justice, I believe the degree to which such concerns are commensurable is likely to be found in the working out and balancing of different concerns. But what methodological assumptions do I make when I consider how to balance these different concerns?

Concerning ideal and non-ideal theory, there are a series of methodological choices I have made that warrant attention. Following Hamlin and Stemplowska’s description of the multidimensional terrain of the ideal/non-ideal debate, I will focus on the choices I make in relation to abstraction, fact-sensitivity and feasibility. Let us first consider abstraction. Alex Sager criticises the general debate between state-centred and cosmopolitan positions, introduced in section 2.2, for its reliance on an overly simplified and idealised conception of migrants:

Though careful reflection on the permissible grounds for admission and exclusion is valuable, much of this reflection takes place at a level of abstraction that is difficult to connect with the world in which hierarchy, domination, subordination are enforced along gender and racial lines and would still bear the scars of colonialism and imperialism. (Sager, 2016a, p. 7)

Sager is criticising much of the abstraction that has characterised the philosophy of migration debate. In a similar way to how Mills criticised Rawls above, we might ask what is the value of an abstract debate about migration rules between ideal communities that bear little resemblance to the world around us? Current migratory arrangements are born out of racism and colonialism, and continue to be plagued by injustices and inequalities; should not such pressing concerns be our starting point? Much of current work on philosophy of migration (see sections 2.2.3–2.3.5) takes such a view, and begins by looking at global inequalities, unequal treatment and particular policies towards migrants. While some of my arguments consider how migration policies can contribute towards reaching an abstract normative ideal, namely the ideal of global equality of opportunity, and might therefore be conceived of as a type of transitional theory, they also consider a particular type of practice, namely differentiated treatment of migrants on the basis of skills. So while I am using an abstract ideal, I am also considering the impact of concrete real-world policies. Yet, it should be noted that this description of a practice also makes use of an abstraction.

In this thesis the description of skills-based immigration policies is an abstraction. An abstraction is here “understood to consist in bracketing off some complexities of a given problem, without assuming any falsehoods about them” (Hamlin & Stemplowska, 2012, p. 50). As I write in 2.2.4 and in App. ii, such admissions policies are many and varied, and I do simplify by lumping them together. Skills-based admissions policies vary according to the criteria they use, such as language skills, education, wealth or health, how such criteria are applied and weighed, and how such an application affects treatment of migrants. One might therefore ask whether one can or should consider normative arguments about the fairness of such systems in general, instead of considering each immigration policy on its own merits. Are such policies similar enough to be the subject of a normative enquiry? As I argue in the article “Statements on race and class: the fairness of skills-based immigration criteria” (see App.ii), I do consider the various skills-based selection policies sufficiently similar to normatively analyse them together. Many of them employ similar criteria, for similar reasons. That being said, that does not mean that some are not better or worse than others in regards to their impact on equality of opportunity. Clearly, the degree to which a policy can be said to contribute to alleviating global inequality of opportunity or impacting structural injustice, will depend on the particular criteria that are applied and how they are used. As I argue in the article “Towards fairer borders: Alleviating global inequality of opportunity“ (see 4.1 and App. i) we can reimagine a points-based immigration system that does take inequality of

opportunity into account, and uses criteria to identify those migrants whose migration would most contribute towards this normative ideal. But what facts do I assume when making this argument?

This brings us to another dimension of the ideal/non-ideal debate, namely whether the assumptions being made are fact-sensitive. When it comes to the question of what is considered a fact-sensitive approach, it quickly becomes clear that what the facts are, is also up for debate. Sarah Fine has criticised David Miller along these lines, and pointed out that his ‘realist’ foundation also embody normative judgements:

If we are starting from the world as it is, then we are starting from a world in which existing territorial borders and population distributions have come about in a variety of complex ways, many of which have included extensive injustices, such as those involved in colonialism, slave trading, wars of aggression, ethnic cleansing and land seizures. [...] Miller’s animating idea of benign, national communities stretching into the past and future allows him to brush over those kinds of facts about the world [...]. (Fine, 2016b, p. 723)

There are many different ways we can describe the world as it is, and our choices of what to emphasise will also embody normative judgements about what should be emphasised. Even our choice of which terms to use can embody evaluative content. Now, Miller argues that we should not use purely formal principles of justice, such as equality, and that justice is contextual, derived from particular instances of human association (Miller, 2007, pp. 13-17). However, Fine persuasively argues that Miller’s view of national communities actually hinders his attempt at realism. Now, this is not the place to consider the variations of real-world assumptions in philosophy of migration in detail, but it is worth remembering that in a contentious research field such as migration, not only the degree to which our theories should be fact-sensitive, but also the facts themselves are up to debate.

So while what is true and the degree to which one should be fact-sensitive are two different questions, it is clear that one relies on the other. It is therefore worth emphasising that in this thesis I rely on two real-world descriptions in particular. Recall that many of the suggestions to remedy migration injustice take their point of departure from the observation that brain drain harms citizens in the developing world. In the first article in particular (see 4.1 and App. i) I rely on this actually being true, as well as the descriptions of vast global inequalities and

that the causes of such inequalities to a large degree can be traced to relationships between states and the international trade and financial system. I believe these to be true descriptions, given the evidence I have available and that I have cited in the arguments in the appendix. That being said, if it should turn out that brain circulation outweighs the negative effects of brain drain, or that economic differences are in fact largely the result of domestic policies, the arguments I make, and the conclusions I reach, in particular in the first article (see App. i), would have to be revised.

But is it realistic to assume that states will comply with suggestions to alter their practises to limit such inequalities? How useful is it to imagine what fair migration policies might look like according to a standard of fairness that is unlikely, at least currently, to be followed by most states? Might it not be better to look at what kinds of compromises states might be willing to make in the interest of global justice and start from there? With respect to how realistic some of my suggestions are, I might therefore be said to be towards the ideal end of the multidimensional spectrum, for I do attempt to clarify what kinds of practices might contribute towards global equality of opportunity.

That being said, I do also take into account some feasibility constraints in all of the articles. In the first article (see 4.1 and App i) I discuss a reformed points-based system, in part because such a system is practically workable. In other words, it is a feasible in the sense that it describes a usable institutional design. In the second article (see 4.2 and App. ii), I propose ways that skills-based selection and differentiated treatment might be less damaging to the social bases of self-respect and equality of opportunity of the people in the states employing such policies, namely that they compensate for such effects by letting in the kinds of migrants who contribute to increasing domestic opportunities, and allow for more funding for educational opportunities of their own citizens. In the third article (see 4.3 and App. iii) I also point to specific ways individuals can and should contribute to rectifying structural migration injustice, such as through collective political action and support for immigrant organisations.

Whether it is likely to expect that states might actually institute such reforms, and that individuals might alter their behaviour, is another matter. It is clear that states today do weight economic concerns a lot higher than global justice when deciding on their immigration policies. But that is also one of the reasons why it is useful to consider exactly how current practices stack up against various normative ideals; it is important to check whether our

current practices are morally defensible or not. But by what process can we discover what normative ideals imply for policy?

When considering his philosophical method Joseph Carens distinguishes between a series of different presuppositions he makes at different times: the just world presupposition, the real world presupposition, the democratic principle presupposition and the conventional view presupposition (Carens, 2013, pp. 297-313). The first two presuppositions mirror the ideal/non-ideal distinction, where the just world uses a “background assumption of a world where all institutions are just, everyone is acting justly, we don’t have to worry about overcoming past injustices, and so on” (Carens, 2013, p. 301). The real-world presupposition, on the other hand, introduces more feasibility constraints, and considers the way things are now. The democratic principle entails a commitment to current democratic tradition, whereas the conventional view presupposition starts with assuming nation-states’ right to decide their own immigration policy. The latter is similar to what I referred to as methodological nationalism in section 3.1.

Now, what is of importance here is not which particular ideal and non-ideal background assumptions Carens makes in his various arguments, but rather his reflections on the merits of varying one’s assumptions. Carens argues that we should shift between various presuppositions: “There is no single correct starting point for reflection, no single correct set of presuppositions about what is possible”(Carens, 1996, p. 169). Carens argues we should shift between background assumptions, thereby testing various ideals. If there is no single correct starting point, then we should vary our points of departure, and continually test our assumptions against arguments and intuitions.

I find this line of thought compelling, and I am therefore sceptical of adopting a single set of presuppositions, feasibility constraints, and abstractions in order to discuss skills-based selection. I believe it makes sense to vary ones assumptions and focus, and apply normative ideals to different cases. It is also worth repeating Sen’s point regarding incommensurability. If there is no completely fair migration system, but rather many valid and competing normative ideals, such as global equality of opportunity and national self-determination, then varying one’s methodological assumptions is important. If we do not assume that there is one way of fixing a problem, but perhaps many competing interests that can be balanced in different ways, it makes sense to vary our perspective in order to arrive at valuable and useful suggestions as to how we might resolve conflicts of interest. So while I do not believe it is

possible to sketch out an ideal immigration system, I do think it is possible is to offer reasons why some normative ideals are important, and consider what their implications might be if they were to be followed.

In the articles in the Appendix the background assumptions vary. In the first article (section 4.1 and App. i), I rely on the normative ideal of global equality of opportunity, but also assume a methodological nationalist position; that states can and should have control over immigration. In the second article (section 4.2 and App. ii), I only consider the impact on citizens in receiving states and their levels of opportunity and self-respect, bracketing off the issue of global justice and assuming a prescriptive nationalist position. In the third article (section 4.3 and App. iii), I consider migration in the light of Young's theory of structural injustice, do not assume any kind of prescriptive or methodological nationalism, and focus on individual responsibility. By varying my assumptions and testing various ideals I do not aim to reach a definite overall understanding, or at resolving migration injustice, but merely to better philosophically appreciate and understand what kinds of responsibility are involved and how one might go about satisfying them.

As I quote in the third article (see App. iii), Iris Young makes the following point about the limits of philosophical theorising:

No philosophy can tell actors just what we ought to do to discharge a responsibility, nor can philosophy provide a formula for a decision. This philosophy can offer, however, what I call *parameters of reasoning* to which individuals and organisations can refer to decide what makes the most sense for them themselves to do in the effort to remedy injustice, given that there are many problems to address and limited energy and resources for addressing them. (Young, 2010, p. 124)

Philosophers should know their limits, we can sketch out theories of moral ideals and how they might apply. We can make clear how current admissions policies can be justified or problematic. We should do this work while acknowledging the problem of competing ideals, and the potential practical problems in implementation. It is up to policy experts, politicians and people in general, to decide what they want to do in practice. What we can do as philosophers is clarify ideals, and the implications of such ideals for current practices. This is what I have done in the three articles I have written, which are summarised in the next section.

4 Summary of articles

This chapter contains short summaries of the three articles I have written and submitted as part of this thesis. The articles are included in full in the Appendix. The three articles address the issue of the fairness of controls on migration and skills-based admission policies, with three novel philosophical arguments. The first article, summarised in section 4.1., presents an argument for why global equality of opportunity places demands on states in relation to migration, and shows how states could accommodate these demands by altering their admission criteria. The second article, summarised in section 4.2., brackets the question of the effect of skills-based admission criteria on migrants and sending states, and argues that such criteria can have a negative impact on the social bases of self-respect and opportunities of individuals in receiving societies. The third, summarised in section 4.3., argues that global labour migration arrangements are structurally unjust, and that individuals also have a responsibility to help remedy this injustice.

4.1 Towards fairer borders: Alleviating global inequality of opportunity

This article addresses the issue of the fairness of immigration restrictions from the perspective of global equality of opportunity. Broadly, it argues that current admission practices have a negative effect on global equality of opportunity, and that states should alter their admission criteria in order to instead alleviate such inequalities. In order to make this argument, the paper addresses two specific questions: (1) What responsibility do states have to alleviate global equality of opportunity in relation to labour migration? (2) And if states were to assume such a responsibility, what would their admission policies look like? I argue for a position with some latitude given to states to decide their own immigration policies, but also for an increased responsibility for states to take global equality of opportunity into account when deciding on admission policies.

The article opens by considering why global equality of opportunity might be relevant to the fairness of admission policies. The point of departure is the discussion between Joseph Carens (2013) and David Miller (2016) on the responsibilities of states for global inequality of opportunity, and the implications this has for the question of open borders. As Joseph Carens argues, if people are morally equal, they have the same right to attempt to advance in society, and they need freedom to migrate in order to make use of opportunities (2013, pp. 227-228). Carens therefore argues for open borders. I then consider David Miller's three objections to Carens' position, (1) that one cannot compare opportunities across borders, (2) that people's

opportunities are largely the result of domestic policies, and (3) that open borders would lead to brain drain for many countries, thereby negatively impacting the citizens left behind (Miller, 2014, 2016). The article dismisses Miller's first two objections. I argue that we can evaluate relevant opportunities such as education, health care and job market, and that even if we cannot conclusively compare opportunities, some meaningful relative comparisons can be made. Furthermore, I point out that while domestic policies do determine opportunities in countries, states' abilities to provide opportunities for its citizens are largely impacted by the international political and economic system. Finally, I agree with Miller's third objection, but argue that the answer to the harmful effects of brain drain on citizens in countries of emigration, specifically on their levels of opportunities, should be to construct admission policies that take global equality of opportunity into account.

The second part of the article considers what admission policies would look like if we wished to contribute to alleviating global inequality of opportunity. I develop a points-based system for how this might work, called a fairer migration model, which takes into account the impact of migration on the opportunities of the migrant, the opportunities for others in the country of origin, and in the receiving society. Briefly put, this would mean that states have a moral obligation, in addition to considering their own labour market requirements, to prioritise migrants whose opportunities would most improve by migrating, most improve the level of opportunities in the country they are moving to, and least hurt their countries of origin. This would for example mean that if two migrants have the same skill-sets, states should prioritise the migrant who comes from a country with fewer opportunities, so long as a negative effect of their emigration does not offset the benefit for the migrant. In practise it would also mean that many countries in the Global North should prioritise admitting unskilled migrants over skilled migrants, as the former often stand to gain more by migrating, and their emigration is less likely to impact the overall levels of opportunities in the countries they are emigrating from.

4.2 Statements on race and class: The fairness of skills-based immigration restrictions

The second article considers the effect of skills-based admission policies on receiving states, and how these effects should impact admissions policies and the treatment of migrants. It brackets the effects of such policies on other states and the migrants themselves, in order to focus on the fairness of such policies to citizens in the countries employing skills-based policies. I argue that there are good reasons to be sceptical of skills-based migration due to the

effects it can have on the social bases of self-respect and levels of opportunities for citizens in general. In particular, I consider whether Michael Blake's argument against racial selection (2002), might also apply to skills-based selection. Blake argues that even if one does not acknowledge that states have responsibilities towards so-called discretionary migrants, racial selection is wrong because of the message it sends to citizens who share the racial or ethnic identification of the dispreferred prospective immigrants.

Blake describes two kinds of negative impact of racial selection (Blake, 2002). Firstly, such criteria can have an impact on the social bases of self-respect, thereby limiting some citizens' ability to fully take part in society. Secondly, such selection can allow a segment of the population to ensure their numerical, and therefore democratic, superiority over time. I argue that while a straightforward analogy between Blake's argument concerning racial selection and skills-based selection cannot be made, there are some similar effects that need to be considered and weighed when considering the normative grounds for implementing such policies.

First, I point to instances where people have objected to treating people differently based on their skills, health and wealth, and how this might impact views of equality. As it seems clear that people identify differently with their race than with class, due in part to past injustices, I think it is unclear whether such skills-based admissions policies can have the same effect on social bases of self-respect. However, I emphasise that skills-based selection is relatively new compared to racial selection, and that it is also likely that skills-based selection has some impact on the social bases of self-respect and that these might increase over time. Secondly, I argue that while skills-based selection does not have any obvious effects in cementing political power, it can have effects on the opportunities of citizens in the states employing such policies. Among other things, recruiting skilled professionals can limit the incentive of governments to educate their own citizens to do such jobs, and thereby limit the educational and employment opportunities of citizens. I argue that such effects need to be taken into account when considering whether and how states should employ skills-based admission policies. I suggest that these kinds of adverse effects could be alleviated by for example letting in those migrants who would contribute to improving the opportunities of the citizens at large, and by supporting free and accessible public education.

4.3 Structural justice and labour migration: The scope of responsibility

The third paper argues that current inequalities in opportunities to migrate and unequal treatment of migrants constitutes a structural injustice, and that individuals have a responsibility to help remedy this. The article has two main parts. The first part critically discusses Young's theory of structural injustice (Young, 2010), and argues that migration injustice is an instance of this kind of injustice. This is done by using an analogy with Young's example of homelessness. The second part of the paper examines what this might mean for who has the responsibility to ameliorate such an injustice. I show how the structural injustice approach can be used to analyse the responsibility of many relevant agents, but concentrate on the responsibility of individuals, as their responsibility has been particularly undertheorized in the literature.

In the first part of the paper I show how Young distinguishes her concept of structural injustice from liability injustice. While the latter assigns responsibility for an injustice based on one's causal role in bringing it about, the former assigns responsibility based on what social position one occupies in the structure sustaining it. Structural injustice is also forward looking, in that it looks at what position agents are in to reform the structure. I argue that restrictions on opportunities to migrate and differentiated treatment of migrants, constitute a structural injustice. In a similar way to homelessness, this is a socially structured position brought about by many actors behaving according to generally accepted rules and practises, which limits the opportunities of some while benefitting others. The paper furthermore contributes to the theoretical debate on structural injustice by considering two criticisms levelled at Young's theory: its strict distinction between liability and structural injustice, and its insistence that blame is counterproductive. I argue that the explanatory value of Young's model does not rely on a strict distinction, and that there can also be a role for blame and 'disruptive politics' in overcoming structural injustice.

In the second part of the paper, I argue that individuals have a responsibility to ameliorate structural injustice in migration. I use Young's four parameters for reasoning about responsibility: power, privilege, collective ability and interest. I show how wealthy and educated citizens, in particular from the Global North, have responsibility due to their privilege, which they can discharge collectively, through for example NGOs, unions or local government. I argue that citizens in general who benefit from economic migration, also have

responsibility due to their privilege, in particular to rectify the conditions disadvantaged labour migrants find themselves in.

Finally, I argue that disadvantaged migrants also have a responsibility to ameliorate migration injustice, according to the structural injustice model, due to their interest in changing the conditions they find themselves in. While it would be absurd to claim that people lacking an opportunity to migrate or who are treated badly, are causally liable and therefore responsible for the situation they find themselves in, they do have responsibility according to the structural injustice model. This responsibility can be discharged through collective agency, such as advocacy and informal networks. However, I also argue that the insistence that current skills and wealth-based admission regulations are fair, can be seen as a avoidance of responsibility, similar to what Clarissa Hayward refers to as “white privilege” in relation to racial injustice (Hayward, 2017). I therefore argue that there can be a role for disruptive politics in overcoming structural migration injustice, and give the example of illegally migrating as one way disadvantaged people can fulfil the responsibility that stems from their interest.

5 Discussion and conclusion

In this chapter I return to the questions I asked in the Introduction: To what extent are skills-based migration restrictions fair, and how can they be made fairer? What do the articles, when considered together, contribute to the discourse on how we view such migration regulations and differentiated treatment of migrants? And finally, what might be worth examining in more detail?

5.1 What do the articles contribute to the field?

I begin with the question of how states ought to weigh competing demands. After all, the arguments in the articles, summarised in chapter 4 and included in full in the appendix, do not deny that states have the right to control and limit immigration. I am not arguing for an open borders position. Rather, I have argued that there are valid competing obligations, related to national interests, collective self-determination, and migrants' opportunities. I think it is also reasonable to assume that there could be a degree of incommensurability; in that it is unlikely that all reasonable and morally justified obligations can be satisfied. At least we should not assume that all the obligations can be met. Furthermore, based on the discussion on methodology in section 3.3., it seems clear that I cannot stipulate exactly how varying demands can be satisfied and how they should be balanced. That said, what I have done in the articles, and will do here, is to help clarify the implications of theories on equality of opportunity and structural injustice have for how we can morally assess skills-based immigration policies.

So what can we conclude on the basis of the three articles and the foregoing discussion? Well, even if one agrees that states have the right to control their borders and keep strict limits on migration, there are good justice-based reasons to be concerned with the effects of skills-based admissions policies. Furthermore, if we think states have a responsibility to ameliorate global inequality of opportunity, we should take the effects of such policies, both on sending states and individual migrants, more into account when setting up admissions systems. In other words, if states, employers, international organisations and citizens in general want to contribute to global equality of opportunity, as I argue they are morally obligated to do, impact on migrants' opportunities needs to be taken into account. Let us consider why they should do this, before we turn to how they might go about it.

Obligations to alleviate inequality of opportunity and structural injustice are entailed by both relational and non-relational accounts of justice. The type of arguments I rely on are relational

and luck egalitarian, as discussed in section 2.4. It is clear that the state people are born in is a matter of chance and has a large impact on their opportunities, and if one believes such differences due to luck are unfair, states and individuals have a responsibility to remedy them. Furthermore, there are also relational arguments for why states and individuals have obligations to ameliorate inequalities in opportunities. These relational obligations are based on both contribution and benefit. They stem from taking part in structures that give individuals and states advantages, a lack of an effort to contribute to changing such structures, and their continued benefit from sustaining them.

Furthermore, I have shown how there can be adverse effects of skills-based selection on domestic citizens, both through a statement of preference for some types of citizens over others, and a potential lack of investment in educating the domestic population. And while such effects might be outweighed on the normative scales by other concerns, they ought to be taken into account when considering instituting such policies. I have also shown that individuals and other agents, not merely states, have a responsibility to help ameliorate the inequality in opportunities that migrants face. As I discussed in sections 2.4, 3.1. and 4.3, there has been too much of a focus on the responsibility of states, and not enough on the responsibility of other agents. And while there are some notable exceptions,¹⁰ it is clear that there is still much work that can be done on the responsibility of other agents, particularly individuals. For while other global justice issues, such as climate change and poverty, are frequently discussed as matters of corporate and individual responsibility, this is seldom done with respect to migration injustice.

We also need to be honest about the fact that there are competing ideals and interests at play. I doubt that a perfectly just immigration scheme can be found. Yet, one thing we can be certain of is that skills-based migration, at least as currently practiced, is profoundly unfair. This is especially true of countries in the Global North, which exclude unskilled migrants, while admitting those whose skills they need. In the public debate on migration, and in some of the philosophical literature (see section 2.2.4), skills-based selection is often taken as a neutral, acceptable and meritocratic practice. Yet, as the three articles in the appendix and the present text makes clear, this is far from the case. Such practices help perpetuate global inequalities,

¹⁰ Some such notable examples include the considerations of best practices for companies in order to avoid brain drain discussed in section 2.4.1 (Brock, 2009, pp. 201-202), work on international institutions such as the EU (Duarte, 2020; Nuti, 2018), and arguments concerning other actors such as sanctuary cities (Lenard, 2019).

harm some nations' ability to provide for their citizens and limit many migrants' opportunities, and are therefore unjust.

5.2 Policy implications and avenues for future research

How should states, corporations and individuals go about fulfilling their responsibilities towards remedying global migration injustice? As we saw in section 2.3, the migration solutions in the literature are based on different theories of justice and conceptualisations of different problems. Yet, whether they are based on for example the negative duty to avoid harm, or are cosmopolitan and egalitarian, most of the solutions tend to argue for taking more into account the effect of migration on the citizenry at large in the countries of emigration, and give more weight to obligations towards less-skilled and unskilled migrants. As Kim Angel and Robert Huseby have argued, theories building on global equality of opportunity, and related cosmopolitan theories, tend towards gradually opening borders, at least for those who would not hurt the states they emigrate from due to brain drain (Angell & Huseby, 2019). This would also follow from Peter Higgins account, whereby disadvantaged social groups are given preference (Higgins, 2013). My own fairer migration model (4.1 and App. i) is quite similar to Higgins', but whereas Higgins' units of concern and implementation are social groups, I am concerned with individual migrants. However, the implications are similar. As I have argued, most criteria that benefit skilled and wealthy migrants are unjust, states should prioritise unskilled over skilled migrants, and in general treat less-skilled and unskilled migrants better than they do now.

Some of the migration solution discussed in section 2.3, such as improved remittances and easier entry for unskilled migrants, might be compatible with differentiated treatment and fewer rights for guest workers, as discussed in 2.3.5. However, the trade-off between fewer rights for guest workers and the potential for temporary improvements in global equality this might bring about, would also be incompatible with some of my conclusions in the second and third article, since such differentiated treatment could affect the social bases of self-respect for affected groups and would constitute a structural injustice towards guest workers. I agree with both Walzer (1983), and Lenard and Straehla (2012), who consider such a trade-off ill-advised, as long as there is no pathway for citizenship for all guest workers. For while such trade-offs might tend towards global equality of opportunity in the short term, by giving some migrants more opportunities, the potential for entrenching structural inequalities is also great. By perpetuating and institutionalising a system of fewer rights for some people, one is

creating something akin to a modern feudal hierarchy, which once in place might be difficult to remove. This might therefore be an instance where the solution might not actually move one towards the normative ideal or end-state one is striving towards, as discussed in section 3.2. Yet, it is worth noting what Ottonelli and Torresi (2019) persuasively point out in relation to guest workers, that other special rights might be better suited to protect the migrants' particular life situations. However, I think such rights ought to come in addition to, rather than instead of, the opportunity to gain citizenship rights. Irrespective of how one concludes on this issue though, it is clear that there is much room for further study of the impacts of transnationalism on the philosophy of migration. As people live increasingly across borders, it is likely their obligations change, and also the states' responsibilities for such transnationals.

Many of the proposed solutions to migration injustice, discussed in 2.3, appear to be compatible with each other, and are compatible with my own suggestions in the articles. That is, it is likely that they can and should be used concurrently. Of course, some of the proffered migration solutions are more encompassing than others. And while their underlying normative commitments might differ, from a negative duty to avoid harm to cosmopolitan equality, I believe most of these solutions, such as improving remittances, emigration restrictions, rectificatory migration solutions, and prioritising disadvantaged migrants, would all tend toward fulfilling cosmopolitan and egalitarian obligations. Whether this is actually the case, exactly which solutions might be used concurrently, and which normative commitments would tend towards the same policies, would also be a fruitful avenue for further study.

In general, it should be stressed that all of my arguments also allow for the partiality of states, and for states to decide on admission criteria. But they also point to other normative responsibilities states have due to global justice, and that such responsibilities, described in many different ways, should lead one to go beyond prescriptive nationalism, and weigh other factors than mere self-interest when deciding on immigration admissions and treatment of migrants.

Finally, I think the strength of my own solutions to migration injustice discussed in this thesis, is not merely how they might practically contribute to changing the world for the better, but how the various analogies and conceptual frameworks allow us to consider current migration inequalities in a new light. Recall for example Shachar and Hirschl's birthright privilege levy discussed in section 2.3.3. They state that the strength of their proposal is not merely that instituting such a levy would ameliorate global differences in opportunities, but that it also

allows us to see global differences in a new light. As they put it: “by teasing out the similarities between citizenship and other inherited property regimes, we hope to encourage debate about existing distributional schemes, as well as the proposed remedies for the injustice is inherent in the current membership-allocation structure”(Shachar & Hirschl, 2007, p. 282).

The articles in the Appendix, and the solutions discussed above, also show that we have a moral obligation to perform a conceptual shift. By spelling out the implications of normative ideals, which I think most people would agree with, we might be able to perform a conceptual shift towards reconsidering global justice, migrants’ opportunities, and the impact immigration policies have. States, employers, institutions, and individuals should consider global justice and migrants needs more when making policy decisions on admission regulations and treatment of migrants. By considering practical solutions, we are able to see what injustices many agents help perpetuate, and how one might, if willing, begin to take responsibility for remedying them.

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Appendix i: Towards fairer borders: Alleviating global inequality of opportunity. *Etikk I Praksis – Nordic Journal of Applied Ethics*, (2018) 12(2), 11-26.

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Abstract: Current admission criteria for migrants tend to favor those who are well to do, able bodied, and well qualified. This leads to migration patterns that exacerbate global inequalities. In this article, I argue that we should alter admission criteria in order to alleviate some of the negative effects of global inequality of opportunity. In support of this argument, I discuss two global justice theories that are central to borders and migration, specifically a cosmopolitan position that argues for more open borders and a nationalist position that emphasizes the importance of states being in control of their borders. In particular, I address David Miller's objections to using open borders to remedy global inequality of opportunity. The argument I present agrees with the benefits of a conception of justice that allows for degrees of partiality and a state's right to control its borders. However, I argue that the roles of Western states in particular in perpetuating global inequality of opportunity lead to moral demands, which can in part be met by fairer migration. Finally, I consider what kind of criteria fairer immigration should take into account. The system I propose would rank migrants based on their individual access to opportunities, how little their emigration would affect the opportunities in the country they are emigrating from, and to what extent it might improve the opportunities in the country they are moving to.

Keywords: borders, equality of opportunity, global justice, migration

Introduction: *Why is migration relevant to questions of global equality of opportunity?*

Most normative approaches to political philosophy proceed from the generally held assumption that all human beings are of equal worth. However, the kinds of implications this assumption has for how one should actually treat people are hotly disputed. For although most people agree that all human beings are equally valuable, political institutions, private companies, and the international community treat people differently based on many different criteria, such as religious, economic, linguistic, or national distinctions. One of the ways in which people are treated differently is in regards to whether they are allowed into a country or

not. An important task for political philosophers is to consider which kinds of differentiated treatment are morally justified and which are not.

When it comes to migration and questions of global justice, a useful distinction can be made between nationalist and cosmopolitan positions. Whereby the former emphasizes the reasons states are justified in prioritizing their own citizens over foreigners and argues for controlled migration, the latter emphasizes the illegitimacy of many migration restrictions and argues for open borders or more freedom of movement.¹¹ In terms of immigration, they disagree over whether selective immigration regulations are normatively valid, and in which situations and to what extent this might be the case. Broadly put, cosmopolitans argue that the demands of global justice are so strong that a state is only justified in implementing limited migration restrictions, while nationalists argue that the global justice demands are weaker and that it is in everyone's basic interest that states have comprehensive control over their migration restrictions. In this article, I am specifically concerned with voluntary migration, as opposed to forced displacement¹², and with one of the arguments often put forth for the cosmopolitan position, namely global equality of opportunity. I will be using the equality of opportunity argument in order to defend a fairer migration model. This model evaluates whether migration regulations are justified not merely based on the impact a migrant might have on the country they are moving to, but also considers the effect on the country they are leaving, and the improvement in opportunities for the individual migrant.

Before considering why migration might be relevant to questions of global equality of opportunity, I will first describe what such an equality might consist of. Perhaps the most prominent exponent of the cosmopolitan position on migration is Joseph Carens, who argues that open borders are necessary partly in order to accomplish equality of opportunity.¹³ Carens describes the equality of opportunity argument as follows:

¹¹ This picture is somewhat simplified. Nationalists, such as David Miller (2016a: 76- 93), also agree that states have extensive duties towards refugees, while cosmopolitans, such as Kieran Oberman (2016: 49-50) and Joseph Carens (2013: 173- 179), will agree that states have a justifiable right to limit immigration in exceptional circumstances, for example for health or security reasons. In other words, there is a difference of a degree rather than a strict dichotomy between their positions. However, for the purposes of this paper it makes sense to contrast these positions, as they differ starkly in relation to migration restrictions for voluntary migrants.

¹² The reason for this focus is that there is more of an agreement that global justice should matter when it comes to the treatment of refugees and the forcibly displaced, than in relation to those who migrate voluntarily. Furthermore, it seems quite clear that forcibly moving people around contravenes other basic moral principles, such as individual agency, and it is therefore difficult to see how it can be justified.

¹³ The equality of opportunity argument is only one of several arguments Carens puts forward for open borders. He also argues that freedom of movement is an important right in itself, and that it is important to realize other

Within democratic states we all recognize, at least in principle, that access to social positions should be determined by an individual's actual talents and effort and not limited on the basis of birth-related characteristics such as class, race, or gender that are not relevant to the capacity to perform well in the position. This ideal of equal opportunity is intimately linked to the view that all human beings are of equal moral worth, that there are no natural hierarchies of birth that entitle people to advantageous social positions. But you have to be able to move to where the opportunities are in order to take advantage of them. So, freedom of movement is an essential prerequisite for equality of opportunity (2013, 227-228).

Simply put, this is an argument for open borders. Moreover, it proceeds from the premise that the stark divide between nations in access to opportunities is vast; that where people are born is a matter of chance, and that this disparity is therefore fundamentally unfair and should be rectified. In other words, it would seem that if we believe all people are equally valuable, we should provide them with similar access to opportunities. This argument is consistent with economic and social differences between people, often referred to as inequalities in outcomes, and is based on the intuitively appealing idea that people should have an equal chance to attain favored social positions. However, it is still necessary to specify what these opportunities consist in, and which social goods equality of opportunity relies upon. As Carens puts it, “[a] closely related point is that a commitment to equal worth entails some commitment to economic, social, and political equality, partly as a means of realizing equal freedom and equal opportunity and partly as a desirable end in itself” (2013, p. 228). I therefore initially consider equality of opportunity broadly to mean access to social positions, and that this access relies on the availability of social goods such as access to health care, education, and the job market.¹⁴ As we will get back to below, however, how one chooses a particular metric, and whether one can make a global metric of opportunities, is hotly contested.

fundamental human rights (2013: 225-254). However, as it is the equality of opportunity argument I discuss in this paper, these other arguments will not be considered.

¹⁴ This is quite a broad definition, and there has been an extensive debate on exactly what equality of opportunity consists in. Carens' argument for equality of opportunity relies heavily on Rawls' description in *A Theory of Justice*, and since then much discussion has revolved around what types of opportunity need to be equalized and what other kinds of social goods equality of opportunity relies upon. My definition is therefore intentionally broad, in order to be able to accommodate various definitions. For various positions on the equality of opportunity globalized, see for example Gillian Brock's *Egalitarianism, Ideals, and Cosmopolitan Justice* and Darrel Moellendorf's *Equality of Opportunity Globalised?*

This is quite a broad definition to proceed from, as it hardly seems unreasonable to make the point that current global differences in opportunities are unfair and something we should remedy. However, this perspective raises questions of whether the goal of just policies should be the complete elimination of differences, the mitigation of significant differences, and what complete equality might look like. Furthermore, how far is fairer migration supposed to move us towards this goal? The answers to these questions lie beyond the scope of this article, and I am not advocating an ideal situation. Rather, I am pointing to current unfairness in migration practices and making some suggestions as to how this unfairness could be mitigated. Thus far, I can be seen as following Miller, whose stated aim was “to sketch the outlines of a legitimate and justifiable immigration policy for a democratic state in the world that we actually inhabit, replete with inequalities and injustices.” (2016b: 2) In short, I am moving from broadly uncontroversial views on global differences in opportunity, to some potentially more controversial suggestions about how these differences can be reduced. I begin by addressing two objections to using equality of opportunity as an argument for open borders, specifically (1) that it is problematic to compare opportunities between different societies, and (2) that opportunities are largely the result of states’ domestic policies. In light of this discussion, I then consider why altered migration regulations, rather than open borders, might contribute towards global equality of opportunity, before finally presenting a sketch of migration regulations that can contribute towards this goal.

[Nationalist objections to global equality of opportunity](#)

Before discussing how this type of equality of opportunity is relevant to questions of migration, I will consider some objections to the argument that in order to have global equality of opportunity, we need open borders. In *Strangers in Our Midst*, David Miller presents a comprehensive and convincing defense of the nationalist position, and argues against the relevance of global equality of opportunity for evaluating whether migration restrictions are just or not. The argument I propose must therefore be able to meet his objections. Miller attacks the equality of opportunity argument for open borders by arguing that: (1) there are problems in evaluating opportunities across cultures, (2) the level of opportunities are largely the result of domestic politics in states, and (3) there is a possibility of a brain drain from the countries of origin. The point about the brain drain will be addressed in the next section. Before doing so, I will comment on Miller’s other two points in particular and the nationalist position in general.

One cannot compare opportunities across cultures

First, let us consider the suggestion that evaluating opportunities across cultures poses problems. As Miller puts it: “There is no agreed metric that can be applied to rank the sets because how particular opportunities are to be valued relative to one another will depend upon the local culture” (Miller 2016a: 46). It should be stressed that Miller does not think this applies to basic human rights, and he draws a strict division between basic rights and equality of opportunity. The differences which he does not think can be used as a normative basis when it comes to alleviating global inequality of opportunity through migration, are differences relating to things such as “to get an education, to enter the job market, and to make money” (Miller 2016a: 44). While the merits of such a differentiation might be debated, let us take it for granted for the purpose of the present discussion.

Miller’s argument does not claim that it is difficult to measure the differences between cultures, but rather that these kinds of metrics out of necessity prioritize one particular cultural vantage point. Different nations and cultures prefer different kinds of opportunities; therefore a comparison between them is not relevant to questions of global justice and migration. Another formulation of this argument is put forward by Gillian Brock, who argues,

Either we must try to articulate a version of equality of opportunity that mentions particular social positions that are favored, and opportunities to achieve these are equalized, or we allow much cultural variation on what counts as a favored social position, and the standards of living or levels of well-being that they enable are to be equalized (2015: 29).

Put simply, the problem is that either the favored social positions and standards of well-being are too broad, and therefore cannot be useful as a comparative metric, or the metric favors some particular cultural standard over others.

Now, while it is certainly the case that various countries prioritize different sectors, such as health, education, and the job market, it does not necessarily follow that their ability to prioritize these sectors is the result of national priorities. And, if their ability to provide opportunities is significantly affected by outside factors, the fact that they might prioritize various sectors does not necessarily remove the moral culpability for creating this disparity. We consider this more closely in the next section, so let us first turn to the contention that it is in fact necessarily parochial to rank these opportunities up against each other.

It is clear that different cultures have variations in preferences. However, that does not mean that no significant overlap exists, and that this overlap might not be meaningful in discussions about variations in opportunities. For while differences in preferences might vary, it is a much stronger claim that they vary to such a degree that comparisons between them are not valuable in moral discussions about differences in equality of opportunity. After all, one would be hard pressed to make the case that some cultures prefer high unemployment and poor access to decent health care. Indeed, just because states have internal variations with respect to preferences, we do not consider this a reason to abandon an attempt at overall considerations of justice and opportunities in the domestic setting. And while the variation is undoubtedly greater in the international setting, the mere fact of difference does not make comparisons invalid as foundations for normative evaluations. As Darrel Moellendorf argues, Brock's cultural variation challenge can be met "if there were an account of the goods – for which opportunities should be equalized – that is both free-standing, that does not derive simply from the cultural understandings of a particular culture, and sufficiently sensitive to empirical matters as to capture real differences of opportunity" (2006: 309). In short, we would need a sufficiently general and empirically sensitive metric in order to make valuable comparisons.

Furthermore, access to education, the job market and decent health care certainly seem to be likely contenders as aspects of society that are globally valued. As Eszter Kollar points out, "some global egalitarians have responded [to problems of global value pluralism] by proposing a core set of goods that should be seen as all-purpose means in global political life" (2016: 4). So, while the content to be included in such an evaluative standard will be hotly disputed, the fact of value pluralism does not mean that a variety of meaningful evaluative standards cannot be found.

There are also various ways in which one can approach the problem of deciding on an overall metric. One might concede that it is difficult to agree on such a global metric, and yet believe that meaningful comparisons can be made in the case of evaluating the opportunities of individual migrants. As I propose below, a measure of opportunities for individual migrants might take into account their access to education, the job market and health care in both the country they are moving from and the receiving country. So, while we might struggle to create an overall metric for all people, we can likely say something meaningful about specific migrants' access to opportunities and how these may or may not be improved.

In short, I do not make the claim that we can create some kind of overall objective metric by which to consider all opportunities and global justice. I am merely contending that some relative comparisons are normatively meaningful, in particular when it comes to judging potential migrants. Furthermore, while all people probably cannot agree on a standard system of differentiation, they can surely provide some facts as a basis for reasonable democratic deliberation of responsibility. Perhaps a general description of variations in opportunities and obligations that stem from them could be put forth. After all, we seldom demand empirical exactitude on domestic considerations of justice from philosophers, so why should this be the case in the international setting?

One should not compare opportunities across cultures

Another and perhaps more central aspect of Miller's objection to the possibility of evaluating differences is that it is not fair to use these varying opportunities as a measure, since they follow from the self-determination of the countries in question. In other words, these differences are largely the results of different priorities made by different states, and therefore not relevant for the current discussion. As Kollar formulates this nationalist argument, "[g]lobal equality of opportunity wrongly neglects the normative relevance of national self-determination that inevitably produces different opportunity sets for different nationalities. [...] It is not that we cannot compare, but that we should not compare opportunities across borders" (2016: 4). Therefore, we must consider the question of how these differences in opportunities come about, and make the case for why these differences are in fact relevant for our present discussion.

As most people would readily agree, the differences in opportunities across borders are vast, in particular between countries in the Global North and the Global South. However, there is a lot of disagreement about whether, and to what degree, these differences are the outcome of legitimate national priorities or due to other causes. A nationalist position might state that these differences in opportunities are not normatively relevant to questions of admission policies, insofar as they are the result of domestic political decisions for which the nation can be held responsible. Higgins describes this nationalist argument as follows:

If the global poor are understood merely as needy strangers whose poverty is causally unrelated to the affluence of the Global North, then choosing admission policies in a way that is responsive to their interests appears, wrongly, to be a matter of charity (2013: 30).

An initial objection to the nationalist position might question why migrants should be held responsible for the domestic policies in their home countries. Indeed, most of these kinds of decisions are taken before and without most individuals' explicit blessing. Why should the opportunities in a country therefore count for anything in evaluating whether migration restrictions are justified? A nationalist will likely respond that the relevant question here is who bears the responsibility to fix global disparities in opportunities. How can one make the case that a prosperous country should alleviate global differences, if they are not responsible for bringing these differences about? While I do think this objection has merit, the nationalist position should nevertheless be addressed.

It is clearly correct to state that the level of opportunities is to a certain extent the result of domestic policy. However, this is hardly the whole story. The level of opportunities in countries is also influenced by other countries' foreign policy, trade policy, and the international political system to a considerable degree. Even when it is difficult to show exactly how disadvantages come about, this still does not mean that the causes lack normative validity or do not place moral demands on us. The point is that global inequalities generally have complex causes, and are not merely due to national priorities. As Kollar (2016: 5) says, "Those differences that are not the outcome of legitimate national priorities, instead, should be judged as unjust global inequalities of opportunity to be properly mitigated from life-prospects."

One way of explicating this unequal relationship can be found in the work of Thomas Pogge. He points out how certain features of the international system systematically disadvantage the ability of other countries to fulfill the human rights of their citizens. For instance, Pogge (2001: 20) describes the "international borrowing privilege" and the "international resources privilege." The former in part "facilitates borrowing by destructive governments" and "imposes upon democratic successor regimes the often huge debts of their corrupt predecessors" (Pogge 2001: 20). "Resources privilege" allows the group in power in a country to be considered the legitimate owners of that country's resources, whether their citizens are represented or repressed. In short, Pogge explicates how these privileges maintain an unfair international system, which benefits the interests of some in richer and more influential states over others. If we take this to be the case, it seems clear that the vast differences in opportunities between states are not the result of legitimate national priorities, but rather the

result of unfair trading practices. In other words, regardless of how some countries might decide to prioritize, the vast differences in global opportunities will remain.

Another point pertains to aspects of the international financial system, which allows for vast transfers of wealth from poor to rich countries. A recently published report by Global Financial Integrity and the Center for Applied Research at the Norwegian School of Economics shows how the financial resources that flow from poor to rich countries are far greater than those that flow in the opposite direction, and that the international financial system allows for this reverse distributive effect:

In 2012, the last year of recorded data, developing countries received a total of \$1.3tn, including all aid, investment, and income from abroad. But that same year some \$3.3tn flowed out of them. In other words, developing countries sent \$2tn more to the rest of the world than they received. If we look at all years since 1980, these net outflows add up to an eye-popping total of \$16.3tn – that’s how much money has been drained out of the global south over the past few decades (Hickel 2017).

In sum, it can be argued that there are many aspects of the international economic, political and financial system that contribute to countries’ financial ability and political stability. Furthermore, since the level of opportunity in a country relies directly upon the government’s ability to deliver decent health care, education, and job markets, a grossly unfair international system that perpetuates these differences seems particularly relevant when considering states’ responsibilities to alleviate them.

[Why might migration be relevant to alleviate global inequality of opportunity?](#)

Even allowing for the arguments that some states benefit from an unjust global system and contribute to perpetuating global inequality, some might ask why this inequality is relevant to questions of migration and admission policies. Some people might indeed say that all I have done is show that some trade policies are unjust, that these affect the levels of opportunities, and that this is something that should be remedied. However, why should the solution to this problem have anything to do with migration? Responding to this challenge requires answering the question of how open borders, or increased migration, might contribute to alleviating this inequality. One way to respond is to follow Carens, who states, “Freedom of movement would contribute to a reduction of existing political, social, and economic inequalities. There are millions of people in poor states today who long for the freedom of economic opportunity

they could find in Europe or North-America” (2013: 228). But as Miller and Higgins, among others, have pointed out, the idea that open borders would significantly reduce global inequalities does not mesh well with how migration actually occurs. Indeed, as it is only those who can afford to who can travel, it has been argued that open borders would not contribute towards alleviating global inequality of opportunity, and might even negatively affect it.¹⁵ According to Higgins, the open border position relies “on an idealized conception of the typical poor migrant’s social wherewithal, as well as on an explanatorily nationalist understanding of the causes of severe poverty” (2013: 64). In other words, this position builds on a wrongly held belief that the causes of severe poverty are local, and that people lacking opportunities and basic rights have the social and financial resources to migrate. As Higgins puts it, “the structural causes of social disadvantage in virtue of which persons are vulnerable to severe poverty are not themselves addressed by changing potential migrants’ location of residence” (2013: 64).

Since open borders might not be a solution to the problem of alleviating global inequalities of opportunity, why should we care about migration at all in connection with global inequalities? Here we must distinguish between arguments for open borders and arguments for fairer migration. Although the former might not improve global equality of opportunity, it seems more likely that fairer migration, which takes into account global inequality of opportunity, would do so. Nevertheless, some might argue that given the effort it would take to alter unfair admission practices, we should instead focus on remedying an unfair international system. As Pogge argues, “With the political effort it would take to pressure some Western government to admit an extra hundred needy foreigners, we could alternatively pressure this same government to allocate a few extra million dollars to global poverty eradication” (1997: 17). In other words, rather than making the difficult point that we should admit people according to fairer migration criteria, our efforts are better spent arguing for more practical measures to reduce extreme poverty.

¹⁵ Scholars do however disagree on the effects migration may have on global differences, and what the potential effects of open borders might be. For example, Kieran Oberman argues that there is substantial evidence that migration in fact reduces poverty (Oberman 2015). Even though it may be the wealthier citizens who migrate, and their families who receive remittances, the money that is then invested and used has broader effects on the sending society. Furthermore, Oberman argues that migration can diffuse knowledge and thereby be beneficial for the sending society, and he shows that an increase in high-skilled emigration can also lead to an increase in the education of highly skilled persons in society in general. While this might be the case, it does not seem to detract from my general line of argument. After all, Oberman also points to the negative effects of brain drain, and that migration restrictions can justifiably be restricted to limit such effects.

One can respond to this objection in several ways: first, by pointing out that arguing for fairer migration will also indirectly highlight the inequalities inherent in the global system. In other words, a normative reconstruction of our admission criteria might draw attention to global inequalities, which most definitely need addressing. Second, one might show how some unfair admission criteria actually contribute to, indeed are perhaps even integral to, the unjust international order. So, whereas poverty eradication might indeed give more of a return for each dollar spent, unfair admission criteria can be shown to play an integral role in a globally unequal system that contributes to extreme poverty. Third, one might contend that this is not a zero sum game, and that the more arguments that are raised concerning global inequalities and the systems that perpetuate them, the better.

In short, I argue that because many affluent countries are apparently unwilling to rectify global inequalities, and in some cases even actively perpetuate them, these countries have a moral obligation to admit migrants on fair terms. I am not claiming that this is the ideal solution to the problem of global inequality of opportunities, merely that it is relevant to questions of justice and migration. While these arguably justifiable demands for fairer migration might not be met either, it is still important to point them out.

Finally, some people might criticize both open borders and my suggestions for fairer migration criteria by pointing out that states have a right to control their borders, and that this right is needed, and normatively justified, in order to uphold the basic functions of a liberal democratic state. Miller states that liberal democracies have a right to control their borders due to concerns over “self-determination, the functioning of democracy, and population size” (2016a: 75). So there are good reasons to assume that some selective admission criteria are necessary to facilitate the proper functioning of a working democracy. However, even though a state might be justified in limiting and controlling immigration, the migration restrictions that a state implements can still be evaluated as to whether they are conducive to global equality of opportunity or not.

The question then arises of what type of admission criteria would contribute to global equality of opportunity. If states are justified in controlling immigration, and open borders are not conducive to global equality, what kind of immigration regulations would alleviate global inequalities of opportunity? Furthermore, how can we practically evaluate whether states’ immigration regulations are appropriate to achieving such a goal? As previously discussed, a universally accepted metric of global equality of opportunity is unlikely, and states are more

likely to have readily available information on the opportunities of specific migrants seeking admittance. Specifically, countries are more likely to be able to deliberate on relative differences in opportunities between sending and receiving countries than the effect migration regulations might have on overall global opportunities. The most readily available data for countries to consider is the impact a potential migrant has on the country they come from, the country they are moving to, and the effect of the move on the individual migrants. These factors could work as proxies, allowing migration regulations overall to be conducive to global equality of opportunity. Put simply, the moral reasons for countries to alter their admission criteria are the vast global disparities in opportunities, and the practical way to alter the admission criteria is based on the data readily available to the countries in question. In the following, I present an outline for what such fairer admission criteria would look like.

[What kind of migration criteria would alleviate global inequality of opportunity?](#)

In order to describe fairer migration regulations, I have to be able to find some criteria that are empirically viable, and sensitive to both the effect on the individual migrants' opportunities, as well as to the effect on the overall opportunities in the country they are moving from and to. In brief, one needs criteria to evaluate whether and to what degree allowing someone to migrate alleviates global inequality of opportunity. In the following, I describe which criteria I believe can fulfill this function, before briefly considering some objections that my model for fairer migration criteria might face. The admission criteria I propose that can manage this must evaluate whether migrating on balance: (1) does not negatively impact the overall level of opportunities in the country of origin through a brain drain effect, (2) positively affects the overall level of opportunities in the receiving country, and (3) distinguishes to which degree a migrant's opportunities will be increased by moving.

This should not be considered an exhaustive list of factors for how migration affects global equality of opportunity. One might for example plausibly argue that it is necessary to consider the effect of migration regulations on global equality of opportunity, as in the overall level of opportunities globally. Some might indeed contend that increased overall migration positively contributes to the global economy and thereby opportunities in general. However, the three factors listed above – effect on country of origin, effect on receiving country, and effect on the opportunities for the individual migrant – seem to be particularly relevant and the factors for which we are most likely to find readily available data. Furthermore, based on the discussion of global metrics of opportunities above, comparisons of potential migrants'

opportunities in sending and receiving countries are more likely to be readily available, and empirically sound, than some ideal global metric.

Brain drain, the effects on receiving country and individual migrant

Moving on to these specific factors, we should first consider how a brain drain effect could negatively affect countries that migrants are moving from. As the phrase implies, this effect is related to the problems countries face when much of the human capital in a country moves abroad. Miller describes this phenomenon, saying,

the ones who have the resources – the savings and the education – that enable them to do this will be the ones who are already relatively advantaged in their societies of origin. [...] It may even turn out that the opportunities of those left behind are reduced in absolute terms, if those leaving are skilled professionals who would otherwise provide education, health services, or competent administration in their home country (2016a: 48).

While there is some disagreement as to the supposed effects more open migration might have on brain drain, this is not the place for that discussion.¹⁶ However, it is worth considering the negative systemic effects that are caused by brain drains as a result of current migration patterns. As Higgins says: “Large-scale emigration, in fact, initiates a self-perpetuating cycle of underdevelopment in already poor countries, since lost human development prospects both discourage emigrants from returning and encourage more residents to leave” (2013: 67).

Furthermore, states are increasingly using highly selective immigration standards, in order to attract the kinds of migrants they wish to admit. Ayelet Shachar points out that “[b]y continually ‘retooling and recalibrating’ selective skills-based admission avenues to attract the best and brightest, governments engaged in the global race for talent have demonstrated their willingness and their ability to intervene in the market for the highly skilled” (2016: 180).

So, if we wish to avoid the negative effects of brain drain, how will this affect our admission criteria? Intuitively, it implies that when considering migration restrictions, we should weigh the impact the departing migrant has on the overall level of opportunities in the country of origin. A likely result of this could be that we should allow more migration of skilled professionals from countries with more overall opportunities to countries with fewer opportunities than the other way around. This is due to skilled professionals contributing

¹⁶ See for example Joseph H. Carens *The Ethics of Immigration* pp. 183-184.

significantly to the overall level of social goods that opportunities rely upon. In order to have a decent health care system, one needs doctors, and in order to have good public education, one needs teachers. When it comes to unskilled migrants, it would seem that fewer restrictions would apply to those moving from less affluent to more affluent societies; one might even argue that according to this first criteria, the less skilled the better. This is due to a large number of unskilled workers often being a strain on social goods such as health care and education, as well as contributing to more competition in the job market. Such evaluations must furthermore be made on the basis of an examination of the opportunities in different countries, as the needs and supply of skilled and unskilled workers will vary from country to country. Different countries also have varying levels of resources with which to provide opportunities for their citizens, and the impact of skilled and unskilled emigration will vary. Some countries will benefit more from emigration, thereby freeing up opportunities in the labor market for the domestic populations, whereas others would suffer more if important institutions were affected by a lack of human capital.

Second, the effect the migrant might have on the receiving country also needs to be taken into account. In relation to this second criterion, similar evaluations to those above must be made, but with the emphasis on the receiving country. Furthermore, in order for the migration restrictions to contribute to global equality of opportunity, one needs to balance the effects on both countries against each other. If the effect of a proposed admission policy greatly benefits either the sending or receiving country to the detriment of the other, it would seem to be problematic. However, if one country benefits greatly, while the other country is only slightly negatively affected, the admission policy would appear to be fairer.

Third, one also needs to consider the effect migration might have on the opportunities of individual migrants. People have differing levels of opportunity in their countries of origin, due to different factors, such as varying levels of unemployment and access to affordable education. This third criterion will therefore allow us to prioritize individual migrants, where the effect on the first two factors, the sending and receiving countries, is similar. In short, it would enable prioritizing those migrants whose individual opportunities would increase the most by being admitted, while deprioritizing potential migrants who would benefit less.

What would a fairer migration model look like?

So, how might we envisage a policy that takes the benefits for the migrant, and the receiving and sending countries into account? A popular tool among current types of selective

immigration standards is the Australian-style points-based system. A “fairer migration” policy could be modeled on this points system, albeit heavily modified. The Australian system ranks people according to how their skills match the Australian job market, with accountants and mechanics ranked highly, for example (Shachar 2016: 181). Further requirements specify that the migrants should not place a significant burden on the Australian health service, have a criminal record, or pose any threat to the Australian community (Donald 2016). This system evaluates migrants similarly to one of the criteria listed above, namely how beneficial they will be to the country they are moving to.

Conversely, a fairer migration model points system would first consider to what degree the potential migrant’s skill is needed in their country of origin, rather than in the receiving country. If the individual was particularly unhealthy or considered a danger to society, on the other hand, this could also cause positive discrimination to be applied, according to this first factor. This person's emigration could be seen as potentially contributing positively to the overall level of opportunities in their country of origin. Following this logic, doctors, university professors, or engineers might be at the back of the queue, if the professions were understaffed in their country of origin. This would broadly allow one to limit potential brain drain effects. Second, one would need to evaluate how much the overall opportunities in the country they are moving to would be improved. If a severe lack of doctors or teachers exists in the receiving country, for example, this would cause these professions to be positively discriminated. This is because of the positive effect they might have on the level of social good, which the opportunities in the receiving country rely upon. This could for example allow for easier movement of skilled workers, such as medical professionals, from the Global North to the Global South than the other way around. This is due their potential impact on overall opportunities being greater in the Global South than the negative impacts of their emigration on countries in the Global North. Third, in order to progress towards global equality of opportunity, people would have to be positively discriminated on the basis of how much their individual opportunities would increase by migrating. In other words, two migrants with the same skill set could be treated differently depending on how much their skills, or lack thereof, benefit them in their country of origin. Faced with many potential migrants, and states that are only willing to admit a limited number, this third criterion would clearly give priority to those individual migrants whose opportunities would increase the most by migrating.

In order to explicate how one might balance these factors, this fairer migration model can be contrasted with current practices controlling migration. Common migration regulations include: requiring people to earn a certain amount before being eligible to apply for family reunification; needing to show a minimal amount of capital before being accepted on student visas; programs letting people with particular skills receive visas; and programs making it easier to migrate if one is sponsored by an employer in the receiving country. Clearly, these practices can be criticized based on the model presented above. After all, these practices, implicitly or explicitly, merely evaluate a potential migrant on the basis of only one of the three criteria, in this case how much the receiving country might benefit from their arrival.

If we consider some of these specific cases according to the fairer migration model, we can see that some of the evaluations would be significantly different. In particular, it would be more difficult to argue that people should earn a certain amount of money for families to be reunified, if the country they emigrate from does not stand to lose much from their emigration and their individual opportunities are greatly enhanced by migrating. In short, a large positive effect for the migrant and a negligible effect on the country of origin would need to be balanced against a slight downside for the receiving country due to lack of financial means. In the case of student visas, a case might also be made for the students with lesser means being accepted first as it greatly improves their individual opportunities, though this has to be weighed against the receiving state's ability to provide higher education. All in all, the kinds of migration regulations that merely consider the receiving society would have to take account of the impact on the country of origin and on the individual migrant to be justified according to this fairer migration model.

In order to evaluate the viability of such a model, I need to briefly consider some of the objections it might face. However, it is important to initially point out that this fairer migration model does not rule out other considerations of justice, such as the agency of migrants. While it might seem like this system has the potential to be used to justify forced movements in order to alleviate global inequalities, it would clearly be unjust to do so, since this would contravene the fundamental normative consideration of individual agency. Therefore, this system would only apply to people who want to migrate, or who already have and are seeking residency. One might furthermore object to the fairer migration model by arguing that this kind of migration is undesirable, as it could lead to less social unity in the receiving society, and that the migrants I propose should be admitted would be perceived as

undeserving. Another detraction might be that this system could create some perverse incentives, whereby individuals would be encouraged to, for example, take less education, thereby limiting their opportunities and increasing their possibilities to migrate. Finally, one might contend that I am ignoring racial and gender discrimination in immigration practices.

While the above concerns would need to be addressed before such a fairer migration model could be implemented, a thorough examination of them is beyond the scope of this article. But it is worth adding that the system outlined above also needs to be balanced against other aims of general immigration policy. It should not overwhelm the receiving society, and there would therefore have to be a limit to the numbers of migrants being admitted. It should also not discriminate against people arbitrarily, on the basis of such factors as race and gender. And while the system could create perverse incentives for some individuals by potentially prioritizing unskilled over skilled migrants, it is also doubtful that these incentives will override their motivation to better themselves. Furthermore, a fairer immigration policy should allow for migrants to be properly integrated to ensure the continuing democratic deliberations of the receiving society, and it would somehow have to be broadly accepted among the host population. However, it has to be acknowledged that the latter might be hard to achieve in the current anti-immigration climate that prevails in many Western democracies. In short, any implementation of the fairer migration model would also have to take these objections into consideration.

I should point out that I think it is unlikely that a system such as the one outlined above is likely to be implemented, considering the present situation in which the United Nations refugee agency is finding it difficult to convince countries to resettle even a limited number of refugees. Therefore, rather than delivering a fully-fledged policy proposal, I suggest that these kinds of criteria would be more just according to the demands of global justice. In short, I believe this model would be better able to fulfill the obligations states have to rectify global inequalities that they are responsible for perpetuating. And furthermore, I believe this model would be a far more just system than many current admission criteria that positively discriminate in favor of the wealthy and educated.

Conclusion

In this article I have considered how one might alter migration regulations in order to contribute to alleviate global inequality of opportunity. I started by considering some of the major objections to the relevance of global inequalities to migration regulations, first by

discussing how global inequalities might be compared. While I agree with the criticism that evaluations between various cultural preferences in opportunities can be problematic, I believe that valuable comparisons can be made, in particular in relation to health care, education and the job market. Secondly, I showed why migration is normatively relevant for considerations of global equality of opportunity. In short, as affluent countries both contribute to and benefit from a global trading and financial system that significantly diminishes poorer countries' ability to provide opportunities for their citizens, the affluent countries have a moral obligation to alter this. Furthermore, since these countries do not significantly attempt to alter these underlying conditions, and unfair migration practices are a part of an unfair system, it is pertinent to consider what kind of migration might actually contribute to alleviating inequalities of opportunity. Third, I argued that greater equality of opportunity could in part be met by reevaluating admission policies for migrants. Instead of merely considering how much a country might benefit from receiving a migrant, one should also consider whether, and to what degree, potential migrants might affect the level of opportunity in their country of origin, and to what degree their individual opportunities might be improved by migrating.

I concede that the argument outlined here somewhat oversimplifies affluent states' part in an unjust global trading and financial system. Some states attempt to rectify or maintain this international system to varying degrees. Some differences in opportunities can also be more readily traced back to national priorities than others. Moreover, some countries have more resources than others and are more readily able to admit greater numbers of migrants. I have not shown to what degree various states can be seen as responsible for remedying these unjust conditions, as this question is beyond the scope of this article. However, this does not take away from the normative validity of the central argument. In sum, as affluent states benefit greatly from international trading and migration practices to the detriment of less developed states, they are morally obliged to alter their immigration practices in a way that alleviates these inequalities. And while it may not seem feasible to expect states to alter their practices in order to admit migrants whom they do not necessarily benefit from admitting, it is certainly not likely that they will alter their practices if their moral unfairness is not pointed out.

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Appendix ii: Statements on race and class: the fairness of skills-based immigration criteria, *Ethics & Global Politics*, (2020) 13:2, 108-122.17

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Abstract: It is often argued that states do not have any special obligations towards economic migrants, and that skills-based selection of migrants is morally unproblematic. In this paper, I argue that even if one does not endorse special obligations towards economic migrants, there are good reasons to be critical of skills-based selection due to its effect on the citizens in the country they are migrating to. I introduce the issue of the impact of migrant selection on domestic populations by considering Blake’s arguments against racial selection in immigration. He argues that racial selection is wrong because “[...] making a statement of racial preference in immigration necessarily makes a statement of racial preference domestically as well” (Blake, 2002, p. 284). In this paper, I consider whether a similar case can be made against selecting migrants based on their marketable skills. I begin with a short overview of skills-based selection and some of the normative arguments put forward in favour of it, before considering Blake’s argument. Thereafter I show how Blake’s example of race differs significantly from selection based on skills, in part due to the nature of identification with race and skills. However, I argue that the effects of skills-based selection on domestic population also need to be considered in any normative argument proposing such migration regulations. These effects include changes in our evaluations of equality and citizenship, negative impact on the social bases of self-respect, as well as specific disadvantages for segments of society and a negative effect on social mobility.

Keywords: Economic migration, skills-based selection, self-respect, philosophy of migration, immigration

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Introduction: Skills-based immigration

In the philosophical debate on migration there has been some discussion on the fairness of the selection of high-skilled migrants due to its effects on countries of origin through “brain drains”.¹⁸ However, less attention has been paid to how skills-based selection in general impacts the countries these migrants are moving to, and how such an impact should affect an evaluation of the fairness of such policies. In this paper, I address this issue by critically discussing how skills-based selection affects citizens in countries enacting such regulations. In short, I argue that skills-based selection is morally problematic due to its effects on parts of the domestic population. As such, I bracket the question of whether selecting migrants based on their skills is unfair to the migrants seeking admittance and their country of origin, and show how it can be unfair to some of the citizens in the country they are migrating to. This unfairness is due to skills-based selection sending a message of preference to lower skilled or working class citizens, the effect this can have on these citizens’ social bases of self-respect, and the policy’s potential to limit the opportunities for the domestic population. Before I proceed to the normative discussion, I next give a brief overview of what is meant by skills-based selection, and some of the arguments put forward for these kinds of immigration regulations.

What is skills-based selection?

Skills-based selection refers to labour migration regulations that evaluate people according to their marketable skills, and give differentiated treatment on the basis of these evaluations. These kinds of evaluations are increasingly being made, and in more sophisticated ways, as states attempt to fill gaps in their labour market. For example, there is an increasing global competition to attract many so-called highly skilled migrants, such as IT specialists and experienced engineers. Health care professionals are also particularly sought after, as an aging population and increased spending on health care have increased the need for these workers in many countries in the Global North. Furthermore, as Castles (2006) points out, there is a global trend towards more guest worker programs, whereby typically lower skilled workers are given temporary and conditional contracts. Finally, the need for unskilled migrants in many countries is fulfilled by so-called “illegal” migrants, who have no official residency

¹⁸ See for example *Debating Brain Drain* by Brock and Blake (2015), for a discussion on whether brain drain can justify emigration restrictions.

status. Increasingly then, countries in the Global North and Global East, such as Canada, Australia, the United Kingdom, Singapore, and Denmark, are systematically differentiating their treatment of labour migrants, giving preference and beneficial conditions to highly skilled workers, while either allowing lower skilled migrants entry subject to certain restrictions, allowing them in on temporary visas or barring their entry.

Before I proceed, a few points on terminology and scope are in order. It is worth noting that the definition of skills is highly contentious, and different approaches define skills in a variety of ways. These definitions can be based on higher education qualifications, work experience, occupation and/or salary.¹⁹ Different countries all have their own definitions of high-skilled, low-skilled and unskilled. While the Organisation for Economic Cooperation and Development (OECD) defines a persons level of skill on the basis of years of education, some countries define it according to what types of visas they are eligible for. The UK has no official definition of what counts as low-skilled, but it is commonly used about people who do not qualify for Tier 2 working Visas. As these are given on the basis of projected earnings, low-skilled can therefore for example refer to carers or cleaners.²⁰ Canada on the other hand has several different types of skill levels (0, A, B, C and D) in its official immigration regulations, wherein managers, professionals and certain trades are amongst those considered high-skilled, whereas: “Skill Levels C and D occupations include semi- and low-skilled workers in the trades, primary and manufacturing industries, sales and services, as well as certain clerical and assistant categories” (Canada, 2019). It therefore seems difficult to conclusively define what counts as “high-skilled”, “low-skilled”, “unskilled”, or even “semi-skilled”. However, I will for the purpose of this paper consider high-skilled individuals to typically be higher earners working in sectors such as management, IT, or medicine, whereas low-skilled refers to lower earners such as carers, cleaners, etc. Finally, unskilled refers to people without any trade specialisation, higher education or personal wealth.

Although skills-based selection varies from country to country, both in terms of which factors they consider and the proportion of migrants selected by these systems, I consider them

¹⁹ For an overview of the debate on how skills are defined in immigration policies and the merits of these varying definitions see Boucher (2019).

²⁰ Due to increased earning requirements, however, nurses can also frequently be unqualified for a Tier 2 visas. (Sumption, 2018)

similar enough to treat them as one type of migration regulation in this paper.²¹ When it comes to the scope of the paper, I am primarily referring to skills-based migration restrictions enacted by countries in the Global North, as these are the countries that have come furthest in instituting these kinds of restrictions. Now it is worth noting that many countries have migration streams in addition to skills-based selection, most notably family reunification and refugeehood. However, skills-based selection is increasingly being adopted and advocated by politicians. Many countries are also placing restrictions on other migration streams, for example by limiting the number of refugees they receive, and making it harder for people to be reunited with their families. Skills-based selection is also increasingly being used on other migration streams. Antje Ellermann traces this development to the rise of human capital citizenship: “As a membership *status*, human-capital citizenship renders the link between membership and its benefits conditional and tenuous, transforming rights into earned privileges” (Ellermann, 2019b, p. 2). This leads to increasing precariousness of many migrants’ rights, whereby they have to continuously live up to the varying countries assessment of their skills and economic contribution.

Ayelet Shachar has shown how there has been a paradigm shift in countries’ immigration regulations from selecting by origin to selecting by skills. Whereas previously most countries decided who could immigrate to their country based on the nationality of the person seeking admittance, countries are increasingly using skills-based systems to evaluate who should be allowed entry. These systems are said to be impartial and fair, as they evaluate all potential migrants according to an objective, impartial and transparent metric, rather than according to their race, religion, or country they were born in. As Shachar puts it: “Today’s skills-based migration priorities reflect a technocratic, econometric, and managerial logic that aims to bring an air of objectivity (though measures such as the point-system rubric) into the

²¹ It is worth noting that “merit-based”, “needs-based” and “skills-based” are often used as synonyms in the philosophical and political debate on migration. All these terms refer to a variety of systems that select immigrants based on such characteristics as their skills, education, wealth, health or age. In this paper I use the term skills-based to refer to these kinds of systems. Furthermore, points-based systems are a mechanism used by some skills-based systems, which rank a migrant’s skills and characteristics according to a mathematical metric, and those who reach a certain total number of points are eligible to apply for a visa. The skills and characteristics countries use are typically chosen in order to attract the workers they need, while minimising the expenditure incurred by these migrants on such things as health care or language training. Skills-based systems are in place in countries such as Denmark, Finland, France, Germany, Ireland, Japan, the Netherlands, Sweden, the Czech Republic, Singapore, South Africa, Lithuania, and Romania. (Pottie-Sherman, 2013, p. 558). Countries such as Canada (1967), Australia (1989), New Zealand (1991), Hong Kong (2006), and South Korea (2018), have implemented points-based systems.

otherwise deeply charged and politicized terrain of discretionary immigration” (Shachar, 2016, p. 183). Having briefly sketched out what is meant by skills-based selection, I will now move on to discuss some of the normative arguments put forward for the fairness of these kinds of systems.

The arguments for skills-based migration

Most political philosophers working on immigration do not consider education and skills-based selection particularly problematic.²² And while most will agree that selection on the basis of racial grounds is ethically problematic, skills-based selection has not received as much normative scrutiny.²³ It is often taken for granted that states have a right to control their borders, and as long as they do so in an open and transparent way, the selection criteria that are used are mostly the prerogative of the countries in question.

In reference to what kinds of immigrations regulations are justifiable, David Miller refers to legitimate and illegitimate policy goals for states to pursue:

The receiving state has certain policy goals - for example, it is aiming for economic growth or to provide its citizens with generous welfare services - and it is entitled to use immigration policy as one of the means to achieve such goals. This explains why selecting immigrants according to particular skills that they can deploy is a justifiable criterion. [...] In contrast, selection by race or national background is unjustifiable, since these attributes cannot be linked (except by wholly spurious reasoning) to any goals that a democratic state might legitimately wish to pursue (Miller, 2016, pp. 105-106).

When evaluating what kinds of immigration regulations are morally permissible, Joseph Carens also argues that selecting immigrants based on their marketable skills is morally permissible:

As a general matter, this is another criterion that seems morally permissible. To be sure, the destination country is not acting altruistically in adopting this sort of immigration policy. It is selecting immigrants on the basis of its perception of the national interest. But since the country is morally free not to take any immigrants at all

²² For an overview of some of the arguments put forward for education based selection see Tannock (2011, pp. 1338-1339).

²³ Most also agree that selection on the grounds of religion and gender is illegitimate, whereas political or cultural background seems to occupy an intermediate position. For example Miller argues that one can discriminate on political background if the views held are illiberal or undemocratic (Miller, 2016, p. 107).

from the pool under consideration here [economic migrants], the fact that it is guided by its own interest in its selection of some for admission cannot be a decisive objection. Of course, states are equally free to adopt a more generous policy, taking in those whom they judge to be in greatest need. That is an admirable course, but it is not morally obligatory (Carens, 2013, p. 108).

It should be noted that Carens primarily argues for open borders, and he is here merely considering legitimate and illegitimate immigration regulations, given that states are justified in limiting immigration. In short, both Carens and Miller think skills-based selection is permissible, given that states can choose those immigrants it is in their interest to receive. And while they discuss in detail the negative effects of brain drain on the countries of origin and what can be done to limit these negative impacts, they do not pay much attention to the issue of the potential negative effects of skills-based selection on the citizens in the countries these migrants are moving to.²⁴ What is important to note in relation to both Miller's and Carens' positions, is that they both treat states' interests as a given, without sufficiently considering the adverse effects for many citizens in the states enacting the proposed policies. As I argue below, there is reason to be sceptical of skills-based selection due to the effects on some of the citizens in states enacting such legislation, and an argument considering legitimate and illegitimate immigration criteria should address this. Furthermore, like any governmental policy, skills-based selection is likely to impact citizens to varying degrees. In order to illustrate how immigration criteria can negatively affect citizens in states enacting such criteria, I turn next to Blake's argument against racial restrictions.

[Blake's argument against racial selection](#)

In the philosophical debate on immigration, state-centred approaches often argue that states only have special obligations to their own citizens, and lesser obligations towards the people beyond their borders. States therefore have discretionary control over immigration regulations, as those subject to these regulations have no special claims on the state they seek to enter. However, the same theorists often argue that selection of immigrants on racial grounds is unjust, and therefore need to stipulate a basis for why this might be unjust, which

²⁴ It should be noted that they at length discuss the normative validity of treating people differently when they have been allowed into the territory. While Miller opens up for somewhat more differentiated treatment than Carens, they both agree that people who have stayed for a prolonged period of time should be allowed citizenship.

preferably does not refer to those beyond their borders.²⁵ One of the arguments that bridges this gap and maintains that states have no special obligations towards immigrants, but that some types of selection of them is wrong, is made by Michael Blake in the article *Discretionary Immigration* (2002, pp. 282-289). This argument considers the effects of racial selection on domestic citizens, and argues why racial selection is wrong due to these effects. Now, while it might initially seem off-putting to justify the wrongs of racial discrimination with reference to its effects on someone other than the person being discriminated, it is worth noting that just because something is wrong for one reason, that does not mean it is not also wrong for many other reasons. As mentioned above, for the purpose of this paper, I bracket the issue of injustices done to migrants seeking admittance and countries of origin, in order to focus on the effects of skills-based selection on the citizens of the country enacting these regulations.

In the article ‘Discretionary Immigration’ Blake points out that, if one believes that states do not have any particular moral responsibility towards prospective discretionary immigrants, it seems difficult to base the objection to race based selection on what is owed to these discretionary immigrants. In other words, if we do not have moral obligations towards prospective migrants, what makes selection on the basis of racial criteria unjust? Blake then argues that what is objectionable about this form of selection is that it also significantly negatively impacts the state’s own citizens:

Racially conscious immigration is of moral importance, in this instance, more for what it says to those already present than for what it says to prospective immigrants. If we examine the message of a racially discriminatory pattern of immigration, we might understand it as a public announcement of racial favouritism. This can be understood as deeply problematic even if the interests and rights of the immigrants are taken off the table. The state making a statement of racial preference in immigration necessarily makes a statement of racial preference domestically as well. (Blake, 2002, p. 284)

²⁵ Some also argue that even though one does not have special obligations to economic migrants, states still need to treat them fairly according to some less weighty obligations. For example Miller argues that racial discrimination is insulting to those seeking admittance (Miller, 2014, p. 374). Blake argues elsewhere that one has a moral duty to give economic migrants reasons they cannot reasonably object to (Blake, 2008).

So, according to this argument, what makes racial selection objectionable in immigration policies, is that the state by enacting such restrictions makes a statement of preference, which negatively impacts those in the domestic population who happen to share this identification.

Blake argues that racial selection has two kinds of negative impact on the population. Firstly, he refers to Rawls' description of: "the social bases of self respect. A state which articulated a message that one racial group is to be preferred over another in immigration makes a public statement; this statement undermines the ability of citizens with the disfavoured racial identity to see themselves as full participants in the project of self-rule" (Blake, 2002, p. 284). So, racial selection impacts the agency and self-respect of people who share this group identity. According to Rawls self-respect is fundamental to our valuing ourselves as individuals, something we need in order to be pursue our own ideas of the good, and to contribute in society as citizens. Furthermore, this self-respect is reliant on others respecting us, and fair treatment by institutional structures. Rawls describes the social bases of self-respect in the following way: "these bases are those aspects of basic institutions normally essential if citizens are to have a lively sense of their own worth as persons and to be able to develop and exercise their moral powers and to advance their aims and ends with self-confidence"(Rawls, 2005, pp. 308-309). While there is much disagreement within political philosophy on how to conceptualise self-respect and which social structures that best support it, most agree that it is important to foster, and that fair treatment by institutional structures and social interactions foster it. So, in relation to racial selection, Blake is plausibly claiming that this practice affects people's sense of their own worth, and thereby restricts their ability to exercise their agency as citizens in modern democracies.

Secondly, Blake argues that racial selection also has practical implications for citizens, more specifically as a kind of gerrymandering of the population: "It is one thing, we might think, for a certain ethnic group to tend to find itself in the minority in electoral politics. It is quite another for a state agency to seek to alter the electoral landscape so that this minority status is guaranteed to continue" (Blake, 2002, p. 285). Indeed, controlling demographics has historically been the primary goal of racist immigration policies. The Australian Immigration Restriction Act of 1901, part of the White Australia Policy, the British Aliens Act of 1905, and the US immigration Acts of 1917 and 1924, were all aimed at keeping unwanted

ethnicities and races out.²⁶ In short then, Blake argues that racial selection in immigration policies affects both the self-respect of the discriminated groups domestically, and allows the majority population to politically cement its power.

Now, one might question whether the same argument would hold if the racial group which is being selected is a minority. Would “positive discrimination” of racial minorities in immigration regulations be morally problematic in the same way? While this is not the place to dwell on this question, such a policy could intuitively affect the social bases of self-respect of other non-selected groups. Yet, as the groups affected are not already disadvantaged the effect does not seem as morally problematic, and it furthermore would not seem to contribute to any majority cementing its power. One can also be critical of an underlying assumption relating to the second factor of power cementation here, namely that Blake seems to assume that ethnic groups vote as a block and share the same political preferences, as this varies from country to country. Perhaps if we expand Blake’s second point to also include power entrenchment of demographic groups, not merely in elections, but also in wealth and resources, the argument holds even more force. I will consider this in more detail in the next section when comparing racial selection to skills-based selection.

Blake also argues that racial immigration policies are likely to be more unjust the more multicultural a society is. Furthermore, he points out that as there in a racially homogenous society would be no minority population to be adversely affected, it would not in principle be objectionable with such policies, but that no such homogenous society exists and these policies are therefore always objectionable.²⁷

Blake is not alone in grounding the objection to racial selection on effects to domestic population. In a similar manner, Altman and Wellman argue that racial criteria are morally wrong as they constitute disrespecting citizens who happen to be part of the same racial group. “[It] is not difficult to see how Asian Australians, for instance, would be disrespected by an immigration policy banning entry to non-whites because they were regarded as inferior to whites. Even though this policy in and of itself in no way threatens Asians with expulsion, it sends a clear message that, qua Asians, they are not regarded with equal concern and respect by their fellow white citizens” (Altman & Wellman, 2011, p. 187). As we can see, the

²⁶ For an overview of the relationship between immigration regulations and racist discrimination, see Fine (2016a, pp. 125-150).

²⁷ Blake does consider that an exception might be made for ethnic groups who have been made particularly vulnerable, and gives the example of Israel. (Blake, 2002, p. 286)

moral basis for the wrongness according to Altman and Wellman is also an injury to some of the already residing citizens' self-respect.

There also seems to be some empirical support in psychological research for these philosophical kinds of arguments against racial selection. As Hue et al. (Huo, Dovidio, Jiménez, & Schildkraut, 2018) have found, immigration policies also send a statement to domestic citizens, which has a measurable impact on their sense of belonging: “Subnational immigrant policies (i.e., those instituted at the state level in the United States) are not only key to successful integration, they send a message about who belongs. Our evidence suggests that welcoming state-level immigrant policies lead to greater belonging among foreign-born Latinos, US-born Latinos, and even US-born whites” (Huo et al., 2018, p. 954). As such, there seems to be good reason to believe that Blake's argument concerning the negative impact on domestic citizens is correct, and that this can plausibly impact the social bases of self-respect. However, Blake does not believe the same holds for skills-based selection.

In the article *Immigration and Political Equality* from 2008, Blake argues that selection based on “economic success”, as opposed to racial selection, is legitimate: “It is difficult to regard this as objectionable from the standpoint of social justice – bearing in mind [...] that we are discussing here only individuals with no individual right to status as immigrant. [...] The moral equality of persons, after all, requires us to give reasons to people that they could not reasonably reject; it rules out reasons that demand the moral denigration of some segment of the population in question” (Blake, 2008, p. 972). But is Blake correct in making this distinction? Might not skills-based selection also amount to moral denigration?

[Skills-based selection revisited](#)

[Statements of preference on skills](#)

Now let us consider the case of skills-based selection, and whether it is vulnerable to the same criticisms as Blake's arguments against race based selection. A certain group is being rejected at the border or allowed in on worse terms, people belonging to the same group are also citizens of this state, and by publicly announcing this group as less favourable or unfavourable the state is also sending a signal to its domestic population. As mentioned previously Blake states that: “The state making a statement of racial preference in immigration necessarily makes a statement of racial preference domestically as well” (Blake, 2002, p. 284). Now, does this also apply in relation to skills-based selection, and if so, how does it affect the citizens? I

will first consider the argument concerning the social bases of self-respect, before moving onto the practical effects the selection might have for the population.

On the face of it, we seem to be faced with a similar type of restriction. A group is being selected for admission, while others who do not match these criteria are being kept out. As previously mentioned, skills-based selection typically grants wealthy and high-skilled individuals easier entry, while keeping out, or allowing in on worse terms, the less educated, less healthy and less wealthy, often referred to as working class and lower class people. Moreover, no state is homogenous enough in the skill-levels of its citizens and class distribution that it does not have citizens of all skill levels and classes. As such the state is selecting a group of people at the border, and sending out a signal, implicitly through public policy and sometimes explicitly through public statements, that people without specific skills, education or wealth are unwanted. It is important to clarify that a problematic message can be sent and received, whether or not it is intended to be sent. By giving fewer rights and conditional residence status to the less-skilled, the state is concretely manifesting the lower value it places on some skills. And while states frequently reward people with different skills differently, through for example wages and employment, it would seem to contravene a liberal understanding of equality to give differentiated citizenship rights on the basis of the citizens' skillsets. Furthermore, in response to countries enacting these kinds of immigration regulations, some researchers and politicians have pointed out how they contradict central political values.

With regards to Canada's selective skills regime, Harald Bauder stated that: "In the statistical exercise, the newly proposed selection guidelines were matched with data from the 1996 census to examine how many Canadians would actually qualify to immigrate to Canada as skilled workers. The results indicate the vast majority of Canadians are not good enough for Canada" (Bauder, 2001, p. 1). While Bauder primarily believes these types of regulations are unfair due to their effects on the migrants, and the countries they are moving from due to a "brain drain", he also points out that these kinds of regulations seem "[...]to contradict Canadians' keen sense for justice, equality and democracy" (Bauder, 2001, p. 2). As such, the regulations seem to contradict what many Canadians think of as central political values, and by having an impact on their views of fairness and equality, one could argue they affects Canadians' social bases for self-respect. For if everyone is not viewed equally as citizens, they are not equally able to develop the self-respect needed to participate in self-rule.

Skills-based selection has also long been a contentious issue in US politics. When immigration reform was discussed in the run up to the 2008 presidential elections, then Senator Barack Obama stated: “How many of our forefathers would have measured up under the point system? How many would have been turned back at Ellis Island?” (Obama, 2007, p. 6512). Obama’s statement was made in relation to proposals that the US go from a system where most immigrants were being granted entry based on family reunification and marginally through the green card lottery and refugee status, to more of a skills-based system as in Canada. Now, while his emphasis was primarily on fairness to the immigrants seeking admittance, he also points out what this kind of migration might do to the US itself, referring to the points-based system as a “radical experiment in social engineering” (Obama, 2007, p. 6512). In other words, he raised concerns about what kind of society the US would become by employing such policies, and questioned the underlying fairness of such policies.

So, in both the US and Canada, critics have claimed that these policies contradict central political values, but what kind of message is being sent and might it also impact their own citizens? Yolande Pottie-Sherman has used a critical discourse analysis to analyse the US migration debate. As she puts it: “Admission policies (both permanent and temporary) embody conceptions of who belongs within the borders of the nation” (Pottie-Sherman, 2013, p. 559). According to Pottie-Sherman, rather than merely being a practical device to choose desirable immigrants, these regulations also show a preference for what kinds of citizen a state wants. And while there will always be diverse opinions on migrants amongst citizens of a state, immigration control is a concrete manifestation of a state’s preferences. Consequently, there seems to be good reason to assume that a state employing skills-based selection is sending a message of preference to its own citizens.

It also needs to be added that skills-based selection sometimes works as a proxy. For even though proponents will argue that skills-based regulations are fair, objective and transparent, these kinds of immigration regulations in practise tend to disproportionately favour some groups over others. As Tannock has described in the Canadian case: “[...] education-based discrimination in Canadian immigration policy should be challenged not only because as many of the critics have recognised previously, education very often serves as a proxy whether intentional or not, for other forms of discrimination based on race, class, gender, or national origin” (Tannock, 2011, p. 1332). So, even though many countries in the Global North have changed their previous racial restrictions, their immigration regulations could tend

to favour the same groups. In a similar manner and in relation to the US debate, Pottie-Sherman mentions how: “The points system, because of its certain uneven racial bias against Latinos and other immigrants from the Global South, became a veiled way of talking about race (as well as class) and immigration policy” (Pottie-Sherman, 2013, p. 572). In both these cases, it looks like in addition to sending a message that the unskilled are less-wanted, skills-based migration in practise discriminates against the same groups that were previously subject to racial restrictions.²⁸ Therefore, unless this proxy effect is remedied, skills-based restrictions can still be perceived as racial, and Blake’s argument could hold more directly. As such any country implementing skills-based selection needs to consider whether their selections might still work as a proxy for selecting on other clearly impermissible grounds, such as race, religion and gender.²⁹

In sum, there does seem to be good reason to think that the state, in practicing skills-based selection, can be perceived to be sending a message to the domestic population; a message about who is wanted and who is not. Indeed, it is reasonable to assume that the message about undesirability is received by a state’s own citizens, whether or not they are the intended recipients of the message. However, as opposed to racial selection criteria, these policies are not usually taken to be normatively problematic. Why might this be the case? Let us consider three possible reasons why skills-based selection might not have similar effects on the social bases of self-respect: firstly, that the groups in question do not have as strong an in-group identity, secondly, that citizens believe the state is pursuing its legitimate goals through this selection and that they therefore are not the intended recipients of this statement of preference,

²⁸ For more information on the relationship between immigration restrictions and racial injustice, see Fine (2016a, pp. 125-150).

²⁹ In the article ‘Immigration and Political Equality’, Blake addresses the issue of the proxy effect to skills-based migration (Blake, 2008, pp. 973-974). He uses the example of gender imbalance in education, and argues that if women in general are less educated, skills-based migration criteria would seem to give preference to men. Blake holds that this would be particularly unfair if the reasons for underdevelopment in the origin state have in any way been caused by the receiving state. However, he contends that this is not enough to deem skills-based criteria morally unfair, as firstly, it is difficult to identify who is responsible for underdevelopment, and secondly, this unfairness gives rise to other duties of assistance, rather than changes in migration systems. I do not think this response is successful, as I do not believe one needs a clear causal link to identify responsibility, and since other duties of assistance are not being met today. However, these issues are clearly beyond the scope of this paper, and what is important to note for our present purpose is that Blake’s underlying moral reasoning here is based on how one is treating prospective migrants, and that one needs to give prospective immigrants reasons they cannot reasonably object to. In other words, the argument and response does not address the issue of any proxy effect skills-based selection might have on the social bases of self-respect for the domestic population.

and thirdly, that many citizens believe immigration in general is bad for their prospects on the job market.

Firstly, we are obviously considering distinctly different kinds of groups. Most people, at least at present, seem to identify more with people of their own nationality and race, than people from other countries who might share their skill levels, social class and their level of wealth. Therefore, although a public announcement of skills favouritism could in principle have the same effect on the social bases of self-respect as public announcement of racial favouritism, in practice it might have less of an effect. Furthermore, the history of immigration restrictions is also interwoven with racism, as most of the early immigration restrictions were instituted to limit the arrival of unwanted ethnic and racial groups. These same groups were also subject to racist policies inside the countries instituting these restrictions. Therefore, there has long been an awareness of the interplay with racial restrictions in immigration, and internal mistreatment of these same groups. As such, the relative novelty of skills-based selection criteria could plausibly indicate less of an impact on the domestic populations' self-respect. However, this could be subject to change over time as more states institute such restrictions, and the consciousness around the mode of selection increases. And while the degree of class identification differs from country to country, evidence suggests that it increases with the degree of economic inequality (Andersen & Curtis, 2012), so the more unequal a society becomes the larger the effect on self-respect could become. Furthermore, as skills-based evaluations are increasingly being used on other migrant streams (Ellermann, 2019b), the awareness of these restrictions, and consequently their impact on self-respect, is likely to increase.

Secondly, while racial selection cannot claim to contribute towards the legitimate policy aims of a state, skills based selection can arguably do just that, as amongst others Blake (2008) and Miller (2016, pp. 105-106) have pointed out. So, while racial selection can only point to some rather ethnocentric or racist claims as reasons for this kind of selection, states can argue that skills-based selections are made on the basis of the benefit to the wellbeing of their own citizens. In a similar manner to a job interview, they are getting the best people for the task at hand, namely filling gaps in their labour market. This could lead citizens to realising that they are not the intended receiver of this statement of preference. However, it is difficult to see how the state can make this statement of preference without any domestic recipients who share the same skill-sets also identifying with it. In short, the fact that states argue that they

need some people and not others, while true, might at the same time hurt some of their citizens' self-respect. It is not as if many states are refusing entry to lower-skilled and unskilled people; they are often letting them in, but on different terms, thereby concretely manifesting their evaluations of various people's worth. It should be noted that some skills based selection are being made on federal levels, such as in Australia or Canada, and this could also affect both the message being sent, and how it is perceived. If the local selections vary considerably, they are less likely to be perceived as a clear statement of preference. Furthermore, the local citizens are more likely to see the selection as justified if they address specific skills shortages in the area.

Thirdly, the view one has of skills-based selection will also be based on the perceived effect it might have on one's livelihood. As Mavroudi and Nagel have pointed out: "Whether one views migration in positive or negative terms, it seems, hinges on the position one occupies in the labour market and in social hierarchies" (Mavroudi & Nagel, 2016, p. 82). So, if one thinks one's job is likely to be threatened and is suffering from economic anxiety, it is likely that one will be sceptical to a large influx of workers. For example, Hainmueller et al. have showed that workers in the US are not more sceptical to immigrants with their own skill-sets. Indeed they found that all workers in general were more positive to high-skilled than low-skilled immigration (Hainmueller, Hiscox, & Margalit, 2015, p. 205). Furthermore, there is evidence, at least in the case of the US, that low-skilled citizens are more sceptical of economic immigration in general, and that the more skilled someone is the less sceptical they are (Hainmueller & Hiscox, 2010, p. 79). In short, many working class people are sceptical of immigration, as it is frequently argued that migrants have undercut and put pressure on wages. And whether or not this is actually the case, it is clear that a commonly held assumption that this is the case will have an impact on the ways in which skills-based selection affects people's self-respect. In sum, although skills based selection intuitively would seem to have an effect on the social bases of self-respect, there are other overriding concerns that diminish the effect of such policies. Furthermore, the complicated nature, diversity and relative novelty of skills-based selection criteria might also diminish the effects of the message, as opposed to the clear and transparent message of racist immigration criteria.

Practical effects: Power entrenchment and educational opportunities

The second effect Blake argues racial selection has on domestic population are the practical effects, more specifically that it alters the demographics of the population by allowing the

majority population to cement its numerical advantage by granting members of their own group entry, while other groups are stopped at the border. As mentioned above, Blake seems to be making the assumption that racial selection is made on behalf of a majority and that members of racial groups share political interests, which while historically often the case, will vary between historical and societal settings. In the case of skills-based selection, the situation is even more complex. As previously mentioned, countries often give high-skilled people more rights and easier tracks to citizenship, while less-skilled individuals are given temporary residency and fewer rights. Furthermore, whether high skilled migrants will contribute to a kind of cementing of political power is questionable, after all why should we assume that they share the same views? For although wealth and earnings are often an indicator of how one votes and attempts to influence the political process, they are far from the only ones.

It seems difficult to be certain concerning the precise effects of skills-based selection on political power entrenchment, yet skills-based selection has other practical effects on domestic citizens, primarily in relation to education and the labour market. While many have argued that an influx of people with particular skillsets can have a depreciative effect on wages in certain sectors - this is frequently an argument put forward against low-skilled migrants - the effects of skills-based immigration on public education has been less appreciated. As Mavroudi and Nagel ask: "To what extent do skilled migration programs allow governments and businesses to ignore the training and educational of national labour forces?" (Mavroudi & Nagel, 2016, p. 82) While the long-term effects of skills-based selection on public education have yet to be revealed, it is clear that it can alter the needs of a government to spend funds on training their domestic population. As Tannock has recognised in the Canadian case: "[...] we need to recognise immigration policy as constituting another potential mechanism for the privatisation of public education as well" (Tannock, 2011, p. 1340). This seems intuitively plausible, for if it is cheaper to attract a nurse from the Philippines or a doctor from Ethiopia than to educate a young citizen, there seems to be an incentive for the state to prioritise the former over the latter. In short, the influx of high-skilled migrants could lead to fewer opportunities for advancement for citizens in general, and this should be considered by anyone advocating skills-based selection. It should be emphasised that while I have not found any empirical evidence that this has been proven, the concern does seem reasonable. Shachar describes the issue in the following way:

“The basic concern is that if the world’s best and brightest can be “imported” at will, with government’s fast tracking admission to those they covet on the basis of an expected return - material, reputation, or otherwise - we might see decreased attention paid to the kind of persistent, long-term investment that is required in order to build up a creative and professional workforce to meet the challenges of the knowledge economy in the twenty-first century and to cultivate home-grown talent in arts, athletics, sciences, and the like” (Shachar, 2016, p. 194).

Consequently, some states which receive many skilled migrants, such as Singapore and Hong Kong, have already put policies in place in order to assuage such concerns among their citizens (Shachar, 2016, p. 194). There are also ongoing discussions in the US to tax employers of skilled migrants in particular STEM sectors (science, technology, engineering, and mathematics), and use these funds to educate the domestic population in similar degrees. These policies constitute concrete examples of how states are attempting to remedy the appearance of unfairness in giving high-skilled jobs to foreign citizens, and thereby prioritizing integrating them before educating their own population.

In sum, how can we evaluate whether the effects of skills-based selection on the domestic population should make us limit or alter these practices due to considerations of fairness? Well, it might be normatively problematic to different degrees. Firstly, one might ask whether skills-based selection is wrong in all cases due to the kind of negative effects it has on the domestic population. Based on the above discussion, I cannot conclude decisively on this. Secondly, one can contend that these negative effects need to be part of a utilitarian calculus, and that when calculating the permissibility of skills-based selection one needs to consider the effects discussed in this paper. I believe the latter to be the case, and that a normative evaluation of skills-based selection should take into account the negative effects, as well as the gains, brought about by such migration; in particular in relation to any effects on the self-respect of citizens in the society the migrants are moving to, and any power entrenchment that might come about as a result. If the society in general benefits from skills-based selection, and in particular the less skilled and unskilled people in that society, it would seem like a more compelling case can be made for it than if merely a segment of society or a particular industry benefits.

Conclusion

The ideals of citizenship are continually being re-examined and redefined by states in various ways. One of the ways in which this is done is at the border, where states decide who is wanted, and who is not. The effects of skills-based selection on countries, not just for the migrants and the countries these migrants are leaving, needs to be considered when evaluating the fairness of such policies. Rather than being merely a neutral framework for deciding who is allowed in, skills-based selection makes a statement regarding the kind of citizen a state wants. And while this selection is not as problematic for the formation of self-respect as selection based on race, some negative impacts are clearly discernible. In addition to potentially influencing the formation of self-respect, skills-based selection has practical effects on the population in the short term, and its effects in the long term are uncertain and affected by many other governmental policies. It also seems likely that skills-based selection might have a detrimental effect on the funding of public education. As the effects of such policies have yet to reveal themselves, it is worth being mindful of how differentiated treatment of migrants on the basis of skills, with respect to rights and opportunities, impacts treatment of citizens already residing in a state. These effects should be considered in any normative evaluation by states before instituting, or increasing the use of, skills-based immigration systems.

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Appendix iii: Structural injustice and labour migration – From individual responsibility to collective action, *Theoria*, Forthcoming

Abstract: This paper argues that the vast inequalities in access to migration opportunities and treatment of migrants, constitute a structural injustice, and that while states are clearly the most powerful agents in migration injustices, individuals also bear a personal responsibility to ameliorate these injustices. The argument builds on Young's theory of structural injustice and critically applies it to labour migration. The paper argues that wealthy migrants, and citizens who benefit from migrant labour, have a responsibility to contribute towards ameliorating migration injustice on account of their position of privilege, whereas disadvantaged migrants have a responsibility due to their interest in changing their situation. It then considers how people might discharge such an obligation through collective political action, pointing in particular to NGOs, labour unions and local government. Finally, the paper addresses the objections that positing personal responsibility for labour migration is overly demanding and that the current labour migration regime is meritocratic and fair. The article concludes by showing how this sort of stance can be seen as interest-driven by privileged groups, and argues for the role of disruptive politics in overcoming it.

1. Introduction

It is readily apparent that the possibilities people have to move around the world today vary considerably. While some cram into plastic boats over perilous seas only to be put in detention centres or forced back by border guards, others fly comfortably over them and are welcomed on arrival. The latter often have wealth, higher education and the “right” passports, and can therefore traverse the globe easily. They also often have the opportunity to gain citizenship in many countries. The former, who are often poorer, lack recognised formal education, and have the “wrong” passports or none at all, find crossing borders difficult if not impossible. They are also liable to be sent back if they attempt to stay in countries permanently. Most migrants occupy an intermediate position between these two extremes, facing some restrictions on their movements; and often make trade-offs by accepting rights restrictions in order to be able to migrate and work. This description of a vast disparity in mobility is hardly controversial. But why is it unjust, rather than merely unfortunate? Why

should lack of access to mobility be seen as a type of structural injustice? And why should we hold individuals responsible for such injustices?

When considering migration philosophers have mainly been concerned with what types of migration restrictions are fair, and what rights migrants should have access to. It is also states' responsibility towards migrants that has been most debated. While most agree that states have some kind of responsibility to help refugees, whether states have obligations towards other migrants is contested. What position one holds is based on whether one believes restrictions on migration are compatible with liberal-democratic values, one's position on global justice, and the questions of whether what we owe distant strangers should have an impact on states' admissions policies. Some scholars such as Michael Walzer (1983), Michael Blake (Blake, 2002, 2005), and David Miller (2016), argue that states have extensive rights to decide which non-refugee migrants to admit. They differ somewhat on the cut-off point for who should be considered within this discretionary group. For example Blake thinks the state only has a weak right to exclude people from underdeveloped and oppressive states (Blake, 2013, p. 129). Others, such as Joseph Carens, and Philip Cole argue for open borders, based on the inconsistency of border controls with liberal democratic values (Cole, 2000), and the need for people to migrate in order to attain global equality of opportunity (Carens, 2013). What these positions have in common is their principled abstract discussion on rules of admittance and obligations to migrants, and the focus on the state.³⁰ In this paper, I use a structural injustice framework to examine responsibility for migration injustice more broadly.

While personal responsibility is often considered in relation to other issues of global justice, such as global poverty or climate change, when it comes to migration it has received little attention. I argue that while states have much to answer for, in particular their mistreatment of migrants, there are many other agents that are involved in, and benefit from, current international labour migration arrangements. Employers and recruitment agencies hire migrants, privileged migrants benefit from ease of travel, and citizens in general profit from the labour of migrant workers. While it would be patently absurd to blame an individual for all the wrongs done in relation to migration, I argue that individuals bear a responsibility to contribute to changing the systematic harms that are brought about by unjust migration arrangements they take part in and benefit from.

³⁰ For an overview of some of these strands of argument and a discussion of the new and old open borders debate see: Reed-Sandoval (2016)

Some of these systematic harms are brought about by migration systems that systematically differentiate treatment on the basis of an individual's wealth, health, education and skill-set. While some privileged migrants are given a fast-track to citizenship, others are given temporary residence, and their residency permit is tied to a particular employer. Recently there has been an increasing focus on the fairness of such migration restrictions. In particular there is some disagreement as to whether the rules that govern guest workers and temporary labour migrants (hereafter TLMs) are fair, or whether they are instruments of exploitation (Attas, 2000; Lenard & Straehle, 2012; Nuti, 2018; Ottonelli & Torresi, 2019; Stilz, 2010). On the one hand, such systems allow more migrants opportunities to migrate in order to work, thereby increasing their earnings and life choices, and allow host countries to fill gaps in the labour market. On the other hand, migrants often have to trade these opportunities for fewer rights in the country they move to, face restrictions on their ability to change employers, and their emigration can lead to a 'brain drain' from the countries of origin. However, as I argue below, irrespective of whether these migration systems on balance might contribute to alleviating global inequalities, they can still be structurally unjust, and people therefore have a responsibility to alter them.

In this paper, I show how current inequalities in opportunities to migrate and treatment of migrants constitute a structural injustice, and how we can assign personal responsibility for such an injustice. In order to make this case, I first provide a sketch of Young's concept of structural injustice in section 2, discussing in particular her wish to avoid blame and strict division between types of injustice. Following this, I draw on the debate concerning TLMs and argue in section 3 that the disparities in possibilities to migrate, and the vastly unequal treatment of migrants, constitute a structural injustice. In section 4, I discuss personal responsibility for ameliorating the structural injustice migrants face. I identify and discuss three relevant groups: privileged migrants who benefit from structurally unjust migration practices, citizens in general who benefit from migrant labour, and disadvantaged migrants who have an interest in changing the unjust structures they are subject to. I also consider how these groups might discharge this responsibility through collective action, before finally discussing the widespread belief that current migration regulations are fair and meritocratic, and the potential need for disruptive politics to overcome such views.

2. Structural injustice

In *Responsibility for Justice* (2010), Iris Young distinguishes between two types of injustice. The first, which she calls the liability model, is the standard view, whereby some agent is responsible for some harm, can be causally linked to that harm, and thereby blamed and held responsible for it. For example, if I steal from you, I have committed an injustice, and should be blamed and held responsible for it. However, she points out that there are other kinds of harms that people experience that cannot easily be traced to some agent's bad action, and in these cases it is more difficult to hold someone responsible.

Young's paradigmatic example is of Sandy, a working single mother, who due to a myriad of factors is unable to afford a place to live. These factors include low wages, gentrification, lack of housing regulations, unaffordable rents, requirements of deposits, competition on the housing market, etc. Young describes the injustice Sandy is subject to as being deprived of housing and being vulnerable to homelessness. She argues that while this inability to find housing is clearly wrong – as no one should be in such a situation - there is no single agent who can be blamed for it. Yet, although it might be impossible to find someone to blame, Sandy is clearly subjected to harm, and her situation is a moral wrong: “Structural injustice is a kind of moral wrong distinct from the wrongful action of an individual agent or the repressive policies of a state” (Young, 2010, p. 52).

While we cannot trace the moral wrong back to a responsible agent, it is not as if the reasons for Sandy's situation are inexplicable. Indeed, the reasons why she, and others like her, are in this situation can be investigated and described: “[...] it is predictable and explainable that there will be an insufficient supply of decent affordable housing in an urban area where there is a generally healthy capitalist economy and where large-scale nonprofit housing investment is absent” (Young, 2010, p. 47). So, while no one specific agent is responsible, homelessness in society is also not merely a question of bad luck, though it might appear so on an individual level. Homelessness is rather the result of a myriad of factors. “Many policies, both public and private, and the actions of thousands of individuals acting according to normal rules and accepted practices contribute to producing these circumstances” (Young, 2010, pp. 47-48). These factors include monetary policies, housing rules, market forces, incentives for landlords, economic inequalities, etc. As such, being vulnerable to homelessness is a predictable and explainable moral wrong, due to many complex factors, and yet no one is to blame. In short, Young argues that Sandy is suffering under a structural injustice, namely

homelessness. This kind of injustice “[...] exists when social processes put large groups of persons under systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time that these processes enable others to dominate or to have a wide range of opportunities for developing and exercising capacities available to them” (Young, 2010, p. 52).

Young argues persuasively that vulnerability to homelessness is morally wrong, and is caused by complex social processes, which benefit some to the detriment of others. But what does that imply about who is responsible for fixing the injustice? As opposed to a case where a specific agent or group of agents are to blame, which she refers to as the liability model, Young argues that we should not think of responsibility for structural injustices as grounded in who caused them. Rather we should consider who is involved in the social structures sustaining them. In order to do so she proposes ‘a social connection model of responsibility’, which analyses who is taking part in the social processes that make the harms come about, how these processes can be changed, and which actors are in a position to do so. “The social connection model says that individuals bear responsibility for structural injustice because they contribute by their actions to the processes that produce unjust outcomes” (Young, 2010, p. 105). Young gives four parameters that may be used to decide allocation of responsibility: power, privilege, collective ability and interest. As we will see in the case of migration, while this model is helpful in identifying responsible agents, a drawback is that it is difficult to say exactly how responsible any one agent is. It should be emphasised that Young does not believe that the structural injustice model can or should give an exact estimate of how responsible an agent is. She contrasts responsibility with duty and states that: “Because responsibility is more open and discretionary than duty, a theory cannot provide a set of rules or even a method for calculating what to do” (Young, 2010, p. 144). What we can expect of theory are rather tools to guide our interpretation.

Young’s theory of structural injustice is not only motivated by her belief that it constitutes a better description of injustices caused by structural processes, but also that it is more useful in order to bring about change and alleviate the injustices she discusses. Specifically, Young argues that the social connection model is pragmatically better because it avoids ‘blame switching’: “People who perceive themselves being blamed for wrongs that some people endure usually react defensively” (Young, 2010, p. 117). While blaming someone might be appropriate for wrongs they are liable for, in the case of structural justice, Young argues that

it is unproductive. “A round-robin “blame-game” often ensues, with one actor after another being blamed and defending herself by throwing blame onto another” (Young, 2010, p. 117). As opposed to blaming, Young argues, we should shift our focus to look for possibilities and solutions.

Let us now briefly consider two criticisms that have been levelled against Young’s theory, before moving onto the issue of migration. These are both relevant to the discussion in section 4, when we will consider individual responsibility for the structural injustices in migration. Firstly, Young has been criticised for creating too strong a distinction between liability and structural injustice. As Martha Nussbaum points out in the Foreword to Young’s *Responsibility for Justice* (Nussbaum, 2010; Young, 2010), Young’s argument that one cannot blame someone for taking part in normal processes that they do not know create harm, makes sense initially. However, once they are made aware of this harm, can and should we not blame them for not changing their behaviour? One response to this criticism is to point out that Young distinguishes between moral and political responsibility, and to further develop Young’s account of blame. In her application of structural injustice to colonial injustice, Catherine Lu argues that: “Agents who perpetuate structural injustice implicated in wrongdoing are not morally responsible (and blameworthy) for the wrongful conduct of others, but they are morally responsible (and blameworthy) for failing to address structural injustice and its consequences” (Lu, 2017, p. 259). However, Abdel-Nour (2018) has found this clarification unsatisfactory, and argues that a qualitative distinction between two types of injustice obscures more than it reveals, preferring a continual account. Abdel-Nour argues that structural injustice and a liability model are not qualitatively different, but implicitly rely on the same kinds of conceptual tools, as both “[...] tap into that motive of seeking to make good what we participate in making bad” (Abdel-Nour, 2018). There is not the room here to do justice substantively to the interpretations and criticisms of Young’s account, nor is this my aim. However, I do not believe the usefulness of Young’s account is much reduced even if one acknowledges that there is no qualitative distinction between structural injustice and liability, but rather a difference of degree, and relaxes Young’s prohibition against blame. As we will see in the case of migration, the explanatory framework of structural injustice can be used whether or not one assumes such a strict distinction. Furthermore, blame might even be useful in the case of the structural injustice, as the second criticism, presented in the next paragraph, makes clear.

Nussbaum also points out that although blaming someone can be counterproductive in finding solutions to injustice, this is not necessarily a given. As she writes “[...] guilt is also a powerful incentive to make reparations, and when the appeal to guilt is coupled in the right way with respect for the person, or even love, it can produce such motivations even more powerfully” (Nussbaum, 2010, p. xxiv). I think this seems intuitively correct. Furthermore, as Hayward (2017) has pointed out, Young’s account of how to remedy structural injustice seems to rely on the assumption that once people are told that their actions contribute to harm, they will take responsibility and change them. However, this disregards the fact that some people are wilfully ignorant. Indeed, sometimes people use ways of viewing the world as a method to avoid responsibility. Young acknowledges this “absolving function” of belief in relation to personal responsibility and individualism. In short, Young argues that since the 1980s the conservative idea that most inequalities in society can be traced to personal choices rather than systematic injustice has permeated the discourse, thereby helping people to avoid taking responsibility for rectifying the underlying inequalities (Young, 2010, p. 4). Yet this acknowledgement does not seem to influence how Young thinks about how we can pragmatically go about influencing people to solve structural injustice. As opposed to Young’s opposition to blaming, Hayward argues that there is also a role for disruptive politics, such as civil disobedience and mass demonstrations, in order to fight such epistemic ignorance. As Hayward puts it “[...] disruptive politics play a crucial role in dismantling structural injustice. Because they interrupt privileged people’s motivated ignorance, disruptive politics create a political opening to institutionalise structural change” (Hayward, 2017, p. 396). Once again, whether one agrees with Young’s pragmatic view of avoiding ‘blame switching’ or not, I do not believe that it substantively alters the viability of the structural injustice model as such. Indeed, I think it will likely be a pragmatic political choice, depending on the case under consideration, what type of strategy is most likely to succeed. And while the intuition to avoid blame makes sense, I think there can be a substantive role for disruptive politics as well, as we will see in the case of migration injustice.

3. The case for why migration is structurally unjust

Before we get to the question of how to apportion responsibility and bring about change, however, we must ask whether a similar argument can be made with respect to inequality in access to migration opportunities and treatment of migrants, as Young makes for vulnerability to homelessness. Indeed, there can be no responsibility for an injustice, without there being an

injustice. In the following, I make this case by comparing Young's case of homelessness with migration restrictions, and argue that Young's concept of structural injustice is appropriate to describe migration restrictions. So let me first define the injustice in question, before in section 4 moving onto personal responsibility for this injustice.

It is clearly the case that when it comes to access to migration and treatment of migrants, some people's opportunities are severely restricted, while others have more freedom. There are a myriad of reasons why some people are advantaged in access to migration, while others are more disadvantaged. National laws, regional migration agreements, employer preferences, qualifications, education, nationality, language skills, poverty, race, gender, class, health, all create the conditions within which people can make their choices. These conditions create an individual migrant's horizon of possibilities, and the size and nature of this horizon varies considerably. In the same way that Young argued that vulnerability to homelessness is a socially structured position, so is lacking access to mobility and the differing treatment one receives. The institutional rules and norms within which people find themselves constrain their possibilities. As Young puts it in the case of being housing deprived: "Persons in this position differ from person's differently situated in the range of options available to them and in the nature of the constraints on their action" (Young, 2010, p. 45). This is plainly also the case with access to migration.

Now, while in one sense the many migration restrictions people come up against are intended, in another sense they are not. They are intentional in that states, employers and institutions often seek to limit the immigration of "unwanted" migrants, while attracting those they believe will contribute to their state. Yet the overall limitation on the mobility of migrants is unintentional, in the sense that no one institution, employer or state is to blame for it. Rather it is the result of general trends in state preferences, and migration regulations as a whole. Many migrants therefore have to make trade-offs, often accepting restrictions on their rights, or in their ability to change employer, in order to be able to migrate. This is particularly the case in guest-worker programs, which are set up by states to fill gaps in their labour market, without assuming the expense of giving these workers long term access to citizenship rights. The systems are typically time-limited, migrants often tie themselves to one employer, and do not have access to the same rights and benefits as other citizens. The rights restrictions and treatment of the TLMs vary considerably from country to country, from brutal working conditions to access to the host societies' regular wages and work protection. As Lenard and

Straehle point out, such temporary work programs are typically defended by pointing to the “moral primacy of free movement and by pointing to the redistribution of wealth that accompanies migration” (2012, p. 209). So such migration regimes give more people access to work and opportunities, and distribute wealth through people sending remittances home. However, does such a redistributive effect outweigh arguments for equal treatment?

Michael Walzer argues that such guest worker programs are similar to having a “disenfranchised class” (1983, p. 59), and that a denial of guest workers’ civil rights is intertwined with their worse material conditions. Even if they might want to eventually return home, they should have basic civil rights and the right to attain citizenship after a period of time. In short, Walzer argues that having such a class of people, unable to attain political rights, is incompatible with being a democratic society. Others such as Robert Meyer (2005), Anna Stiliz (2010), and Lenard and Straehle (2012), argue that some rights restrictions can be justified, given their benefits in alleviating inequalities and the opportunities they give some migrants.³¹ Now, I do not aim to reach a conclusion on this question of the permissibility or justifiability of such TLMs. For while differentiated rights for migrants might be pragmatically acceptable, due to their effects on alleviating inequalities and contributing to migration opportunities, and given that many states are unwilling to give migrants more rights, that does not preclude the argument that such systems are structurally unjust. In short, guest worker programs can be morally permissible, and still be structurally unjust. And if this is the case, many of the agents involved, will still have a responsibility to alter the structural injustice migrants find themselves subject to.

As Ellerman convincingly shows: “[...] with the emerging conception of the individual as the bearer of human capital, states have privileged the admission of highly skilled, highly educated, and wealthy immigrants by offering them access not just to their territories and labour markets, but also to residents, family reunification, and, ultimately, citizenship. At the same time foreign workers classified as low skilled rarely enjoy equivalent rights and are only given temporary access to labour markets” (Ellermann, 2019, p. 14). It is clear that this

³¹ Robert Meyer argues from a sufficiency theory, that as long as a minimum standard of conditions for the migrants is met, the net gains outweigh the losses, then while unfair such a trade-off can be justified (2005). Anna Stiliz also argues that some rights restrictions can be justified, given that they do not subject workers to “dominant social relationships that are [...] inconsistent with liberal-democratic values” (2010, p. 304). Lenard and Straehle argue that there are benefits to temporary work programs, yet in order to be just they need to allow for all guestworkers to attain citizenship after a certain amount of years has passed (2012). Ottonelli and Torressi point out that many TLMs would benefit from a different set of rights than permanent domestic citizens, and that many current practices have a “sedentariness bias”, which should be remedied (2019, p. 272).

differing treatment harms some migrants, while benefitting others. These harms include for example lack of access to job market, unsafe travel, more insecure rights, and being exploited by predatory employers. And while there are clearly migration injustices that are more similar to what Young terms liability injustices, such as a state's mistreatment of migrants or lack of assistance to refugees, this does not cover the structural inequalities in how people are treated.³²

Furthermore, as Alasia Nuti has shown in relation to the EU context, a rights-based approach does not pick up all the disadvantages that many TLMs find themselves in (Nuti, 2018). Nuti points out that labour migrants are not merely disadvantaged by their lack of access to equal rights - indeed intra EU migrants often have equal formal rights - but they also face language barriers, and ethnic and gender discrimination. One might therefore object that differences in access to mobility and treatment of migrants, is not a distinct kind of harm, but rather a consequence of other structural inequalities, and that it therefore should not be normatively analysed as a distinct structural injustice. After all, many of the reasons why migrants do not meet states' admission criteria are due to their being disadvantaged, poor, lacking higher education and access to health care, which in turn can be traced to poor government, inadequate state finances, global economic inequalities, colonialism, racism, capitalism, or unfair international trade regimes. However, even though differentiated treatment of migrants might be influenced by other injustices, this does not mean it does not constitute an injustice in itself, in the same way that vulnerability to homelessness is often connected to, and exacerbated by, income inequality, racial inequality, and laissez-faire capitalism. Furthermore, migration restrictions help reproduce the very global disparities that make many people want to migrate in the first place. As David Owen puts it in the case of racial inequalities in migration:

Under contemporary circumstances, the normal state unilateral control over 'voluntary' migration is pivotal to the social reproduction of racialized transnational patterns of 'exclusion, domination, subordination, exploitation, and marginalisation' between the citizens of advantaged states and those of disadvantaged states that are rooted in the history of formal

³² I think that it is easier to make the case that states have a moral responsibility to help refugees, and that they can be blamed for not doing so according to a liability model. However, the plight of refugees can also be analysed in light of the structural injustice model, for more on this see Serena Parekh (2017, pp. 104-135; 2020, pp. 151-176).

and informal imperialism, on the one hand, and of racialized migration controls, on the other (Owen, 2019, pp. 7-8).

Owen argues that this structural injustice is a result of states being able to decide the admission requirements for ‘voluntary’ migrants, which systematically privilege some to the detriment of others. He argues that this constitutes a structural injustice, which leads to demands on states to coordinate their actions, limit the harm they are creating and create fairer migration opportunities. Nuti similarly points out that labour migrant practices can help reproduce gender and racial injustices: “intra-EU temporary migration projects contribute to the establishment and reproduction of a differentiation between ‘whiter’ and ‘less white’ workers and of a hierarchy among (white) European ethnicities and nationalities, both of which significantly structure the labor market in receiving countries” (Nuti, 2018, p. 215).

So while structural migration injustice clearly relies on, reinforces and helps reproduce other injustices, that does not mean normative weight should not be given, and responsibility assigned, to migration injustices themselves. However, it does seem clear that it is more difficult to trace those responsible for such systematic differentiated treatment, as opposed to the case when applying the liability model. Indeed, I would argue that the differing treatment migrants receive is a better example of structural injustice than homelessness, as providing accommodation can (and perhaps should) be seen as a state responsibility, which some states have acknowledged and addressed to varying degrees. For example, many of the factors Young mentions in relation to homelessness, such as monetary policies, housing rules, incentives for landlords, and economic inequalities, are to a greater or lesser extent factors a state has the power to change. Furthermore, if the state considers housing as part of their remit, they can provide adequate housing to every citizen. And while Young limits her case to a contemporary capitalist housing market, it is not clear that just because the state does not see housing as a responsibility, that it should not do so. However, in the case of global migration trends, there is no one such powerful agent. For whereas individual states have vast power over their own admission policies, they have less power over all other states, employer preferences, racial stereotypes and systemic migration trends in general. In general then, Young’s argument is more helpful in cases where there are multiple factors and agents, and where no one single agent occupies an overwhelming position of power in a social structure.

If no single agent has such a position, to whom should we assign responsibility, and how far do these bonds of responsibility hold? Rather than taking for granted that bonds of

responsibility do not hold beyond state borders, I am here foregrounding the migration limitations people face. As Young argues this point: “The nation state view [...] makes prior what is posterior from the moral point of view. [...] Ontologically and morally, though not necessarily temporally, social connection is prior to political institution” (Young, 2010, p. 139). We influence people in a myriad of different ways, socially, politically and economically. It therefore makes sense that our moral obligations should stem from an examination of these interactions. And while the types of institutions, norms and interactions are quite clearly different on a global level, there are certainly interactions where our impact is felt beyond borders. As Young puts it: “An agent’s responsibility for justice is not restricted to those close by or to those in the same nation-state as oneself, if one participates in social structural processes that connect one to others far away and outside those jurisdictions” (Young, 2010, p. 142). By migrating, or relying on migrant labour, one is participating in the social structures that go beyond borders, and a discussion of people’s responsibility for the harms that are caused by these social structures is clearly merited.

4. Individual responsibility and collective action

If we accept that the vast inequalities between how migrants are treated, when it comes to their admission and treatment, constitute a structural injustice, who is then responsible for alleviating it? According to the structural injustice model, we should not merely consider who is directly mistreating others: “We should also ask whether and how we contribute by our actions to structural processes that produce vulnerabilities to deprivation and domination for some people who find themselves in certain positions with limited options compared to others” (Young, 2010, p. 73). So, building on Young’s structural injustice theory, we can consider who is involved in the social processes in migration; more precisely, who has the power, privilege, interest and collective ability?

By using Young’s four parameters for reasoning concerning responsibility, one can identify and discuss many of the agents involved in creating disparities in access to mobility and differentiated rights. These include states and transnational institutions, which have vast power to change migration policy; companies, wealthy citizens and employers who enjoy privileges due to the global migration injustices; transnational organisations and regional governments, which have a collective ability to contribute to changing current practices; and disadvantaged states and migrants, who have an interest in seeing these policies changed.

Young describes these parameters as “four parameters agents can use for reasoning about their actions and those of others in relation to collective action to redress injustice” (Young, 2010, p. 144). I take it that Young does not believe that this is an exhaustive list of possible parameters for social positions, but rather those that seem particularly relevant and describe the most important social positions people have in relation to structural injustices. Indeed, the idea that one can have a complete and sufficient list of necessary criteria for how agents are involved in structural processes, and from this derive responsibility, seems implausible to me. Various interpretations of structural processes are likely to conceive of different relevant parameters. As such, the validity of the list of parameters should continually be evaluated according to how plausibly they track and explain the social structures.

Many agents will of course have responsibility according to several of these parameters. As mentioned in section 2, while Young’s structural injustice model allows us to consider the responsibility of more agents than a liability model, it does make it somewhat more difficult to estimate exactly how responsible any particular agent is. Yet, it seems clear that when an agent both has more power and collective ability to rectify an injustice, that agent bears a heavier burden for doing so. As previously mentioned the most powerful agents in the global migration regime are states, international organisations and large companies. But there are many others who are involved in the societal processes, and who therefore also have responsibility for righting wrongs. Furthermore, the responsibility of states in particular, has received a lot of attention³³, yet the role of individuals is often neglected. As individuals are clearly involved in migration structures, and their responsibility has received less scrutiny, in the following three sub-sections I discuss the responsibility individuals have in relation to migration injustice, and consider ways one might go about discharging such a responsibility. I identify three groups of people relevant to this discussion: privileged migrants who benefit from structurally unjust migration practices (4.1), citizens in general who benefit from migrant labour (4.2), and disadvantaged migrants who have an interest in changing the unjust structures they are subject to (4.3).

4.1. Privileged migrants

Perhaps the most noticeable aspect of migration injustice, at least seen from the Global North, is that in addition to the strict border policies towards unwelcome migrants, many people are

³³ For more on state responsibility for structural migration injustice see David Owen (2019) and Peter Higgins (2013). Higgins, briefly put, argues that structural migration injustice leads to a normative responsibility on states to prioritise disadvantaged social groups.

also clearly privileged. Their privilege consists in benefitting from a structure that produces inequalities in access to migration opportunities and treatment of migrants. Such benefits include being able to migrate to many different countries, being welcomed on arrival, given extensive rights and protections, and often given paths to citizenship. According to the structural injustice model, privilege leads to responsibility. As Young puts it:

Where there are structural injustices, these usually produce not only victims of injustice, but also persons with relative privilege in relation to the structures. [...] Persons and institutions that are relatively privileged within structural processes have greater responsibilities than others to take actions to undermine injustice. As beneficiaries of the process, they have responsibilities. Their being privileged usually means, moreover, that they are able to change their habits or make extra efforts without suffering serious deprivation. (Young, 2010, p. 145)

In relation to the structural injustice of migration opportunities, educated, wealthy citizens, particularly from countries in the Global North, are clearly benefitting. Their freedom of movement, preferential treatment, and easier access to citizenship when migrating, means that they occupy a position of privilege in the structure of global labour migration. Their wealth, education also make them more likely to be able to contribute without ‘suffering serious deprivation’. Through benefitting from structural processes that harm others, they, according to the structural injustice model, therefore have some responsibility to remedy migration injustice.

In relation to sweatshops and the structural injustice of the international garment industry, Young gives the example of ordinary consumers who benefit from cheap clothes. Due to their privileged position in this relationship with the people who make their clothes, they have a responsibility to help better the situation, and they can discharge this responsibility by, for example, changing their consumption habits or encouraging textile companies to treat their workers better. Similarly, people who benefit from unjust migration arrangements, privileged migrants, have a responsibility to alter their behaviour in order to remedy this injustice. Yet asking them to change their choices of where to migrate, is perhaps more demanding than changing purchasing habits for clothes. Some might retort that purchasing clothes is more necessary than migrating. At least it is more demanding to alter migration choices in the sense that larger life choices are affected, whether one migrates for work, family or education. Moreover, it is somewhat unclear whether and how such altered choices might contribute to

reducing the structural injustice of differentiated treatment and access to migration. Indeed, if many people simply did not migrate in order to let other less privileged people do so, it seems too hopeful, and perhaps naïve, to think that this would actually alter employers' or states' behaviour towards less advantaged migrants.

Privileged migrants could therefore respond in different ways, such as contributing politically through collective action. After all, the responsibility to alter structural injustice is, according to Young, both shared and political, rather than individual and moral:

I have asserted that the shared responsibility for undermining injustice can be discharged only through collective action. Agents who participate in processes that produce injustice often need to reorganise their activities and relationships to coordinate their action and coordinate it differently. (Young, 2010, p. 147)

Young's examples of these kinds of organisations are unions, church groups, and stockholder organisations. In the case of sweatshop workers she also gives the example of student groups and university communities. The importance of coordinating organisations is clearly also paramount in the case of rectifying immobility. Any state, employer, or individual migrant, whether advantaged or disadvantaged, can do little to alter global structural injustice if they do not coordinate their actions, though some are certainly more powerful than others. In the case of the structural injustice of immobility and treatment of migrants, many groups have the collective ability to bring about change. For example, labour unions can help promote the opportunities of migrants, NGOs can advocate fairer migration regulations, political parties can impact state admission rules, global institutions can coordinate state action, and university communities can promote more equal access for foreign students and faculty.

It is also important to note the role of local and regional governments. This can be exemplified by the role of so-called sanctuary cities in the U.S., which work to help migrants. They do so by making it more difficult for the central government to enforce immigration laws, not cooperating with governmental immigration enforcement agencies, and not subjecting local governmental services to checks of citizenship. By helping "illegal" migrants, local government can thereby discharge some of the obligations that stem from their ability for collective action.³⁴

³⁴ For an overview of sanctuary policies and the moral justification of them, see Patti Lenard (2019).

In short, there are many collective methods by which privileged people in general, can – and many in fact do – contribute towards bettering the structural injustices in migration. However, what is important to note for our purposes is why they should be doing so. According to the argument presented here, such assistance or political action should not be seen as merely grounded in a duty of assistance to aid the less fortunate, but rather in the political responsibility engendered by privileges under current unjust structural migration arrangements. As their privilege is socially connected to harm done to others through the structural conditions within which they interact, they have a political responsibility to alter the situation. Furthermore, the more an individual is privileged, the more responsible they are.

4.2. People that benefit from migrant labour

Another way people can be clearly privileged by structural injustices in migration is by benefitting from underpaid migrant labour. Migrants often have fewer rights and are paid less than other workers. Whether that labour is taking place in their own state or in another country where the products they consume are being made, citizens who consume the products produced by underpaid migrants have a responsibility because they benefit. Of course, one's responsibility as a consumer is likely to be different according to whether the work is being done in their own state or elsewhere, at least in the sense that they have more of a collective ability to influence the conditions in their own countries. Yet, both domestically and internationally, they have a responsibility to better the situation for the migrants whose work they are benefitting from, whether they are reliant on farm labour for the food they eat, or medical workers in their hospitals. People will be able to take responsibility to different degrees, according to how privileged they are and how easy it is for them to change their habits without suffering as a consequence. They can discharge this responsibility in much the same way as the privileged migrants above, by contributing towards bettering the migration opportunities and treatment of more disadvantaged migrants. Furthermore, as their responsibility is based on their benefitting from migrant labour, they bear a particular responsibility to contribute to bettering the labour and citizenship rights of such disadvantaged migrants, and to contribute towards more equal rights for all migrants in a society.

While it is clearly too demanding to ask every citizen to have knowledge of all groups of migrant workers, different rights and regulations, and the specific harms that befall many migrants, what one can demand is a general acknowledgement of the situation: that the

privileged are indeed privileged, and that their advantages are maintained by harm done to others. The exact degree of responsibility each individual has is also difficult to establish according to this framework. As we saw above there are several ways one gains responsibility for structural injustice, and many ways one can discharge it. Furthermore, I do not think that the structural injustice framework can, or even should, prescribe specific action for each individual. What it gives is a model for deciding who has responsibility for structural injustices and why, not a straightforward way to decide exactly how much responsibility each individual has and how they should discharge it. Indeed, this seems to be a natural consequence of the framework of structural injustice discussed in section 2. The theory is not trying to trace causal liability, but rather consider how agents are involved in social structures sustaining injustices. And while their social positions are clearly related to the causal interactions by which the social system instantiates injustice, it is more difficult to prescribe an appropriate amount of responsibility from what social position an agent occupies. Furthermore, rather than merely tracing causal structures, the structural injustice model goes beyond that by looking at agents' possibilities for reforming that very structure. And these possibilities are not given by their current interactions. As such, I would argue that structural injustice both is and is not qualitatively distinct from liability injustice. It is not distinct in that it seeks to trace causal interactions by examining structural processes. In order to reify a social structure, you need to examine how it works and who plays which roles. At the same time, Young's model is distinct in the sense that the forward-looking solutions go beyond this causal interpretation of people's roles and social positions. You are not merely responsible for helping making better what you contribute to making wrong, but also to make better what you are in a position to make better. Indeed, according to the structural injustice framework, you can be responsible without making anything wrong at all, as the case below makes clear.

4.3. The responsibility of disadvantaged migrants and disruptive politics

Sometimes agents' interests coincide with the responsibility for justice. Victims of structural injustice in particular have unique interests in undermining injustice, and they ought to take responsibility for doing so (Young, 2010, p. 145).

As Young points out, if we follow the liability model whereby responsibility is grounded in causality and blame, it would be perverse to give victims of an injustice responsibility to remedy it. Indeed, this would be a philosophical kind of victim blaming. However, according to a social connection model this is not the case. For even though they might not be

blameworthy for creating the unjust structures, disadvantaged migrants certainly have an interest in changing them. As mentioned in section 3, labour migrants receive vastly differentiated treatment, and the degree to which someone is disadvantaged varies a lot. A Nepalese construction worker employed under the kafala system in Qatar is clearly more disadvantaged than a Polish plumber working in Norway. And while there is disagreement as to the justifiability of the differentiated treatment of temporary labour migrants, there is no disagreement about the existence of such differentiated treatment and that some migrants have fewer advantages than others. So regardless of whether one considers the individual migrants exploited, there can be little doubt that they have an interest in seeing their conditions improved.

In the case of the sweatshop industry, Young refers to the workers having an interest in their conditions being bettered. Though they most often have limited resources and ability to change the conditions, Young points out that they can and do attempt to organise workers, participate in campaigns and give information which can highlight their situation. In the same manner, disadvantaged migrants have an interest in increasing their mobility and the rights they are given. How might they go about discharging this responsibility? One way is to organise and speak out against current injustices, as many do. In addition to contributing with their perspectives and insights to the work mentioned above, an important use of collective ability today consists of informal networks of immigrants, who organise and aid people from their own countries of origin. These groups help people migrate, find work, understand local rules, and negotiate bureaucracy. These are clear expressions of migrants taking responsibility to better the situation they find themselves in.

Another way migrants contribute to alleviating global injustice is through remittances. Indeed, the redistribute effect of remittances is often used as a main argument in favour of guest worker programs (Lenard & Straehle, 2012, p. 210). While this does not in itself combat migration injustice, it does contribute towards alleviating global inequalities, which are intricately tied to the reproduction of and reasons for migration injustices. Yet, it is clear that in many instances people have few avenues to contribute to political change. It is therefore worth considering whether there are alternative ways they might discharge this responsibility. Recall the discussion in section 2 concerning what is likely to bring about structural change and Young's pragmatic opposition to using blame. A problem with this avoidance is that in many instances simply pointing out that something is unfair is unlikely to motivate someone

to take responsibility for changing it. Indeed, as Young acknowledges in relation to conservative beliefs in personal responsibility in relation to structural poverty, some beliefs are used to absolve individuals of responsibility to change unfair structures. While this is more readily appreciated in the case of, for example, racist beliefs justifying white privilege or misogyny justifying male privilege, I believe it also applies to meritocratic and nationalist beliefs justifying structural migration injustice.

One objection to the argument that migration access is structurally unjust, is that while it results in some people having fewer opportunities and worse treatment, this is merely an unfortunate result of a fair system. Current admission policies based on skills, health and wealth are meritocratic and fair. People are treated differently, but they have different abilities and states have different demands. The unequal treatment of migrants based on their skills, class, advantaged and abilities, is therefore fair. Now, if one agrees that the structural injustice argument presented above is correct, how might we read such a response? We can read it as a mistaken understanding of a state of affairs in the world, which once properly informed, people will seek to rectify. However, we can also read it as a mistaken belief that facilitates an avoidance of responsibility. In order to defend their position, people of privilege consider their position fairly acquired, whether or not this might actually be the case. This kind of ignorance is described by Hayward in relation to racial injustice, in the following manner:

The mechanisms of their production include information gate-keeping by powerfully positioned members of dominant groups, dominant background beliefs and assumptions, which many individuals, especially (but not only) members of dominant groups internalise, and the psychological investment that privileged members have in maintaining a sense of the self as ethical, even as they enjoy systematic unearned advantage. (Hayward, 2017, p. 404)

In the case of migration injustice, the belief that the current admission systems are fair and do not discriminate can be seen as a background assumption by means of which the privileged protect their unearned advantage. If this is the case, it is not likely that suggestions of more equitable opportunities to migrate or giving migrants equal access to rights, will be well received. After all, if the current system is fair, what moral problem needs to be solved? In light of this, it would seem that Young's pragmatic avoidance of blame and constructive collective politics might not be satisfactory to bring about change, at least not on its own. The usefulness of disruptive politics is well exemplified by the #MeToo movement, whereby the

ability to point the finger of blame has played an important role in the work for systemic change. In the case of racial injustice Hayward argues for the role of disruptive politics, by which she means “[...] boycotts, mass protests, sit-ins, die-ins, and other forms of unruly political action” (Hayward, 2017, p. 405). The latter have recently been successfully employed in the protests following the murder of George Floyd in Minneapolis in May 2020. It seems to me that there is good reason to assume that such disruptive political action will also be necessary in the case of bringing about change to migration injustice. After all, there seems to be little willingness in the Global North to substantially alter current admission requirements and treatment of migrants, regardless of how many people protest unfair conditions or how many migrants drown in the Mediterranean.

In “The Ethical Consequences of Criminalizing Solidarity in the EU” Melina Duarte considers the impact of criminalising aid towards refugees and migrants in the EU (Duarte, 2020). Duarte argues that this can have unintended damaging consequences for the EU, leading to increased polarisation, confusion of who actually counts as illegal, and making it harder for citizens to fulfil their moral duties to people in need. The important point to note here is that the continuation of such aid, even when illegal, can be seen as a form of disruptive politics aimed at overcoming a structural injustice. Indeed, these kinds of actions might be pragmatically necessary to shed some light on the deliberate avoidance of moral responsibility by EU states.

Another avenue of disruptive action is discussed by Nuti who points out that temporary labour migrants often conform to racial and gender stereotypes that help reproduce the structures of injustice (Nuti, 2018, p. 214). And while they should not be blamed for this, expressions of non-conformity might thereby also be seen as a way to take responsibility. Furthermore, such expressions might contribute towards dismantling the kinds of background beliefs that help reproduce social inequities.

Finally, one avenue of disruptive politics, available to disadvantaged migrants, is to migrate, whether or not it is legal to do so. Gwilym David Blunt argues that as migration restrictions are unjust, people have the right to conduct infrapolitical resistance by migrating (Blunt, 2018). Blunt draws an analogy with slaves escaping to the north in the United States. “Slaves and the global poor are both denied secure access to the human rights. This is because social institutions that define the positions are characterised by domination” (Blunt, 2018, p. 90). He furthermore argues that this denial of access to human rights legitimises resistance, which in

this case is so-called “illegal migration”. In the same way, according to a structural injustice argument, migrants can be seen as discharging their responsibility grounded in interest by migrating without permission. They are thereby contributing to shining a light on and undermining the structural conditions that bring about their disadvantage.

To clarify, I am not arguing that disadvantaged migrants have a duty to illegally migrate. Rather, I am pointing out that given the structural injustice in access to mobility, and the wilful ignorance of privileged groups, illegally migrating can be seen as a morally praiseworthy act. Furthermore, I do not think illegally migrating will change many people’s minds, indeed many will react with hostility to such migration. But it is one way people can discharge responsibility, and it can contribute to shining a light on immoral structural inequalities. After all, only by people becoming aware of structural injustices, is it likely that people will contribute to changing current practices. As Hayward puts it:

Disruptive politics are not a matter of moral suasion. Their aim is less to convince those who are systematically advantaged by structural injustice that they ought to “do the right thing” than to make it all but impossible for the privileged to not hear the voices of, to not know the political claims of, the oppressed. (Hayward, 2017, p. 406)

Ideally, of course, revealing the facts above about the systematic injustices in international migration, should prompt individuals to act. After all, once they have become aware of the injustices and harms, should not people and states change their ways? However, as with many kinds of structural inequalities, such as those rooted in misogyny, colonialism and racism, merely revealing unfair structures is unlikely to bring about change. Therefore, there is also a role for disruptive politics in overcoming migration injustice, as well as the more traditional political avenues.

5. Conclusion

In this paper, I argued that the vastly unequal access people have to migration and the differences in the treatment they receive, constitute a structural injustice. I have also pointed out that individuals bear some of the responsibility for these injustices, and considered how they might discharge such responsibility. This personal responsibility is based on either their privilege in these societal arrangements, typically benefitting from unequal migration arrangements and migrant labour, or their interest in seeing these systems changed, typically disadvantaged by worse treatment and lacking migration opportunities. And while the degree

of responsibility is difficult to ascertain according to a structural injustice model, the important thing to note is that individuals are indeed responsible, and to point towards some way they might discharge this responsibility. Possible ways to discharge this responsibility include contributing to NGOs, political parties, local government, employers, and informal networks. Finally, I considered the retort that current migration opportunities are fair, as they are mostly transparent and meritocratic. I argue that this, in addition to being a normative argument, can be understood as a kind of defence mechanism by the privileged: if my wealth and migration privileges do not depend on the misery of others, I am not responsible for helping them. Meritocratic belief and nationalism can thereby work as a defence mechanism for privileged citizens, in order to avoid the responsibility they have for the harms societal arrangements do to others.

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