

# The case for the international governance of immigration

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States have rights to unilaterally determine their own immigration policies under international law and few international institutions regulate states' decision-making about immigration. As a result, states have extensive discretion over immigration policy. In this paper, I argue that states should join international migration institutions that would constrain their discretion over immigration. Immigration restrictions are morally risky. When states restrict immigration, they risk unjustly harming foreigners and restricting their freedom. Furthermore, biases and epistemic defects pervasively influence states' decision-making about immigration policy. States should transfer some of their decision-making authority over immigration to more reliable institutions in order to mitigate the risks that they will unjustly restrict immigration. International institutions that include the interests of potential immigrants would be more reliable with respect to immigration policy than unilateral state decision-making. Thus, states should subject their immigration policies to international control.

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Global governance institutions have proliferated in recent decades. Organizations such as the United Nations Security Council, the World Trade Organization (WTO), the International Monetary Fund, and the International Criminal Court (ICC), promote international cooperation on a diverse range of policy areas, such as trade, intellectual property, criminal justice, and war. These international organizations limit what individual states can do without international consultation and approval. Yet, few international organizations constrain the immigration policies of states. International institutions influence how states respond to certain aspects of migration, such as the migration of refugees. But there is no formal multilateral institutional framework that regulates states' policies regarding the admission and exclusion of foreigners more generally (Betts 2011). Furthermore, international law grants states extensive discretion over the admission of foreigners (Opeskin 2012). Some legal scholars even describe

states' legal authority over the admission of foreigners as 'the last major redoubt of unfettered national sovereignty' (Martin 1989, 547). States often use this legal authority to implement policies that prevent foreigners from immigrating.

In this paper, I will defend the international governance of immigration. I will argue that international institutions that consider the interests of potential immigrants should regulate states' immigration policies. My argument goes like this. Immigration restrictions are morally risky because these laws enable harm to foreigners and curtail their liberties, and there is some probability that states' immigration restrictions are unjustified. Furthermore, biases against immigration pervasively influence states' decision-making about immigration policy. If states risk unjustly interfering with foreigners and their decision-making about immigration suffers from serious biases and epistemic defects, then states should transfer decision-making authority over immigration to more reliable institutions. International institutions that include the interests of potential immigrants would be more reliable with respect to immigration policy than the unilateral decision-making of states. Thus, states have moral reasons to subject their decision-making about immigration to international control.

I have organized this paper as follows. In the second section, I will explain why immigration restrictions are morally risky. In the third section, I will argue that officials and citizens have procedural obligations to decide immigration policy in a reliable manner and that the citizens of some states are violating these obligations. In the fourth section, I will argue that states should delegate some decision-making authority over immigration policy to international institutions. In the fifth section, I will respond to objections. In the last section, I conclude the paper.

### **The moral risks of immigration restrictions**

My argument for the international governance of immigration begins with the claim that immigration restrictions are morally risky. Immigration restrictions are morally risky in part because these laws risk causing harm to foreigners. Agents can cause harm in different ways. An agent can directly inflict harm by initiating a causal sequence that results in harm to another person. If you shoot someone with your gun, then you initiate a causal sequence that results in a harmful outcome for this person. But agent can cause harm in other ways. They can cause harm by enabling harm. You enable harm to another person if you act in a manner that prevents this person from avoiding a bad state. Immigration restrictions enable harm in this sense (Huemer 2010). Border controls coercively prevent foreigners

from avoiding harms, such as poverty and threats to their lives and liberties.<sup>1</sup>

Here is an illustration. Most people in Haiti are extremely poor. About 58% of Haiti's population lives on less than \$2.4 a day and 23% subsists on less than \$1.23 a day (World Bank 2014, 2). Haiti has the highest infant mortality rate in the Western Hemisphere and over 30% of Haiti's population lacks access to improved water sources (UNICEF and WHO 2014). Many Haitians want to immigrate to other countries, such as the United States. One group of economists calculate that an average, moderately educated Haitian male would earn at least six times more in the United States than he would in Haiti once they adjust for purchasing power (Clemens, Montenegro and Pritchett 2008, 4). If Haitians could immigrate to the United States, they would likely escape extreme poverty. Approximately four out of five Haitians who live above the poverty line of \$10 a day already live in the United States (Clemens and Pritchett 2008, 411).

Other states stop Haitians from immigrating. The United States Coast Guard has stopped 114,716 Haitians who were trying to immigrate to the United States between 1982 and 2009 (Clemens 2010). The United States only allows about 21,000 Haitians to immigrate every year. In blocking Haitians from immigrating, border agents prevent Haitians from avoiding poverty and other harms. This is not just an isolated example. Immigration restrictions reinforce global poverty. The economist Clemens (2011, 84–89) estimates that open borders would increase the gross domestic product of the world by 20–60% and the citizens of developing countries would benefit disproportionately from liberalized immigration laws. Economists Richard and Page (2005) find that a 10% increase in the share of international migrants in a country's population causes 2.1% decline in the number of people living on less than \$1 a day. Even when immigration restrictions don't trap people in severe poverty or other harmful conditions, these restrictions constrain valuable freedoms. Immigration restrictions interfere with foreigners' freedom of occupational choice and association

<sup>1</sup> Abizadeh (2008) argument emphasizes the coercive nature of immigration restrictions in defending the international governance of immigration. Abizadeh argues that a person has a right to a democratic say over a state's policies if this state coerces this person. Immigration restrictions coerce potential immigrants. Abizadeh concludes that, to extend political rights to foreigners, states should create democratic cosmopolitan institutions that would regulate their immigration policies. But, as Wellman (2011, 93–103) and Miller (2010) point out in criticizing Abizadeh's argument, an agent can sometimes permissibly coerce another person without giving this person a say in the agent's decision. For example, people have rights to unilaterally exclude trespassers from their property in some cases (see Wellman and Cole 2011, 96–99). If it is sometimes permissible to unilaterally coerce other people, then it is unclear whether foreigners have rights to a democratic say in a state's immigration decisions simply because border controls are coercive.

(Carens 2013, Ch. 11; Hidalgo 2014). States that restrict immigration prohibit foreigners from seeking employment abroad and associating with the citizens of other countries on voluntary terms.

States have moral reasons to avoid causing harm to foreigners and restricting their liberties. The burdens that immigration restrictions impose on foreigners are unintentional. That is, public officials don't intend to harm foreigners when they decide to restrict immigration. But the harms of immigration restrictions are foreseeable. While it is perhaps morally worse for states to intentionally set back the interests of foreigners, states nonetheless have moral reasons to refrain from foreseeably harming foreigners and abridging their liberties. Consider an analogy with 'collateral damage' in war. Most people recognize that there are weighty moral reasons against foreseeably harming bystanders as a side effect of military action (see Rodin 2004). Similarly, states have strong moral reasons to refrain from foreseeably causing harm to foreigners by restricting immigration. These reasons may defeat countervailing considerations and explain why immigration restrictions are impermissible. In this respect, immigration restrictions are morally risky because there is some probability that they are unjustified.<sup>2</sup> For example, there is some non-zero probability that the United States' moral reasons to permit the immigration of Haitians are undefeated. The moral reasons that count against allowing Haitians to immigrate may simply be insufficiently strong to justify their exclusion. As a result, the United States might be unjustly condemning hundreds of thousands of Haitians to poverty and deprivation.

One might think that, to endorse the claim that there is some probability that immigration restrictions against Haitians are unjust, we need to reject the view that states have moral rights to exclude outsiders. But we can accept that states have rights to exclude and still conclude that there is a probability that actual immigration restrictions, such as the restrictions on the immigration of Haitians, are unjust. This is so because rights to control immigration are not absolute. Other moral considerations, such as the moral reasons to refrain from enabling harm to foreigners, can outweigh states' rights to exclude.

Several political theorists contend that states have presumptive rights to exclude foreigners, although different authors describe the content and justification of these rights in different ways. Some authors, such as Wellman (2011), argue that states have rights to freedom of association, which includes rights to refuse association with potential immigrants.

<sup>2</sup> By 'some probability', I mean that there is a non-zero epistemic probability that any given immigration restriction is morally unjustified. Epistemic probability refers to the degree of justification a proposition has in light of one's current evidence (Huemer 2013, 262).

Miller (2005) and Walzer (1983) argue that nations have rights to preserve their national cultures or, at least, to control how their national cultures evolve over time by enforcing immigration restrictions. Other authors, like Pevnick, contend that citizens have ownership rights over their political institutions and that citizens have rights to exclude outsiders from using their collective property (2011).

Yet, these theorists concede that other moral considerations can defeat states' rights to exclude. Walzer (1983, 48–51) claims that states have obligations of mutual aid to admit refugees. Miller (2007, 207) and Pevnick (2011, 84) argue that states should admit immigrants who would otherwise lack adequate options to live decent lives in the states where they currently reside. Blake (2013, 125–26) concludes that rich states must accept foreigners who are fleeing oppression and that the restrictions that these states currently impose against the citizens of poor countries are unjust. Wellman concedes that states have powerful reasons to respect the freedom of foreigners and the citizens that want to associate with them, and that these reasons can outweigh states' rights to self-determination (2011, Ch. 4). The claim that other moral considerations can outweigh the moral reasons in favor of immigration restrictions is relatively uncontroversial.

So, most political theorists accept that moral reasons to admit immigrants can override the moral reasons in favor of exclusion. This is true regardless of whether states have presumptive moral rights to exclude potential immigrants or not. If states lack presumptive rights to exclude, then many actual immigration restrictions are unjust. But, even if states have presumptive rights to exclude, it does not follow that actual immigration restrictions are permissible insofar as the reasons to avoid enabling harm to foreigners and constraining their liberties can outweigh rights to exclude. To determine whether immigration restrictions are permissible, we must balance the moral reasons to permit immigration against the reasons to impose restrictions on immigration to arrive at an all-things-considered judgment about whether any given immigration restrictions are justified. Yet, there is a probability that states will get this balance wrong and impermissibly restrict foreigners' freedom to immigrate.

### **Procedural obligations and biases against immigration**

So, immigration restrictions are morally risky. What follows from this fact? If immigration restrictions are morally risky, then public officials and citizens incur obligations to take precautions to mitigate the risks that they will authorize unjust immigration restrictions. We generally have obligations to take precautions before acting in a morally risky manner. Rosen (2004, 301) gives some examples to illustrate: 'You are obliged to

keep your eyes on the road while driving, to seek advice before launching a war and to think seriously about the advice you're given; to see to it that dangerous substances are clearly labeled, and so on'. You should take precautions of this kind because you have obligations to avoid negligently causing or allowing harm.

The same point applies to public policy. Political decision-making is often morally risky. Consider Rosen's example of the decision to go to war. Wars typically risk causing unjustified harm to innocent people. For this reason, most people think that it would be negligent if a political leader decides to go to war without taking adequate precautions to determine if this war is actually justified. Suppose that a political leader is deciding whether to authorize a military strike against a neighboring state. This leader neglects to think hard about whether this strike satisfies the principles of *jus ad bellum* or acquire the best available information about the likely consequences of a war with this state. Instead, this political leader adopts the following decision rule: if authorizing the strike boosts this leaders' chances of winning the next election, then she will authorize it. Even if this procedure resulted in the substantively correct decision, this leader is culpable of gross negligence. As war is morally risky, this leader should have taken more rigorous precautions to ensure that she arrived at a morally justified decision.

Let us return to immigration policy. Immigration restrictions enable harm and coercively restrict the liberties of foreigners. Moreover, immigration restrictions may sometimes be impermissible. Thus, immigration restrictions risk subjecting foreigners to unjustified and harmful interference. Public officials and, to the extent that they influence political decision-making, citizens have obligations to take precautions to avoid impermissibly harming foreigners and curtailing their liberties. To do this, states must be able to reliably determine when it is morally permissible to restrict immigration or not. So, states should take steps to ensure that their decision-making about immigration is reliable, where a decision-making procedure is reliable if this procedure is more likely to result in morally justified decisions than alternative procedures. For ease of reference, I will refer to obligations to make a decision in a reliable manner as 'procedural obligations'. The people who exert influence over a state's immigration policies, such public officials and voters, have procedural obligations to decide whether to restrict immigration in a reliable way in order to reduce the risk that they will unjustly restrict immigration.

How should public officials and citizens satisfy their procedural obligations with respect to immigration policy? Political leaders and citizens should acquire accurate beliefs about the likely effects of immigration. This is the case because the permissibility of immigration restrictions depends at least in part on the benefits and burdens of immigration.

Suppose that states have moral rights to exclude foreigners. Nonetheless, most people accept that rights can be overridden if the consequences of doing so are sufficiently good. Even philosophers who defend the right to exclude concede that immigration restrictions are likely to be unjustified if immigration has large benefits for foreigners and few costs for citizens (see Wellman and Cole 2011, 84–91). If the permissibility of immigration restrictions depends partly on the effects of immigration, then public officials and voters are required to take steps to form accurate beliefs about these effects. Among other measures, political actors might consult the relevant social science on the consequences of immigration and adjust their beliefs about immigration in light of the available evidence.

Officials must do more than acquire justified beliefs about the effects of immigration. They must also evaluate these effects in the right way. In particular, officials should properly balance the interests of foreigners and citizens when deciding immigration policies. Imagine that public officials satisfy their procedural obligations to form justified beliefs about the effects of immigration. These officials examine the relevant evidence and come to the conclusion that immigration imposes costs on citizens. Assume that, while immigration benefits foreigners, immigration also causes wage losses for citizens, unemployment, overcrowding, and so on. If immigration sets back the interests of citizens, then public officials need to weigh the interests of foreigners against the interests of citizens in order to decide which policies to implement in response to these costs. But how should officials balance these interests in deciding whether to restrict immigration?

One possibility is that public officials should treat the interests of their citizens as decisive. People often assume in public discourse that their compatriots should have strict priority over the claims of foreigners. According to this view, citizens have special obligations to one another and these obligations permit citizens to give much greater weight to the interests of their compatriots than those of foreigners (see Macedo 2007). Adherents of this view would say that, if immigration imposes costs on citizens, then public officials should restrict immigration in order to protect citizens from these costs even if allowing immigration would substantially benefit foreigners.

However, we should reject the view that the interests of citizens generally trump the interests of potential immigrants. This is so because the moral reasons to refrain from coercing or harming foreigners often defeat the moral reasons to benefit our compatriots. To see why, consider an analogy with other special obligations. Most people think that we owe more to our friends and family members than we owe to strangers. Yet, it is normally impermissible to harm or coerce innocent strangers in order to benefit our friends and family members. It would be wrong for you to, say, mug a

stranger and give this person's money to your friends, or to coercively prevent strangers from competing with your family members for jobs.

The same point seems to extend to relationships between compatriots (Pogge 2006, 120–39; Huemer 2010, 438–47). Suppose that we have special obligations to promote the interests of our compatriots. It hardly follows that states can permissibly promote these interests in just any way. In fact, it can be wrong for a state to harm or coerce foreigners despite the fact that harming or coercing foreigners would prevent comparable harms to this state's citizens. For example, while we might have special obligations to provide our compatriots with adequate healthcare, it would nonetheless be impermissible to kill foreigners, extract their organs, and distribute them to our compatriots who are dying of organ failure (Miller 2007, 44). I have argued that immigration restrictions coerce and harm foreigners as well. If the moral reasons to refrain from harming or coercing foreigners can override the moral reasons to benefit one's compatriots, then immigration restrictions may be unjustified even if these restrictions benefit a state's citizens on net. So, it is false that the interests of compatriots should have strict priority over the interests of potential immigrants.

To more precisely specify how public officials should balance the interests of citizens and potential immigrants, I would need to supply a more-or-less complete account of justice in immigration, and I am unable to provide this account there. But I have argued elsewhere that it is objectionable for public officials to attach greater weight to the interests of their citizens in deciding immigration policies (Hidalgo 2013). Most people think that it is impermissible for public officials to use the coercive power of the state for the benefit of their friends and family over the interests of other citizens. I contend that it is wrong for officials to use coercion to privilege the interests of citizens over the interests of foreigners as well. If negative duties to refrain from coercing foreigners defeat special duties to compatriots, then public officials must be impartial with respect to the interests of foreigners and citizens. This is an admittedly revisionary view about the responsibilities of public officials. Even if this view turns out to be incorrect, it is clear that public officials are obligated to give the interests of foreigners non-trivial weight in their deliberations and to avoid treating the interests of their own citizens as decisive when the interests of foreigners and citizens conflict.

As a corollary to their procedural obligations, public officials and citizens should also insulate their decision-making from epistemic defects that damage the reliability of their decision-making. Suppose that the citizens and public officials of a state are disposed to form false beliefs about immigration. They think that immigration lowers wages, increases crime, and generates unemployment, whereas the evidence suggests that



immigration does not have these effects. Or imagine that the citizens and public officials are inclined to disregard and ignore the interests of potential immigrants. These biases may cause this state to restrict immigration even when doing so is unjustified. Consequently, political leaders and citizens are obligated to take precautions to prevent these biases from influencing their decision-making about immigration. Political actors are violating their procedural obligations to the extent that they negligently allow biases and other epistemic defects to influence their decision-making about immigration policy.

To sum up my argument so far, public officials and citizens have procedural obligations to decide immigration policy in a reliable manner and, to satisfy these obligations, they must acquire accurate information about the effects of immigration, give appropriate weight to the interests of foreigners in their deliberations, and take precautions to insulate their decision-making from biases. I will now make the case that the public officials and citizens of actual democratic states are violating their procedural obligations. In particular, the citizens of affluent democratic states tend to overestimate the costs and underestimate the benefits of immigration. These biases prevent the citizens and officials of affluent states from satisfying their procedural obligations to decide immigration policy in a reliable way.

To explain why citizens and public officials often violate their procedural obligations, I want to first note that voters exert a large impact on immigration policy in democratic states. Legislatures are the primary actors who decide whether to restrict immigration or not and voters influence what legislatures decide to do. Other groups, particularly interest groups, also influence legislatures. Certain powerful interest groups, such as businesses, may favor more immigration than the general population and these groups might wield disproportionate influence over political institutions (Facchini, Mayda and Mishra 2011). But the immigration policies of wealthy democratic states are broadly consistent with public opinion (Freeman, Hansen and Leal 2013, 2–3). States generally select policies that are most preferred by the median voter, although states' immigration policies tend to be somewhat less restrictive than the median voter would like (Facchini and Mayda 2008). Countries where the median voter is more opposed to immigration tend to implement more restrictive immigration laws.

However, citizens often hold false and biased beliefs about immigration. To support this claim, let us begin by examining popular beliefs about the economics of immigration. Many citizens oppose immigration on the grounds that immigration is harmful for the economy and that immigration increases unemployment among citizens. One cross-national survey of the public opinion of countries such as Britain, the United States, Italy, Spain,

Germany, and France, finds that large pluralities or majorities disagree with the claim that immigration is good for their country's economy and agree that immigration makes it more difficult for native citizens to secure employment (Ipsos 2011). But citizens' beliefs about the negative effects of immigration are exaggerated. The dominant view among economists is that immigration has small or even negligible effects on employment and wages (Clemens 2011, 94–95; Peri 2014). Most recent studies find that immigration typically has ambiguous effects on wages and employment and, when immigration does have an impact, the effect is small and sometimes positive (Friedberg 2001; Peri and Sparber 2009; Fromentin 2013).

Citizens also worry about the effect of immigration on public finances. They believe that immigration worsens public finances and that immigrants take more in welfare than they contribute in taxes. One report by the Organization for Economic Co-Operation and Development (2013, 126) finds that 'there is clearly a link between the perception of the fiscal impact and public acceptance of additional immigration'. But most major studies of the fiscal effects of immigration find that immigration has few net effects on public finances. For instance, a majority of citizens in the United Kingdom say that immigrants take more out of the welfare system than they put it in, but it appears that immigrants are actually net contributors to public finances in the United Kingdom on average (Dustmann, Frattini and Halls 2010). A survey of the evidence concludes: 'in general, there is no strong fiscal case for or against sustained large-scale immigration' (Rowthorn 2008, 560).

One survey of randomly selected people in the United States asked respondents to say whether immigration is a 'major reason', 'minor reason', or 'not a reason at all' why the 'economy is not doing better than it is'. About 47% of the public said that immigration is a major reason that the economy is not doing better than it is (Miller 2009, 36). This survey also posed the same question to a randomly selected group of economists. Just 1% of the surveyed economists said that immigration is a major reason that the economy is not doing better. The overwhelming majority of economists could be wrong about the effects of immigration on the economy. Maybe economists are biased. But the disagreement between economists and the public persists even when social scientists control for many of the factors that could produce bias, such as income, job security, race, gender, age, ideology, and party identification (Caplan 2007, 59). This is *prima facie* evidence that many members of the public have false views about the economic effects of immigration. This helps explain why 65% of respondents in surveys believe the number of immigrants to the United States should be decreased, while only 16% of economists agree that 'current U.S. immigration levels are too high' (Miller 2009, 36).

Most citizens also seem to have false beliefs about the relationship between immigration and crime. Majorities in Western Europe believe that immigration increases crime (Fitzgerald, Curtis and Corlis 2011, 477–78). Concerns about crime are significant determinants of people's attitudes toward immigration. In some countries, concerns about crime may be a more important predictor of attitudes toward immigration than concerns about the economic impact of immigration. Yet, the claim that immigration increases crime is generally unsupported. Three political scientists observe: 'reports from single and multicountry studies suggest that immigration does not actually elevate crime rates. Recent U.S. research even finds that immigration is associated with *lower* levels of crime' (Fitzgerald, Curtis and Corlis 2011, 478). Sociologists Waters and Simes (2013, 457) note that the popular belief that immigration causes crime 'is remarkably resilient to the evidence that immigrants are no more likely than natives, and in most cases much less likely than natives, to commit crimes'.

Popular beliefs about immigration are not the result of random error. To see this, note that most citizens do not believe that immigration has greater *positive* effects than immigration actually has. They believe that immigration has larger *negative* effects than the evidence supports. This fact suggests that citizens are predisposed to form unfavorable beliefs about immigration in the first place. Biases distort people's judgments about immigration in a negative direction. One relevant bias is ethnocentrism or in-group favoritism. Ethnocentrism involves the disposition to believe that members of in-groups are trustworthy, cooperative, friendly, and safe, and that the members of out-groups are untrustworthy, dangerous, and uncooperative. Some citizens have nationalist ethnocentric biases. These citizens tend to believe that foreigners have undesirable dispositions and characteristics in comparison with their compatriots.

To see the influence of nationalist ethnocentrism on public opinion about immigration, consider popular beliefs about the relationship between immigration and crime. As I noted above, most citizens think immigration causes more crime despite the fact that the available empirical evidence fails to support this belief. Why then do citizens think that immigration increases crime? Nationalist ethnocentrism is one plausible answer. If citizens believe that immigrants are untrustworthy, uncooperative, or dangerous, then it is only a short step to the conclusion that immigrants commit more crime than native citizens. There is systematic empirical support for the claim that nationalist ethnocentrism is a significant factor in explaining public opinion about immigration. According to one study, ethnocentrism is 'the single most important determinant of American opposition to immigration—across time and setting and for various aspects of immigration policy'

(Kinder and Kam 2009, 139). Another study of attitudes toward immigration in Italy finds that:

... a sizeable segment of the Italian public denies that immigrants, whether white or black, whether from North Africa or Central Africa, act honestly and properly toward others, behave like good citizens, and observe the regulations and laws of the government. They perceive immigrants as intrusive, pressing themselves on others, as lazy, trying to avoid honest work but complaining about being badly treated, and not infrequently using or threatening to use physical force (Sniderman *et al.* 2002, 31).

Respondents blamed immigrants for contributing to a variety of social problems, such as unemployment and crime (Sniderman *et al.* 2002, 33–34).

Favoritism toward compatriots is not the only kind of in-group favoritism that influences popular attitudes toward immigration. Racial and ethnic in-group favoritism also affects attitudes about immigration policy. Research in political psychology in the United States indicates that people are more likely to feel threatened by non-white immigration (Hartman, Newman and Bell 2014). Popular opposition to immigration depends on the origin of this immigration. British citizens are more strongly opposed to immigration from the West Indies and Asia than they are opposed to immigration from Europeans and New Zealanders or Australians (Dustmann and Preston 2007). Voters in Switzerland are more likely to reject observably similar applicants for naturalization if these applicants come from Yugoslavia or Turkey rather than Northern or Western European countries (Hainmueller and Hangartner 2013). The fact that opposition to immigration depends on the origin of this immigration suggests that racial or ethnic in-group favoritism influences attitudes about immigration.

So, it is plausible that citizens of some states have biases that lead them to form unfavorable beliefs about immigration. But we should distinguish between two kinds of ethnocentric biases. One kind of ethnocentric bias is empirical. People are disposed to form negative empirical beliefs about the members of out-groups. People might believe that the members of out-groups are dangerous, lazy, untrustworthy, and so on. These are, to some extent, empirical beliefs about the dispositions of immigrants. Another kind of ethnocentric bias is moral in nature. People may also ignore or radically discount the interests of out-groups. Citizens tend to discount or ignore the interests of foreigners, at least when the interests of foreigners and citizens conflict (Pratto and Glasford 2008). This moral bias is reflected in immigration policies. Rodrik (2015) observes that we would need to value the welfare of foreigners dramatically less than the welfare of the citizens of affluent states in order to justify existent immigration restrictions. This is

the case because allowing more immigration than the *status quo* would benefit foreigners a great deal and impose only small costs on citizens. Rodrik argues that, even if we attach relatively slight value to the welfare of foreigners, we should favor expanding global mobility. Yet, existent immigration restrictions are often popular. These facts suggest that citizens and public officials tend to unjustifiably ignore the interests of potential immigrants in crafting immigration policy.

In light of the evidence, it appears that many citizens in wealthy democratic states are biased against immigration. These biases influence what public officials do. Public officials pander to these biases in order to win elections. Some politicians also have the same biases and false beliefs about immigration that ordinary citizens have (Caplan 2007, 168–69). Recall that public officials in democratic states have procedural obligations to decide immigration policy in a reliable manner. Officials and citizens should insulate their decision-making about immigration from biases and false information. But citizens and officials have biases and epistemic defects that prevent them from deciding immigration policy in a reliable way. So, many citizens and public officials appear to be violating their procedural obligations.

### **International migration institutions**

In this section, I will argue that states have strong moral reasons to transfer their decision-making authority over immigration to international institutions. My argument for this claim begins with the observation that, if an agent has biases that impair this agent's capacity to make morally risky decisions in reliable ways, this agent has moral reasons to transfer decision-making authority to a more reliable party. To motivate this idea, consider the rationale for recusals. Public officials should recuse themselves when conflicts of interest impair their impartiality. If a public official has a personal or financial stake in a decision, then this official's personal interests might bias her decision-making. In other words, conflicts of interests damage the ability of public officials to competently make morally risky decisions. To satisfy their procedural obligations, officials with conflicts of interest should delegate their decision-making authority to more impartial parties. These officials should allow less biased agents to make morally risky decisions instead.

The example of recusals suggests the following principle: if an agent A has biases that prevent A from reliably making a morally risky decision, then A has moral reasons to transfer decision-making authority to some more reliable agent B. These reasons might not be decisive. If an agent can eliminate her biases without transferring authority, then the reasons in

favor of this delegation may be defeated. Nonetheless, biased agents who must make morally risky decisions have strong defeasible moral reasons to transfer decision-making authority to more impartial parties.

This rationale for delegation can extend to entire groups or institutions. Sometimes entire groups or institutions have biases that prevent them from making morally permissible decisions. If a group is confronting a morally risky decision and this group has biases that impair its capacity to make this decision in a reliable way, then the members of this group have strong moral reasons to delegate decision-making authority to more reliable institutions. Mayerfield (2012, 288–95) develops an argument along these lines for international institutions. States are often biased in favor of their own interests and can be blinded by nationalist pride. Mayerfield observes: ‘If one group finds itself in conflict with another, members of the group form their views in consultation with fellow-members; they are little inclined to test those views against the objections from the other group. Under such circumstances, there is dangerously little check on the forces of bias and self-praise’ (2012, 289). These biases can lead states to engage in violent disputes and treat outsiders unjustly. So, Mayerfield argues that states should delegate decision-making authority to international institutions that can impartially resolve disputes in order to prevent unjustified conflicts and wars (see also Cabrera 2009, Ch. 2).

The moral case for delegation to international institutions applies to immigration policy as well. As the decision to restrict immigration is morally risky, citizens and public officials have obligations to take precautions to avoid wrongdoing. In particular, they should take steps to insulate their decision-making from bias. But states are often biased against immigration and these biases prevent states from deciding immigration policy in a reliable way. If impartial international institutions constrained states’ decision-making about immigration, then this decision-making would be more reliable. That is, states would be more likely to implement morally permissible immigration policies if relatively impartial international institutions regulated and constrain their policies. Thus, public officials and citizens should allow international institutions to exercise authority over their immigration policies.

A more precise description of my argument goes like this:

1. States’ decisions to restrict immigration are morally risky.
2. If agent A must make morally risky decisions and A has biases or epistemic defects that prevent A from making these decisions in reliable ways, then A has strong moral reasons to transfer decision-making authority to a more reliable agent B.
3. The citizens and public officials of some states have biases and epistemic defects that impair their ability to make reliable decisions about immigration policy.

4. Certain international institutions that constrain state discretion over immigration policy would be more reliable at deciding immigration policy than states acting unilaterally.
5. So, the citizens of some states have strong moral reasons to (at least partially) transfer their decision-making authority over immigration policy to these international institutions.

I will refer to this argument as *the reliability argument* for the international governance of immigration. I have already defended premises 1 and 3 of the reliability argument. I will focus on defending premise 4 in the remainder of this section.

I contend that international institutions that represent the interests of both the citizens of recipient states and the interests of foreigners would help citizens to satisfy their procedural obligations with respect to immigration policy. For the sake of brevity, I will refer to these kinds of institutions as *inclusive migration institutions* (IMIs). More specifically, the IMIs would have the following properties:

- A. *Authority*. IMIs would have the power to regulate or exercise oversight over states' immigration policies.
- B. *Feedback and accountability mechanisms*. IMIs would have feedback mechanisms that provide these institutions with incentives to respond to the preferences and interests of both citizens of recipient states and potential immigrants.
- C. *Contestation*. IMIs would have deliberative forums that allow both the citizens of recipient states and people who represent potential immigrants to contest or criticize states' immigration policies.
- D. *Impartial adjudication*. IMIs would allow for impartial adjudication through courts in cases where recipient states and potential immigrants disagree about which immigration policies to implement.

It is possible to imagine different kinds of IMIs that embody properties (A–D). We can imagine an international system of immigration courts that rule on the legality of states' immigration restrictions or resolve disputes between states about their immigration laws. We can imagine a multilateral migration organization that is modeled along the lines of the WTO that encourages states to agree on common immigration laws and policies. I will describe examples of IMIs in more detail below.

Some institutions that seem desirable in theory might be bad ideas in practice. IMIs could have severe design flaws that make them less reliable than sovereign states. But I want to defend a probabilistic claim about IMIs. It is likely that reasonably well-designed IMIs with properties (A–D) would be more reliable than unilateral state decision-making about immigration.

A well-designed IMI would suffer from fewer epistemic defects than states and IMIs would help counterbalance the biases that influence states' immigration policies. Recall that the citizens of some states have ethnocentric biases that lead them to form unfavorable empirical beliefs about immigrants. IMIs would help counteract these biases. IMIs would include representatives from different nations and cultures that are less likely to suffer from these particular ethnocentric biases. If these representatives have power, then IMIs may help neutralize the biases that influence states' immigration policies.

IMIs would also correct for biases against the interests of foreigners. Ethnocentric biases cause some citizens to ignore the interests of foreigners when citizens' interests conflict with those of foreigners. Furthermore, democratic governments have strong incentives to implement policies that pander to these biases because citizens have political power. Potential immigrants lack the political influence to pressure other states for better treatment under the *status quo*. As a result, governments often have incentives to disregard the interests of foreigners. IMIs would encourage states to give greater weight to the interests of foreigners. These institutions would have feedback and accountability mechanisms that would allow foreigners to exercise political influence over the immigration policies of other states. Foreigners would have the power to demand fairer treatment of potential immigrants from other states and could use this political influence to counterbalance the impact of antiforeign biases on states' immigration policies. For these reasons, states' immigration policies are likely to be more responsive to the interests of foreigners if IMIs were in place.<sup>3</sup>

Finally, IMIs would incorporate mechanisms for deliberation and contestation. These factors would likely improve the quality of states' decisions about immigration. Foreigners could contest states' justifications for excluding them in IMIs and force states to consider and respond to their objections. One standard argument for democratic government is that democracy promotes collective learning (Anderson 2006, 13–15).

<sup>3</sup> Some defenders of global democratic institutions appeal to a principle of all-affected interests (Goodin 2007, 2010). This principle holds that people should have a voice in a decision if their interests are affected by this decision. The activities of states often affect the interests of foreigners. So, the principle of all-affected interests seems to imply that foreigners should have the right to exercise a say over the policies of other states (perhaps through participatory international institutions). Here I am making the narrower argument that foreigners should have political influence over the affairs of other states if (a) states are morally required to take the interests of foreigners into account when making decisions and (b) we have reason to believe that states will be biased against the interests of foreigners unless foreigners have some influence in their decision-making. I will remain agnostic about the more general principle that people have rights to participate in a decision if this decision affects their interests.



Democracy encourages people to learn from one another, deliberate together, and to hold each other accountable in public life. This continual process improves the epistemic quality of decisions. IMIs would supplement this process of collective learning. The members of IMI would bring the citizens of different countries together to contest each other's policies and laws. Theorists of democracy have recently emphasized the epistemic value of diversity. Democratic institutions incorporate diverse perspectives and this epistemic diversity can help generate solutions to complex problems (Landemore 2012). Under the *status quo*, the citizens of most states debate immigration policy largely without considering the perspectives of potential immigrants. IMIs would incorporate the perspectives and interests of foreigners as well. If deliberation, contestation, and epistemic diversity improve the quality of decisions, then IMIs would likely improve decision-making about immigration policy.

For purposes of illustration, it may be helpful to consider an analogy with the WTO. To an imperfect degree, the WTO has properties that run parallel to (A–D). First, members of the WTO effectively lack the discretion to unilaterally restrict trade. If members unilaterally disobey WTO rules, then they may become liable to sanctions. In a sense, the WTO wields partial authority over the trade policies of some states. Second, the WTO formally and informally incorporates the perspectives and interests of a large number of different countries and stakeholders such as businesses and non-governmental organizations, despite the fact that some actors, such as rich countries, continue to have more influence than other stakeholders. Third, the WTO has deliberative forums where members can deliberate about and contest trade policies. The members of the WTO have rights to attend meetings, make proposals, suggest amendments, and oppose the consensus. Fourth, the WTO has mechanisms for impartial arbitration to resolve trade disputes. Countries can bring complaints about another state's trade policies before a dispute settlement panel and appeal to the WTO's Appellate Body to challenge rulings.

The WTO may improve the reliability of state decision-making about trade. The citizens of states confront moral risks in deciding trade policy. They risk wrongly impose trade restrictions on the citizens of other states. Like immigration restrictions, trade restrictions can enable harm to foreigners, especially the citizens of poor countries who would benefit from access to the markets of high-income countries. Furthermore, citizens tend to underestimate the benefits of international trade and nationalism generates strong opposition to free trade (Mayda and Rodrik 2005; Caplan 2007, 36–39). So, nationalist biases can influence state's decision-making trade policy and these biases may prevent public officials from deciding trade policy in a reliable manner. The WTO helps counterbalance these

biases and insulate states' trade policies from biases and epistemic defects that shape public opinion. The WTO seems to make a difference for members' trade policies (Goldstein, Rivers and Tomz 2007). It appears that the WTO encourages states to implement less restrictive trade policies by limiting the influence of domestic interest groups and nationalist backlashes against trade (Goldstein 2012). To be clear, my view is that the WTO is a flawed institution. The WTO should arguably be more accountable to the interests of poor countries (Cabrera 2010, Ch. 8). Yet, there is evidence that the trade policies of rich states would be even more biased against poorer states in the absence of a multilateral trade organization that can adjudicate trade disputes (see Davis 2012, Ch. 7).

Some economists propose that states should create a world migration organization that aims to establish a multilateral framework for negotiating migration flows between states (Bhagwati 2003). A multilateral immigration organization of this kind might have similar benefits as the WTO. Like the WTO, a world migration organization would constrain the kind of immigration laws that states could implement by establishing institutions that encourage more accountability to foreigners and impartial adjudication. If a world migration organization had a similar structure as the WTO, it could counterbalance the biases of certain states against immigration, allow for greater contestation and deliberation, make states' immigration laws more responsive to the interests and rights of foreigners, and permit foreigners to appeal to impartial adjudication in disputes about immigration restrictions. A world migration organization may improve the quality of state decision-making about immigration by insulating this decision-making from biases against immigration.

Yet, there are differences between migration and trade that might make a global migration organization difficult to establish. The problem is that most of the gains from liberalizing immigration restrictions flow to poor countries instead of rich states (Hatton 2006). As a consequence, rich countries have weaker incentives to join a world migration organization because they have less to gain from more immigration. But states may have stronger incentives to join regional migration organizations. Hatton notes that regional associations 'have the potential to work because they are between countries at similar income levels and hence there is the prospect of two-way traffic. In cases such as these, where development gaps between the countries are small by world standards, migration is driven more by comparative advantage, making two-way flows a more realistic prospect and offering some potential for building agreements based on reciprocity' (2006, 370). The gains from international immigration are more equally distributed between countries with similar income levels. If migration between countries is mutually beneficial, then states can negotiate their

immigration restrictions on the basis of reciprocity. In addition, enforcement mechanisms, such as the threat of sanctions, are more likely to be effective in securing compliance when international immigration is mutually beneficial. So, regional IMIs between states with similar income levels might be a feasible first step toward the global governance of immigration.

Different kinds of international institutions besides a world migration organization can instantiate properties (A–D) as well. Here is another possibility: international immigration courts. To illustrate how international immigration courts might work, let us consider the example of the European Union (EU). The supranational courts of the EU constrain the immigration policies of European states. This system has two major components. First, the treaties of the EU give citizens of member states the legal rights to immigrate to other parts of the EU. Second, if states violate legal rights to free movement, then EU citizens can appeal these laws in the European Court of Justice (ECJ) and the ECJ has the power to invalidate states' immigration laws. The ECJ has in fact played a key role in striking down the immigration restrictions of member states and expanding the scope of free movement within the EU (Carrera 2005, 710–15). The EU system has several features that likely improve decision-making about immigration. The ECJ has authority over the immigration policies of member states and gives EU citizens access to a forum where they can publicly debate and challenge states' immigration policies. The ECJ also has accountability mechanisms that promote impartiality. For instance, many different European states oversee the Court and select officials to staff it. International courts like the ECJ may be relatively responsive to the interests of potential immigrants because these courts are accountable to international constituencies and not merely to the citizens of states that are deciding whether to restrict immigration.<sup>4</sup>

It might be possible to extend elements of the EU model to other regions. But one major roadblock is international law, which gives states extensive discretion to unilaterally control immigration. To extend the EU model, states would need to give up some of their legal discretion over immigration. In particular, states would have to agree to give foreigners legal rights to immigrate. These rights could be qualified and defeasible. States could continue to retain some legal discretion to balance foreigners' rights to immigrate against other considerations. States might have the legal discretion to restrict immigration if immigration threatens important public

<sup>4</sup> This is not to say that the European system is perfect. One problem is that EU institutions lack accountability to foreigners outside of the EU. As a result, members of the EU may be more likely to unjustly restrict immigration from non-member states.

interests, such as this state's interests in maintaining public order or managing rapid demographic change. But foreigners could appeal states' immigration restrictions in international courts that would determine whether these restrictions are ultimately justified. International courts would aim to impartially judge whether a state's interests in exclusion should trump foreigners' interests in immigrating. International courts of this kind could have accountability mechanisms in place to help maintain their impartiality and ensure that they are responsive to both the interests of citizens of recipient states and foreigners who want to immigrate. An international body that includes representatives from different countries could oversee a global immigration court and select judges to serve on this court.

Global immigration courts are probably infeasible in the near term. States will likely refuse to cede legal control over immigration to global courts anytime soon. But the regional governance of immigration might again be a feasible first step. EU institutions are living proof of the possibility of regional courts that regulate immigration and other regions could conceivably create regional immigration courts in the near future. Consider the South American association Mercosur. The 2002 Mercosur Resident Agreement gave citizens of member states the right to work and reside in other states for a period of 2 years if they lack a criminal record and have appropriate identification. But, unlike the EU, Mercosur lacks supranational judicial bodies that exercise oversight over the immigration policies of member states. Mercosur instead relies on elite consensus and regional policy networks to secure compliance (Arcarazo and Geddes 2014). Yet, it is hardly beyond the realm of possibility that the members of Mercosur will one day create international courts to monitor and enforce compliance with treaties that grant citizens of member states legal rights to immigrate. Other regional associations in Asia and Africa also regulate the immigration policies of their member states. Perhaps these regional associations will create international courts that would constrain the immigration policies of member states.

To be clear, I do not claim that IMIs should have exclusive control over immigration policy. States could continue to have some discretion to craft their own immigration laws. Consider an analogy with the ICC. The ICC can only exercise jurisdiction to prosecute people for crimes if national legal institutions are unable or unwilling to prosecute these people. So, the ICC has authority only if the domestic legal institutions of states fail to meet certain standards. This system may give states greater incentives to strengthen their legal institutions and adequately prosecute international crimes and crimes against humanity. IMIs could operate on a similar principle of complementarity. Suppose that states join an IMI that permits member states to control their own admission decisions if they already have sufficient legal protections for potential migrants in place. Imagine that

these states grant foreigners qualified legal rights to immigrate and allow these migrants to appeal decisions to exclude them in their domestic courts. However, states would be obligated to transfer decision-making power to IMIs if they failed to implement these protections. This institutional arrangement might give states incentives to implement reliable procedures for deciding immigration policy while permitting them to exercise greater control over their own policies. Thus, states could potentially retain significant discretion over their policies even if the reliability argument is sound. But IMIs would constrain this discretion in order to make decision-making about immigration policy less biased against potential immigrants.

If international organizations regulated immigration and had properties (A–D), then these organizations would likely insulate state decision-making from biases against immigration to a greater extent than the *status quo*. IMIs would help political leaders and citizens to satisfy their procedural obligations to decide immigration policy in a reliable manner. As a consequence, membership in IMIs would mitigate the risk that states will implement morally impermissible immigration restrictions. Therefore, states have strong moral reasons to allow IMIs to regulate their immigration policies.<sup>5</sup>

## Objections

In this section, I will respond to objections to the reliability argument for the international governance of immigration.

### *Self-determination*

An objector might argue that my position is incompatible with collective self-determination. The reliability argument aims to show that states should partially transfer their authority over immigration policy to international institutions. But states have rights to self-determination. The citizens of a

<sup>5</sup> State decision-making may be biased in many domains. For example, state decision-making about criminal justice or welfare policy might also be distorted by bias and epistemic defects. Does my argument imply that states must transfer decision-making authority about these domestic issues to more impartial international institutions as well? Perhaps. There is a role for international institutions in regulating states' treatment of their own citizens as well (see Buchanan and Powell 2008, 330–32; Keohane, Macedo and Moravcsik 2009). But I think that states have compelling reasons to subject their immigration policies in particular to international control. The citizens of at least democratic states have some influence over the policies of these states because these citizens have political rights and can sometimes appeal to courts to challenge state decisions. In contrast, potential immigrants currently lack any effective say over the immigration policies of other states. This asymmetry between foreigners and citizens explains why the case for IMIs is especially strong.

legitimate state have rights to control or shape their own affairs. Membership in IMIs might diminish citizens' ability to govern themselves. Membership in IMIs would restrict the kinds of policies or laws that citizens could implement and thereby constrain the scope of self-government. Furthermore, some people think that control over immigration policy is especially integral to self-determination. Walzer (1983, 62) famously argued along these lines that '[a]dmission and exclusion are at the core of communal independence. They suggest the deepest meaning of self-determination'. Perhaps the reliability argument fails to respect the value of collective self-determination or, at least, stands in tension with this value.

While membership in IMIs might diminish collective self-determination, it is hard to see why the international governance of immigration is distinctive in this regard. International institutions and international law constrain collective self-determination. International human rights treaties, international courts, the WTO, and other global institutions reduce the scope of collective self-determination. These institutions prevent the citizens of legitimate states from implementing certain laws or policies. But global institutions may nevertheless be all-things-considered justified because the value of self-determination fails to take precedence over all other moral considerations. Unless an adherent of the self-determination objection claims that all international institutions that restrict self-determination are unjustified, then it is unclear why collective self-determination necessarily rules out IMIs. Although IMIs may restrict the scope of self-determination, the moral reasons in favor of IMIs might nonetheless outweigh the value of self-determination just as the moral reasons in favor of other international institutions can override this value.

Another, less concessive response to the self-determination objection may also be available. I contend that

1. Some states have strong moral reasons to join IMIs.

Notice that (1) is compatible with

2. States should be permitted to refrain from joining IMIs and to renounce their membership in IMIs.

That is, other agents should avoid forcing states to join IMIs or continue their membership in these institutions. But (2) is arguably all that is necessary for states to enjoy self-determination with respect to IMIs. It is consistent with self-determination that states have moral reasons to perform certain actions or join certain associations. If (2) is all that is necessary for states to enjoy self-determination with respect to IMIs, then (1) is compatible with self-determination.

To illustrate, consider an analogy with individual self-determination. We believe that individuals can autonomously bind themselves. Suppose

that you decide to sign up for a charity that automatically deducts money from your bank account every month and gives this money to famine relief. The following two claims seem true about this case: your decision to sign up for this program does not diminish your autonomy and you have strong moral reasons to give money to help the global poor. This example suggests that self-binding in this manner is compatible with individual self-determination. The same point applies to collective self-determination. Suppose that the United States government is considering whether to sign a treaty that would obligate the United States to reduce greenhouse emissions. No other state will force the United States to sign this treaty and the United States can decide to withdraw from the treaty at a future date. It seems coherent to say that the United States has strong moral reasons to sign this environmental treaty and that the United States would remain a self-determining community if it signed the treaty. As in the individual case, self-binding does not inherently conflict with collective self-determination. For this reason, membership in IMIs is also in principle consistent with a state's right to self-determination.

More generally, it is implausible to think that rights to self-determination are moral permissions to refrain from joining international institutions. A more plausible view is that rights to self-determination are claim-rights against intervention or interference: a state has a right to self-determination if other states are under moral duties to avoid interfering with this state's domestic affairs. Yet, the citizens of a state can enjoy self-determination and nonetheless have moral obligations to join international institutions. Other states should not force the United States to sign the environmental treaty, although the United States should sign. In the same way, states should exercise their rights to self-determination by joining IMIs. I do not claim that sovereign states should be forced to join IMIs. I contend that state morally ought to join these institutions. In this sense, my position is compatible with the value of self-determination.

### *International organizations can be biased*

Another objection to my argument is that I am overly optimistic about the capacities of international organizations. An objector could argue that my argument compares IMIs with ideal epistemic capacities to the actual decision-making of states. But this is an unfair comparison. Actual international organizations may be biased as well. For example, Posner and Figueriedo (2005) argue that judges on the International Court of Justice (ICJ) are biased in favor of their national governments and states that are similar to their own countries. Other scholars contend that powerful states strongly influence how international organizations and regulatory regimes

behave (Drezner 2007). If biases and the national interests of powerful states also pervasively shape the actions of international organizations, then it is unclear whether actual IMIs would be more reliable than unilateral state decision-making.

Powerful states might effectively ‘capture’ actual IMIs and use them for their own self-interested purposes. Actual IMIs would probably have design flaws that damage their reliability. But my argument for IMIs does not depend on the claim that IMIs would be perfectly reliable. My argument is that IMIs would be reliable relative to the *status quo*. Let us return to the example of the ICJ. Suppose that Posner and Figueriedo are right that judges on the ICJ are biased. As Posner and Figueriedo (2005, 624–26) acknowledge, this conclusion fails to entail the ICJ is unjustified. International courts might be comparatively reliable. There is evidence that states are less likely to engage in violent conflict over territorial disputes if they allow an international court, such as the ICJ, to resolve these disputes (Huth, Croco and Appel 2011). Maybe international courts prevent violent conflict because they do better at helping states to fairly resolve their disputes in comparison with alternative options, such as bilateral negotiations (see Allee and Huth 2006; Alter 2014, 165–82). We can develop a similar argument for IMIs. The case for IMIs depends on the reliability of these institutions in comparison with unilateral state decision-making, not a standard of perfect impartiality. Even if IMIs were biased in favor of powerful states, IMIs might nonetheless improve the quality of decision-making about immigration policy.

### *Alternative policies*

I have argued that IMIs would help states mitigate their biases against immigration. Yet, this conclusion is insufficient to justify creating and joining IMIs. This is so because alternative measures might also insulate state decision-making about immigration from biases and epistemic defects. Maybe public officials can implement alternative policies to eliminate the biases that pervade the politics of immigration in their states. For example, states can implement educational policies that would correct the false information that citizens believe about immigration. Here is another possibility. Suppose that a state gave foreigners legal rights to immigrate. It seems that domestic courts could enforce these rights and protect them from biased majorities. Why do we need international institutions in particular to insulate political decision-making from biases about immigration? To support my argument for IMIs, I must explain why IMIs are superior to alternative proposals.

I favor different policies that would reduce people’s biases against immigration and that would better insulate political decision-making from



these biases. I also will avoid claiming that IMIs are superior to all alternative policies. But I am skeptical that alternative policies would entirely eliminate the need for IMIs. My skepticism has to do with a general hypothesis about political procedures. This hypothesis is that political procedures will be biased against the interests of a group of people if the members of this group lack influence in these procedures. Mill suggested this hypothesis when he wrote: ‘in the absence of its natural defenders, the interest of the excluded is always in danger of being overlooked: and, when looked at, is seen with very different eyes from those of the persons whom it directly concerns’ (1998, 246). Similarly, if states lack accountability to foreigners, states will probably be biased against their claims. IMIs would help correct this bias. IMIs would be accountable to potential immigrants (or their representatives) and would be relatively responsive to their claims. Furthermore, international institutions can alter states’ incentives. That is, it can be costly for states to refuse to comply with international institutions.<sup>6</sup> If IMIs would be more responsive to the claims of potential immigrants than states are and states have incentives to comply with IMIs, then IMIs would provide states with stronger incentives to consider the claims of non-members in their decision-making about immigration.

In contrast, suppose that states extended legal rights to immigrate to foreigners, but domestic courts would enforce these rights instead of international courts. Perhaps domestic courts would be as impartial as international courts. But here is one reason for skepticism: domestic courts are sensitive to political constraints. A large body of evidence indicates that judges make decisions strategically (Epstein and Knight 1998; Harvey and Friedman 2006). Judges tend to take popular opinion into account and what other political actors will do in response to their decisions because judges must rely on other agents to enforce their decisions. Moreover, legislatures may engage in court curbing and judges want to protect their courts against this threat (Clark 2010). So, domestic courts have incentives to respond to popular opinion and the preferences of legislatures. But domestic courts generally lack incentives to protect the interests of foreigners because foreigners have little political influence over these courts.

<sup>6</sup> States may have incentives to comply with IMIs even if IMIs lack the power to coercively enforce their decisions. For example, the rulings of existent international courts sometimes frustrate states’ preferences. Yet, states often comply with these rulings anyway, even though these courts lack coercive power. Why do states comply? Some authors argue that international organizations are useful to states as a means of self-binding and making credible commitments (Simmons and Danner 2010). Other authors argue that international institutions, particularly courts, give symbolic, legal, and political resources to constituencies that want a state to comply with international law and allow these constituencies to more effectively mobilize in order to secure compliance (Alter 2014).

If judges in domestic courts do not need to appease foreigners in order to achieve their aims, then we can expect that domestic courts will tend to neglect the interests of foreigners in the absence of international institutions that alter the incentives of these courts.

International courts might have stronger incentives to impartially consider the claims of potential immigrants than domestic courts. To explain why, let us consider an analogy with the European Court of Human Rights (ECtHR). The ECtHR is an international institution that is responsible for monitoring compliance with the European Convention on Human Rights. Judges on the ECtHR are elected by the Parliamentary Assembly of the Council of Europe, which is composed of representatives from 47 member states. The ECtHR lacks any credible coercive sanctions to enforce its decisions, but states face reputational costs for non-compliance and it appears that states generally comply with the court's rulings (Dothan 2011). The ECtHR is accountable to an international constituency and judges come from many different European countries. These accountability mechanisms might reduce the risk that the ECtHR will favor certain states over others. There is some evidence that the judges of ECtHR are reasonably impartial. Voeten analyzes a data set of dissents in the ECtHR and concludes that the 'findings are generally optimistic for the possibility of impartial review at the international level. There is no evidence that legal culture and geopolitics are important sources of bias among ECtHR judges' (2008, 418).<sup>7</sup> IMIs could conceivably have similar mechanisms as the ECtHR and other international courts for promoting impartiality and protecting their valuable epistemic qualities. These features would make IMIs less biased against potential immigrants than institutions that are unaccountable to foreigners, such as domestic courts.

If political procedures would fail to impartially consider the claims of foreigners unless these foreigners wield political influence, then it is unlikely that more education can substitute for IMIs either. An objector might argue that states could eliminate biases against immigration through educational programs. For example, states could spend more on educating citizens about the social science of immigration and how the evidence on immigration is sometimes at odds with popular perceptions. But I doubt that educational policies of this kind would be sufficient to address the problems of bias that I have highlighted. The problem is that more education may fail to change incentives. While education might help correct false beliefs about immigration, it is less clear whether education would motivate citizens and

<sup>7</sup> However, Voeten (2008, 421) does point out that international courts that regulate high-stakes interstate disputes may be more biased in favor of nationalist governments. The EtCHR does not typically oversee these kinds of disputes.

public officials to care more about the interests of immigrants and to act on the basis of accurate and unbiased beliefs about immigration.

Consider an analogy with voting rights. Suppose that a state denies voting rights to a minority group. Furthermore, many citizens are biased against the interests of this group. Most citizens distrust the members of this minority and discount their interests when participating in political decision-making. More education might help correct citizens' biases against this minority group. But this would be an inadequate substitute for access to the franchise. Although citizens might have less biased beliefs about the members of the minority group, government officials still lack clear incentives to impartially consider the interests of this group. The members of the minority would also continue to need to rely on the goodwill and benevolence of enfranchised citizens for their protection. The minority group must instead have access to an institutionalized mechanism for holding officials accountable in order to motivate these officials to refrain from acting on biases and false beliefs about this group and to contest laws that risk that unjustly harming members of the minority. The same lesson applies to the politics of immigration. A more educated citizenry might improve the quality of political decisions about immigration. But, in the absence of IMIs, a more educated citizenry would lack incentives to fairly consider the interests of foreigners in political decision-making or insulate political procedures from bias.

## Conclusion

The practice and law of international human rights constrain how states can treat their own citizens. International institutions and law also limit state sovereignty with respect to trade, war, criminal justice, and other policy domains. International institutions should constrain how states can treat potential immigrants as well. States should partially cede their authority over immigration policy to international institutions. We can even accept this conclusion without rejecting the view that states have rights to control immigration. Even if states have rights to control immigration, it remains the case that states can sometimes enforce unjustified immigration restrictions. If states risk enforcing impermissible immigration laws against foreigners, then these states incur procedural obligations to decide immigration policy in a reliable way. To satisfy these obligations, states should create and join international institutions that constrain their authority to unilaterally exclude foreigners.

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