

The Marginal Cases Argument for Open Immigration

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Public Affairs Quarterly 29 (2015): 257-275

The marginal cases argument for animal rights goes something like this.¹ Take whatever property you think entitles humans--but not nonhuman animals--to moral standing, such as the ability to act from duty. Now consider a human that lacks this property, such as an advanced Alzheimer patient. Is he entitled to moral standing? If not, we're morally permitted to (mis)treat him however we'd like. This result seems wrong, so we should conclude that whatever property confers moral standing will be one that an Alzheimer patient possesses, like sentience. But since sentience is a property also possessed by nonhuman animals, at least some nonhuman animals are due the same moral consideration as humans.

Why am I introducing an argument about immigration with a discussion of animal rights? The reason is because the marginal cases argument alerts us to our moral judgment's susceptibility to in-group bias--a tendency, often implicit, to favor members of one's own group relative to others in the distribution of benefits and harms (inter alia).² We're willing to subject animals to harms like medical experimentation on the grounds that they lack rationality, autonomy, and so on. But we're unwilling to subject our fellow humans to those same harms even when they're identical to nonhuman animals in terms of their rationality, autonomy, and so on. Unless we're prepared to favor our fellow humans simply because they are our fellow humans, consistency forces us to revise our view and give equal moral consideration to humans and animals when all else is equal.

There is reason to believe that our intuitions about justice in immigration are also subject to an implicit in-group bias.³ A state's border closure harms prospective immigrants by coercively excluding them from that state's territory. Arguments for immigration restriction contend that this exclusion is justified on the grounds that prospective immigrants can (e.g.) overconsume social programs, depress domestic wages, and disrupt national cultural norms. Notice, however, that one's fellow citizens are equally capable of overconsuming social programs, depressing domestic wages, and disrupting national cultural norms. Yet few would declare the state justified in coercively excluding these citizens from its territory (i.e., deporting them) even when all else is equal between their case and that of prospective immigrants. So unless we're prepared to favor our fellow citizens simply because they are our fellow citizens, consistency forces us to grant equal territorial access to citizens and prospective immigrants when all else is equal. Or so I will argue.

The paper proceeds as follows. I begin by arguing that, all else equal, immigration restriction and deportation are prima facie wrongs of the same magnitude and for the same reason. Following Michael Huemer, I believe that immigration restriction is a prima facie wrong because it coercively harms would-be immigrants by denying them access to the restricted territory. I contend that the same consideration explains the prima facie wrongness of deportation. Consequently, there is an equal presumption against both immigration restriction and deportation when all else is held equal (§1). I then argue that the principles most often invoked to defeat this presumption and thus to justify immigration restriction also justify the deportation of at least some citizens and nationals (§2). Given that deporting these citizens and nationals on the basis of the proposed principles is intuitively impermissible, we ought to reject the principles and, in turn, immigration restriction (§3). Next I address arguments suggesting that

states have a stronger duty to not coercively harm citizens and nationals than immigrants even when all else is equal (§4). I close by suggesting that the marginal cases argument provides a recipe for challenging virtually all arguments for immigration restriction (§5).

§1

Here's the basic schema of my argument:

P1: If reason R is sufficiently forceful to justify immigration restriction, then reason R is sufficiently forceful to justify deportation.

P2: It is not the case that reason R is sufficiently forceful to justify deportation.

C: Thus, it is not the case that reason R is sufficiently forceful to justify immigration restriction.

The first two sections argue for the first premise; the subsequent sections defend different iterations of the second premise.

Matthew Gibney and Javier Hidalgo have recently argued that a state's right to freedom of association or self-determination (and thus its right to regulate its own membership) implies not only a right to exclude immigrants but also to exclude (i.e., deport) relevantly similar citizens.⁴ As Hidalgo notes, this result should cause us to reject the self-determination argument:

One prominent argument for immigration restrictions, the self-determination argument, has objectionable implications. This argument entails that it can be morally permissible for states to denationalize and deport their own citizens. To avoid this implication, we should reject the self-determination argument. We should reject the conclusion that rights to self-determination can justify any significant immigration restrictions.⁵

I agree and I'll talk about the self-determination argument later in the paper. For now, let me say that the focus on self-determination is too narrow: I contend that the like wrongness of

like cases of immigration restriction and deportation grounds a challenge to virtually all arguments for immigration restriction. We have reason to doubt that any of the standard reasons can justify significant immigration restriction.

My aim is twofold. First, I'll elucidate and defend an account of the wrong-making features shared by immigration restriction and deportation. Holding all else equal, restriction and deportation are prima facie wrongs of the same magnitude and for the same reason (indeed, for a reason that's partly due to their very nature rather than their accidental features): they involve coercive, harmful exclusion.

Second, I suggest that the most common arguments for immigration restriction fail to defeat the prima facie wrongness of deportation. Since the prima facie wrongness of deportation is equal to the prima facie wrongness of immigration restriction, the failure of these arguments to defeat the prima facie wrongness of deportation implies their failure to defeat the prima facie wrongness of immigration restriction.

Following Michael Huemer, I believe that immigration restriction is a prima facie wrong because it coercively harms would-be immigrants.⁶ I'll argue that deportation is a prima facie wrong for the same reason. Let's start with coercion and then move to harm. Both immigration restriction and deportation necessarily involve coercive exclusion from territory. (For the sake of brevity, I'll use the term exclusion to denote a state's coercive denial of access to domestic territory.) States enforce closed borders with coercion or the threat thereof--for example, by empowering armed patrol guards to handcuff or imprison those who attempt to transgress the borders.⁷ Similarly, deportation is carried out with force or the threat thereof: states do not ask deportees to voluntarily relocate themselves. Instead, deportees are forcibly detained and transported out of the state's territory. Policies that merely suggested that foreigners remain

outside of the state's territory or that citizens exit the state's territory simply wouldn't count as forms of immigration restriction or deportation.

It's plausible to regard coercive exclusion--and indeed, coercion generally--as a prima facie wrong, such that the burden of justification rests with those who coerce. Huemer writes, "[C]oercion requires a justification. This may be because of the way in which coercion disrespects persons, seeking to bypass their reason and manipulate them through fear, or the way in which it seems to deny the autonomy and equality of other persons."⁸ The notion that a coercer faces a burden to justify herself to the coerced permeates the history of liberalism. John Stuart Mill writes that "the burden of proof is supposed to be with those who are against liberty; who contend for any restriction or prohibition [. . .] The a priori assumption is in favor of freedom."⁹ More recent defenders of this idea include John Rawls and Joel Feinberg, who says, "Most writers on our subject have endorsed a kind of 'presumption in favor of liberty' [. . .] Liberty should be the norm; coercion always needs some special justification."¹⁰ Feinberg elaborates that the presumption in favor of liberty transfers "the burden of argument to the shoulders of the advocate of coercion who must, in particular instances, show that the standing case for liberty can be overridden by even weightier reasons on the other side of the scales."¹¹

To motivate the claim that coercers face a justificatory burden, let's adapt an example from Stanley Benn.¹² Alan is walking along a beach, when Betty comes across his path and asks him to justify himself. While Alan is free to offer a justification, he's not obligated to do so. By contrast, if Betty were to threaten Alan with physical violence to induce him to turn around and thereby coercively exclude him from the relevant territory, she would owe him a justification. Benn sums up the lesson: "The burden of justification falls on the interferer, not on the person interfered with. So while Alan might properly resent Betty's interference, Betty has no ground

for complaint against Alan.”¹³ The claim so far is only that the initial justificatory burden rests with those who would coerce. And there are plenty of ways to meet this burden. Maybe Betty is a police officer who is enforcing the beach’s closing time. Or she might be trying to stop Alan from unwittingly falling into quicksand.

The bar for justifying the kind of coercive exclusion implicated in immigration restriction is raised, however, because it typically causes harm.¹⁴ Blocked immigrants’ economic and political interests are routinely set back by immigration restrictions. That immigration restriction tends to be both coercive and harmful adds to the weight of its (prima facie) wrongness. So those who would restrict immigration need weightier reasons to meet their burden of justification than they would if immigration restrictions were merely coercive but not harmful.

Taking inspiration from one of Huemer’s examples, consider a case that’s relevantly analogous to many real-world instances of immigration restriction:

LAKE: Phil needs food to avoid malnutrition and, soon, starvation. So Phil begins walking across a bridge to a lake whose owner permits him to catch trout in exchange for a small fee. Gus knows of Phil’s plans and steps in front of him on the bridge before he can reach the lake. Gus then forces Phil to turn around and refrain from fishing in the lake.¹⁵

Gus wrongs Phil. In particular, Gus coercively harms Phil. He uses force (or the threat thereof) to prevent Phil from locating himself where he sees fit and Phil’s interests are frustrated as a result.

Gus’s behavior is still only prima facie wrong. Its wrongness can be overridden or cancelled by sufficiently powerful moral considerations. Perhaps Gus owns the bridge or is even closer to starvation than Phil and needs the trout to survive. Under these circumstances, Gus’s

behavior might be justified. Nevertheless, there is a strong presumption against Gus's coercive harms that shifts the burden to Gus to provide further justification for his actions.

LAKE is analogous to many real-world cases of immigration restriction in the relevant respects. As noted, states enforce immigration restrictions with coercion or the threat thereof. These coercive measures tend to harm would-be immigrants. They often prevent blocked immigrants from bettering their condition by acquiring income from citizens who wish to offer them jobs or homes from citizens who wish to sell them housing. Many of these blocked immigrants seek an escape from severe material deprivation or political oppression.¹⁶ In brief, immigration restrictions can reduce a person's expected income, employment prospects, or political liberty.

I should emphasize that it is the combination of coercion and harm rather than harm alone that accounts for the prima facie wrongness of immigration restriction. If you propose that I hire you for a job and I decline, perhaps it could be said that I have harmed you: I have set back your interests by withholding a benefit. Intuitively, though, I haven't wronged you. However, border closure is not analogous to this case because border closure sets back prospective immigrants' interests by forcibly preventing them from acquiring jobs or housing from willing providers. Borrowing from Huemer, the state's restriction of immigration is more closely analogous to a situation in which I stand at the entrance of your prospective employer and forcibly prevent you from interviewing.¹⁷ Intuitively, I have wronged you in this case.

The same consideration accounts for the prima facie wrongness of deportation.¹⁸

Consider another analogy:

MOTORBOAT: Phil needs food to avoid malnutrition and, soon, starvation. So Phil begins fishing on a lake whose owner permits him to catch trout in exchange for a small fee. Gus steers his motorboat next to Phil and forces Phil to leave the lake.

Here again, Gus wrongs Phil by coercively harming him. Gus forcibly restricts Phil's freedom to move his body and property and, in doing so, frustrates Phil's interest in obtaining sufficient food. As before, Gus's action is a prima facie wrong that can be outweighed or nullified if special conditions apply. Yet there is a presumption against Gus's coercive harms that shifts the burden to Gus to provide further justification for his actions.

MOTORBOAT is analogous to deportation in the relevant respects. States coercively harm deportees. Like immigration restriction, deportation is carried out with force or the threat thereof. Moreover, deportation is usually accompanied by a reduction in deportees' life prospects due to their being denied access to the opportunities available in the states that deport them. So deportation, like immigration restriction, is a prima facie wrong in virtue of coercively harming people.

My claim thus far is that the exclusion involved in immigration restriction and the exclusion involved in deportation are equally wrong when all else is held equal. If a reason is powerful enough to justify the prima facie wrongness of exclusion in the case of immigration restriction, then it is powerful enough to justify the prima facie wrongness of exclusion in the case of deportation, all else equal.

§2

I've argued that there is a presumption against the kinds of coercive harms involved in immigration restriction and deportation. Are there defeaters for this presumption that would

justify immigration restriction but never the deportation of citizens? I'll argue that the most common arguments for immigration restriction fail to identify defeaters whose scope is restricted in this way. Thus, these arguments counterintuitively license the deportation of some citizens and nationals (hereafter 'domestics').

As noted at the outset, my strategy resembles the "marginal cases" argument for the claim that at least some nonhuman species are due the same moral consideration as humans.¹⁹ A "marginal case" is an actual or possible human being that lacks a property that human beings typically possess, a property that is thought to confer direct moral standing. For example, most human beings possess the ability to abide by the terms of a social contract. Maybe this property is what entitles humans to direct moral standing. But there is some human being that lacks this property. So does this mean that she lacks direct moral standing? The marginal cases argument rests on the intuition that she does have direct moral standing despite lacking the property in question. In our search for reflective equilibrium, we ought to revise our belief that the property in question is what justifies according humans direct moral standing rather than our belief that the marginal case has direct moral standing. The upshot is that the property that confers direct moral standing will not be exclusive to humans: (e.g.) sentience or being a living organism.

I take no stand on the success of the marginal cases argument as it applies to the moral consideration due to nonhuman species. However, I will avail myself of an argument with a similar structure to make the case for open immigration. Here the marginal case is an actual or possible domestic that possesses a property that domestics typically lack: (e.g.) she upholds values that are deemed inconsistent with the values of the national culture. The possession of this property is what allegedly justifies the state in excluding immigrants; thus, all things equal, the state is similarly justified in excluding the marginal domestic.

The next section proceeds as follows. I examine a variety of properties possession of which allegedly justifies the state in excluding immigrants. I show that domestics can possess each of the specified properties. However, intuitively, the state is not justified in excluding these domestics--i.e., the state is not justified in deporting them. In our search for reflective equilibrium, we ought to revise our belief that the possession of the property in question justifies the state in excluding the possessor rather than our belief that the state is not justified in deporting the relevant domestics. Thus, immigrants' possession of the property will not justify the state in excluding them.

The position to avoid is what we might call "pejorative" nationalism--a view that gives domestics special protection from coercive harms simply because they are domestics (that is, simply because they are located within the same lines of longitude and latitude) and not because they share some independently morally relevant quality. Pejorative nationalism is analogous to racism, sexism, or what Peter Singer calls "speciesism," viz. doctrines according to which we owe preferential treatment to members of our in-group simply in virtue of sharing group membership. Such a view would explicitly endorse in-group bias as a matter of moral principle. (Following the neologism "speciesism," we might also call this view "borderism.")

I assume that sharing a location within certain lines of longitude and latitude (that is, the border) is not a morally relevant characteristic in itself that would entitle people to special protection from coercive harms not due to people located outside of those lines. Of course, this characteristic may give rise to morally relevant characteristics that would entitle them to such protections, just as being of a certain species may give rise to morally relevant characteristics. My contention, however, is that not all domestics will possess the morally relevant

characteristics (at the least, there are possible domestics who do not possess them) and thus would not receive the special protection from coercive harms.

Before proceeding, I should note that we must test our intuitions about the moral principles underlying arguments for immigration restriction by comparing them to cases of deportation in which all else is held equal. Contingent differences might make real-world cases of deportation worse than real-world cases of immigration restriction and therefore make the presumption against real-world deportation stronger than the presumption against real-world immigration restriction. For example, if the United States were to begin deporting domestics, deportees' reasonable expectations about living in the United States might be disrupted-- expectations that blocked immigrants lack. Or, new deportees may find themselves with no place to go, unlike blocked immigrants who can return to their native territories.

Such differences do not differentiate between immigration restriction and deportation in principle, however. We can imagine conditions that eliminate the contingent differences. For example, even if a state publicized its policy of deportation to avoid violating domestics' expectations, deportation would remain a prima facie wrong on a moral par with a publicized policy of immigration restriction. A publicized and predictable deportation policy, like a publicized and predictable policy of immigration restriction, coercively harms people. Consider that Gus's forcible ejection of Phil from the lake in *MOTORBOAT* seems wrong even if he lets Phil know what he is going to do beforehand.

Furthermore, deportation would remain a prima facie wrong on a moral par with immigration restriction even if countries were willing to accept the deportees.²⁰ The key stipulation here is that the countries willing to accept the deportees be roughly equal in their socioeconomic and political conditions to those countries from which immigrants tend to

emigrate. (For example, suppose that Mexico agrees to accept American deportees.) Once we bring the deportation and restricted immigration cases into alignment in this way, their wrongness seems equal.

There are other pertinent differences between typical cases of immigration restriction and deportation. For instance, it's natural to become attached to a place and its people over time; thus, exclusion is more likely to deprive deportees than blocked immigrants of valued cultural and social connections.²¹ Here again, though, these differences are contingent. To return to the stylized cases, forcibly deporting Phil from the lake is a prima facie wrong on a moral par with restricting him from the lake if we assume that Phil has no special social or cultural connection to the lake. Similarly, it's a prima facie wrong to deport a citizen who is not particularly social or attached to her cultural environment. For instance, Gibney considers those who have only recently begun residing in a state; Hidalgo imagines someone with dual citizenship in the United States and Norway who lacks strong ties to any Americans and is deported to Norway.²²

Of course, in the real world, deportees typically would have social and cultural connections to their homes even if they do not necessarily have these connections. Thus, if the United States government (for example) were actually to begin deporting domestics, it would be probably committing a graver wrong than it is committing by restricting immigrants. But the wrongness of real-world deportation doesn't bear on my argument. Rather, I'm trying to establish the following: if reason R is not a sufficiently strong reason to justify the counterfactual case of deportation in which the deportee possesses the same morally-relevant properties as the immigrant who is actually restricted, then R is not a sufficiently strong reason to justify the relevant actual case of immigration restriction.

§3

This section challenges three of the most common arguments given in defense of immigration restriction: it protects (i) domestic welfare programs, (ii) low-wage domestic jobs, and (iii) a national culture.²³ As noted earlier, the method here is reflective equilibrium. We arrive at reflective equilibrium by revising general principles against judgments about particular cases. We reject a general principle if it implies a particular judgment we cannot accept; we reject a particular judgment if it violates a general principle we insist on accepting. Eventually we reach a satisfactory set of principles and judgments.

In what follows, I test the principles that underlie standard arguments for excluding immigrants via their implications for “marginal cases” of domestics. I contend that these general principles imply particular judgments about the permissibility of deporting domestics that we cannot accept. Intuitively, the moral concerns expressed in these principles are not powerful enough to justify the exclusion of “marginal domestics” and thus are not powerful enough to justify the exclusion of prospective immigrants either. I should note that I lack the space to offer a comprehensive review of the prevailing arguments for immigration restriction. However, I aim to say enough to motivate the thought that reflection on marginal cases is a novel and productive method for analyzing these arguments that merits further consideration.

Some worry that immigrants will overburden government services by consuming more than they contribute in taxes.²⁴ I’ll set aside the empirical question of whether immigrants are generally “net tax consumers.” Instead, I’ll focus on whether we should accept the principle underlying this argument. Call this the overconsumption principle: ϕ ’s (sufficiently high) likelihood of overconsuming state β ’s public programs justifies β ’s exclusion of ϕ . The overconsumption principle licenses coercively denying people access to domestic territory in

virtue of their propensity to consume more in government services than they pay in taxes; thus, it would license the deportation of some domestics just as it would license restricting the immigration of some foreigners.

We can test the overconsumption principle by looking at its implications for a citizen who consumes more in domestic social services than he contributes in taxes. Here's a specific case:

Joe is an American domestic who was only capable of working a series of low-paying jobs. Due to his low wages, he has paid little in taxes. Now retired and suffering the usual ailments of old age and poverty, the cost of the Social Security and Medicaid that Joe consumes is greater than the amount of taxes he paid as a worker. The Mexican government agrees to permit Joe across its border.

Is the United States government justified in deporting Joe to Mexico in order to cut costs? It doesn't seem to be. Most would deny that the United States government should deport to Mexico those Americans who consume more in Medicaid and unemployment benefits than they contribute in taxes. One plausible principle that could substantiate this judgment is humanitarian or prioritarian: the deportation further deprives those who are likely to be among the most deprived already. If the United States government needs to save money, domestic economic reform seems like a better alternative than deportation.

Our reason to reduce strain on government services is not strong enough to defeat the presumption against the kind of harmful coercion involved in both deportation and immigration restriction. Because the overconsumption principle implies a judgment about deportation that we reject, we must reject the principle, and in turn, one justification for immigration restriction.

Another concern is that opening borders to immigrants will increase the supply of low wage labor, and thus depress wages in certain sectors of the domestic economy.²⁵ This result is especially troubling because it harms those domestics who are already likely to be worse off.²⁶ Call the following the wages principle: ϕ 's (sufficiently high) likelihood of depressing wages in state β justifies β 's exclusion of ϕ .

The wages principle licenses coercively denying people access to territory in virtue of their propensity to depress wages in certain sectors of the domestic economy; thus, it would license the deportation of some domestics just as it would license restricting the immigration of some foreigners. Domestics can depress wages for low-skilled labor just as foreigners can. Governments could therefore increase wages in the relevant sectors of the economy by deporting domestics who choose to enter these professions.

We can test the wages principle by looking at its implications for a citizen who depresses wages in the domestic economy by adding to the labor supply. Here's a specific case: Joe is an American domestic who has been supported by his parents since graduating high school. His parents are no longer willing to provide him with room and board, so he seeks to enter the workforce for the first time in his life. He applies for a job sweeping floors. In desperate need of work and lacking the skills required for a higher paying job, Joe's bargaining position is weak. So he offers to take a lower salary than the other applicants, thus threatening to depress the wage level of "unskilled" domestic labor. The Mexican government agrees to permit Joe across its border where he can sweep floors for even lower wages than he would receive in the United States.

The United States government doesn't seem justified in deporting Joe to Mexico in order to maintain a certain wage level for unskilled domestic labor. Producing modest increases in the

wages of certain jobs is not a strong enough reason to justify forcibly restricting people's access to territory in order to reduce their access to these jobs--especially given that those whose labor mobility is restricted tend to be poorer than those whose wages are protected. Thus, a prioritarian principle could provide a reasonable explanation for why preserving a particular wage level is not a sufficiently strong reason to defeat the wrongness of coercive exclusion.

Our reason to maintain a certain wage level for certain domestic jobs is not strong enough to defeat the presumption against the kind of harmful coercion involved in both deportation and immigration restriction. Because the wages principle implies a judgment about deportation that we reject, we must reject the principle, and in turn, another justification for immigration restriction.

Let's pause for an objection. States routinely impose restrictions on labor market participation to prevent depressing wages, such as minimum wage laws. If these restrictions are unobjectionable, then perhaps restricting immigration to prevent depressing wages is unobjectionable as well.²⁷

The difference, as I see it, is that minimum wage legislation--but not immigration restriction--is designed to benefit the very class of people whose labor options it restricts. For instance, some argue that minimum wage legislation prevents a Prisoner's Dilemma-style "race to the bottom" whereby workers engage in a mutually harmful underbidding process. Others contend that while the minimum wage results in increased unemployment among low-wage workers because it increases the cost of hiring them, this negative is outweighed by the benefit to those low-wage workers whose wages are increased. I take no stand here on the effects of the minimum wage and thus whether the preceding claims are correct. If they aren't, then minimum wage legislation probably is objectionable, in which case the analogy between the minimum

wage and immigration restriction would fail to show that immigration restriction is unobjectionable. On the other hand, if the claims are correct, then we have a consideration that could justify the coercive restriction of labor market entry in the case of the minimum wage but not closed borders--viz. that the restriction benefits the (average member of the) group whose labor options are restricted. Another way of putting the point is that a justified minimum wage wouldn't count as a coercive harm with respect to the (average member of the) group it excludes.

A further argument for restricting immigration is that those living in a country have an interest in preserving its national culture and a sense of solidarity.²⁸ On these sorts of views, sharing a common culture is not simply part of living well; it may also be a precondition of successful democratic governance. Immigrants can allegedly disrupt this culture by speaking a foreign language, practicing a heterodox religion, or failing to abide by common customs. Call the following the culture principle: ϕ 's (sufficiently high) likelihood of disrupting prevailing cultural norms in state β justifies β 's exclusion of ϕ .

The culture principle licenses coercively denying people access to territory in virtue of their propensity to disrupt the national culture; thus, it would license the deportation of some domestics just as it would license restricting the immigration of some foreigners. Domestics can undermine a nation's culture (however one chooses to specify this) in precisely the same ways that foreigners can. In general, domestics can undertake any foreign practice that worries the opponent of open borders. For example, domestics can choose to speak a foreign language or can write books and give speeches with the explicit intention of undermining the country's culture.

We can test the culture principle by looking at its implications for a citizen whose beliefs, customs, and politics oppose those that his government wishes to preserve. Here's a specific case:

Joe is an American domestic who has grown dissatisfied with what he sees as the decadence of American culture. He refuses to speak English, adopting the universal language of Esperanto instead. He spends his free time speaking out against the American government, the television show “The Simpsons,” and apple pie. The Mexican government agrees to permit Joe across its border.

Once again, the United States government does not seem justified in deporting Joe to Mexico in order to preserve traditional American culture. A basic commitment to liberal principles speaks against a state’s coercively harming citizens for writing or speaking against the country’s dominant cultural norms or adopting a foreign language.²⁹

Our reason to preserve a national culture or language is not strong enough to defeat the presumption against the kind of harmful coercion involved in both deportation and immigration restriction. Because the culture principle implies a judgment about deportation that we reject, we must reject the principle, and in turn, any support it might provide for immigration restriction.

§4

The marginal cases considered in the previous section indicate that we do not regard the standard reasons offered for the exclusion of immigrants to be powerful enough to justify the exclusion of domestics. Assuming that advocates of immigration restriction do not want to favor domestics simply because they happen to be located on one side of a line rather than another, they need an account of why the coercive harm of excluding domestics is worse in principle than the coercive harm of excluding immigrants--even when all else is held equal.

In this section I assess arguments that imply that, even when holding all else equal, states have a stronger duty to not coercively harm domestics than immigrants in the manner required

by deportation and immigration restriction. These arguments, if successful, would break the symmetry between deportation and immigration restriction and establish that the former is indeed worse in principle. However, I contend that these arguments also fall to variations of the objection from marginal cases: the proposed reasons for according domestics special protection from the relevant kind of coercive harms will either apply to immigrants as well or fail to apply to some domestics.

It's a common liberal theme that legitimate coercion must be justifiable to the coerced.³⁰ For this reason, some argue that the state has special obligations to domestics given that the state coerces them when enforcing its laws.³¹ On such a view, the state can justify the costs of its coercion by extending the benefits of citizenship to those on whom it imposes costly coercion.

But this argument fails to establish an asymmetry between domestics and blocked immigrants. States with closed borders coerce would-be immigrants.³² States do not ask immigrants to remain outside of their borders; they use force or the threat thereof to restrict access. (Governments also routinely coercively harm foreigners through means other than border restrictions, e.g., through the imposition of tariffs and embargos.) Thus, if the benefits of citizenship are the appropriate compensation for those who suffer costly coercion at the hands of the state, then foreigners coercively harmed by the state's border controls (inter alia) ought to receive the benefits of citizenship.

Indeed, we can reasonably conjecture that the harm done by a country's coercive restriction of would-be immigrants is greater than the harm done by its coercive enforcement of domestic law. Immigrants prefer to be within the restricted state rather than outside of it--often precisely because its coercive legal and political institutions enable better life prospects than can be found elsewhere. In brief, they would rather be subject to the country's coercive domestic

laws than its coercive border controls. This consideration suggests that the costs of being coercively denied entry to that state are generally greater than the costs of being coerced by domestic law enforcement within that state. Where the costs of the coercion of immigration restriction are greater than the costs of the coercion of domestic law, it seems as though states owe blocked immigrants at least as much justification for their use of coercion as they owe domestics.

Some argue that states have rights of self-determination that justify them in closing their borders.³³ More specifically, we might justify border closure on grounds of freedom of association, which entails the right not to associate. It would be a violation of my right of self-determination as an individual if I were required to accept a person into my house without my consent. Similarly, it is a violation of a state's right of self-determination if it is required to accept immigrants into its territory without the consent of the domestic political community.

On this kind of view, citizenship is not primarily a matter of residing within certain lines of latitude and longitude but of belonging to a certain kind of political community--a community that is bound together by what Michael Walzer calls "shared understandings" of things like language, morals, and culture.³⁴ Walzer offers the classic analogy between a domestic political community and a club. Members of a political community, like members of a club, are thought to share a commitment to certain values, traditions, and the like. Moreover, just as club members have the right to determine access to club membership, citizens have the right to determine access to membership in the political community.

A virtue of this view is that it avoids what I've called "pejorative" nationalism or "borderism." On Walzer's account, membership isn't distributed on the basis of people's position relative to a line but rather on the basis of their "sharing sensibilities and intuitions,"

using a common language, and so on.³⁵ But the very move that enables Walzer and those like him to avoid borderism--viz. identifying an independently morally relevant characteristic that confers membership--thereby renders them vulnerable to the marginal cases argument. If shared understanding is the basis for membership in the political community, then domestics who don't share the relevant understandings seem to be excluded from membership. This point generalizes: criteria for membership other than shared understandings will be similarly unable to accommodate marginal citizens.

For further support, consider Hidaglo's argument that a nation's self-determination right implies a right to control which people can gain membership to the political community, which would in turn imply the right to exclude both immigrants and citizens.³⁶ Think of it this way: if a state is analogous to a club that has the right to determine the composition of its membership, then it has the right to restrict entrants and eject those already within in order to regulate the composition of its membership.³⁷ If this view is right, then the self-determination argument could not explain why it is worse in principle to deport citizens than restrict immigrants.

The discussion of whether a nation's right to self-determination would grant it the right to both restrict immigrants and exclude citizens centers partly on the question of whether citizens have something akin to ownership rights over domestic political institutions or territory.³⁸ This "ownership argument" looks like a good candidate to defeat the prima facie wrong of the harmful coercion involved in exclusion. If my spouse and I co-own our house and yard, we can forcibly prevent a trespasser from entering our property. We would thereby set back the interests of the trespasser through the use of coercion, but we're justified in doing so. Similarly, if citizens are co-owners of a territory or its political institutions, they reserve the right to forcibly prevent

foreigners from entering the territory even if doing so sets back the foreigners' interests through the use of coercion.

However, just as we need an account of how my spouse and I justly acquired ownership rights to our house and yard, we need an account of how citizens justly acquire ownership rights to the relevant parts of their country. Ryan Pevnick, for instance, argues that citizens acquire ownership rights over domestic political institutions by making the right kinds of contributions--e.g., paying taxes or participating in politics.³⁹

In reply, Hidalgo runs a dilemma that's similar to the marginal cases argument. Some foreigners will contribute more than some citizens. Hidalgo offers the case of Dani, a citizen of Turkey who contributes to the German government by paying tariffs, obeying the law when he visits Germany, and stimulates the German economy through his tourism.⁴⁰ Since there are some German citizens who contribute less than Dani (e.g., they contribute less money to the government, break German laws, etc.), we have a dilemma. We can either (i) distribute ownership rights to Dani and grant him the right to immigrate or (ii) strip the relevant citizens of their ownership rights and deport them. Since (ii) is intuitively unacceptable, we should opt for (i).

I think Hidalgo's argument is right, but I'd like to offer a friendly amendment. He seems to suggest that the ownership argument fails partly because some foreigners actually contribute more than some citizens. While this claim is probably correct, it's irrelevant to the evaluation of the ownership argument in principle. Suppose that, as a contingent matter of fact, all citizens contribute more than all foreigners. Indeed, suppose that no foreigner makes any of the relevant contributions. The key question is this: if there were a citizen who made none of the relevant contributions, would we be willing to deport her? If not, then we must reject the relevant

contributions as the criteria for ownership--in which case the ownership argument would fail to establish that citizens have a special right to access domestic territory that foreigners lack.

Pevnick considers the objection that the ownership argument would justify the exclusion of citizens who have not made the relevant sorts of contributions.⁴¹ Although he doesn't seem to have deportation specifically in mind, he asks whether it would be permissible to refuse to share the "benefits of citizenship" with domestic non-contributors.⁴² He says that such exclusion would be impermissible because domestic non-contributors find themselves non-voluntarily "enmeshed within a system of social cooperation (and protection) that importantly influences--and to a large extent determines--their life chances."⁴³ Their interest in being full-fledged members of the domestic politico-economic community in which they find themselves trumps their lack of ownership rights.

Hidalgo replies that foreigners can also be non-voluntarily "enmeshed" with citizens of other countries in shared schemes of economic and political cooperation.⁴⁴ The idea here is that many people's life prospects are importantly influenced by other states' economic and political arrangements (e.g., trade policy, immigration policy, etc.). Thus, they ought to be entitled to citizenship in these other states by the lights of Pevnick's own argument.

Here again, Hidalgo's empirical claim strikes me as correct but unnecessary. Suppose all countries are economically and politically self-contained. The United States begins deporting citizens who have failed to make adequate contributions. The deportees arrive in Mexico, where they become citizens. Because the deportees have citizenship rights in their new country, they are full members of the politico-economic cooperative scheme in which they are enmeshed. Intuitively, though, this deportation policy is still wrong. But Pevnick's account cannot explain why: after all, the deportees' interest in being full members of the cooperative scheme in which

they are enmeshed is being met. So it turns out that Pevnick's argument lacks the resources to reject the (counterintuitive) deportation of non-contributors.

§5

Although I haven't addressed all arguments against open immigration, I have offered a tool for analyzing them. Considering further arguments in detail is a task for another paper, but here's a sense of how that might go. One could appeal to utility, fair play, consent, and so on as bases for state legitimacy--legitimacy that would in turn justify the state in enforcing laws that restrict immigration.⁴⁵ In reply, I would say that if these accounts legitimate the state's right to coercively exclude people from their territory, then they legitimate not only laws mandating the restriction of immigrants but also the deportation of domestics who are relevantly similar to the restricted immigrants. Any attempt to explain the preferential treatment of domestics relative to foreigners will either (i) fall prey to the case of a marginal domestic who fails to possess the property that allegedly justifies the preferential treatment of domestics or (ii) collapse into "borderism," whereby domestics are favored simply because they are located within certain lines of longitude and latitude.

In closing, I should mention the possibility of someone taking the modus ponens to my modus tollens. Perhaps my arguments merely show the surprisingly robust permissibility of deportation. Yet I think this position is more costly than the alternative, both in terms of its revisions to ordinary moral thought and political practice and its opposition to precepts of liberal justice. Goals such as labor market protectionism and cultural preservation are not powerful enough to justify the wrong of exclusion. Perhaps we are simply able to see this wrong more clearly when it affects our fellow domestics.⁴⁶

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¹ See, e.g., Singer, “All Animals Are Equal.”

² See Tajfel et al., “Social Categorization and Intergroup Behavior.” Singer suggests that our tendency to favor humans over nonhuman animals in moral decision making amounts to a kind of bias. Singer, “All Animals Are Equal.”

³ For instance, through the use of an implicit association test, it was found that an automatic preference for “traditional” American culture relative to one blended with foreign cultural influences independently contributes to American subjects’ explicit preferences for restrictive immigration policies. See Knoll, “Implicit Nativist Attitudes.”

⁴ Gibney, “Should Citizenship Be Conditional?”; Hidalgo, “Self-Determination.”

⁵ Hidalgo, “Self-Determination,” 20.

⁶ Huemer, “Is There a Right to Immigrate?”

⁷ See Huemer, “Is There a Right to Immigrate?”; Abizadeh, “Democratic Theory and Border Coercion.”

⁸ Huemer, *The Problem of Political Authority*, 10.

⁹ Mill, *Collected Works*, 262.

¹⁰ Feinberg, *Harm to Others*, 9. Rawls, *Justice as Fairness*, 44.

¹¹ Feinberg, *Harm to Others*, 9.

¹² Benn, *A Theory of Freedom*, 87. In the original example, Betty interferes with Alan’s splitting of pebbles on a public beach, but the principle remains the same.

¹³ Ibid.

¹⁴ See, e.g., Huemer, “Is There a Right to Immigrate?”; Hidalgo, “Self-Determination.”

¹⁵ For a similar example that inspired this one, see Huemer, “Is There a Right to Immigrate?,” 431.

¹⁶ See Huemer, “Is There a Right to Immigrate?”

¹⁷ *Ibid.*, 439.

¹⁸ For a similar discussion of the in-principle symmetry between immigration restriction and deportation, see Hidalgo, “Self-Determination.” In addition to noting their coercive nature and economically harmful effects, Hidalgo adds that both immigration restriction and deportation can also involve (*inter alia*) the severing of ties between family and friends and the loss of one’s connection to one’s society. Hidalgo, “Self-Determination,” 6.

¹⁹ See Singer, “All Animals Are Equal,” 1989.

²⁰ This sort of scenario is suggested in Gibney, “Should Citizenship Be Conditional?,” 655.

²¹ I am grateful for an anonymous referee for pressing this objection.

²² Gibney, “Should Citizenship Be Conditional?,” 656; Hidalgo, “Self-Determination,” 13.

²³ With his Leticia case, Hidalgo suggests that these sorts of considerations might be among the factors that motivate a nation with the right to self-determination to exclude both immigrants and citizens. See Hidalgo, “Self-Determination,” 5. However, he does not examine the justificatory force of these considerations in their own right but rather focuses on the justification and scope of the right to self-determination itself.

²⁴ See, e.g., Woodward, “Commentary: Liberalism and Migration”; Heath, “Immigration, Multiculturalism, and the Social Contract”; Isbister, “A Liberal Argument for Border Controls.”

²⁵ See, e.g., Macedo, “The Moral Dilemma of U.S. Immigration Policy.”

²⁶ *Ibid.*

²⁷ Thanks are due to an anonymous referee for raising this objection.

²⁸ See, e.g., Heath, “Immigration, Multiculturalism, and the Social Contract”; Miller, “Immigration: The Case for Limits.”

²⁹ Hidalgo notes that a robust right of self-determination would (counterintuitively) license the state to impose illiberal domestic policies like restriction on speech and religious practice in the interest of shaping its membership in a preferred direction. See Hidalgo, “Self-Determination,” 18.

³⁰ See, e.g., Rawls, *Political Liberalism*, xlvii.

³¹ Arguments in this spirit can be found in Blake, “Immigration”; Macedo, “The Moral Dilemma of U.S. Immigration Policy.”

³² See Abizadeh, “Democratic Theory and Border Coercion”; Huemer, “Is There a Right To Immigrate?”

³³ See Walzer, *Spheres of Justice*; Kershnar, “There Is No Moral Right to Immigrate to the United States”; Wellman, “Immigration and Freedom of Association.”

³⁴ Walzer, *Spheres of Justice*, 40.

³⁵ *Ibid.*, 28.

³⁶ Hidalgo, “Self-Determination.”

³⁷ Whereas my primary focus rests with the patients of immigration restriction and deportation, Hidalgo’s focus rests with the agents—that is, I argue that people’s (*prima facie*) right to not be coercively harmed implies a right to not be restricted from immigrating and to not be deported; he suggests that a state’s (alleged) right to regulate its membership implies a right to block outsiders (i.e., restrict prospective immigrants) and to remove insiders (i.e., deport current

citizens). So even if Hidalgo's interpretation of the self-determination argument is incorrect and it does *not* imply that states have the right to exclude members, it could still be the case that states also lack the right to exclude non-members because such exclusion violates the right of non-members to not be coercively harmed.

³⁸ Hidalgo talks specifically of deportation. See Hidalgo, "Self-Determination." Pevnick talks of leaving the excluded class alone and not sharing the benefits of citizenship rather than deportation in particular. See Pevnick, *Immigration and the Constraints of Justice*.

³⁹ Pevnick, *Immigration and the Constraints of Justice*, 35.

⁴⁰ Hidalgo, "Self-Determination," 8.

⁴¹ Pevnick, *Immigration and the Constraints of Justice*, 64.

⁴² *Ibid.*, 65.

⁴³ *Ibid.*

⁴⁴ Hidalgo, "Self-Determination," 21.

⁴⁵ Thanks are due to an anonymous referee for suggesting this sort of reply.

⁴⁶ Thanks are due to two anonymous referees for this journal, Josh Gert, Adam Lerner, and audiences at Wake Forest University and the 2012 Eastern Division meeting of the American Philosophical Association for their helpful comments on previous versions of this paper.