IMMIGRATION AND DISCRIMINATION

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Abstract

This thesis examines discrimination in immigration policy. It consists of two parts. The first part examines the normative significance of discrimination in the history of immigration policy. I argue that descendants of those who have been excluded by race or ethnicity have a right to immigrate to the state in question as reparation. This argument is based on one popular approach to justifying reparations for historical injustice: the counterfactual approach.

For much of the thesis, however, I examine discrimination in present-day immigration policy. This is the second part of the thesis. I put forward a pluralist account of discrimination in immigration policy. This, I argue, allows us to more fully capture discrimination in immigration policy than the monist account of discrimination that is implicitly adopted in the philosophical literature on migration. I develop this pluralist account of discrimination by examining three significant immigrant selection policies of countries in the Global North: selection by skill, selection by age, and selection by nationality.

I show that discrimination in immigration policy can be wrong for three reasons: if it fails to select by merit, if it demeans would-be immigrants, and if the selection unfairly disadvantages certain groups of people. I consider one possible solution to this discrimination in immigration policy: a lottery that selects immigrants. I argue that while lotteries are non-discriminatory, they are nevertheless unappealing for reasons that do not have to do with discrimination. Thus, non-discrimination cannot be the only standard by which we judge immigration policy. I end by considering what this entrenched discrimination means for immigration policy at large.

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Chapter 1: Introduction

Borders are open for some and closed for others. My thesis examines the ways in which states select immigrants and whether this can be said to be discriminatory. We can point to obvious cases of discrimination in the history of immigration policy. The first immigration restriction in the United States can be traced back to the Chinese Exclusion Act of 1882, which prohibited all immigration of Chinese laborers. Senator Farley defended the law on the grounds that the "Mongolians are alien to our civilization, aliens in blood, aliens in faith, and clogs to the free movement of the wheels of Christian civilization and enlightened progress" (Calavita, 2006, p. 11). Many other politicians justified it on similarly racist grounds. To take another example, the Immigration Restriction Act 1901, otherwise known as the White Australia Policy, was one of the first laws passed after the federation of Australia. It effectively shut out any non-European immigration by allowing immigration officers to ask migrants to take a dictation test in any European language or, after 1905, any language of the immigration officer's choosing. These are just two of the many examples of exclusion by race and ethnicity in the history of immigration policy.

We know that these cases are clearly discriminatory. But what states should do in order to reckon with this history is less clear. I will explore this question in my thesis. However, much of my thesis will be about how states *now* select immigrants. Indeed, from the mid-twentieth century, things began to change in how states selected immigrants. In the 1960s and the 1970s, countries such as the United States and Australia "dismantled their racially-stratified immigration systems and substituted family ties and skills for race, national origin, and religion" (Ellermann, 2019, p. 2463).[1]

However, just because states generally no longer directly exclude immigrants by ethnicity or race, it does not mean that border control can no longer be said to be discriminatory. Mobility rights are distributed in starkly unequal ways and whether this makes these selection processes discriminatory will be the focus of my thesis. Let us consider some of the ways in which

[1] While this is a common reading of the history of immigration policy, it has been challenged (Joppke, 2005; Orgad and Ruthizer, 2010).

mobility rights are unequally distributed. For example, those from the Global North have far more mobility rights than those from the Global South. Citizens of the Global North enjoy visa-free travel that would-be citizens from the Global South do not have access to. Consider the Henley Passport Index, which ranks the world's passports on the basis of the number of destinations their holders can travel to without a visa. Countries from the Global North populate the top of the ranking and countries from the Global South populate the bottom. As Tendayi Achiume (2019) notes, it is hard to avoid the conclusion that freedom of movement is in effect racially differentiated. Moreover, even within countries in the Global South, it is the political and economic elites who enjoy some international freedom of movement (Achiume, 2019). The exorbitant costs of visa applications mean that immigration is simply unaffordable for much of the population.

But it's not just national origin that determines whether an individual will be able to migrate. There are other important factors too. Canada's immigration policy has long been criticised for its virtual ban on disabled immigrants. According to Canada's Immigration and Refugee Protection Act, foreigners can be refused entry if they "might reasonably be expected to cause excessive demands on health or social services" (Zaikowski, 2017). The exact number of immigrants turned down on these grounds is unknown, but we know of some cases. One German woman moving with her husband to Canada was denied permanent residency because she had multiple sclerosis, and another family was refused entry because one of their daughters had a mild intellectual disability (Zaikowski, 2017). In some cases, women are also indirectly disadvantaged by immigration policy. For example, when the British government introduced the new points-based system as part of its plan for a post Brexit immigration overhaul, women's groups protested that it would disadvantage women (Yeginsu, 2021). They pointed out that women would be less likely to meet the minimum salary requirements as they tend to take up lower-paid occupations. Another important factor is the age of the would-be immigrant. It is very common for countries in the Global North to impose age requirements in their immigration policies. New Zealand has an age limit of 56 for its skill-based visas, while Canada has an age limit of 45. Canada and Austria's points-based system for skill visas penalise immigrants the older they are over 35.

Whether borders are open or closed then depends on where you come from, how wealthy you are, how old you are, and many other factors. As Lea Ypi (2018, p. 142) puts it, "borders have always been (and will continue to be) open for some and closed for others. They are open if you are white, educated, and middle and upper class; they are closed (or much less open) if you are not." Similarly, Ayelet Shachar (2014, p. 236) notes, "countries simultaneously engage in *both* opening *and* closing their borders, but they do so selectively." It's clear that mobility rights are unequally distributed. But are these various forms of differential treatment morally wrong? Do they count as discrimination? In my thesis, I will explore this question and, as I mentioned earlier, the normative implications of discrimination in the history of immigration policy.

Section 1: The scope of the thesis

Before I survey the relevant literature, I will discuss two important points relating to the scope of my thesis. First, for almost all of the thesis, I will focus on discretionary admissions. I will make a distinction between discretionary admissions, which is the admission of immigrants a state is not obligated to admit, and obligatory admissions, which is the admission of immigrants a state is obligated to admit. This is a distinction that is often appealed to in practice. There are two relatively uncontroversial cases of obligatory admissions: refugees seeking asylum and family reunification migrants. Let us consider each in turn. First, international law sets down the duties of states to refugees. For example, according to the 1951 Refugee Convention and its 1967 Protocol, states must not return refugees to a country in which they would face persecution. Today, there are 149 State parties to either or both documents (UNHCR, n.d.). As Gillian Brock (2021, p. 69) notes, "all democratic states have, and recognize that they have, some moral obligations to admit noncitizens such as in the case of refugees seeking asylum." Thus, asylum-seekers are typically viewed as a form of obligatory admissions as states have duties to accept at least some of them.

States also have an obligation to admit family reunification migrants and this obligation, as Brock (2021, p. 69) notes, "derives from the principle of family reunification, recognized in the laws of democratic states and also many core human rights documents." These laws enshrine a state's obligation to respect the citizens' interests in both continuing to live in their own country and

their interests in living with their immediate family members (Brock, 2021, p. 69). This of course leaves open the question of who should count as part of the family (Brock, 2021, p. 69; Hosein, 2019). However, the important point is that family reunification migrants, like asylum-seekers, are typically viewed as obligatory admissions because states have duties to admit some of them.

Unlike obligatory admissions, discretionary admission is the admission of immigrants that I assume for the sake of argument a state has no obligations to admit. In practice, states do employ this distinction between discretionary admissions and obligatory admissions. In Europe, for example, "even though states may feel obligated to take in some immigrants, perhaps even a substantial number, for reasons of family reunification and shelter of refugees, they try not to take in any immigrants whom they are not obliged to admit" (Carens, 2006, p. 103).

My focus will be discretionary admissions. I focus on discretionary admissions simply because it is a more manageable than focusing on both obligatory admissions and discretionary admissions. Only in the second chapter, I will examine a case of obligatory admissions. My focus will be neither refugees nor family reunification migrants but rather particularity claimants: "people who assert that one particular state owes them admission by virtue of what has happened in the past" (Miller, 2016, p. 77). I will focus on particularity claims that stem from the history of discrimination in immigration policy. In the rest of the chapters, however, I will focus on discretionary admissions.

Second, I will focus only on the immigration policies of the Global North and in particular those of the United States, Canada, Australia, and the United Kingdom. I do this because we have evidence that shows that this is where the majority of those who want to move would want to move. For example, a poll showed that 14% of the world's adults said they want to permanently migrate to another country (Esipova et al., 2018). The top six desired destinations are the United States, Canada, Germany, France, Australia, and the United Kingdom (Esipova et al., 2018). The Global North is evidently where would-be immigrants most want to move to. I therefore focus on the immigration policies of the Global North because discriminatory barriers to immigrate there should be especially worrying, given these are the most desired places to immigrate to.

Section 2: The philosophical literature

Now that I have delineated the two limits on the scope of my thesis, I will move on to the literature on the ethics of immigrant selection. There are two parts to this literature. The first examines what makes ethnic or racial exclusion morally wrong. Since I will explore this literature in depth in the third chapter, I will only briefly survey it here. In this debate, political theorists are grappling with the following question: why is it wrong for a state to exclude immigrants by ethnicity or race if we assume states have a general right to exclude? We want to be able to say that this form of exclusion is morally wrong, but it's not clear what makes it wrong if states have a right to exclude. That is, if states have a right to exclude, can they not select immigrants on whatever grounds they like?

Political theorists have responded to this issue in various ways. David Miller defends a state's right to exclude but opposes racial or ethnic discrimination in immigration policy on the grounds that it is insulting to the would-be immigrant (Miller, 2014, p. 204). Michael Blake (2003) argues that it is wrong for a state to exclude immigrants by race or ethnicity because it will offend citizens and residents of that race or ethnicity. Joseph Carens (1987, p. 267) instead focuses on the distinction between the public and the private sphere: "in the private sphere freedom of association prevails and in the public sphere equal treatment does." For example, "you can pick your friends on the basis of whatever criteria you wish, but in selecting people for offices you must treat all candidates fairly" (Carens, 1987, p. 267). According to Carens, immigration decisions should be classified as part of the public sphere, which would rule out ethnic or racial exclusion. Thus, political theorists have given different explanations of what makes exclusion by ethnicity or race morally wrong.

The second part of the literature on the ethics of immigrant selection examines the moral permissibility of the various criteria that states use (Carens, 2006; Hosein, 2019). All political theorists agree that race and ethnicity are morally impermissible criteria of exclusion,[2] but what about other criteria such

[2] One exception in the literature is Michael Walzer. In his discussion of the "White Australia" case, he implies that Australia would be permitted to exclude non-European immigrants if Australia did not have superfluous land. He writes, "Assuming, then, that there actually is superfluous land, the claim of necessity would force a political community like that of White

as skill or security or culture? There is almost a consensus that selecting by skill is morally permissible. For example, David Miller (2008, p. 389) claims it is legitimate for states to select on the basis of skill "so long as the policy is introduced and applied in good faith." Michael Blake (2008, p. 971) argues that states are permitted to select immigrants on the basis of "economic success" because such selection would be based on reasons that "reflect the moral equality of all prospective immigrants—reasons that ought to be accepted in the end even by those excluded."

Some political theorists argue that skill-based immigration policy is justified only under certain conditions. Douglas Mackay (2016) argues that states are permitted to select immigrants by skill only if this does not harm low- and middle-income countries by, for example, brain drain. Similarly, Kevin Kw Ip (2020) argues that skill-selective immigration policy is morally permissibly so long as three conditions are met. The first condition is that it should not promote brain drain, the second is that it has to be "compatible with admitting other individuals who have strong claims to enter" (Ip, 2020, p. 133), and the third is that the state must have "done its fair share to alleviate global distributive injustice" (Ip, 2020, p. 134). Some, however, have argued that skill-selective immigration policy is in fact unfairly discriminatory against certain groups such as women (Lim, 2017; Wilcox, 2005).

Political theorists have also considered other immigrant selection criteria such as cultural affinity. For example, Carens (2006) considers the case of Canada, which prioritises would-be immigrants who speak one of its two national languages. Carens (2006, p. 109) argues that this is a legitimate practice because it "facilitate[s] economic and social integration." However, states should not, he argues, select immigrants on the basis of other aspects of culture such as religion because it would "violate deep liberal democratic norms about religious freedom and religious toleration" (Carens, 2006, p. 109). Adam Hosein (2019) considers Trump's Muslim ban, which Hosein takes to be a form of religious selection as it prevents nationals of several Muslim-majority countries from entering the United States. He argues that this policy harms

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Australia to confront a radical choice. Its members could yield land for the sake of homogeneity, or they could give up homogeneity (agree to the creation of a multiracial society) for the sake of the land. And those would be their only two choices. White Australia could survive only as Little Australia" (Walzer, 1983, p. 47).

Muslim Americans because it assigns them a second-class status in society. It also harms Muslims elsewhere in the world because it wrongfully exerts power over citizens in Muslim-majority countries (Hosein, 2019). One common worry about cultural selection is that it "may slide into ethnic and racial selection in countries whose national cultures have been historically defined in terms of ethnic and religious identities" (Song, 2019, p. 170).

In the philosophical literature, there has also been some discussion of the ethics of excluding would-be immigrants for national security reasons. Most seem to believe that this is not in principle morally problematic. For example, Carens (2006, p. 104) writes, "all states use some sort of security screen, denying admission to people perceived to be threats to national security. There is nothing problematic about this in principle; it reflects an important public interest." However, some have raised concerns about how this criterion is applied in practice. As Sarah Song (2019, p. 162) puts it, "we should recognize the potential for abuse in implementing the national security criterion, but this does not mean doing away with the national security criterion altogether."

My thesis will draw upon this philosophical literature on immigrant selection and the philosophical literature on discrimination. As for the latter literature, I will be especially interested in the debate on what makes certain forms of differential treatment instances of morally wrongful discrimination. The approach here has often been to first determine what makes treatment that is widely accepted to be discrimination wrong and then to use this to determine whether other instances of differential treatment are discriminatory. There are many different ways of identifying the wrong of discrimination. One argument is that discrimination is wrong because the discriminator treats people on the basis of traits that are beyond the individual's control. On this view, "judgments about us … must be based on what we choose and do, rather than on what happens to us" and so to treat people on the basis of traits that are beyond their control "is to violate a precept that we not be (made) worse off than others through no fault of our own" (Cupit, 2013, p. 2). Another argument is that discrimination is wrong because it treats people in an arbitrary way. For example, it would be discriminatory to reject an applicant for a job because they are black because their race does not tell us anything about how well they can do the job and is therefore an arbitrary selection criterion (Singer, 1978). A third argument is that discrimination is wrong because it is demeaning as it

"expresses that a person or group is of lower [moral] status" (Hellman, 2018, p. 102).

Section 3: Thesis topic

My thesis will lie at the intersection of the philosophical literature on discrimination and the philosophical literature on immigrant selection. It will explore discrimination in present-day immigration policy and in the history of immigration policy. On the latter point, historical injustice more generally is a neglected topic in the philosophical literature on migration. While it is true that political theorists such as Miller (2014), Blake (2003), and Carens (1987) have examined what makes policies that were once seen as acceptable – in particular, policies that exclude immigrants by race or ethnicity – morally wrong, this is usually as far as political theorists go in examining the relevance of historical injustice for immigration policy. There are, however, two notable exceptions in the literature. First, Sarah Fine examines the history of racism in immigration policy and argues that there are there are "significant challenges involved in distancing immigration restrictions from that history" (Fine, 2016, p. 149). She claims that accounts that defend a state's right to exclude are unable to explain why it is wrong for a state to exclude immigrants by ethnicity and race. According to Fine, this means that defences of a state's right to exclude fail to properly acknowledge the problem of racism in the history of immigration policy and in turn do not "avoid perpetuating it in the future" (Fine, 2016, p. 149).

Second, Sara Amighetti and Alasia Nutti (2016) explore the implications of colonialism for a state's right to exclude. They focus on the liberal nationalist argument that justifies a state's right to exclude on the grounds of self-determination and the preservation of national identity. They criticize this argument by drawing on Edward Said's notion of 'intertwined histories,' "according to which the history of the colonized and that of the colonizer are 'intertwined' in that they are inseparable" (Amighetti and Nuti, 2016, p. 548). According to Said, the national identity of the colonized cannot be separated from the national identity of the colonizers. Nuti and Amighetti argue that this suggests that the liberal nationalist cannot justify excluding immigrants from the state's former colonies on the grounds of national identity "because they are already part of its identity" (Amighetti and Nuti, 2016, p. 560).

In chapter 2, I will explore the implications of discrimination in the history of immigration policy for present-day immigration policy. Some political theorists such as Sarah Fine have raised the concern that present-day immigration policy might perpetuate the racist exclusion of the past. I will instead explore what receiving states owe, if anything, to descendants of those they wrongfully excluded in the past. I will argue that descendants of those who have been wrongfully excluded have a pro tanto right to immigrate to the state in question.

For the rest of thesis, I will explore discrimination in present-day immigration policy. Political theorists have examined how existing selection criteria wrongfully disadvantages certain groups of immigrants. This relates to the literature I surveyed on the permissibility of certain immigration selection criteria. For example, Desiree Lim argues that skill-based selection criteria are discriminatory because they have the "expressive effect of reproducing demeaning stereotypes about low-skilled foreigners" (Lim, 2017, p. 69). Others, as I mentioned, argue that existing skill-based selection criteria discriminate against women (Boucher, 2016; Lim, 2019). There is a worry that immigration selection policies tend to devalue traditionally female roles (Wilcox, 2008, p. 218).

For the part of my thesis on discrimination in present-day immigration policy, I will do two things that are missing from this literature. First, I will explore what ties together different forms of discrimination in immigration policy. Do immigrant selection criteria have to be wrong in one specific way for them to count as discrimination? Or can different selection criteria be discriminatory for different reasons? In the third chapter, I will explore what makes certain immigration restrictions discriminatory. I will put forward a pluralist account of discrimination in immigration policy, according to which discrimination can be wrong for various different reasons. This is in contrast to the approach that is implicitly adopted in the literature to explain morally wrongful cases of discrimination in immigration policy. I will refer to this dominant approach as the monist approach as it seeks to explain all cases of discrimination in immigration by one single disvalue.

Second, I will examine whether three significant immigrant selection criteria count as discriminatory. In chapter 5, I will focus on selection by skill, as it is one of the most common ways of migrating. Yet access to these visas is deeply unequal at the global level. I will explore whether this makes skill-based migration discriminatory against would-be immigrants from low- and middle-income countries and the poor in those countries. In chapter 4, I will focus on age limits, which are part of most skill-based immigration policies and yet are unexplored in the philosophical literature. I will examine whether age-preferential immigration policies are discriminatory against older would-be immigrants. In chapter 6, I will focus on policies that exclude would-be immigrants by nationality for national security reasons. Such selection is becoming increasingly common – especially in the United States post-9/11 – and is significant because of the way this reproduces the ethnic and racial selection that was so prevalent in the history of the immigration policy of countries in the Global North. I will explore whether these policies are discriminatory against would-be immigrants of the targeted nationalities.

Taken together, these three chapters amount to a comprehensive exploration of discrimination in immigration policy. Much of the philosophical work on discrimination in immigration policy has been done in piecemeal way. Within this literature, most political theorists have focused on the ways in which skill-based immigration policy in particular wrongfully disadvantages certain groups. As I have noted, there has also been some work in the literature on whether other kinds of selection are morally wrongful. My aim in exploring three significant immigrant selection policies is to say something broader about the state of immigration policy. If three significant immigrant selection policies are discriminatory, then discrimination in immigration policy cannot be easily dismissed as a negligible or small problem. Discrimination seems much more entrenched in immigration policy than we might have thought.

Section 4: Methodology

Three methodological points frame my thesis. The first is that I will not challenge a state's right to exclude as my focus will be on discrimination in actual immigration policy.

In the thesis, I am interested not in whether a state has a right to exclude but in how a state exercises this right through its immigrant selection policies. So, a state's right to exclude is something that I will take for granted.

This draws on Carens's (1996) realistic approach to the ethics of migration. He distinguishes between a realistic approach and an idealistic approach in the following way: "the realistic approach wants to avoid too large a gap between the ought and the is and focuses on what it is possible given existing realities…The idealistic approach, in contrast, requires us to assess current reality in light of our highest ideals"(Carens, 1996, p. 156). The idealistic approach considers first "the ought rather than the is" (Carens, 1996, p. 166). It is a common approach in the philosophical literature on migration and addresses questions such as "would an ideal world be a world of open borders, where each individual enjoyed international freedom of movement?" (Brezger et al., 2016, p. 135).

By contrast, the realistic approach, as Carens (1996, p. 156) puts it, "avoid[s] too large a gap between the ought and the is." Carens identifies three kinds of realities that the realistic approach could assume: institutional, behavioural and political. I will focus on the institutional reality as it most relevant to my thesis:

> From a realistic perspective, whatever we might want to say about migration should accept as a starting point the division of the world into states that are, at least formally, sovereign and independent. This means that we should start with a recognition that every state has the authority to admit or exclude aliens as it chooses since that authority is widely acknowledged to be one of the essential elements of sovereignty (Carens, 1996, p. 158).

Similarly, my starting point is that states exercise a right to exclude in the way that they do at present. I adopt a realistic approach not because I think that the idealistic approach is not valuable – it of course deals with some very important questions – but because the subject of my thesis requires it. With this realistic starting point, the target of our criticisms or suggestions will not be the prior question of whether a state should have the right to exclude in the first place but

rather the question of whether it is morally permissible for states to select immigrants in the ways that they do at present.

Given that I take for granted a state's right to exclude, my thesis project is amenable to proponents of a state's right to exclude. Let me explain why. Political theorists who argue for a state's right to exclude generally do not think that a state can exercise this right in whatever way it likes. One example I have discussed is the case of racial and ethnic exclusion: political theorists who defend a state's right to exclude do not think that a state can exclude immigrants by race or ethnicity. Thus, a project that examines how states can and cannot select immigrants can help these political theorists develop a more comprehensive account of *just* closed borders.

However, it is perhaps less clear whether this project is interesting to political theorists who oppose a state's right to exclude. Both Fine and Carens worry that arguments that take such a right for granted might risk legitimating a state's right to exclude. I will consider each of their arguments in turn. Carens makes this argument by exploring what the realistic approach would have to say about slavery in seventeenth- and eighteenth-century America. It would say something similar to the following:

> If we want to avoid too large a gap between the is and the ought, we must begin our moral discussion of slavery with a recognition of social reality. Slavery is a deeply entrenched social institution. It is here to stay, at least for the foreseeable future… If people concerned with morality really want to have an impact, they should stick to prescriptions that people might be able and willing to follow. They should demand better treatment of slaves rather than the abolition of slavery (Carens, 1996, p. 165).

This is obviously morally problematic. A realistic approach risks obscuring the most important issue – that slavery is not justified in the first place – if it takes the existence of slavery for granted. A realistic approach to migration could also be said to obscure the important question of whether a state's right to exclude is justified in the first place. Therefore, one might argue that my project is *not* amenable to an open borders position: if I take a state's right to exclude for

granted, then I am side-lining the more important question of whether this right to exclude is morally justified in the first place.[3]

Sarah Fine (2020) makes a similar criticism in response to the debate on the ethics of refugee selection. Her point is that theorising about how refugees should be selected normalises the shortcomings of states in admitting refugees.[4] Fine (2020, p. 19) concludes that "we do not need to answer questions about the principles for admitting refugees where permanent asylum is under-supplied, and we should avoid accepting the under-supply of temporary asylum as any kind of starting point." While I do not focus on the case of refugees, a similar criticism can be made against my project. One could argue that we should similarly not consider the ethics of immigrant selection because the very starting point that states do not at present admit all migrants must be challenged.

Fine and Carens are both in effect arguing that a realistic approach risks conflicting with a defence of open borders. Fine believes this is because it might legitimate a state's right to exclude, while Carens thinks it is because it might side-line the question altogether. Yet I believe that a project that examines discrimination in immigration policy has much to offer to critics of a state's right to exclude. Indeed, a project on discrimination in immigration policy can be developed to help bolster arguments against a state's right to exclude. This draws on Carens' view that examining actual practices and policies "includes a search for cases that are especially challenging to the theorist's own theoretical position" (Carens, 2004, p. 125). In other words, actual practices can challenge the philosophical views we hold. In the same way that political philosophers consider hypothetical counterexamples or theoretical objections to their views, Carens suggests that actual practices and our intuitions about them can serve as

[3] Carens argues that the realistic approach can overcome this issue by being clear on what the end goal ultimately is. He (1996, p. 166) writes, "if any discussion of the ethics of migration should recognize reality, it should also consider whether we should embrace that reality as an ideal or regard it as a limitation to be transcended as soon as possible." I will set this aside and explore way of addressing this issue.

[4] There are issues with this argument. It might be argued that, even if there is an under-supply of asylum, it still matters that those refugees in greatest need of help should be taken first. Consider by analogy resource shortages in the health service. It is not plausible to say that discussing priorities in this context – whose needs are most urgent – should be avoided because this just normalises the state's failure to supply more resources. However, I will grant for the sake of argument that Fine's argument holds and will show that my approach nevertheless avoids these issues.

important objections to philosophical arguments. For example, while Carens (2004, p. 125) "defended various positions that [he] saw as rooted in liberal principles that seemed to leave little room for the claims of community and culture," he nevertheless turned to "cases where [he] might intuitively feel that the claims of community were very strong in order to see whether those cases might challenge the liberal views that [he] had been espousing."

I also think that paying attention to actual immigrant selection policy can challenge some of our philosophical arguments about migration. More specifically, it can challenge arguments for a state's right to exclude. For example, if it turns out that much of immigrant selection policy is discriminatory, then we might doubt whether we can have *any* just closed borders, as many proponents of a state's right to exclude believe. The closed borders position seems much less appealing if there is little chance of it being just. Thus, it might strengthen the case for more open borders if the most common ways that states select immigrants – by age, skill, education – are discriminatory. This is one way in which examining discrimination in immigration policy can be fruitful for political theorists who oppose a state's right to exclude.

I will now move on to the second methodological point that frames my thesis. I will assume that we have the global inequalities that mark our world today. For example, Miller (2015) criticizes Carens on the grounds that he fluctuates between this sort of real-world perspective and a just world perspective, which is "one with roughly the same level of economic development and basic freedoms protected in each state" (Carens, 2013, p. 311). Miller argues that a just world perspective is incompatible with Carens's work on practical issues to do with immigration such as refugees or the selection of migrants. This is because, according to Miller, it is not clear that these practical issues to do with immigration would even arise from this just world perspective. In a world in which countries have roughly the same level of economic development and basic freedoms, migration would be very different from how it is today:

> People would want to move only for personal reasons, or because they were attracted by the culture or the climate of a particular society. They would not be moving for pressing economic reasons or because they were

> in danger of being persecuted by remaining where they were. Since many people attach value to remaining in their communities of origin, we can predict that the volume of migration, even with open borders, would not be great, and the flows would mostly be reciprocal (Miller, 2015, p. 388).

As Miller (2015, p. 388) notes, "it seems that the issues that arise in practice mainly arise *because* our world is not like the one depicted therein." For example, the issue of selection arises at least partly because the volume of migration is very high, and the volume of migration will probably not be very high in a world in which there is "roughly the same level of economic development and basic freedoms protected in each state" (Carens, 2013, p. 311). Thus, a just world perspective omits many of the important practical issues to do with immigration. In order to avoid this problem, I consistently adopt a real-world perspective that takes into account existing global inequalities.

The third methodological point has to do with the cosmopolitanism versus national partiality debate. While I acknowledge that this debate is relevant to the topic of the thesis, I will not take a stance within it. However, my project can nevertheless shed light on both camps in the debate. Let me first briefly explain the debate. National partiality is the view that states should prioritise the interests of their own citizens over non-citizens. There are two versions of cosmopolitanism: political cosmopolitanism and moral cosmopolitanism. Political cosmopolitanism takes different forms, but one prominent version advocates for a world government: "the idea that supreme political authority should rest with a single body that represents all human beings, albeit that below this there can exist many subsidiary forms of regional and national government" (Miller, 2018, p. 22). Moral cosmopolitanism instead is based on the more abstract idea "that individuals are ultimate units of moral worth and are entitled to equal consideration, regardless of contingencies such as citizenship or nationality" (Tan, 2005, p. 165). In its strongest form, it claims that "the fundamental duties we owe to our fellow human beings are exactly the same regardless of the relationship in which we stand toward them" (Miller, 2016, p. 22).

This debate seems to have important implications for the ethics of immigrant selection. As Miller (2016, p. 20-2) notes, "we can't think properly about the specific issue of immigration without knowing … whether and to

what extent states are justified in showing what I shall call "compatriot partiality" – treating their own citizens more favourably than others." Let us consider this in the case of immigrant selection specifically. For example, suppose that a state's skill-selective immigrant policy is insulting to would-be immigrants. This would be much more troubling for a proponent of strong moral cosmopolitan than a proponent of national partiality. For example, if skill-selective immigration policy is very beneficial to the economy of the receiving society and only slightly insults some would-be immigrants, then the proponent of national partiality will very likely be in favour of such a policy. By contrast, the strong moral cosmopolitan would very likely oppose such a policy on the grounds that people matter equally regardless of their nationality, which implies that we cannot benefit our own society at the expense of others. This debate therefore has important implications for the ethics of immigrant selection policy.

It is important to note that there are various views along the spectrum between the two extremes of national partiality and strong moral cosmopolitanism. For example, Richard Miller (1998) puts forward an account of weak cosmopolitanism according to which we should have equal resect but not equal concern for all. He thinks that this leaves room for national partiality because we can prioritise compatriots – and thereby fail to show equal concern to all – but still show equal respect to all, including non-compatriots. We can fail to show non-compatriots equal concern for respectful reasons such as to maintain social trust within a state. Other political theorists such as Robert Goodin (1988) believe that moral cosmopolitanism does allow for national partiality as it is the most effective ways of securing equal concern for all. However, some have questioned the efficacy of national partiality for the goals of cosmopolitan justice, given stark global inequality between countries (Miller, 1997). In any case, these different views would of course each have different implications for how we think states ought to select immigrants.

I will not take a stance on this debate, but I want to make two points on how it relates to my project. The first is that there is no denying that this debate is relevant to my project. I try to be alert to it when it arises in my work. One example of this is chapter 5. There I argue that skill-selective immigration policy discriminatory for reasons to do with equality of opportunity. I provide two arguments for this: one that hinges on a global principle of equal

opportunity and another one that does not. I do this precisely because the global equality of opportunity principle is only going to be acceptable to cosmopolitans. But, since I do not want to commit myself to either position in the debate, I offer another argument for my claim that does not hinge on a *global* principle of equal opportunity.

Second, even though I do set aside this debate, I believe that my project can shed light on both positions within it. Consider first national partiality. Proponents of national partiality are generally not concerned with cases that set back the interests of non-citizens. However, they presumably would be concerned if these interests are setback in ways that are morally wrongful, such as the violation of rights. My project will show how the interests of would-be immigrants can be set back in morally wrongful ways by immigrant policy. This reveals the ways in which the interests of would-be immigrants are wrongfully sacrificed by policies that are often justified on the grounds of national partiality. This calls for a more careful use of national partiality in immigration policy.

Next, consider strong moral cosmopolitanism. Recall, these cosmopolitans hold the view that people matter equally regardless of their nationality. This implies that it is important for strong moral cosmopolitans to be able to capture and take into account the different ways in which immigration policy sets back the interests of migrants. My project can help them do this. However, perhaps the strong moral cosmopolitan will not be particularly focused on the interest setbacks suffered by immigrants, given the scope of their concern is universal. For example, Peter Singer suggests that it is more important to pay attention to the interests set back by global poverty than the interests set back by migration (Klein, 2019). Yet, even then, it is important to determine what the interest setbacks are of immigration policy in order to determine which cases the cosmopolitan should focus on.

To take stock, there are three methodological points that frame my thesis. The first is that I take for granted a state's right to exclude in order to focus on the ethics of how states select immigrants and not on whether states should have a right to exclude in the first place. I argue that my project is nevertheless a fruitful one for proponents of open borders. Second, my perspective on immigrant selection policy takes into account existing global inequalities. Third,

I set aside the cosmopolitanism versus national partiality debate but do so in a way that I hope can offer insights to both camps.

Section 5: Outline of the thesis

Chapter 1: Introduction

Chapter 2: Discrimination in the History of Immigration Policy

Before I examine discrimination in present-day immigration policy, I will explore the normative implications of discrimination in the history of immigration policy. I will focus on policies that excluded would-be immigrants by race or ethnicity. I do this because, in the philosophical literature, there is "near consensus" (Fine, 2016, p. 127) that states are not permitted to exclude would-be immigrants on the basis of race or ethnicity. Yet such criteria were in fact widely used in the history of many states' immigration policy. I will explore whether reparations are required for this discrimination in immigration policy. I will begin by identifying the two main approaches political theorists generally take to establish a claim for reparation: the inheritance approach and the counterfactual approach. I argue that the inheritance approach does not offer a very promising argument for reparations for descendants of those who were wrongfully excluded. By contrast, the counterfactual approach does. I respond to one important objection that even if we grant that there is a claim for reparation, this claim can be undermined by current circumstances. Finally, I show why this reparation should take the form of immigration rights. I conclude that descendants of those who have been wrongfully excluded have a pro tanto right to immigrate to the state in question.

Chapter 3: When are border restrictions discriminatory?

For the rest of the thesis, I will examine discrimination in present-day immigration policy. In this chapter, I will set out my pluralist account of discrimination in immigration policy. The dominant approach that is implicit in the literature is what I will refer to as the monist approach, according to which the wrongfulness of discrimination in immigration policy can always be explained by one reason. I will show that three prominent monist accounts suffer from the same problem: they fail to explain the wrongfulness of all cases of discrimination in immigration policy. What we need instead, I will argue, is a pluralist account of discrimination in immigration policy. My account is

comprised of two parts. First, it defines discrimination as morally objectionable differential treatment on the basis of membership of a socially salient group. Second, this differential treatment can be morally objectionable for different reasons, which is what makes this account a pluralist one. I will argue that this pluralist account allows us to capture discrimination in immigration policy more fully than the monist account. I will explain how each of the following three chapter fits in with this pluralist account of discrimination.

Chapter 4: Is immigration only for the young?

In the remainder of the thesis, I will develop the pluralist account of discrimination in immigration policy. I will show that discrimination in immigration policy can be wrong for three reasons. In this chapter, I will show that it can be wrong if it fails to select would-be immigrants by merit. I will demonstrate this by focusing on age-preferential immigration policies, which are immigration policies that have explicit age limits and policies that make it more difficult for older people to migrate. I will argue that age-preferential immigration policy is morally wrong for the same reason that mandatory retirement policies are thought to be wrong: they violate a principle of equal opportunity and in particular a principle of hiring by merit. I will begin by explaining the underlying rationale behind age preferential immigration policies. Their aim is to offset the economic costs of the ageing populations in the Global North. I will refer to this as the efficiency argument, and I will assume for the sake of argument that it holds. To begin, I will consider a perhaps intuitive view about age-preferential immigration policies: why should selection by age not be wrong for the same reasons that selection by ethnicity or race is? There are two ways of fleshing this out: that age, like ethnicity and race, is beyond an immigrant's control and that selection by age, like selection by ethnicity or race, is arbitrary as it is irrelevant for a state. I will argue that the parallel between selection by ethnicity or race and selection by age is untenable. Instead, I will argue that age-preferential immigration policies are wrong for the same reasons that these very same states now oppose mandatory retirement policies: they fail to select people by merit. I will show why, unlike some cases of permissible mandatory retirement, the efficiency argument for age-preferential immigration policy does not outweigh the principle of hiring by merit. Following this, I will respond to potential objections. The upshot of this chapter is that discrimination in immigration policy can be wrong if it fails to select would-be immigrants by merit.

Chapter 5: Immigration and Inequality of Opportunity

In this chapter, I will show that discrimination in immigration policy can be wrong for another reason: if the selection unfairly disadvantages certain groups of would-be immigrants. To do this, I will focus on skill-based immigration policy, which is the most common form of discretionary admission. I begin by distinguishing between two sorts of fairness that we might think arise in the case of skill-based immigration policy: the use of merit criteria at the point of selection, and the fairness of the background conditions in which skills are acquired in the first place. The previous chapter applied the first idea, while this chapter will examine background inequality of opportunity. Developing a point first made in chapter 2, I argue that skill-based immigration policy can be at once discriminatory in one sense – because of background conditions – and non-discriminatory in another sense – because it selects by merit. In this chapter, I will argue that there are two ways in which background inequality of opportunity means that selection for skill-based immigration policy will unfairly disadvantage certain would-be immigrants. The first argument is that skill-based selection discriminates against all those who come from low- and middle-income countries because the general level of education in those countries is low. The second argument is that skill-based selection discriminates against the poor within those countries, because they are unfairly treated by the domestic education systems in those countries. Overall, I show that skill-based immigration policy discriminates against these two groups of people because it unfairly disadvantages them in the selection process.

Chapter 6: National Security and Exclusion

In this chapter, I will argue that discrimination in immigration policy can be wrong for a third reason: it can be wrong if it demeans certain would-be immigrants. To show this, I will focus on what I will call national security-based immigration restrictions, which are restrictions that exclude would-be immigrants by nationality over national security concerns. One recent example is former President Trump's Muslim ban, which banned nationals of Iran, Libya, Somalia, Syria, and Yemen from entering the US. In this chapter, I will show why such national security-based immigration restrictions are wrong *even* if they respond to national security concerns. However, I will point out that there is strong reason to be sceptical that the real motivation behind these policies is national security. I will examine several different understandings of

national security to show that it is inconsistent for states to apply immigration restrictions on a nationality basis only for religious extremism and not for other terrorist threats. This should lead us to question whether it is national security that is the motivation for these policies. In what follows, I will grant for the sake of argument that national security-based immigration restrictions do contribute to national security. I will examine three potential arguments for why they are nevertheless wrong: first, that they are unfair to would-be immigrants; second, that they are demeaning to citizens and residents; and third, that they are demeaning to would-be immigrants. I will conclude that only the third argument is persuasive: national security-based immigration restrictions are wrong because they track pernicious negative stereotypes and are thus demeaning to the would-be immigrants of the targeted nationalities.

Chapter 7: Lotteries as a Possible Solution?

The previous three chapters developed the pluralist account of discrimination by examining three ways in which discrimination in immigration policy can be wrong. Overall, this shows that significant parts of immigration policy are discriminatory. In this chapter, I will explore one potential solution to this problem of discrimination: lotteries. In general, lotteries are seen as a solution to discrimination in various contexts. In the immigration case, a lottery that is open to all would have neither age and education requirements nor nationality-based restrictions. All the cases of discrimination that I explored would therefore not arise with such a lottery. Could a lottery be a solution to discrimination in immigration policy? Indeed, some states do use lotteries to select immigrants. However, I will argue that even if lotteries are non-discriminatory, this is not sufficient reason to implement them in immigration policy. There are other problems with these lotteries that do not have to do with discrimination. This highlights that discrimination cannot be the sole standard against which we judge immigration policy. I will argue that lotteries that select immigrants are not the best for achieving an unbiased decision-making process, fairness, nor diversity. This draws on three justifications that have been used to defend lotteries in general, which I then apply them to the specific case of immigration. However, I do concede that lotteries that form a small part of the immigration system such as the Green Card Lottery could be justified as a second-best policy device. This nevertheless does not undermine my point that lotteries in general should not be viewed as a solution to discrimination. The lesson to be drawn

from this chapter is that discrimination cannot be the only benchmark against which to judge immigration policy.

Chapter 8: Conclusion

In the conclusion, I will reflect on the thesis as a whole. I will discuss some further questions raised by my thesis that I would like to explore in future work.

Chapter 2: Discrimination in the History of Immigration Policy

Introduction

Before I examine discrimination in present-day immigration policy, I will examine discrimination in the *history* of immigration policy. I will focus on policies that excluded would-be immigrants by race or ethnicity. I do this because, in the philosophical literature, there is "near consensus" that states are not permitted to exclude would-be immigrants on the basis of race or ethnicity (Fine, 2016, p. 127). This is true not just of proponents of open borders, who in any case believe that most if not all of the selection of immigrants is morally impermissible, but also of proponents of closed borders (Blake, 2005; Miller, 2014; Wellman, 2008). Yet such criteria were in fact widely used in the history of many states' immigration policy (Fine, 2016).

In the United States, the use of such criteria can be traced at least as far back as the Chinese Exclusion Act of 1882, which prohibited all immigration of Chinese laborers. It is clear that "racism prompted this action" (Reimers, 1998, p. 11). The Act was largely based on the view that Chinese immigrants were "socially and morally inferior to whites" (Reimers, 1998, p. 12). It was only in 1943 with the Magnuson Act that the exclusion was repealed. In 1917, Congressional legislation barred the entry of Asian Indians after a few thousand of them arrived in the United States mostly as agricultural workers, and were met with intense hostility and protests against their presence (Reimers, 1998, p. 14). A few years later, Congress passed the notorious Immigration Act of 1924, otherwise known as the National Origins Act, which gave immigration visas to just two percent of the total number of people of each nationality in the United States as of the 1890 national census. The Act aimed to exclude immigrants from southern and eastern Europe. Congress was drawing on the view of many prominent eugenicists that people from northern and western Europe were superior (King, 2002).

The United Kingdom also implemented policies that excluded immigrants on the basis of ethnicity or race. The Aliens Act of 1905 was passed to exclude the large numbers of Jews escaping pogroms in Eastern Europe. In an 1893 House of Commons debate, the Conservative MP for Thanet, Mr. James Lowther, spoke about his trepidation about the "Jewish race" and his fears that the country was being "overrun" by "destitute foreign immigrants" (Hansard,

1893). Decades later, parliament passed the Commonwealth Immigrants Act of 1968, which prevented Kenyan and Ugandan Asians with British passports from entering the country. As the "Africanisation" policy in Kenya threatened those without Kenyan citizenship with expulsion, thousands of Asian Kenyans with British passports planned to leave for Britain. In opposition to the Act, Richard Crossman noted that "[a] few years ago everyone there would have regarded the denial of entry to British nationals with British passports as the most appalling violation of our deepest principles. Now they are quite happily reading aloud their departmental briefs in favour of doing just that" (Hansen, 1999, p. 819). Crossman was pointing out that the United Kingdom was in effect "denying entry to British citizens because of the colour of their skin" (Hansen, 1999, p. 819).

As we can see, countries such as the United Kingdom and the United States have in the past employed immigrant selection criteria based on ethnicity or race, which we now all take to be unjustifiable. What does this mean for present-day immigration policy? I will argue that descendants of those who have been wrongfully excluded have a pro tanto right to immigrate to the state in question. I will assume a right is pro tanto if it is one that can sometimes be infringed all-things considered, and a right is absolute if it cannot be infringed under any circumstances.[1] I will begin by identifying the two main approaches theorists generally take to establish a claim for reparation: the inheritance approach and the counterfactual approach.[2] In the first section, I argue that the inheritance approach does not offer a very promising argument for reparations for descendants of those who were wrongfully excluded. In the second section, I argue that the counterfactual approach, by contrast, does. In the third section, I respond to the objection that even if we grant that there is prima facie a claim for reparation, this claim can be undermined by current circumstances. In the fourth section, I argue that immigration rights should be offered as one form of reparation. It is important to emphasise that my argument does not imply that there aren't more urgent reparative claims such as those to do with slavery or colonialism.[3] It is nevertheless important for philosophers to draw attention to, as we will see, significant and nontrivial reparative claims.

[1] This is setting aside the question of whether there are any absolute rights to begin with (Gewirth, 1981).
[2] I here follow Daniel Butt (2013). For a prominent defence of both views, see Boxill (2003).
[3] See James Souter (Souter, 2003) for an argument for asylum as reparation for past injustice.

In this chapter, I will assume that backward-looking reparative considerations have normative force in immigrant selection. One reason for this is that the reparative argument creates directed duties to particular individuals, whereas more general duties, such as the general imperative to protect vulnerable immigrants, does not specify which states should admit which immigrants. Second, I assume that it is sometimes possible to identify the descendants of those that have been impacted by such policies. There are in fact plenty of records of the individuals who have been excluded by such immigration policies. For example, when the Commonwealth Immigrants Act of 1968 was passed, many newspapers included the full names of some of the Kenyan Asians who were impacted by the Act (BBC, 1968; Lone, 1971). To take another example, the National Archives in Washington D.C. hold a variety of immigration documents relating to the Chinese Exclusion Act such as affidavits, photos, letters to immigration officials, and transcripts of interrogations.[4] It includes documents that Chinese would-be immigrants received that notified them that their application for admission to the United States was denied.[5]

Section 1: An inheritance approach

To begin, I will examine whether we can use the inheritance approach to make the case for reparations for descendants of those who were wrongfully excluded. I will argue that the problems with such an approach, while perhaps not fatal, suggest that we should look elsewhere for an argument for such a claim to reparation. The inheritance approach in general tells us that individuals have a right to reparation "by virtue of being heirs to possessions that would have been theirs if the injustice had not been done. By being deprived of their inheritance the injustice has violated their right to possession" (Thompson, 2001, p. 120).[6] As Janna Thompson (Thompson, 2001, p. 120) points out, this view "seems to rely on the idea of concrete possession that can be handed down, like an heirloom." So, for example, this view applies well to cases of historical injustice that involve wrongfully seized property. It might justify the practice several

[4] 'Chinese Exclusion' Docs Teach," n.d.) Available at https://www.docsteach.org/documents/search?filter_searchterm=%22chinese+exclusion%22&filterEras=&filterDocTypes=&filter_order=&filter_order_Dir=&rt=skNXcxRf5YbL&reset=1

[5] See, for example (Chinese General Correspondence, 2022).

[6] For a prominent defence of the inheritance argument, see Bernard Boxill (1972).

European countries have adopted of giving back Jewish-owned properties seized before or during World War II to their rightful owners or their descendants. Again, the idea here is that the descendants have a right to the property because they have inherited an entitlement to it.

However, not all reparative claims can be cashed out in terms of inheritance. Consider, for example, the sexual exploitation of 'Comfort Women' by the Japanese army.[7] There was no possession, so to speak, that their descendants would have had had the injustice not occurred. The exploitation they endured is not something that can be cashed out in terms of a possession that should later have been inherited. The issue is thus whether there might be an entitlement to compensation that, arguably, could be inherited. The question in our case is whether immigration rights that were wrongfully withheld can be said to be a sort of possession that is passed down from forebears.

We can distinguish between two sorts of immigration rights that are relevant in this context: rights to entry or rights to citizenship. The first, a right to entry, is relevant in certain cases of wrongful exclusion in the history of immigration policy. These cases are ones in which entire groups of people who belong to a certain ethnicity or race were prevented from entering. It was a right to entry that was wrongfully withheld from, for example, at least some of the Chinese laborers who were intending to immigrate until the Chinese Exclusion Act was passed. But a right to entry does not seem to function as a possession that is passed down from forebears, primarily because entry rights more broadly are not thought to be inheritable. For example, suppose that a mother has a pass to use a private park that expires after two years. Now suppose that she dies with her entry right unexpired. We do not think that her daughter can claim that entry right for the unexpired period. The most she could perhaps claim is to have the pass fee reimbursed. If the general nature of entry rights is that they are not normally inheritable, then it is unclear why the same is not true of a right to entry for states. In practice, entry rights are indeed not inheritable and we do not seem to have the intuition that they should be either.

Consider the second form of immigration right that is relevant in our case: citizenship. This is relevant for another sort of injustice in the history of immigration selection policy that, while rare, is nevertheless important to

[7] For a more detailed exploration of this, see Catherine Lu (2011).

consider. For example, it is relevant in the case of the 1968 Commonwealth Act. Recall, this was implemented to prevent Kenyan Asians from entering the UK as they sought to escape the "Africanisation" policy Kenya was pursuing (Hansen, 1999).[8] Most importantly for our purposes here, the British government announced it would no longer accept their passports, in effect stripping them of their British citizenship. Should we view citizenship as something that can be inherited from forebears who were wrongfully excluded?[9] To begin, in most countries, citizenship is inherited only from parents.[10] What rationale underpins this norm, and could it be extended to inheriting citizenship from ancestors in our case? Joseph Carens (2013) offers an intuitive explanation for this norm by pointing out that children of resident citizens will grow to have a deep relationship to that state. The political community they grow up in will be formative to their identity, they will feel that they belong to that community, and they will grow up expecting that they will exercise their political agency within it as an adult. He concludes that "granting [children of resident citizens] citizenship at birth is a way of recognising that relationship and giving it legal backing" (Carens, 2013, p. 24).

However, the obvious difference between this case and ours is that it is far from clear in our case that the descendants of those who were wrongfully excluded from a certain state will develop any relationship with that state. This is particularly salient in our case because their ancestors have never even lived in the state in question to begin with but were only wrongfully excluded. Thus, it is reasonable to assume that many of these descendants will not have a strong connection, if any at all, to the state in question. It is very likely that the state that their great grandfather belonged to is not one they learned about, speak the language of, reside or work in, and so on. While a strong relationship to the

[8] For more on this, see Sana Aiyar (2015).

[9] One might think that this argument applies to a wider range of cases. Think of, for example, the descendants of guest workers in Germany and Austria. Many of these people are wrongfully denied citizenship, but they never had it to begin with. However, it is important to emphasize that I am considering policies that excluded people from entering the country to begin with, which distinguishes the sorts of cases I am considering from the guest workers case. I therefore set aside such cases.

[10] There are exceptions to this norm. Some states have *jus sanguinis* citizenship principles that grant citizenship to those who descend from even distant ancestors who were born in the state. For example, Italian citizenship is granted by birth through the paternal line, with no limit on the number of generations, or through the maternal line for individuals born after 1 January 1948. Moreover, on the problematic nature of inherited citizenship, see Shachar and Hirschl (2007).

state explains the norm that children of resident citizens should inherit that citizenship, it will often not extend to individuals inheriting citizenship from ancestors who were wrongfully excluded. The view that one can inherit citizenship from a forebear who was wrongfully excluded therefore does not seem to be a very convincing one. While these issues may not be fatal, I will show that there is a more promising approach, the counterfactual approach.

Section 2: A counterfactual approach

The second main approach for establishing a claim for reparation is the counterfactual approach. This approach asks, "are some currently living persons better off, and some worse off, than they would be in a counterfactual world where historic injustice did not take place?" (Butt, 2013, p. 246). This is a fairly intuitive approach. For example, if someone stole my possession a few weeks ago, it seems important to ask what would have happened had it not been stolen in order to determine what compensation I am owed. So, if a student's laptop was stolen shortly before their exam, we would think they are owed some compensation because they would have been able to study for the exam, had it not been stolen. Such counterfactual reasoning has been applied to many cases of historical injustice. Boxill and Boxill (2003) apply it to the case of African Americans. They note that African Americans arguably would have had more wealth and more education had their ancestors not been enslaved (Boxill and Boxill, 2003, p. 125). The more general point is that the descendants of victims of an injustice would have been better off had the injustice not occurred. This seems to apply to the case of historical injustice in immigration selection policy. For example, consider the notorious National Origins Act the US implemented in 1924. Recall, its aim, which drew on the view of many prominent eugenicists, was to exclude southern and eastern Europeans. In many cases, those who would have immigrated to the US had it not been for the Act missed out on jobs, social and cultural connections, educational opportunities, and so on. So, we can reasonably expect that descendants of these southern or eastern Europeans are worse off because their ancestors were prevented from moving to a place that had more opportunities for them.

Before I further explain this account, it is important to clarify why I focus on the descendants *and* unjust immigration policies specifically. First, why do I focus on the descendants of those who were excluded by unjust immigration policy rather than more generally on whoever happened to have ended up being

worse off as a result of these policies? It might be true that there are people, other than these descendants, who are made worse off by such policies. For example, if the Chinese Exclusion Act were not in place, some members of a family would have moved to the U.S. and sent back remittances to China, just as other immigrant groups often do. These remittances might have benefited family members who never would have thought of immigrating, and their descendants. This approach would say that they are also owed compensation, but, since this group of people will be much more difficult to identify, I set this issue aside and focus on the descendants of those who were excluded by such policies. Second, why do I focus on unjust immigration policies that excluded entire groups of people rather than also the wrongful denial of the ability to immigrate for individuals? For instance, imagine that my grandmother was denied entry to the UK 100 years ago, not because of a racist immigration policy, but because of a clerical error. She should have been allowed in but, by mistake, she was not. This approach would indeed tell us I am owed reparation, but again the focus on unjust policies is important because it helps us more easily identify a large group of people that are left worse off.

In order to flesh out this account, we need to answer three questions. First, what exactly is the relevant counterfactual? Consider the descendant of a Chinese labourer who was excluded by the Chinese Exclusion Act. Is the relevant counterfactual one in which this labourer had not been wrongfully excluded or one in which this labourer *and* all other Chinese labourers not been excluded? In other words, should the focus of the counterfactual be on the individual or the group? The counterfactual would clearly differ depending on whether it is only one person who was not excluded or whether it was a large group of people who were not excluded. I take the relevant counterfactual to be the one in which the entire group targeted by the discriminatory policy was not excluded. Given that I focus on policies that discriminated against entire groups of people, it is natural to focus on the counterfactual world where this entire group of people had not been excluded. Moreover, it is not very intuitive to imagine a counterfactual world where there was a discriminatory policy that excluded an entire group yet an individual from that group somehow was admitted.

The second question is who exactly is in this group? Is it, for example, the group of all Chinese labourers in the case of the 1882 Act? The answer is

that my argument only applies to those whose forebears would have wanted to migrate had it not been for the unjust policy. So, the victims of the Chinese Exclusion Act of 1882 were not *all* Chinese laborers but only those who would otherwise have applied for entry. It is clearly only those who would have wanted to immigrate to the US that would have been counterfactually better off had it not been for the discriminatory policy. Those who did not want to immigrate anyway would not have been affected had the discriminatory policy not been enacted. As I mentioned earlier, there is evidence of people that went through the selection process – and so wanted to immigrate – but were barred by these policies.

However, there are two complications here. First, should we also say that it is the group of individuals that not just wanted to immigrate but also would have actually been admitted had it not been for the discriminatory policy? It does make sense to say that if, say, a Chinese laborer would not have been admitted according to legitimate selection criteria at the time had it not been for the discriminatory policy, then they would not have counterfactually been better off had it not been for the policy. However, it is clearly difficult to determine who of the individuals that we know wanted to immigrate would have also been admitted to the state.[11] Second, what about those who never went through the selection process? Presumably there are many who would have wanted to apply for admission but did not do so because of the discriminatory policy. The problem here is that even though they would have wanted to immigrate, there will again rarely, if ever, be any evidence of that. It is important to emphasise that those who are owed reparations are those who would have wanted to immigrate, including those who did not even go through the selection process, and would have been admitted had it not been for the unjust policy. However, given that it will be difficult, if not impossible, to determine who would have indeed been admitted and who would have gone through the selection process, the state will have to grant a right to reparation for all descendants of those who we know would have wanted to immigrate, as an imperfect application of this argument.

[11] But this is not true of all cases. In the case of the Chinese Exclusion Act, it seems reasonable to assume that had the Act not been implemented, it is very likely that all Chinese laborers that wanted to immigrate would been admitted given the fact that the 1882 Act was the first and for many decades later the only policy that restricted immigration to the United States.

Before we explore the third important aspect of this account, it is worth considering a potential challenge to my argument so far. Is it always true that if X commits an injustice against Y, and Y would have obtained some benefit had it not been for this injustice, then X ought to provide Y with this benefit? Suppose, X, a racist police officer, only targets criminals from a given ethnic minority Y. X therefore targets Y, who is indeed about to steal the Picassos from a museum. Here, like the immigration case, X would have received certain benefits, i.e. the Picassos, had it not been for the unjust act, the discriminatory targeting. But obviously this does not mean that they have a right to the opportunity to steal the Picassos. If a wrongdoer needn't give a victim the benefits they would have had, had it not been for the injustice, then perhaps states needn't give descendants the immigration rights they would have had, had there been no discrimination. However, notice that the reason why the wrongdoer need not give the robber the Picassos that they would have had had the injustice not occurred is that the robber has no right to the Picassos and would obviously not have a legitimate right to the Picassos even if they steal them. This explains why, in the Picasso case, the wrongdoer need not give the victim the opportunities they would have had, had it not been for the injustice. Thus, the reason that the overarching principle applies in the immigration case and not the Picasso case is that in the immigration case, unlike the Picasso case, some would have actually had a legitimate right to enter had it not been for the discriminatory policy.

The third question, and the one I will focus on for the remainder of this section, is the *benefit* the descendants counterfactually would have had had their ancestors been admitted. My argument is that the descendants would have been better off had it not been for the discriminatory policy. However, one might argue that it is not clear that we know what the forebears would have done had they in fact been admitted to the state they were excluded from. Jeremy Waldron (Waldron, 1992, p. 9) considers a similar point about the significance of human choice in the debate on historic claims to land:

> Suppose (counterfactually) that a certain piece of land had not been wrongfully appropriated from some Maori group in New Zealand in 1865. Then we must ask ourselves, What would the tribal owners of that land have done with it, if wrongful appropriation had not taken place? … Would they have hung on to the land and passed it on to future

> generations of that tribe? Or would they have sold it – but this time for a fair price – to the first honest settler who came alone? And if the latter, what would he have done with it? Sold it again? Passed it on to his children? Lost it in a poker game?

Waldron's point here is that we do not know what the owners of the land would have done had it not been wrongfully appropriated. This undermines a claim for reparation for the descendants because we do not know that they would have in fact been counterfactually better off had the injustice not occurred – because, for example, their forebears could have given away the land. One might make a similar objection to my argument. One might argue that I am assuming that "what a person should have may be determined by certain actions which neither he nor anyone else has actually performed" (Sher, 1981, p. 11). That is, I seem to be assuming that had the victims of historical injustice in immigration selection policy been admitted, they would have made the most of the opportunities in the new state, worked hard, earned more money, and made a better life for themselves. But obviously, as Waldron points out, we do not know that the victims would have done all of this. It is clearly controversial that we should compensate their children for all of the possible effects of the opportunities that were denied them.

In response, it is crucial to clarify what I am arguing that the descendants should be compensated for. I am not claiming that the descendants of victims of historical injustice in immigration selection policy are owed the money, the careers, or the degrees they would have had had they enjoyed the opportunities in the receiving state. My claim is only that they are entitled to compensation for loss of the counterfactual opportunity set that they would have had now had their forebears been admitted. They would have had more educational, employment, social, and cultural opportunities. It is important to note that the "the counterfactual opportunity set" could mean two things: (a) the specific opportunity set that would have been available to person P and their ancestors not been denied admission or (b) an opportunity set that is at least as good as that opportunity set described in (a). The relevant one, we can assume, for the counterfactual approach is (b): this is the sense in which the person has been made worse off. So, in this sense, descendants are owed reparation for being

denied the counterfactual opportunity set they would have had had their forebears been admitted.[12]

But what if the forebears had been admitted to the state that excluded them but then chose to move elsewhere after? A large number of the Chinese who did move to the United States ended up moving to Mexico, for example (Romero, 2010). Would this not support a Waldron-style claim that we do not know whether the descendants would have been in the same state and enjoyed the opportunities there even had they been admitted? In other words, even if we focus only on the opportunities the descendants would have had, we do not know whether the descendants would have had them had their forebears been admitted because the latter could have moved elsewhere. In response to this, we can simply respond that we care about what would have likely happened.[13] Most people would have likely stayed in that state. They were applying to immigrate to the state so it seems plausible to say most would have wanted to stay. And even if they chose not to stay, they would have likely moved on to somewhere that was better still. In other words, it is reasonable to assume that they would not have chosen to move to somewhere worse. Thus, we can assume that most of the group of people who applied to immigrate to a state would have stayed or at the very least left to a state with more opportunities. The objection that the forebears might have chosen to move elsewhere is therefore not very persuasive.

One might also raise the famous so-called non-identity problem. The objection claims that had the injustice not occurred, the same people would not have been born. This is simply a biological fact: "the existence of a given individual seems to hang on their having been conceived at a particular time, when a specific spermatozoon came into contract with a specific egg" (Butt, 2013, p. 248). The problem is then that "if a current day individual owes his or her very existence to a historic injustice, some ask, how can it be claimed that

[12] It is important to emphasize here that I am introducing *not* the best theory of historical reparations simpliciter but the theory of historical reparations that best justifies rectification for the history of exclusionary immigration policies.

[13] This is in fact how compensation claims work more generally. For example, suppose I steal your car, and then return it to you after a month. Besides getting the car back, we think that you are owed compensation for the opportunities you have lost in the meantime. But for that, we need to know what you would have done if you have had the car, and that involves likelihood estimates. So, for example, you cannot claim that you would have won some car rally if you're not normally a rally driver.

he or she has been harmed by the event in question and is owed compensation?" (Butt, 2013, p. 248). A prominent response to this in the literature is what we can call the subsequent-wrong argument (Herstein, 2008). My aim in introducing this is not to show that we can conclusively reject the non-identity problem but to point out that at least one of the prominent responses easily applies to our case. The subsequent-wrong argument notes that in addition to the initial historical injustice there is a further injustice being done by the failure to compensate the parents (Sher, 2005). This injustice occurs after the child is born. To illustrate, consider Daniel Butt's example of a couple who are victims of an injustice that significantly harms their material welfare. Now further suppose that they have a child. We can grant that the child should not be compensated for the initial injustice because they would not have been born had it not occurred. However, it seems clear that the child should be compensated for the wrongful failure to compensate the parents after the child is born. This is partly because had it not been for this later failure to compensate the injustice, the "child may have grown up in an affluent, rather than an impoverished, environment" (Butt, 2013, p. 248).

We can make a similar point about descendants of victims of unjust immigration policy. That is, we can grant that the children born after the act of exclusion had occurred should not be compensated for the initial injustice of wrongful exclusion but claim that they should be compensated for the later injustice of the wrongful failure to compensate the parents. To see this, consider the following example. Suppose my grandparent was wrongfully excluded from a state. Let us grant that my parent would not have existed had my grandparent not been wrongfully excluded. However, after my parent is born, my parent is wronged because they would have enjoyed the opportunities in the receiving state had my grandparent been given the immigration rights, which is the form of compensation that I will later argue for. Now consider the next generation. Let us again grant that I would not have been born had my parent not been wronged in this way. However, after I am born, I am wronged because I would have enjoyed the opportunities in the receiving state had my parent been given immigration rights. Of course, for this argument to work two things must hold at each link of the chain: that the individual would have moved had they been given immigration rights and that they would have taken their child with them. However, I do not believe that it is implausible to assume that many descendants would have ended up living in the state in question had their

ancestors been given immigration rights. So, while we might say that the children should not be compensated for the initial wrong – because they would not have existed otherwise – it is clear they should be compensated for the ongoing failure to compensate – because it occurs after they are born and harms them. One prominent response to the non-identity problem therefore easily applies to our case.

Finally, there is one broad question to this approach that we should consider. Does this approach retain a tinge of the 'inheritance' approach that I take myself to be rejecting? The worry is that in employing the terms 'descendants' or 'forebears,' I might be thinking of a claim to reparation that is passed along bloodlines, which would imply some aspects of the inheritance approach that I am rejecting. It is true that I am appealing to descent as a way of identifying the people who can make these reparative claims. However, I am arguing that the reason that they have these reparative claims is not because they have inherited them but because they would have been counterfactually better off in terms of opportunities had the injustice not occurred.

To take stock, my argument is as follows. Descendants of those who have been wrongfully excluded have a claim to reparation because they would have been better off had the discriminatory policy not been enacted. In particular, they would have been better off because they would have received the set of opportunities in the state in question had it not been for the discriminatory policy. It is at least those whose ancestors would have wanted to immigrate and would have been admitted that have this claim to reparation. However, because the latter criterion might be in practice difficult to be identify, a state will likely have to grant this claim to all those whose descendants would have wanted to immigrate had it not been for the discriminatory policy.

Section 3: A change in circumstances

I have argued that descendants of those who were wrongfully excluded are owed reparation for the opportunity set they would have had now had their ancestors been admitted. Before I show why this claim to reparation should be offered in the form of admission rights, I will explore whether this claim could be undermined by current circumstances. Waldron makes this point about cases of historical injustice more generally. To illustrate, he gives an example of a savanna where various groups are legitimately in possession of their respective

water holes. Now suppose that "one day motivated purely by greed, members of group Q descend on the water hole possessed by group P and insist on sharing that with them" (Waldron, 1992, p. 24-25). This is clearly a case of injustice. But now suppose that all the water holes except the one originally owned by P dry up. Here the circumstances have changed, and it no longer seems, according to Waldron, that Q forcing P to share their water hole is a case of injustice. As Waldron (Waldron, 1992, p. 25) puts it, "the initial injustice by Q against P has been superseded by circumstances." Supersession occurs when "an act which counted as an injustice when it was committed in circumstances C1 may be transformed, so far as its ongoing effect is concerned, into a just situation if circumstances change in the meantime from C1 to C2" (Waldron, 1992, p. 24-25).

For the sake of the argument, let us grant Waldron's claim that supersession can sometimes happen. Could it also happen in the case of historical injustice in immigration selection policy? To be more precise, I have suggested and will further defend in the next section, that this claim to reparation should be offered in the form of immigration rights. Now I will consider two ways one might argue that the circumstances have changed such that this claim is undermined. First, perhaps the circumstances changed in both the sending state and receiving state such that, by immigrating, descendants would be made worse off than they otherwise would have been. Think of states like Singapore, whose citizens are now relatively wealthy and who would have been denied entry to the US as part of the 'Asiatic barred zone' in the early 1900s. Or consider the citizens of Southern European states such as Austria, whose citizens were subject to restrictive quotas starting in the 1910s and 1920s, but which now has a higher standard of living than the U.S. In these cases, it is likely that by immigrating, these people would have been made worse off than they otherwise would have been. I grant that this is one way in which the injustice could be superseded. It is true that my conclusion is clearest in cases where people from country A were wrongfully denied entry to country B when A is, and remains, relatively impoverished and B is, and remains, relatively affluent, and that the argument does not obviously hold, however, when country A is now relatively more advantaged than country B.

There is a second way one might argue that supersession occurs in the case of historical injustice in immigration policy. Suppose that a state does want

to give the descendants of those who were wrongfully excluded immigration rights as reparation. One might argue that, like the example of the wrongfully appropriated land, doing so comes at a very large cost. There are two ways of fleshing this out: in terms of the cost to other would-be immigrants or the cost to the receiving state. Consider first the cost to would-be immigrants. For example, suppose a state such as the US has already decided upon the number of immigrants it is willing to admit annually and is faced with the choice between someone who has a needs-based right to immigrate – suppose they are fleeing poverty – and someone who has a reparative right to immigrate – their forebears were wrongfully excluded by the state. One might wonder whether my argument implies that would-be immigrants with the reparative right should always be prioritised. On this line of thought, this would be an unfair cost to the rest of the would-be immigrants. However, the problem here only arises if we assume that these descendants have an *absolute* right to immigrate *and* that a state is not willing to increase its immigrant quota. As I stated earlier, I am arguing that these descendants have a pro tanto rather than an absolute right to enter, and a pro tanto right will have to be weighed against other considerations such as needs-based rights. Recall, I took an absolute right to be a right that can never be infringed, while a pro tanto right, in some special circumstances, can be.

Second, we can consider the cost to the state. The worry is that because there are many cases of wrongful exclusion in states' history of immigration policy, my argument might imply that there is a very large number of descendants who have a claim to reparation. Hence, it might be thought to be too costly for a state to grant immigration rights to all these descendants. However, again, I am not assuming that these descendants have an absolute right to enter. Since I am arguing only for a pro tanto right to enter, these descendants will not all necessarily be owed admission into the state. There might be, as mentioned above, competing claims from other would-be immigrants.

Section 4: The currency of reparation

The counterfactual approach tells us that reparation is owed to descendants of those who were wrongfully excluded because they would have been counterfactually better off in terms of opportunities. I have been assuming that reparation in this case should be offered in the form of immigration rights, and I

will defend this assumption in this section. To begin, I assume that compensation is owed to those who have a right to reparation.[14] But what does compensation require? Nozick (Nozick, 1974, p. 57) gives the following canonical account:

> Something fully compensates a person for a loss if and only if it makes him no worse off than he would otherwise have been; it compensates person X for person's Y's action A if X is no worse off receiving it, [than] if Y had not done A.

In our case, I will assume that a right to reparation includes a right to compensation because satisfaction for the damages the descendants suffered – a loss in opportunities – will require that they be made no worse off in terms of opportunities had the historical injustice in immigration selection policy not occurred.

While we might think that there are many ways that a state can compensate descendants for the set of opportunities they lost, I will argue that they should generally be compensated by immigration rights. To begin, we can draw on a distinction Robert Goodin (1989) makes between means-replacing compensation and ends-displacing compensation.[15] Means-replacing compensation aims to "provide people with equivalent means for pursuing the same ends (the same as before they suffered the loss, or as they would have pursued had they not suffered the disadvantage)" (Goodin, 1989, p. 60). An example of this is giving someone who lost a leg an artificial limb. Second, there is ends-displacing compensation, which aims to "provide [people] with equivalent satisfaction through different ends" (Goodin, 1989, p. 60). An example of this is "giving someone who has suffered a bereavement an all-expenses-paid Mediterranean cruise" (Goodin, 1989, p. 60).

[14] I focus on compensation, but it is not necessarily the only reason why reparation here should take the form of immigration rights. Another potentially reason has to do with the expressive function of such a policy. That is, such a policy would allow a state to repudiate its past discriminatory immigration policy. However, I set this aside here and focus on compensation.

[15] This distinction roughly maps onto Onora O'Neill's (1987) distinction between compensation and restitution.

Consider how this distinction maps on to our case. Both approaches grant that the descendants of historical injustice in immigration policy have a right to reparation because they counterfactually would have had more opportunities. The means-replacing compensation approach tells us that the descendants should be compensated by being provided with the opportunities that they lost. This is done (at least in part) by giving the descendants immigration rights. By contrast, the ends-displacing compensation approach tells us that they should be compensated by being provided with other things such as money or other forms of aid.

One reason why we might think that ends-displacing compensation is desirable is that means-replacing compensation is not possible. So, in the example of the person who suffers a bereavement – suppose his wife died – means-replacing compensation is just not possible. The wife obviously cannot be brought back to life. Ideally of course the person should have his wife back, but he instead will have to settle for some other compensation such as the all-expenses-paid Mediterranean cruise. One might make a similar point here. That is, one might claim that means-replacing compensation is not possible in the case of wrongful exclusion in the history of immigration policy. What the descendants were mainly deprived of are the opportunities that come with growing up in a place with more opportunities for them. They have missed out on having more educational opportunities in their childhood that would have set them up for success later in life. And they would have missed out on the opportunities to study a wider array of subjects that would be more suited and fulfilling to them. As Shachar and Hirschl (2007, p. 254) put it, we live "in a world where membership in different political communities translates into very different starting points in life." There is nothing that these descendants could be compensated by that would constitute compensating like with like, as means-replacing compensation would require. In other words, we obviously cannot go back in time and give them the opportunities they would have had growing up in a certain state. So, like the bereavement example, we might have to *settle* for ends-displacing compensation.

However, this objection is not very forceful against the means-replacing compensation approach. The objection correctly points out that a state obviously cannot give the descendants the opportunities that they would have had from birth had the injustice not occurred. In other words, the state cannot

give the descendants opportunities that are *equally* as good as what they would have had had they grown up in that state. However, a state can offer them the opportunities in the state currently, which while not equally as good, are still significantly good. Part of means-replacing compensation is in fact attainable, so we do not really have to settle for ends-displacing compensation as the objection claims. Put differently, just because you cannot compensate someone for 100% of what they lost does not mean that you should not compensate them for, say, 75% of it. So, while the descendants cannot be compensated with the opportunities that are equally as good as what they would have had had it not been for the policy, they can still be compensated with the opportunities they would have had *now* in the state had the injustice not occurred, which is good enough.[16] And this is done, as we mentioned, by giving them immigration rights to the state.

Yet one might wonder what this tells us about *other* cases. Suppose that one hundred years ago a university refused to admit women. This is clearly morally suspect, but would my argument not imply that this university must now grant admission to all of the descendants of those who were wrongly excluded? However, this is not a helpful analogy. What is distinctive about our case is that the descendants of those who were wrongfully excluded would very likely, as we discussed, now be living in the state in question. This is why, I argued, descendants are owed compensation for the counterfactual opportunity set they would have had in the receiving state had their ancestors not been wrongfully excluded. But the same is not true of the university example. That is, we would not think that the descendants would have ended up studying in that university or had a right to study there had their ancestors not been wrongfully excluded from it. This is why it does not follow from my argument that we owe these descendant admission rights to the university.

It is important to note that these immigration rights could be to the state that excluded their forebears *or* another state with equivalent opportunities. Consider why the latter policy might also be appealing. If what we care about is giving the descendants a certain opportunity set, then why can a state not

[16] I leave it open whether in addition to admitting these immigrants (if they desire admission), the state should offer other special integration programs (such as language courses and occupational training) that help approximate access to the substantial opportunities these people would have had if they have grown up in that state.

arrange for another state that can provide a similar opportunity set to grant them immigration rights? So, suppose Kenyan Asians should be compensated for the loss of their counterfactual opportunity set. And suppose that the UK recognises this opportunity claim and that this should be met via immigration rights. Now further suppose that the UK makes a deal with the Canadian government to let in those whose forebears were wrongfully excluded by British immigration policy. The UK government determines that Canada can offer them equivalent opportunities in terms of, say, educational or employment opportunities. So, here the UK government accepts that the Kenyan Asians should be compensated for the loss of their counterfactual opportunity set, but it is at least possible that this could sometimes take the form of immigration in *other* states.

One might argue that the problem with this is that it misses the point that a right to reparation means that the descendants have a claim against a *certain* state that should provide immigration rights. More generally, when we say person X owes reparation to person Y, we mean that person X specifically – and not anyone else – owes person Y that reparation. But this objection fails because, while compensation needs to be *initiated* by the offender, the offender does not need to provide it directly. Consider the following example. Suppose tribe A raids tribe B and steals all their resources. Now suppose that tribe A strikes a deal with tribe C in order to bring it about that tribe C gives tribe B the same amount of resources that they lost. Of course, tribe A still owes tribe B an apology at the very least, but once they do apologise the compensation seems adequate. Similarly, the state that committed the injustice owes the descendants an apology but if it brings it about that another state offers them the equivalent counterfactual opportunity set then this compensation is adequate.

However, there is an important caveat to my claim that the best way to compensate someone for the lost opportunities is through immigration rights, i.e. means-replacing compensation, rather than money or other forms of aid, i.e. ends-displacing compensation. One might argue that the descendants will likely value money or other forms of aid much more than immigration rights to that state. Consider a person of say age fifty now living in Kenya whose parents were refused entry to Britain in the 1960s. Suppose that they were now provided with the right to enter the UK. How much would that right be worth to the person? In many cases, probably very little. They would need to find a job, somewhere to live, and they would need to make social contacts, and so on. By

contrast, suppose the same person is given a lump sum to start or expand a business in Kenya. That seems to make a much bigger difference to the opportunities that the fifty-year-old has than providing him with a right to enter the UK. In other words, ends-displacing compensation would make a much bigger difference to the lives of the descendants than (merely partial) means-replacing compensation.

This objection in fact highlights an important caveat to our approach here. It points to two important aspects of compensation. First, in many cases compensation in the sense of only giving back the same thing that was lost will be insufficient. For example, if someone uses my bike without my permission when I have appointments to make, it will not be sufficient only to return my bike. Perhaps they might need to also, say, book me a taxi or drive me there so that I get to my appointments on time. This shows that in many cases simply giving back the goods that someone was deprived of, i.e. restoration, might not be an appropriate form of compensation. As the objection makes clear, this could sometimes be the case in our context: restoring the opportunities that the descendants would have had is sometimes not adequate compensation. What we have to do in response to these cases, and this brings us to the second important aspect of compensation, is to offer the descendants a choice: either migrate to the state or receive a lump sum by way of compensation, or perhaps even both. In the bike example, it would not be adequate only to give me back the bike without giving me a say in how I should be compensated. For example, I might prefer to be driven to my appointments in addition to being given my bike back. Thus, the more general point is that it is true that in some cases immigration rights, or means-replacing compensation, will not be adequate and giving the descendants a choice will be necessary. This follows from a broader point made about compensation and autonomy in the philosophical literature (Goodin, 1991). As Daniel Butt puts it, "significant concerns of individual autonomy give us good reasons to support principles and institutions of rectificatory justice which protect the capacity of persons to live autonomous lives by upholding their legitimate expectations, and reversing certain kinds of damages to them" (Butt, 2009, p. 45). In our case, in order to respect people's autonomy – their hopes and plans for the future – it seems apt to offer a choice between immigration rights or a lump sum of money or perhaps both.[17] However, the

[17] For more on this, see Amighetti and Nuti (2015).

point still holds that immigration rights are one option for the form of reparation that *should* be available to descendants of those who were wrongfully excluded.

Conclusion

In this chapter, I have argued that past discrimination has normative implications for immigration policy. Specifically, I argued that individuals whose ancestors were wrongfully excluded by race or ethnicity have a pro tanto right to immigrate to the state in question as reparation for having been unjustly excluded. This is because they are owed compensation for the counterfactual opportunity set they would have had, had it not been for the discriminatory policy. I also argued, however, that this right to immigrate is not absolute and that states might have some limited discretion in how they discharge these duties. But claims to reparation based on past discriminatory exclusion are one factor that needs to be taken into account in immigration policy.

Chapter 3: When are border restrictions discriminatory?

Introduction

The previous chapter has explored the normative implications of discrimination in the *history* of immigration policy. For the remainder of the thesis, I will shift my focus to discrimination in present-day immigration policy. As I mentioned in the Introduction, my focus will be on discretionary admissions, which is the admission of immigrants I assume that states have no moral obligation to admit. In this chapter, I will examine what counts as discrimination in discretionary admissions. It might seem that states can select immigrants on whatever grounds they like if we assume they have no duty to admit any of these immigrants.

In this chapter, I will examine the ways in which border restrictions can be said to be discriminatory. It will proceed as follows. In the first section, I will survey three prominent accounts that attempt to identify when immigration policy is discriminatory. I will argue that all three of these accounts suffer from the same problem: they fail to explain the wrongfulness of all cases of racial or ethnic discrimination in immigration policy. In what follows, I will propose a pluralist account of discrimination in immigration policy. In doing so, I will explore two questions. First, what is discrimination? Second, what makes discrimination morally wrong? In the second section, I will respond to the first question. I will define discrimination as morally objectionable differential treatment on the basis of membership of a socially salient group. In the third section, I will answer the second question: what makes discrimination morally objectionable? My answer to this question will be pluralist in the sense that I hold that there are different ways in which differential treatment on the basis of membership of a socially salient group can be morally wrong. I explain how these different wrongs of discrimination and in particular in the immigration context can be explained at a more general level as a failure to treat people as equals.

Section 1: What is wrong about excluding immigrants by race or ethnicity

In order to determine how states should and should not select immigrants, political theorists have examined exclusion by race or ethnicity. Since these are uncontroversially morally wrong criteria, the focus in the literature has been to

explain what precisely makes them wrong.[1] The thought is that if we can identify what makes such exclusion wrong then we can also judge other immigrant selection policies by the same standard. In other words, if we oppose racial and ethnic discrimination in immigration policy for a certain reason, are there other immigrant selection criteria that we should condemn for the same reason? In this section, I will survey some of the prominent accounts that attempt to explain what makes racial or ethnic exclusion morally wrong. I will argue that they all suffer from the same problem: they cannot explain what is wrong about all cases of morally problematic racial or ethnic discrimination in immigration policy.

This debate centres around the following question: if states have a right to exclude, why are they not morally permitted to exclude immigrants on whatever grounds they like, including ethnicity or race? One answer is that such exclusion is morally wrong because it is demeaning to citizens or residents who belong to these ethnicities or races. Michael Blake (2002, p. 284) puts forward such an argument: "the state making a statement of racial preference in immigration necessarily makes a statement of racial preference domestically as well." For example, it would be wrong for Australia to exclude all Asian would-be immigrants because it would be demeaning to all Asian Australians "who are thereby treated as second class citizens" (Wellman, 2020).

The problem with this account is that it does not explain the wrongfulness of all the cases of morally wrong ethnic or racial discrimination in immigration policy. As many have pointed out, Blake's account implies that states would be permitted to exclude would-be immigrants by race or ethnicity if they do not have any citizens or residents who belong to these races or ethnicities (Wellman, 2011). For example, if there were no Asians in Australia then there would be no Asian Australians who would be demeaned by a policy that excludes Asian immigrants. Blake's argument therefore fails to explain why this policy would be morally wrong. Sarah Fine (2016, p. 147) makes this same point when she asks us to imagine the following case:

[1] On whether it is always wrong to select immigrants by race or ethnicity, see Sahar Akhtar (2022). I will later return to cases in which some seem to think it is morally permissible for a state to select by ethnicity or race.

> Suppose a state successfully cleansed its territory of all ethnic, racial, and religious minorities, clearly perpetrating a great injustice against those minority groups. And suppose later that same state instituted an immigration policy which discriminated between prospective entrants on ethnic, racial, and religious grounds. Who exactly is wronged by that immigration policy, now that the state has no ethnic minority citizens?

Again, the problem is that Blake's argument implies that a racially homogenous state is morally permitted to exclude would-be immigrants by race or ethnicity. Yet, these cases of racial or ethnic discrimination are clearly morally wrong. Blake's argument therefore does not comprehensively explain the wrongfulness of racial or ethnic discrimination in immigration policy.

Blake might respond that his argument gives us the wrong verdict only in hypothetical cases and not in real-world cases. In reality, countries are not ethnically or racially homogenous, which means that there will always be citizens who would be demeaned by such policies. Yet, even given real-world country demographics, Blake's argument fails to explain the wrongfulness of racial or ethnic exclusion. Consider very small ethnic groups such as the Bilala people, which are a distinct ethnic group found in central Chad. In the last Chadian census, they numbered 136,629 people. Given the Bilala's small population, there will certainly be countries around the world with no Bilala people. Blake's argument implies that these countries are morally permitted to exclude all Bilala would-be immigrants because there are no citizens or residents of this ethnicity and in turn no citizens or residents who would be demeaned by this policy. Again, Blake's argument gives us no reason to condemn this racial and ethnic exclusion despite it being clearly morally wrong.[2] Thus, even given real-world demographics, Blake's argument does not explain the wrongfulness of excluding immigrants by ethnicity or race.

[2] Would we think it is always morally wrong for a state to exclude all Bilala people? Suppose country A decides not to take any Bilala even though it takes quite a few other Africans, so race is not the issue. It does so because it has no residents who speak Bilala and could therefore help Bilalans integrate, while neighbouring country B, similar in many respects, has developed a small Bilala reception programme. Against that background, would we still think it was clearly morally wrong to exclude Bilalans? But even if we think that it is morally permissible for a state to exclude Bilala people against this background, Blake's argument implies such exclusion would be permissible in cases in which there is *no* such background. Without such a background, it is clearly morally wrong for a country to exclude all Bilala

A second argument is that excluding would-be immigrants by race or ethnicity is morally wrong because it is insulting to the would-be immigrants themselves. Unlike Blake's argument, this argument locates the wrong in what is done to the immigrant rather than the citizen or resident. This seems more plausible: it is intuitively the immigrant and not the citizen or resident who is wronged by discriminatory immigration policies. Miller (2014, p. 204) articulates this view in the following way:

> I have tried to hold a balance between the interest that migrants have in entering the country they want to live in, and the interest that political communities have in determining their own character. Although the first of these interests is not strong enough to justify a right of migration, it is still substantial, and so the immigrants who are refused entry are owed an explanation. To be told that they belong to the wrong race, or sex (or have hair of the wrong colour) is insulting, given that these features do not connect to anything of real significance to the society they want to join.

Again, the argument is that excluding would-be immigrants by race or ethnicity is wrong because it is demeaning to would-be immigrants.

But again, this fails to explain what makes all cases of racial or ethnic discrimination in immigration policy morally wrong. To see this, note that there are different ways a policy can be said to be insulting. One obvious way a policy can be demeaning is if the person subjected to it *feels* insulted (Fine, 2016). A policy that excludes would-be immigrants by race or ethnicity can therefore be said to be insulting if the excluded would-be immigrants feel insulted. But what if such a policy does not lead to these feelings among immigrants? Imagine a case in which there is a widespread view that a certain race or ethnicity is culturally superior. This was in fact the case during colonialism. Its cultural injustice led to what Fanon called 'cultural estrangement' that degraded the cultures of the colonised societies. One upshot of this "cultural estrangement" is that the colonised were led to believe that the colonizers were culturally superior (Tan, 2007, p. 282). The colonised came to hold the view that "if the settlers were to leave, they would at once fall back

people. And this is why Blake's account cannot explain the wrongfulness of all cases of racial or ethnic discrimination in immigration policy.

into barbarism, degradation and bestiality" (Fanon, 1967, p. 169). Given that this was such a widespread view, it is at the very least unclear whether immigrants who did not belong to the race of the colonised would *feel* insulted if they were excluded because of their race. Yet this immigration policy should nevertheless be condemned. Focusing solely on what is perceived as subjectively demeaning will therefore not explain the wrongfulness of racial or ethnic discrimination in immigration policy.

Yet, as I mentioned, there are different ways a policy can be said to be said to be demeaning. The interpretation I discussed is one in which a policy is demeaning because the affected person *feels* demeaned. Another way in which a policy can be said to be demeaning is that it is objectively rather than subjectively demeaning. One such account is Deborah Hellman's account of the wrongfulness of discrimination. According to Hellman (2011, p. 7-8), discrimination is wrong because it is demeaning and "whether a particular distinction does demean is determined by the meaning of drawing such a distinction in that context, in our culture, at this time." So, whether something is demeaning depends not on whether the affected person *feels* demeaned but whether the wider context renders it objectively demeaning. For example, requiring black people to sit at the back of bus is demeaning in the United States because of the history of racial segregation (Hellman, 2011, p. 27). This is true even if the black people being put in the back do not *feel* demeaned. On this view, excluding would-be immigrants by race or ethnicity is wrong because it is demeaning as a result of a wider context.

However, this account also does not explain the wrongfulness of racial or ethnic discrimination in immigration policy. To illustrate, consider Trump's Muslim ban. At first, it was restrictions on would-be immigrants from Iran, Libya, Syria, Yemen and Somalia. Trump latter added three other countries, including Venezuela, arguably in order to avoid the charge of racism and Islamophobia: "it's hard to escape the conclusion that Venezuela was included in the travel ban to provide legal cover for Mr. Trump's goal of a "total and complete shutdown" of Muslims entering the United States" (Camilleri and Raderstorf, 2017). How could the ban be Islamophobic, Trump might protest, if it also includes countries that are not Muslim majority? Now let us suppose that Trump decides to exclude all people who are Norwegian also because it does not track any racist or problematic context. Hellman's account would thus imply

that this exclusion is not demeaning. Nevertheless, the ban against Norwegian would-be immigrants is clearly wrong. The problem is again that Hellman's account cannot explain all cases of morally wrong racial or ethnic discrimination in immigration policy.

The third argument that I will consider is one that Miller has more recently defended. Miller (2015, p. 400) argues that states can exclude immigrants only on the basis of reasons that "connect plausibly to the general goals of the political community." In order to justify excluding immigrants and setting back their interests, states must provide reasons that the immigrants would be able to accept.[3] These are reasons that show that their exclusion connects to a morally legitimate aim of a political community. For example, Miller thinks that political self-determination is one reason that the person being excluded would accept. Miller (2015, p. 400) argues that the immigrant must "recognize the interest that the citizens of the receiving state have in political self-determination, and therefore in using immigration policy as one of several means to further the goals that they have chosen to pursue collectively." As for racial and ethnic exclusion, Miller claims that there could be no reason for this exclusion that the excluded would-be immigrant can accept. This is because "the use of such criteria cannot be linked in any remotely plausible way to the values that a political community may wish to pursue" (Miller, 2015, p. 400). As Miller (2015, p. 400) puts it, "someone who is refused entry on one of these grounds is having her interests set back without being given a reason that could justify her in being treated less favourably than her counterpart."

However, it seems at the very least unclear that ethnicity and race can never be said to connect to the morally legitimate aims of a political community. At least some political theorists seem to think that they sometimes do. Consider the case of Japan, which has long had very restrictive immigration policy in order to protect its distinct culture. Joseph Carens (Akhtar, 2022, p.

[3] Blake (2008) puts forward a similar account. Blake (2008, p. 971) argues that since there is a coercive relationship between the immigrant and the state they wish to enter, states must treat would-be immigrants as moral equals: "when the state selects only some prospective immigrants for admission, it must rely upon reasons that reflect the moral equality of all prospective immigrants—reasons that ought to be accepted in the end even by those excluded." He proceeds to apply this principle to several potential immigrant selection criteria. For example, when it comes to 'economic success,' Blake (2008, p. 971) concludes that it is permissible to select immigrants on those grounds as "it is hard to see how this principle offends the normative equality between persons we endorse."

323), for example, seems to think that it is "permissible for Japan to exclude people who do not share the dominant ethnicity, suggesting that the wrong(s) of such exclusions may be outweighed by the moral value served by the Japanese people protecting their distinct culture." The thought is that in order to preserve Japanese culture, Japan has to select in favour of ethnically Japanese people and against others. Thus, race and ethnicity are sometimes thought to connect to the legitimate aims of a political community if it's for preserving a hegemonic national culture.

The problem with this line of reasoning is that it justifies clearly wrong racial or ethnic discrimination in immigration policy. It is in fact this kind of reasoning that legitimized, for example, the White Australia Policy. The White Australia policy was a set of policies that, as its name suggests, sought to exclude non-white immigrants. The goal of the White Australia policy was the same as that of Japan's restrictive immigration policy: to preserve a hegemonic national culture. For example, C. E. W. Bean (1946, p. 5) explained the White Australia policy "as a vehement effort to maintain a high Western standard of economy, society and culture." Similarly, Ien Ang and Jon Stratton (2009, p. 141) note that the White Australia policy "reflects the new nation- state's search for a national identity in a European culture." Why should protecting a distinct culture not be seen as a legitimate aim of Australia as in the case of Japan? If Japan's restrictive immigration policy does connect to legitimate aims of a political community – as many political theorists seem to think it does – then this implies that the White Australia policy also connects to legitimate aims of a political community. Obviously, the conclusion that the White Australia policy is justified is unacceptable. The problem then with Miller's account is that it fails to explain the wrongfulness of racial or ethnic discrimination in immigration policy in every case.

To sum up, I have surveyed three accounts that attempt to explain what makes ethnic or racial discrimination in immigration policy morally wrong. The idea is that this could provide us a standard by which to judge other immigrant selection policies. I have argued that all three accounts suffer from the same problem: they fail to explain the wrongfulness of all cases of racial and ethnic discrimination in immigration policy. What I want to argue in the remainder of this chapter is that we need to instead adopt a pluralist account in order to capture what we think of as discrimination in immigration policy.

Section 2: What is discrimination?

In building my pluralist account of discrimination, I will answer two questions. First, what is discrimination? And second, what makes discrimination wrong? In this section, I will answer the first question and define what I take to be discrimination. I will consider three potential definitions of discrimination and will endorse the third. First, there is the generic definition of discrimination: it simply refers to disadvantageous differential treatment (Lippert-Rasmussen, 2013). This is clearly too broad a definition. A teacher who gives a low grade to a student because of poor performance on a test and gives a high grade to another student is engaging in disadvantageous differential treatment. Yet, we would not say that the teacher is *discriminating* against the student who performed poorly on the test. The same is true of "a judge who convicts the guilty and releases the innocent" (Lippert-Rasmussen, 2013, p. 16). Again, we would not say that the judge is discriminating against the guilty even though the judge is disadvantaging them and not the innocent.

As Lippert-Rasmussen (2013) points out, we would not call these cases discrimination partly because they are not presumptively wrong, and we think cases of discrimination are generally wrong. For example, it is obviously not wrong for the teacher to give a student a lower grade because of poor performance on a test. It is also not wrong for the judge to convict the guilty and not the innocent. As Lippert-Rasmussen (2013, p. 23) notes, "the world would not be a better place if discrimination in the generic sense never took place—that is, if the innocent were treated no differently from the guilty, the needy taxed no differently from the wealthy, and so on." Another reason why we would not call these cases instances of discrimination, according to Lippert-Rasmussen, is that they seem unavoidable. It's not clear how we can go about assessing academic work and awarding high school diplomas without giving students different marks. Discrimination is something that we can be faulted for engaging in, which implies that it is to some extent avoidable. These cases therefore do not seem to be ones of discrimination because "when people complain about discrimination, they have in mind behaviour that is at least presumptively wrong and generally avoidable" (Lippert-Rasmussen, 2013, p. 17).

Thus, discrimination cannot simply mean disadvantageous differential treatment. What about disadvantageous differential treatment that is morally objectionable (Lippert-Rasmussen, 2013)? This addition seems important as many believe that discrimination implies morally objectionable treatment. For example, Janet Radcliffe Richards (1985, p. 53) notes that the term discrimination "comes trailing connotations of arbitrariness and injustice." However, this moralized definition of discrimination is also too broad of a definition. For example, "it implies that wrongful, idiosyncratic differential treatment constitutes discrimination" (Lippert-Rasmussen, 2013, p. 26). Lippert-Rasmussen (2013, p. 26) gives the following example to illustrate:

> Yvonne and Zack both apply for admission to a graduate program at an Ivy League university. Xavier, the admissions officer, has an idiosyncratic liking for people from Omaha, especially those who did well in sports at high school and who live in a county the name of which contains at least one "s." Yvonne, but not Zack, happens to be distinguished in all these regards and, accordingly, Xavier unjustly admits her rather than Zack.

According to the moralized definition of discrimination, this counts as discrimination as it is disadvantageous differential treatment that is morally objectionable. It is wrong for the admissions officer to reject Zack purely because of these idiosyncratic criteria. But most would not call this discrimination. It is a case of morally objectionable treatment, but it does not seem to be a case of discrimination in the same way that it would have been "if Yvonne had been white, or heterosexual, or Christian, and Zack had been black, or homosexual, or Muslim, and if Xavier admitted Yvonne because he prefers whites, or heterosexuals, or Christians" (Lippert-Rasmussen, 2013, p. 26-7). We generally do not think that idiosyncratic differential treatment are cases of discrimination.

This view is reflected in the laws on discrimination. Consider the anti-discrimination laws of the United Kingdom. The Equality Act 2010 lists nine protected characteristics, which include age, race, religion, sex, and sexual orientation. This means that it is illegal to discriminate against someone because of any of these protected characteristics. So, not only would we not call such

idiosyncratic decisions discrimination, but this common usage of the term discrimination is also reflected in anti-discrimination laws.

Both the moralised and the generic definition of discrimination therefore seem too broad. Instead, I will argue that discrimination is morally objectionable "differential treatment on the basis of membership of a socially salient group" (Lippert-Rasmussen, 2018, p. 2). This partly follows Lippert-Rasmussen's definition but adds the condition that it is morally objectionable treatment. This definition captures the way we commonly use the term discrimination. When we claim that a practice is discriminatory, we are generally referring to a practice that is discriminatory against a *group*. But it's not just any group. It's typically a socially salient group. Lippert-Rasmussen (2013, p. 31) puts forward the following definition of social salience: "a group is socially salient if perceived membership of it is important to the structure of social interactions across a wide range of social contexts." Indeed, the charge of discrimination usually concerns groups such as "women, elderly people, disabled people, gays and lesbians, and ethnic and racial minorities [which] are all socially salient groups in this sense" (Lippert-Rasmussen, 2013, p. 34). For example, ethnicity is a socially salient group because one's ethnicity shapes much of one's social interactions. For example, someone who is an ethnic minority might encounter bias or prejudice in many important social contexts such as education, employment, and public spaces. Thus, a virtue of the group-based definition of discrimination is that it captures what we typically think of as discrimination: it is differential treatment that targets socially salient groups.

Note that this account of social salience is independent of systemic disadvantage. To see why this is important, consider the following example:

> If just one Catholic employer in a Protestant, fiercely anti-Catholic society refuses to hire Protestant applicants simply as a result of animosity toward Protestants—and not, say, in part or wholly as some kind of response to anti-Catholicism—many would call this discrimination even if the act is the only one of its kind in society (Lippert-Rasmussen, 2013, p. 28).

This would count as discrimination on this definition because systemic disadvantage is not a necessary condition of social salience. Religion in general

is a socially salient category, regardless of whether a specific religion is correlated with systemic disadvantage or not. This is because, like other socially salient categories, it determines whether someone will be judged for their religion or not in various social contexts. So, someone who belongs to the privileged religion – in this case, Protestantism – can still be said to occupy the socially salient category of religion because it determines that they will be *not* judged for their religion in various settings. This is a privilege that, in this case, the Catholic does not have. Thus, systemic disadvantage is not a necessary requirement for social salience.[4]

This definition of discrimination gives us the right verdict in the example of the teacher giving one student a higher grade than another. Recall, the generic definition wrongly counts this as discrimination. By contrast, this definition of discrimination would not count this as discrimination because there is no socially salient group of people who perform poorly on a random test. That is, performing poorly on a random test does not shape how society treats an individual.[5] Thus, while this is a case of differential treatment, it is not a case of differential treatment that is based on membership of a socially salient group. The group-based definition of discrimination would therefore not count this as discrimination against people who perform poorly on the test. This is an advantage of the group-based definition over the generic definition.

The group-based definition also gives us the right verdict in cases of idiosyncratic decisions such as an employer who only hires applicants with names that end with an "a." Recall, the moralised version tells us that this would be discrimination because it is disadvantageous differential treatment that is morally objectionable. It is true that the idiosyncratic decision to hire people whose names end with an "a" is morally objectionable, but we do not think of this as discrimination. Discrimination, as the group-based definition correctly points out, concerns groups that are socially salient such as women or racial and

[4] This of course does presuppose that there are some other groups of the same kind that *are* systematically disadvantaged. Imagine a society with several religions in which none of these religions was more advantaged than the others – religious membership made no difference to how someone was treated outside of the religious context itself. Religion would here clearly not be a socially salient group because it something that does not impact social interactions in any way whatsoever.

[5] I say random here because this is not so obvious when it comes to certain tests such as tests that determine what kind of secondary school the student can go to.

ethnic minorities. The group definition of discrimination would not count this idiosyncratic decision as discrimination as there is clearly no socially salient group of people whose names end with an "a."

Does this group-based definition need to be a moralised one? That is, is discrimination any differential treatment on the basis of membership of a socially salient group or is it *morally objectionable* differential treatment on the basis of membership of a socially salient group? It has to be the latter. To see this, consider the following example. Suppose a law firm is troubled by how few female lawyers it has. In order to encourage more female law students to apply to the firm, the recruitment team decides to run outreach events exclusively for female law students. This is differential treatment on the basis of gender, which is a socially salient group. Despite this, we do not think that this counts as discrimination because it is not morally objectionable differential treatment. Thus, what we take to be discrimination is *morally objectionable* differential treatment on the basis of membership of a socially salient group. Again, this is because not all cases of such differential treatment will count as discrimination – only the morally objectionable cases will.

But what makes such differential treatment morally objectionable and in turn discriminatory? This will be the subject of the following section. As I will explain in the next section, this thesis will focus on cases of differential treatment of would-be immigrants on the basis of membership of a socially salient group and will explore whether these are morally objectionable. The thesis will therefore examine whether such differential treatment should count as morally objectionable and thus discriminatory. Before I get to that, however, it is important to clarify how each selection criterion that I will focus on in the following three chapters counts as differential treatment on the basis of membership of a socially salient group.

First, the groups that I focus on in each chapter are all socially salient groups. Recall, "a group is socially salient if perceived membership of it is important to the structure of social interactions across a wide range of social contexts" (Lippert-Rasmussen, 2013, p. 31). So, for example, an ethnic group is a socially salient group because ethnicity shapes much of our social interactions – whether you have or you do not have the privilege to be free of the worry that you will be disadvantaged on the basis of your ethnicity. In chapter 6 on

national security and chapter 5 on skill-selective immigration policy, I focus on selection criteria that targets, explicitly or implicitly, would-be immigrants of certain nationalities. The socially salient group that I focus on are co-nationals living in the country of their nationality. It's not, say, Italians who have immigrated to England that are a socially salient group, but it is Italians living in Italy. Nationality in this sense is socially salient as it determines much of our opportunities in life. It determines our educational and employment opportunities, whether we are able to live in a politically stable country, whether we enjoy basic freedoms such as freedom of speech and freedom of worship, and so on and so forth. This is similar to the reasons why ethnicity is a socially salient category: it impacts much of our social interactions.

In chapter 5 on skill-selective immigration policy, I also focus on how this criterion impacts the poor in low- and middle-income countries. Wealth or class, like ethnicity and other socially salient categories, has a significant impact on one's life: "the poor often face discrimination, stigma and negative social stereotypes that reduce their social participation and opportunities for employment … Partially as a result, there are large differences in the education, health and nutrition of households of different wealth levels within countries" (Rohwerder, 2016). It is undeniable then that a class is a socially salient group as it has a profound effect on many aspects of one's life.

In the chapter 4 on age-preferential immigration policy, I focus on selection criteria that target older would-be immigrants. Age also impacts much of our social interactions. As Richeson and Shelton (2006, p. 177) note, "at the most general category level, older adults are stereotyped as deficient interpersonally, physically, and cognitively." Young age is in turn associated with the opposite stereotypes. These stereotypes arise in various contexts. In the workplace, for example, older people are viewed as less competent and more difficult to train in a way that younger people are not (Posthuma and Campion, 2009). Thus, youth positively impacts many of one's social interactions while old age negatively impacts them. Age is therefore a socially salient category because it shapes important social interactions. This is similar to how ethnicity, as I noted, is a socially salient category because it determines who has the privilege to live without the fear that they will be judged because of their ethnicity and who does not have that privilege.

In each of the three chapters, I explore *differential treatment* on the basis of these socially salient group memberships. Chapter 6 on national security and chapter 4 on age-preferential immigration policies are straightforward cases of differential treatment on the basis of socially salient group membership. In chapter 4 on age-preferential immigration policy, I examine selection criteria that explicitly penalises would-be immigrants on the basis of their age. In the chapter on national security, I focus on policies such as Trump's Muslim ban that explicitly exclude immigrants on the basis of their nationality. These both seem to be clear-cut cases of differential treatment as one group of would-be immigrants is explicitly treated worse than the rest.

What is less obvious is how my discussion of skill-based immigration policy in chapter 5 also counts as a form of differential treatment. There I focus on the ways in which its requirements – such as the education requirement – are much less accessible to those from low- and middle-income countries and the poor in those countries. It might be unclear why this counts as differential treatment because, unlike the two other criteria I examine, it does not explicitly treat a group of people worse. However, differential treatment is not just explicitly but can also be *implicitly* treating a group of people worse. For example, suppose that an employer requires all female employees to show their hair, thereby excluding all Muslim women who want to cover their hair. Even if the employer is not explicitly excluding Muslim women, this can hardly defeat the Muslim women's complaint that this amounts to morally wrongful differential treatment between Muslims and non-Muslims.[6] In this chapter, I will similarly show that skill-based immigration policy does amount to differential treatment as it disproportionately disadvantages those from the low- and middle-income countries and the poor in those countries, even if it does not explicitly exclude these groups of people.

Section 3: What makes discrimination wrong?

Now that I have defined discrimination, I will move on to the question of what makes discrimination wrong. Recall, I defined discrimination as morally objectionable differential treatment on the basis of membership of a socially

[6] Note that not all differential treatment of this kind is necessarily morally wrongful and thus discriminatory. Suppose that a film director is looking to hire a female actress for the role of a non-Muslim woman. This might be differential treatment on the basis of religion, but it is clearly not morally wrongful or discriminatory.

salient group. In what sense is this kind of treatment morally objectionable? Is it morally objectionable only in one way or in several different ways?

I will adopt a pluralist account of the wrongs of discrimination, according to which discrimination can be wrong for different reasons. As I have explained, I will explore three distinct cases of discrimination in immigration policy. The aim of this is to show that there can be different ways in which treating would-be immigrants differently on the basis of membership of a socially salient group is morally objectionable and is thus discriminatory. A pluralist theory of discrimination does not reduce the wrongness of discrimination to one single disvalue. As Sophia Moreau (2020, p. 24) explains, "it allows that discrimination can be wrong for different reasons, reasons that we can trace to fundamentally different kinds of problems with particular acts or practices."

This is in contrast to what Moreau calls monist theories of discrimination, according to which "one disvalue explains, in all cases, why discrimination is wrong" (Moreau, 2020, p. 24). The three arguments that I considered in the first section all qualify as monist theories of discrimination in immigration policy. Each argument is attempting to give one reason for why it is wrong to exclude immigrants by ethnicity or race. As I have explained, some argue it's because it is demeaning, while others argue that it's because it cannot connect to the morally legitimate values of a political community. Each of these arguments attempts to explain the wrongfulness of racial or ethnic exclusion by appeal to one single disvalue. Again, the thought is that this one disvalue can be used to assess other immigrant selection policy.

By contrast, I will adopt a pluralist account of discrimination in immigration policy. In the thesis, I will explore three wrongs of discrimination – three ways in which the differential treatment of immigrants on the basis of socially salient membership can be said to be morally objectionable. However, it is important to flag that this does not rule out the possibility that discrimination in immigration policy can be wrong for other reasons too.

The three wrongs are as follows. First, discrimination in immigration policy can be wrong if it demeans would-be immigrants. In the first section, I distinguished between two arguments that claim that discrimination is wrong because it is demeaning. Here I draw on one of the views that I discussed:

Hellman's view that discrimination is wrong because it is demeaning to the discriminatees. According to Hellman (2018, p. 102), an act is demeaning if it "expresses that a person or group is of lower [moral] status" and is done by someone who has "sufficient social power for the expression to have force." In chapter 6, I show that immigration policy that excludes immigrants by nationality for national security reasons – differential treatment on the basis of a socially salient group membership – is morally wrong because it is demeaning to would-be immigrants of the targeted nationalities. Thus, discrimination in immigration policy can be wrong if it demeans would-be immigrants.

Second, discrimination in immigration policy can be wrong if it fails to select would-be immigrants by merit. In chapter 4, I focus on age-preferential immigration policy, which as I discussed is a form of differential treatment on the basis of membership of a socially salient group. My argument proceeds by way of analogy: if states oppose mandatory retirement policy on the grounds that it violates a principle of hiring by merit, then they should also oppose age-preferential immigration policy for that very same reason. A principle of hiring by merit states that people should be hired purely on the basis of their qualifications. Thus, discrimination in immigration policy can also be wrong if it fails to select would-be immigrants by merit.

Third, discrimination in immigration policy can be wrong if the selection unfairly disadvantages certain groups.[7] I argue that skill-based immigration policy is differential treatment on the basis of socially salient group membership – as it is much less accessible to those from low- and middle-income countries and to the poor in those countries – and that this is wrong because it unfairly disadvantages these groups of people in the competition for the visas. Discrimination in immigration policy can therefore also be wrong if it unfairly disadvantages certain groups of would-be immigrants.

What happens if the wrongs of discrimination conflict? The pluralist view of discrimination leaves open the possibility that one practice can be wrong in a

[7] Some have located the wrongfulness of discrimination in the denial of equal opportunities. For example, Joseph Fishkin (2014) argues that anti-discrimination law aims to remove "bottlenecks" in the opportunity structure. Another example is Shlomi Segall's (2013) idea of "radical equality of opportunity," which, he argues, explains the wrong of discrimination. He argues (2013, p. 109) that "[d]iscrimination … is bad when, and only when, it upsets" equality of opportunity for welfare."

way that makes it discriminatory, but it can also protect against another wrong of discrimination, which would make it non-discriminatory. Consider two examples of this. The first is affirmative action (Moreau, 2020). For example, some companies have quotas for female employees. These quotas are justified on the grounds that they improve conditions for women over the long term. Let's say that they protect a principle of equal opportunity in society by levelling the playing field for women. However, it is perfectly possible that the policy can also demean women by sending them a message that they are not equally as good as their male colleagues. It is possible then that these affirmative action quotas can at once be non-discriminatory in one sense – by securing equality of opportunity in society – and discriminatory in another sense – by demeaning women.

Consider a second example. Suppose a prestigious university selects students on the basis of their exam grades. However, this university ends up accepting only very wealthy students as it is the wealthy students who have the highest grades. This can also be said to be discriminatory in one way and non-discriminatory in another. It is discriminatory in one respect as it unfairly disadvantages some in the selection process – poor students are disadvantaged in meeting the grade requirements. But it is also non-discriminatory in another respect – it protects the ideal of selecting by merit.

Of course, in both examples we can dispute whether they are non-discriminatory or discriminatory in the ways that I have described. But the point still holds that it is possible, on the pluralist view, for a practice to be discriminatory in one sense and non-discriminatory in another. For Moreau (2020, p. 247), cases like these show that sometimes we "will wrongfully discriminate against someone no matter what they do." Is this conflicting verdict a problem for the pluralist view?

I will say two things in response to this. First, I believe that cases in which the wrongs of discrimination conflict will be rare, as Moreau also seems to assume. In most cases, the different wrongs of discrimination will not point in different directions. Second, and most importantly, these conflicting verdicts reflect how we think about discrimination in the real world, and it is a virtue of the pluralist account that it is able to capture this. In the affirmative action case, we do intuitively think there is a sense in which this policy is both

discriminatory and non-discriminatory. A monist theory of discrimination that focuses only on, say, whether a policy is demeaning would take the quotas to be discriminatory, without taking into account the ways in which the quotas might be non-discriminatory as it levels the playing field for women. A pluralist theory then allows us to capture a genuine tension in many real-world cases of discrimination: an act can be discriminatory for one reason and non-discriminatory for another reason. Cases like this, however, will be rare. Yet when they do occur, we want to be able to capture this feature, and the pluralist account allows us to do so.

This is also a virtue of the pluralist approach to discrimination in immigration policy more specifically. It allows for a more nuanced perspective on discrimination in immigration policy. To illustrate, consider one upshot of chapters 4 and 5. In chapter 4, I will argue that age-preferential immigration policy is discriminatory because it fails to select by merit. This means that a policy that does select by merit is anti-discriminatory as it protects this ideal. In chapter 5, I will argue that the selection of would-be immigrants by skill is discriminatory because it unfairly disadvantages some groups of would-be immigrants. Taken together, these two chapters claim that skill-based immigration policy would be discriminatory in one sense – because it unfairly disadvantages certain groups of people – and non-discriminatory in another sense – because it selects by merit.[8] This is similar to the prestigious university example that I considered.

So, my account is pluralist in the sense that discrimination in immigration policy can be wrong for different reasons. This is different from the monist theories that dominate the literature on the ethics of immigrant selection. I now want to explore how these different wrongs can be explained at a more general level in terms of what many think is the core wrong of discrimination: the failure to treat people as equals.[9] Moreau gives two examples to show that it is

[8] Miller (2001, p. 180) makes a similar point about meritocracy and how it relates to other values: "It shows that meritocracy conflicts with other values that we are not likely to want to abandon, so that any feasible social arrangement must represent a compromise between these ideals. But it does not destroy meritocracy as an ideal, any more than democracy or liberty are destroyed when we realize that these values, too, can never be fully realized, either because we cannot prevent some people from having more political influence than others, or because some constraint is necessary for social life."

[9] Like Moreau, I take this to be a failure to treat people as *moral* equals. For more on this notion, see Ronald Dworkin (1978).

this wrong that explains at a more general level what is morally objectionable about discrimination. First, "when we find it troubling that some paediatricians refuse to treat the children of lesbian couples, what concerns us is … the fact that they have been treated as second-class citizens on the basis of beliefs about the immorality of their parents' relationship" (Moreau, 2020, p. 6). Second, "when we object to medical staff refusing to treat members of the trans community for complications resulting from gender-reassignment surgeries … Our objection is rather that the medical staff have treated these patients as though they were not the equals of all other patients, perhaps on the basis of the belief that their bodies are unnatural" (Moreau, 2020, p. 6). At a general level, we take issue with these discriminatory acts, Moreau points out, because there is a sense in which these people are not being treated as equals relative to others.

Moreau (2020, p. 9) claims that the ideal of treating people as equals "[requires] that everyone be respected, with no one treated as though they had a status below that of others." She distinguishes between two parts to this ideal: "first, that everyone should be treated as though they were just as deserving of respect as others; and second, that everyone should be treated as though they were deserving of respect, in absolute terms." She sums it up in the following way:

> What is troubling about acts of wrongful discrimination is not that certain people have been treated "unequally" in the sense of "differently," but that they have been treated as though they were not the equals of others. They ought to have been treated as well as others, in a context in which others were already being treated well; but instead they were treated as inferiors (Moreau, 2020, p. 10).

Thus, Moreau first endorses the ideal of treating people as equals in general and then argues that it applies to cases of discrimination. Moreau (2020, p. 7) writes, "the idea of failing to treat someone as the equal of others does invoke a recognizable moral ideal."

But the problem with Moreau's account of the wrongfulness of discrimination is that it does not tie the wrongfulness of discrimination to the definition of discrimination that I have adopted. This results in this account being overinclusive. Consider the two following examples. First, when a judge

passes a sentence imprisoning a murderer, condemning the crime as she does, it seems that she could be said to fail to treat the murderer "as though they were just as deserving of respect as others." Second, a murderer could be said to fail to treat their victims as equals by failing to treat them with respect (Altman, 2020). None of these, however, count as acts of discrimination. Yet, if the wrong of discrimination at a more general level is a failure to treat people as equals, then why should these not count as instances of discrimination? The wrongfulness of discrimination thus cannot be explained at a general level in terms of failing to treat people as equals. Otherwise, it would include acts that we do not count as discrimination.

I will argue that what is morally objectionable about discrimination can be explained at a more general level as a failure to treat people as equals specifically by differential treatment based on membership of a socially salient group. That is, discrimination is not wrong simply because it fails to treat people as equals, which as we have seen would be overinclusive. Again, it is wrong because it fails to treat people as equals specifically by treating people differently on the basis of membership of a socially salient group. This avoids the overinclusive worries because, by definition, it applies only to cases of discrimination. The wrongfulness of discrimination is thus "tied to the fact that the discriminatory act is based on the victim's membership in a salient social group" (Altman, 2020).

I will explain how differential treatment based on membership of a socially salient group is a failure to treat people as equals. To begin, note that a practice that fails to treat someone as the equal of others is one that makes a judgement or some form of an impact on who they are as a person. When a company rejects someone because they do not have the requisite skills – assuming the absence of any background inequalities – they are clearly not failing to treat them as an equal. This is because such a decision does not have any bearing on who they are as a person and in turn their standing as a person. Discriminatory practices, by contrast, do, which is why they fail to treat people as equals. This takes us back to my definition of discrimination as morally objectionable differential treatment on the basis of membership of a socially salient group. Discriminatory practices do bear on who an individual is as a person and in turn their standing because socially salient groups are typically very significant to their members' lives. As Lippert-Rasmussen (2013, p. 33)

points out, “if membership in a certain group structures social interactions in a wide range of contexts, it is very likely that such membership is also quite central to the members’ sense of who they are.” For example, being a woman is often central to women’s self-conception as it, for example, impacts how they are treated at work or how safe they feel in public. Similarly, being an older person is central to the self-conception of many older people as they are often viewed with pity or are assumed to be less competent at work and in many other settings.

It is true that sometimes membership of a socially salient group will not be significant to an individual. Here is one example from Lippert-Rasmussen (2013, p. 34): “an example of salient but insignificant membership would be people in South Africa under apartheid who were brought up to think of themselves as whites but who, due to surprising facts about their ancestry, later in life suddenly came to be thought of by others, including the authorities, as colored people.” However, it is fair to say that in general membership of a socially salient group will be significant to an individual. Given that it shapes much of one’s social interactions, membership of a socially salient group will almost always be significant to an individual.

It is because of the significance of socially salient groups to their member’s self-conception that the wrong of discrimination can be explained at a more general level as the failure to treat people as equals. When a company refuses to hire people with names that end with “s,” they are not failing to treat them as an equal because having a name that ends with “s” is not an important part of who they are. However, when a company discriminates against, say, Muslim applicants this does amount to a failure to treat them as an equal because their religion is likely to be a significant part of who they are. When the company rejects applicants on the basis of their religion, it impacts a person’s self-conception in a way that it does not when it rejects them because their names end with “s.” In other words, rejection on the basis of religion bears on who an individual is as a person and in turn their standing in a way that idiosyncratic rejections do not. It is because socially salient groups are an

important part of one's identity that discrimination amounts to a failure to treat people as equals.[10]

Each of the three wrongs that I will consider can be explained at a more general level as a failure to treat immigrants as equals. This also captures what many seem to think is the central wrong of discrimination in immigration policy. As Moreau (2020, p. 6-7) notes, "those who criticized the American government for denying entry visas to citizens of predominantly Muslim countries … were, ultimately, concerned that this policy relegated citizens of these countries to an inferior status, relative to citizens of other countries." At a general level, we take issue with these discriminatory acts, Moreau points out, because they seem to be a failure to treat people as the equals of others. That's not to say that any kind of differential treatment on the basis of nationality amounts to a failure to treat people as equals. But in this case, the differential treatment seems to pick out some feature or attitude that amounts to a failure to treat them as equals.

Let me explain how each of the three wrongs I examine can be explained at a general level as failure to treat immigrants as equals. In the chapter 6, I show that discrimination in immigration policy can be wrong if it demeans would-be immigrants. I argue that what makes national security-based immigration restrictions wrong is that it is demeaning to would-be immigrants of the targeted nationalities. States are clearly failing to treat these would-be immigrants as equals since other immigrants are not being demeaned simply because of their nationality. States thus fail to treat immigrants as equals relative to one another by demeaning some of them.

In chapter 4, I focus on age-preferential immigration policy to show that discrimination in immigration policy can be wrong if it fails to select would-be immigrants by merit. I argue that states should oppose age-preferential

[10] Does my argument depend on whether they know they are being rejected on the basis of religion? Suppose the company manages to conceal the fact by the use of some proxy. That would clearly still be wrong, even if the applicant is deceived by this strategy and doesn't believe that his religion is the problem. But would my argument imply that this kind of concealed discrimination is unproblematic? It would, and that's because my argument does not depend on whether the discriminatees knows that they are being discriminated in these ways. What I am instead trying to show is that this is a wrong way to treat people. It's morally wrong to fail to treat people as equals in these ways.

immigration policy for the same reason they oppose mandatory retirement policies: it is a failure to select people by merit. There is a sense in which an employer would be failing to treat applicants as equals when they reject the more qualified one simply because of their age. It is implying that no matter how qualified the applicant is, it will not matter simply because of their age. States are similarly failing to treat immigrants as equals of one another when they reject the more qualified simply because of their age.

In chapter 5, I examine skill-based immigration policy in order to argue that discrimination in immigration policy can be wrong if it unfairly disadvantages certain groups of would-be immigrants. To see why this amounts to a failure to treat people as equals, consider the following analogy. Suppose a prestigious university admits students according to exam grades, while recognizing that students from wealthy backgrounds have a better chance of getting good grades because of schooling differences. Further suppose that the university does nothing to remedy this. There is a sense in which the university can be said to be failing to treat less well-off students as equals relative to the wealthy students. It is implying that no matter how smart or hardworking non-wealthy students are, they are not as good as wealthy students. Similarly, states are failing to treat immigrants from less well-off backgrounds as equals when they impose requirements that very few of these people can meet. Thus, these three wrongs can all be explained at a general level as a failure to treat immigrants as equals relative to one another.

Conclusion

In this chapter, I explained the pluralist account I adopt to identifying cases of discrimination in immigration policy. As I have shown, the monist theories that have been used to explain the wrongfulness of discrimination in immigration policy are inadequate. What we instead need, I argued, is a pluralist account that captures the different ways in which immigrant selection criteria can be discriminatory. My pluralist account of discrimination defines discrimination as morally objectionable differential treatment on the basis of membership of a socially salient group. It is pluralist in the sense that this kind of treatment can be wrong for different reasons. I also explained how the different wrongs of discrimination in immigration policy can be explained at a general level in terms of what many take to be the core wrong of discrimination: a failure to treat people as equals.

Chapter 4: Is immigration only for the young?

Introduction

In what follows, I will develop the pluralist account of discrimination in immigration policy. As I explained in the previous chapter, I will argue that discrimination in immigration policy can be wrong for three reasons. In this chapter, I will show that discrimination in immigration policy can be wrong because it fails to select by merit. I will demonstrate this by examining what makes the differential treatment of older would-be immigrants wrong. These are policies that I will call age-preferential immigration policies, which are policies that have explicit age limits and policies that make it more difficult for older people to migrate.[1]

There has been heated debate on age-preferential immigration policies. For example, this was the case in 2012, when the Australian government held a consultation on whether to raise the maximum age limit for skilled migrants who can apply for visas. At the time, Australia had an age limit of 50 for its skill-based visas, which is the most common immigration route to the country. At the consultation, the age limit was fiercely debated. Many argued that the age limit should be abolished or at the very least raised. For example, Ian Yates, the chief executive of the Australian Council on the Aging, claimed that "an arbitrary age barrier is discriminatory and should be removed" (Bolton, 2012). Others argued for age limits on the grounds that older migrants will quickly retire and become a burden on the Australian state. Against this, many argued that these age limits clash with Australian law that prohibits discrimination on the basis of age. Over the years, the age limit was eventually reduced rather than raised or abolished. As of July 2017, the age limit is 45 years. Now, if a would-be immigrant is 45 or older, they cannot qualify for a skill-based visa to Australia.

But it's not just Australia's skill-selective immigration policy that favours the young. New Zealand has an age limit of 56 for its skill-based visas, and

[1] My focus in this chapter is on limits that prevent older people from migrating. But there are also immigration restrictions that prevent young people from migrating such as visas with minimum age requirements. For example, a would-be immigrant has to be 18 or older to be eligible for a skilled worker visa for the UK. However, these policies will not be the focus of this chapter.

Canada and Austria's points-based system for skill-based visas penalise immigrants the older they are over 35. Consider Canada's skill-based visas, which are allocated via a point-based system that requires immigrant to have 67 points or higher. Applicants between the ages of 18 and 35 receive 12 points for their age. The allocation is reduced by one point for each year above the age of 35, with no points awarded as of age 47. This clearly makes it much more difficult if not impossible for some older would-be immigrants to move to Canada. The immigration policies of many countries then favour the young. Political theorists have paid attention to questions to do with age groups in healthcare (Shaw, 1994; Williams, 1997), voting rights (Parijs, 1998), and employment (Boxill, 1993). Yet, the role of age in immigration policy has been almost completely ignored in the philosophical literature on migration.[2]

In this chapter, I will argue that age-preferential immigration policies are morally wrong. The chapter will proceed as follows. I will begin in the first section by explaining the underlying rationale behind age-preferential immigration policy. As I will explain, its aim is to offset the economic costs of the ageing populations in the Global North. I will refer to this as the efficiency argument and will not challenge it throughout the chapter. Instead, I will argue that it is outweighed by other considerations. In the second section, I will examine the first potential argument against age-preferential immigration policy: it is wrong for the same reasons that excluding would-be immigrants by ethnicity or race is wrong. I will argue that this analogy does not hold. In the third section, I will argue that age-preferential immigration policy is wrong for the same reason that mandatory retirement policies are wrong: they violate a principle of equal opportunity and specifically the principle of hiring by merit. Moreover, I will show why, unlike some cases of permissible mandatory retirement, the efficiency argument for age-preferential immigration policy does not outweigh the principle of hiring by merit. In the fourth section, I will respond to three potential objections. The upshot of this chapter is that discrimination in immigration policy can be wrong if it fails to select would-be immigrants by merit as this is what makes the differential treatment of older-would be immigrants wrong.

[2] Paul-Bou Habib (2019) touches on this issue in his work on age replacement policies.

Section 1: Why do states implement age-preferential immigration policies?

It might seem obvious that countries *should* favour younger immigrants. It's simply in their economic interests to do so. Older immigrants will not be able to work and pay taxes for enough years to cover their retirement costs. In general, there is the idea of reciprocity over time, whereby people are expected to work and contribute through taxes over most of their lives – say from 25 to 65 or 70 – and then they are supported by the state or through the pensions they have earned in their later years. Admitting older would-be immigrants potentially breaks this reciprocal arrangement because they might not be able to contribute enough in the working years they have available. Thus, "the award of points for age [in points-based immigration systems] represents an attempt to balance rewarding experience and selecting younger migrants whom are more likely to contribute to host nations over greater time horizons" (Parsons et al., 2014, p. 14).

The fact that younger would-be immigrants can work for a longer period than older would-be immigrants is especially important given the ageing populations of many of the receiving countries. Population ageing is in fact an international phenomenon:

> Over the next three decades, the number of older persons worldwide is projected to more than double, reaching over 1.5 billion in 2050. All regions will see an increase in the size of the older population between 2020 and 2050. Globally, the share of the population aged 65 years or over is expected to increase from 9.3 per cent in 2020 to around 16.0 per cent in 2050 (United Nations, 2019, p.1).

How does this population ageing affect a state's economy? To study this, demographers typically use what is called the old-age dependency ratio, which is the number of persons aged 65 years (old-age dependants) or over per 100 persons aged 20 to 64 years (persons of working age). The ratio "approximates the implied economic dependency associated with a growing share of the population at older ages" (United Nations, 2019, p. 11). Globally, the ratio is expected to increase from 16/100 to 28/100 by 2050 (United Nations, 2019).

Of the ten countries with the highest old-age dependency ratio, seven are in Europe. In 2019, there were 30 older persons per 100 working age persons in

Europe and North America, and the ratio is expected to rise to 49/100 in 2050. The ratio is expected to increase from 27/100 in 2019 to 42/100 in 2050 in Australia and New Zealand (United Nations, 2019).

This population ageing is thought to come with significant economic costs: "public sector transfers for pensions, health care, and long-term care are a particular problem as populations age, because these payments, even after subtracting the portion funded by tax payments from the elderly, absorb a large portion of public budgets" (Lee and Mason, 2017, p. 8). Thus, prioritising younger would-be immigrants will protect the economy from further elderly dependency as they will be able to work for long enough to cover their retirement costs. There are additional economic reasons for prioritising younger would-be immigrants. As Coleman (2002, p. 583) puts, "it seems reasonable to believe that international migrants, mostly of young working age, can supply population deficits created by low birth rates, protect European society and economy from the economic costs of elderly dependency, and provide a workforce to care for the elderly." I will refer to this argument as the efficiency argument: older would-be immigrants are more economically costly than younger would-be immigrants. In what follows, I will not challenge this efficiency argument but will instead argue that it can be outweighed by other considerations.[3]

Section 2: Is excluding by age wrong for the same reasons as excluding by ethnicity or race?

As I have discussed in chapters 1 and 2, there is consensus in the philosophical literature that excluding would-be immigrants by race or ethnicity is wrong. Could excluding would-be immigrants by age be wrong for the same reason excluding would-be immigrants by race or ethnicity is wrong? I will draw on the work of Geoffrey Cupit, who presents two ways in which a parallel might be drawn between race and ethnicity on the one hand and age on the other. First, one might argue that excluding would-be immigrants by race or ethnicity is wrong because these are traits that are beyond an individual's control. The thought here is that we ought to admit immigrants on the basis of what they

[3] I do not challenge it partly because most political theorists seem to think that economic contribution is legitimate grounds for selecting immigrants. For example, most think that states may give preference to prospective immigrants who are highly skilled (Blake, 2008, p. 965, p. 970-979; Carens, 2013, p. 183-5).

choose to do rather than what they have no control over.[4] Otherwise, states could be said to "violate a precept that we not be (made) worse off than others through no fault of our own" (Cupit, 2013, p. 2). Age, like ethnicity or race, is also something that is beyond an individual's control. Excluding would-be immigrants by age therefore should be wrong for the same reason as excluding would-be immigrants by race or ethnicity.

While we might have this intuition with regards to race or ethnicity – that it is morally wrong to discriminate on those grounds because they are traits that are beyond our control – we just do not seem to have the same intuition when it comes to age. For example, consider the UK law that requires those who are above 70 and want to keep driving to renew their driving licence every three years from then on. The rationale behind this is that old age is associated with poorer eyesight and so, to stay on the safe side, the driving licence needs to be renewed much more frequently for older drivers. Can we here say that this policy is morally impermissible because older people are being disadvantaged on the basis of traits that they have no control over? That seems implausible. Compare this with the same policy applied to people from of minority ethnic groups. Let's assume that in a certain community, most car accidents involve people of a certain ethnic group. Unlike the case of age, it seems more plausible to say that it would be morally wrong to have ethnicity-based driving requirements.[5] This could be explained by the argument that people should not be punished for traits that are beyond their control, and ethnicity is one such trait. So, while age, like ethnicity or race, is beyond an individual's control, it is nevertheless sometimes permissible to treat people on the basis of their age. Thus, this account of the wrongness of discrimination does not apply to the case of age and by extension age-preferential immigration policies.

[4] For example, Christian Joppke (2005, p. 2-3) explains the shift from origin-based immigrant selection policy to skill-based immigration policy and suggests that this change shows that "the state may consider the individual only for what she does, not for what she is ... The individual is selected according to 'achievement,' not 'ascription,' that is, according to her agency rather than according to what she is immutably born with."

[5] But there are more difficult examples. Suppose it were the case that people from ethnic group G very often had a gene that was liable to cause rapid deterioration in their eyesight, but we do not the ability to test directly for the gene. Would it not be permissible to require, say, a five-yearly eyesight test for all (and only) members of G? While this might seem potentially more justified, I think even then ethnicity-based driving requirements give us more pause than the same policy applied to age.

However, one might raise two objections at this point. First, the disadvantage in the driving example is not very significant, which seems to matter. For example, we would want to say that it is impermissible to *deny* driving licences altogether to those aged over 70. In the case of age-preferential immigration policy, the disadvantage is arguably also significant. Perhaps a policy that disadvantages the elderly in significant ways would be wrong because it disadvantages them on the basis of traits that are beyond their control. Yet, even when the disadvantage is significant, it is not clear that we are never permitted to treat people on the basis of traits that are beyond their control. To illustrate this point, Boxill (1992, p. 16) points out that it is not morally impermissible to deny a blind person a driving licence even though we are treating them on the basis of features that they have no control over and this treatment leads to significant disadvantage.

Moreover, there are many other examples that support my argument. For example, consider senior citizens' discounts on various goods and services (McNamara and Williamson, 2012, p. 11). Consider also "age-restricted communities, in which 80 percent or more of residents are ages 55 and older, [that] have become fixtures throughout the United States, particularly in states favored by retirees, such as Florida" (McNamara and Williamson, 2012, p. 11). Neither example of age-based differential treatment seems to be morally problematic. In both cases, the fact that age is beyond our control does not seem to make either example a case of wrongful age discrimination.[6] By contrast, we do think the same policies applied to ethnic or racial groups would be cases of wrongful discrimination.[7] For example, "a housing community requiring 80 percent White inhabitants would be considered redlining, [policies that are banned because they deny services to residents based on their race or ethnicity], yet retirement communities enforce similar rules regarding age composition" (McNamara and Williamson, 2012, p. 11). Here the fact that race or ethnicity is beyond an individual's control could very well be the reason why this is a case

[6] Notice, however, that both are examples of age-based differential treatment that works in favour of the elderly. This distinguishes these two examples from the driving example. These two examples nevertheless show the same thing: we have different intuitions about cases to do with age on the one hand and cases to do with ethnicity and race on the other.

[7] It is true that the opposite could be permissible. For example, in a state with a history of racism, it seems permissible for a community of Hispanics or black people to live together (Shelby, 2014). My point here is simply that this argument against discrimination applies to at least some cases to do with ethnicity and race.

of wrongful discrimination. Therefore, even if we think that discrimination based on race or ethnicity is wrong because it treats people on the basis of traits they have no control over, the same argument does not seem to apply to age and in turn age-preferential immigration policy.

The second reason exclusion by age might be comparable to exclusion by race or ethnicity is that both forms of exclusion are arbitrary. We can take arbitrary treatment to mean treatment on the basis of traits that are irrelevant to the context at hand. As Cupit (2013, p. 3) puts it, "just as race-based or sex-based allocation will be arbitrary where race or sex is irrelevant, so an age-based allocation will be arbitrary where age is irrelevant." However, note that, "age is not always irrelevant, any more than race and sex are" (Cupit, 2013, p. 3). For example, ethnicity might be relevant to casting a character in a film. By contrast, excluding would-be immigrants by race or ethnicity would be arbitrary because race or ethnicity is irrelevant to what a state is selecting for, which is net economic contribution in the case of skill-based visas.[8]

As we have seen in the previous section, age does seem to be relevant for what a state is selecting for. However, perhaps excluding would-be immigrants by age is nevertheless arbitrary because there is more relevant evidence available. We can think of age as a proxy – proxies are "traits that correlate highly or are believed to correlate highly with the traits material to a particular decision" (Alexander, 1992, p. 167) – for net economic contribution. Are there more relevant proxies for net economic contribution? For example, a state could make an employment contract a requirement for visas in order to track predicted economic contribution. Yet, it is hard to deny that age is a better proxy for what a state is trying to target. A state, as we have seen, is trying to target not just economic contribution at a given moment, but how *long* a would-be immigrant will be able to contribute to the economy. As I have discussed, it is important for the state that immigrants can cover their retirement costs by working for a substantial period of time. Using an employment contract as a proxy does not effectively track how long a would-be immigrant will be able to contribute to the economy. A would-be immigrant's age is thus unique in its ability to provide states with this information.

[8] Another issue is that we might not want to use race or ethnicity even if there is evidence that they are relevant. In the next section, I will make an argument against age-preferential immigration policy along these lines.

Are there alternative proxies that better track whether an older would-be immigrant will be able to make up for their retirement costs? Even if there were, it's not clear that such proxies would be morally unproblematic. For example, suppose a 55-year-old immigrant is able to convince the selection officer that he will be able to work, at his current level of productivity, until he is 95, so in that respect he offers the same contributory input as a 25 year old who is going to retire at 65. That enables the selection officer to determine that the older would-be immigrant is able to cover their retirement costs. But can we really imagine a society in which older immigrants are asked to make commitments of that kind? It seems wrong to deny a pension to this individual at 65 and still expect them to work when everyone else around them is able to retire at 65. This kind of differential treatment within a society strikes us as morally troubling. Age therefore not only seems to be the most relevant proxy for what a state is trying to track but also a less morally problematic one.[9]

To recap, I have considered two ways in which one might argue that excluding would-be immigrants by age is morally wrong for the same reasons that excluding would-be immigrants by race or ethnicity is wrong. The first had to do with traits that we cannot control and the second with arbitrary selection. I showed that neither of these arguments show that age-preferential immigration policy is morally unjustified.

Section 3: Does age-preferential immigration policy violate equal opportunity?

I will argue that age-preferential immigration policy is wrong for the same reason that the very states that implement these policies take mandatory retirement policies to be wrong: they violate a principle of equal opportunity. In employment cases, these states no longer allow efficiency concerns to justify age-based discrimination. In other words, an employer cannot discriminate against older workers just because they think they will get more economic output from younger ones. The most telling example of this is the outlawing of mandatory retirement policies. In the UK, employers used to be able to force

[9] These alternative proxies might also be far too invasive or too costly. Thus, "since it may be impossible, costly, or intrusive to determine the particular attributes of each individual, the rationality (all things considered) of using proxies such as age (or race or sex) [because they are relevant] may be hard to dispute." (Cupit, 2013, p. 4).

workers to retire at 65, which was known as the Default Retirement Age, but this law was scrapped in April 2011. Mandatory retirement policies were motivated by a belief that a worker's productivity declined at around age 65. As Edward Lazear (1979, p. 1262) puts it, "there are many defences and explanations of mandatory retirement. Most rely on the notion that a worker's productivity declines significantly after some age, say 65, and that mandatory retirement is the employer's way to deal with this reduced productivity." But the UK no longer allows such efficiency concerns – concerns about the economic output of a company or organisation – to justify age-based discrimination in employment and in particular mandatory retirement policies.

Mandatory retirement policies and age-preferential immigration policies are similar in two respects. First, they are both justified in terms of economic efficiency. Mandatory retirement policies have typically been justified on the grounds that younger workers will be more productive than older workers. Age-preferential immigration policy, as we have seen, are defended on the grounds of net economic contribution that is needed to offset the costs of an ageing society. Both justifications share a concern for economic efficiency. The second and more obvious way in which they are similar is that they both prevent individuals from taking up employment.[10] So, in light of these similarities, why do we think that efficiency concern justify age-preferential immigration policy but not mandatory retirement policies?

As I will explain, the main reason efficiency concerns do not justify mandatory retirement policies is that these concerns are outweighed by equal opportunity concerns. I will argue that the same is true in the immigration case.[11] That is, age-preferential immigration policy is also morally impermissible because equal opportunity concerns outweigh the efficiency concerns. To begin, consider Bernard Boxill's (1993, p. 190) formulation of the principle of equal opportunity, which he later links to age-based discrimination:

[10] It is true that employers were permitted rather than required to have a mandatory retirement policy while the state mandates age-preferential immigration policy. I set this difference aside because I am concerned with arguments for why employees should not be permitted to have compulsory retirement policies to see whether those arguments imply that states should also not be permitted to have similar age-based policies.

[11] It is important to note that I am examining an argument that applies specifically to age-based treatment and not to treatment based on other traits such as ethnicity or race. We may well think that this account of the wrongness of age-based discrimination does not apply to other forms of discrimination, especially given my later discussion of the Equality Act.

"the positions in a society should be distributed on the basis of a fair competition among individuals." In other words, everyone should get an equal shot at the desirable positions in society. Prejudices or other unfair biases should not play a role in the selection process. Everyone should have an equal chance to compete for these positions.

Boxill distinguishes between two important parts of the principle of equal opportunity. First, there is the principle of hiring by merit: "positions should be awarded to individuals with the qualities and abilities enabling them best to perform the functions expected of those filling the positions. Thus, it requires that individuals be evaluated for positions strictly on the basis of their qualifications for those positions" (Boxill, 1993, p. 190). But this principle on its own is not enough to secure equal opportunities in society because some people might be disadvantaged in attaining these qualifications. This takes us to the second part of equal opportunity, which is the idea of equal starting points: "individuals should have the same chances to acquire the qualifications for desirable positions" (Boxill, 1993, p. 190).

It is the first principle, the principle of hiring by merit, that is relevant for my purposes.[12] As mentioned above, this is an important part of what it means to have equal opportunities in a society. It shouldn't matter that you are wealthier than other candidates or that you have connections who can choose you for the job. Qualifications should be the only thing that determines who gets which positions. I will take qualifications to mean job-related skills or experience. Compulsory retirement policies seem clearly to violate this principle of hiring by merit:

> Intuitively, compulsory retirement seems to make age a morally relevant trait for access to jobs when in general it is not. That is, we should in general judge people competing for jobs on the basis of their capabilities to perform them; that is what protecting equality of opportunity in access to jobs and offices involves (Daniels, 2008, p. 479).

[12] I will defend neither the principle of equal opportunity nor the principle of hiring by merit. My aim in this chapter is to show that if we are against mandatory retirement, then we should also be against age-preferential immigration policy. For this, I need only show that the argument against mandatory retirement, which is based on the principles of equal opportunity and hiring by merit, also applies to age-preferential immigration policy. In the fifth chapter, I examine the principle of hiring by merit in more detail.

In other words, positions should be awarded to individuals with the best qualifications for the job. In the same way that we think that people should not be ruled out for consideration for positions simply because they are female, members of an ethnic minority, or not wealthy, they should also not be ruled out simply because of their age. What should matter is the skills of the applicants.

So, we think that efficiency arguments for mandatory retirement policies are in general outweighed by equal opportunity concerns and in particular the principle of hiring by merit. Why is the same not also true of skill-selective immigration policy? States, through their skill-selective immigration policy, are also allocating jobs. They determine who will be able to take up a job in the country. As we have seen, when we allocate jobs or other desirable positions in society, we think that this must be done in a way that is consistent with the principle of hiring by merit. Similarly, what should matter for skill-based immigration policy is the qualifications of the immigrants – their past work experience, employment contract, special skills, and so on. Ruling them out simply because of their age clearly goes against this principle of hiring by merit.

Before we proceed, it is important to clarify how this argument is different from the one I considered in the second section, which claimed that age-preferential immigration policy is morally impermissible because age is not relevant for immigration policy. There I pointed out that age is in fact relevant to what a state is trying to target, which is economic contribution for a prolonged period. The argument I am now considering claims that even if age is relevant to the state – and we have seen that it arguably is relevant – a state must not take it into account because it must assess immigrants solely on the basis of their qualifications. I have explained this by an analogy with the employment case. As we have seen, even if the age of the employee is relevant to an employer, they are no longer allowed to take this into account because of reasons to do with the principle of hiring by merit. The employer must judge applicants solely on the basis of their qualifications. Thus, this argument is different from the one I considered in the previous section in that it holds that age is morally impermissible grounds for selection *even* if it is relevant for the state.

At this point, one might point to one disanalogy between the two cases. When states select immigrants, they are looking for not just how the individuals will perform within their jobs but also the broader contribution they will make to society. This will include factors such as lifetime economic impact, combining both their contribution when in employment and the retirement costs after employment. This perhaps distinguishes skill-based immigration policy from the employment case, where employers are only looking for how well the individual will perform within their jobs, i.e. their qualifications. But it's not clear that the qualifications criterion should be overshadowed by other criteria that also have to do with economic contribution. A company could also look at the resources that it invests in training and whether it would pay off in terms of how long the applicant is able to work at the company. This might lead them to consider prioritising younger applicants as they are more likely to work for longer and in turn pay off their training costs. Still, the employer is not permitted to rule out applicants by age because of, as I have discussed, the principle of hiring by merit. My argument is that the same applies in the case of skill-selective immigration policy: states might have other objectives for immigration policy, but as long as it is selecting people for jobs, as skill-based immigration policy does, this must be done in a way that is consistent with the principle of hiring by merit.

It is important to note that efficiency reasons for mandatory retirement policies sometimes do outweigh the principle of hiring by merit. As I mentioned, UK law was changed in 2011 to prevent employers from forcing workers to retire at 65. However, "there still exists … the possibility for an employer to have an employer justified retirement age, based upon the justifications allowed for in various decisions of the European Court of Justice and the UK Supreme Court" (Barrett and Sargeant, 2015, p. 82). In fact, "age discrimination is the only protected characteristic contained in the Equality Act 2010 for which there can be justification for direct discrimination as well as indirect discrimination" (Barrett and Sargeant, 2015, p. 83). According to Section 13(2) of the Act, "if the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim" (Barrett and Sargeant, 2015, p. 83). Thus, in the UK, mandatory retirement policies can be justified if they are a proportionate means of achieving a legitimate aim.

To take a concrete example, consider Professor Pitcher from the University of Oxford who made a complaint against the University and St John's college alleging that the mandatory retirement age of 67 amounts to age-based discrimination. The two employers successfully argued that the mandatory retirement policy was a proportionate means of pursuing legitimate aims. These aims were the following: "promoting inter-generational fairness (ensuring there were opportunities for progression for younger academics), facilitating succession planning and promoting equality and diversity (the two employers argued that providing opportunities for younger academics was likely to increase diversity among the relevant staff groups)" (Old Square Chambers, 2021).

There are many ways of understanding what counts as a proportionate means.[13] On a general level, I will assume that age discrimination is proportionate when the gains for the employer are significant enough to outweigh the principle of hiring by merit. In this example, mandatory retirement might seem proportionate because even a few positions freed up by this policy make a big difference to these goals of the University. In fact, the judge noted that "there was an increasing lack of younger professors due to the only driver of creation of job roles being retirement" (Age Discrimination, 2019). For example, it was said that in the case of associate professors, 50% of the posts vacated were vacated because of retirement (Gov.uk, 2021). Even just a few positions given up because of mandatory retirement could make a big difference to the goals of the university, given that there are so few academic job openings. So, mandatory retirement could sometimes be said to be proportionate if the gains for the employer are significant enough to outweigh the principle of hiring by merit.

Could age-preferential immigration policy similarly be said to be a proportionate means of achieving a legitimate aim, in this case net economic contribution? It could be proportionate in a similar way to the case above if the gains are large enough to outweigh the principle of hiring by merit. To see why it does not count as proportionate in this sense, we need to consider two points. First, the number of older migrants who would be admitted would likely be very small even if age-preferential policies were abandoned. For example, a recent

[13] For example, there is much discussion of proportionality in the literature on the philosophy of law (von Hirsch, 1992).

poll shows that "one in five 15- to 24-year-olds worldwide say they would like to migrate if they had the chance. This desire declines sharply after age 25 and dwindles to 4% by age 65" (Ray and Esipova, 2011). This is unlike the Oxford case, where the positions given up by mandatory retirement will be a large percentage of the jobs available. Second, since the percentage of older migrants is likely to be very small, it is difficult to see how they will have a very big impact on the state's spending on immigrants. This is again unlike the Oxford case, where the positions given up by mandatory retirement are very important to the university for advancing its goals given that there are so few jobs. Age-preferential immigration policy therefore cannot be said to be proportionate means of achieving a legitimate aim in the way that mandatory retirement policies sometimes are. This is because the gains are not large enough to outweigh the principle of hiring by merit.

Section 4: Potential objections

I've argued that the principle of hiring by merit should outweigh efficiency concerns for age-preferential immigration policy. I will now address three potential objections. The first objection claims that the principle of hiring by merit should take into account not only the skills that the applicant currently has but also the skills that the applicant is likely to develop, i.e their potential. For example, a 25-year-old with skill level S can be expected to develop and progress, whereas this is less likely with a 65-year-old at the same skill level. So, the principle of hiring by merit isn't really violated when the employer chooses the 25-year-old over the 65-year-old because by the time the 25-year-old becomes 65 they will likely have more skills than the 65-year-old has at present. Similarly, a state does not violate a principle of hiring by merit when it favours younger immigrants over older immigrants who are more skilled because the younger immigrants are likely to develop even more skills by the time they reach the older immigrant's age.

However, we have reason to be wary of such an interpretation of the principle of hiring by merit. The point of having such a principle is precisely to avoid situations in which bias or prejudice interferes with the hiring decision. If we factor in beliefs about the candidate's promise that are not based on the qualifications they have now, then there is a chance that this might lead to hiring decisions based on prejudice or bias. How exactly do we determine who is the most promising candidate? For example, employers might be biased in

favour of loud, confident men. It is therefore at the very least not obvious that the principle of hiring by merit always requires us to look ahead to the skills and abilities the person will develop.

Yet, one might press this objection: in some cases, potential will matter. Consider the following example. Suppose that a university wants to hire an academic. Like other universities, they are looking for people with strong research skills. They choose to hire A, just out of the PhD with a good thesis, and two publications that show an upwards trajectory, rather than B, many years out of the PhD with a large number of publications that were initially in good journals but later in progressively worse ones. The job committee acknowledges that B currently has better research skills than A. Yet, they choose to hire A because they believe A's research skills will improve while B's will decline. Their hiring decision seems like the right one. So, while taking into account potential might sometimes give rise to prejudice or bias, we do not always want to rule out potential from hiring decisions.[14]

However, even if we grant that the principle of hiring by merit should make room for potential, it does not follow that age-preferential immigration policy is morally permissible. This is because age-preferential immigration policy will lead to violations of the principle of hiring by merit when an employer is unable to hire the older person who is more qualified, even taking into account potential. Since older immigrants will not be able to get visas because of their age, this will lead to situations where, even taking into account potential, the older immigrant is more qualified for the job and yet they will not be hired purely because their age makes them ineligible for a visa.[15] Age-preferential immigration policy will therefore also violate a principle of hiring by merit that takes into account potential.

I considered whether potential can be taken into account, but what about longevity at the place of work? If we accept that an employer can take into account the abilities and skill of the applicant, then why should their ability to

[14] For a more detailed discussion of this, see Stephen Kershnar (2003, p. 271-75).

[15] This is true even of, say, a points-based system, where an employment contract may be one of the factors in addition to age. For example, employers might not hire older immigrants if they are less likely to get a visa. Or the immigrant might not collect enough points even with their employment contract because of their age. Indeed, in many of these points-based systems, age is often given a very high, if not the highest, weight.

stay at the company for a longer period not also be taken into account? After all, this could be very relevant for the job. However, taking into account longevity has implications that are clearly at odds with the principle of hiring by merit. For example, it would imply that an employer is permitted to refuse to hire women on the basis of a statistical generalisation that women are more likely to drop out of the workforce if they decide to have children. This is something that should be clearly ruled out by the principle of hiring by merit. That is, female applicants must be assessed on the basis of qualifications rather than on such a statistical generalisation about their longevity. We therefore have strong reasons to think that the principle of hiring by merit rules out considerations of longevity.[16]

At this point, one might refer back to the efficiency argument that I discussed in the first section. There, I stated that I am granting for the sake of argument that it is a legitimate aim for states to select immigrants on the basis of economic contribution. Does this argument not presuppose that longevity is an acceptable criterion for selecting would-be immigrants? Yet this does not follow. For example, while it is morally legitimate for an employer to hire the applicant who will most contribute to the profits of the company, this does not imply that this company can refuse to hire women on the grounds that they are more likely to drop out of the workforce because of childcare and in turn more likely to hurt the profits of the company. Even though economic contribution can be a morally legitimate selection criterion, it does not mean it can be pursued by any means whatsoever.

The second potential objection to my argument is that it is not clear that the principle of hiring by merit always rules out taking into account an individual's characteristics rather than their qualifications in employment. I will take characteristics to be personal features other than job-related skills and experience.[17] I will consider two examples of this. First, Kasper Lippert-

[16] This needs some nuancing. What hiring by merit does rule out is using generalisations to predict longevity. But if there is individual-level information available, this might be relevant. Consider the following case. A Premiership manager is trying to hire a new striker and will offer a five-year contract. If the job involves extensive training, then it is a relevant consideration that a candidate *states* that they only want the job for two years.

[17] I am going to grant for the sake of argument that we can make a clear distinction between qualifications and characteristics. There is however debate on what characteristics should count as qualifications, which would blur the distinction (Lippert-Rasmussen, 2009; Mason, 2017).

Rasmussen (2007, p. 395) gives the following example: “it would surely be permissible not to hire an alcoholic as a pilot given statistical information that most alcoholics from time to time fail to keep sober on the job.” This person would be rejected on the basis of a characteristic and not a qualification – being a non-alcoholic is not a job-related skill per se and is not normally viewed as such. The principle of hiring by merit surely does not rule this out even though we are judging the alcoholic on the basis of their characteristics rather than their skills.

Yet this example only shows that while there is a strong case for not hiring on the basis of characteristics in employment practices, this could sometimes be overridden in cases where the stakes are high. If it turns out to be true that the pilot is an alcoholic, then there is a very high chance that they will put passengers at risk of dying in a plane crash. It is hard to see how the stakes could similarly be very high in the immigration case to the extent that they outweigh a presumption to rely on skills rather than characteristics in employment. As I noted earlier, it is a very small number of older people who say they would like to migrate if they had the chance. Thus, the number of older immigrants coming into the country will likely be very small, which means that their impact will probably not be very significant. But even if it were to turn out that older immigrants would not be a very small minority, the costs to the receiving society will clearly not be comparable to the risk of death in the alcoholic pilot example. So, given that allowing older people to migrate will likely not be very high stakes, we do not have strong reasons to consider characteristics rather than skills as in Lippert-Rasmussen’s alcoholic example.

But perhaps it’s not just in high stakes cases that we are permitted to select on the basis of characteristics rather than skills. In other words, even in cases that are not high stakes in the way the alcoholic pilot example is, we can still have strong reasons to hire on the basis of characteristics rather than skills, reasons that outweigh the principle of hiring by merit. For example, think of a hospital that selects a female medical doctor as a gynaecologist because women feel more comfortable being treated by a woman (Arneson, 2015). This clearly would go against the principle of hiring by merit as I defined it because the hospital would select a doctor at least partly on the basis of their characteristics

rather than skills. Yet, many of us would think that there is nothing wrong with such selection.[18]

Unlike the alcoholic pilot example, this case is not a very high stakes one and yet we nevertheless think we are permitted to select on the basis of characteristics rather than skills. So, why is it that we are permitted to select on the basis of characteristics rather than skills in this case but not in the case of age-preferential immigration policy? An important difference between this example and the case of age-preferential immigration policy is that the gynaecologist hiring decision is justified by a morally legitimate aim of the hospital (Arneson, 2015), which we think could outweigh the principle of hiring by merit. It seems perfectly acceptable for women to want to be treated by a female doctor because they feel more comfortable with them. But, as I have discussed, it is generally no longer perceived to be a morally legitimate aim for a company to prioritise younger workers over older workers for efficiency reasons. So, in light of these two examples, we do not have reason to think that the principle of hiring by merit is outweighed by reasons to consider age in immigration policy.

Third, one might point out that equality of opportunity *does* require hiring by merit but that is not all that it requires. It also requires spreading opportunities equally. The idea is that compulsory retirement would *not* breach equality of opportunity if it applies to everyone. The opportunities to which people must have equal access simply will not include 'employment past age X.' This draws on the so-called 'fair innings' argument, which was first expressed by John Harris (1985) in the context of healthcare policy.[19] Harris argues that younger people should be prioritised over older people in healthcare in order to give everyone the opportunity to have a reasonable lifespan. For

[18] Of course, some might dispute this depending on the details of the case. For example, one might argue that women feeling more comfortable is not a very strong reason for the hospital to select, since it isn't in the business of distributing 'comfort.' But for the sake of argument, I will grant that this holds to show that there is nevertheless an important difference between this case and the case of age-preferential immigration policy. Moreover, it seems permissible in some cases such as the following: women might put off seeing the doctor if it was going to be a man, or might not reveal relevant information in the same way, in which case there would be a strictly medical reason for the preference for women doctors.

[19] There are other arguments for prioritising younger patients for medical treatment such as the QALY-based argument. I will not go into these here. For a critical discussion of the QALY-based argument, see John Harris (1987).

example, this approach tells us that it is problematic to choose, say, an 80-year-old over a 20-year-old for life-saving treatment because we are denying the 20-year-old the opportunity the 80-year-old had of a reasonable lifespan – an opportunity to live a long, happy life. As Harris (1985, 93) puts it, "while it is always a misfortune to die when one wants to go on living, it is not a tragedy to die in old age" but it is … both a tragedy and misfortune to be cut off prematurely."[20]

We can apply the intuition behind the fair innings argument to our case. On this line of thought, opportunities to immigrate should be distributed to younger people, as older immigrants have already had the opportunity to move when they were younger and enjoy life in other countries. Older migrants already had the chance to travel when they were in their younger years, which are in fact the years when most people want to migrate. Now it's the younger immigrants' turn to enjoy these same opportunities. Thus, age-preferential immigration policy does not violate equality of opportunity because everyone would have the opportunity to migrate in their younger years and no one would have the opportunity to migrate in their later years.

However, this fair innings argument does not transfer very well from the healthcare case. Intuitively, it makes sense to say that an older person had the chance to live a long, fulfilling life. But can we really say that a would-be immigrant from, say, a low-income country or a country from the Global South had a chance, unlike a younger migrant, to make the most of their younger years by travelling to different places? It is unlikely that an older migrant from the Global South has ever had a chance to travel freely when they were younger – we know that those who come from some of these states are disproportionately denied visas. This argument of course will not apply to people moving between richer states, but it does apply to most would-be immigrants. Thus, the fair innings argument does not seem very persuasive. It is not plausible to say that the principle of equal opportunity permits age-preferential immigration policy on the grounds that everyone gets access to the same opportunity set that does not include "immigration past age X."

[20] Norman Daniels (1988, p. 45) notes that unlike, say, inequalities due to gender or race, inequalities due to age are not an interpersonal issue on "how to divide resources between different people," but rather an intrapersonal issue on dividing resources "between the different stages of one life."

Conclusion

Youth is valued not just in immigration policy but also in society more broadly. As Kite and Wagner (2002, p. 129), "most of us aspire to reach old age; after all, the alternative is to die young," and yet we "are reluctant to accept aging gracefully and often hold ageist attitudes and beliefs." These values are reflected in immigration policy. In this chapter, I argued that if states are opposed to mandatory retirement, then they should also be opposed to age-preferential immigration policy. As I explained, mandatory retirement policies were overturned because they violate equal opportunities and in particular a principle of hiring by merit. I argued that age-preferential immigration policy should also be opposed on these very same grounds. The upshot of this chapter is that discrimination in immigration policy can be wrong if it fails to select would-be immigrants by merit as this is what makes the differential treatment of older would-be immigrants wrong.

Chapter 5: Immigration and Inequality of Opportunity

Introduction

This chapter will explore a second way in which discrimination in immigration policy can be wrong: if the selection unfairly disadvantages certain groups of people. I will make the case for this by examining skill-based migration. This chapter will also illustrate a point I made in chapter 3: a policy can be at once discriminatory and non-discriminatory. The previous chapter implied that a policy is non-discriminatory if it protects the ideal of selecting by merit. This chapter will show that a policy can be discriminatory if it unfairly disadvantages certain groups of people. The upshot is that skill-based migration policy is at once discriminatory in one respect – because, as I will argue, it unfairly disadvantages certain groups of people – *and* non-discriminatory in another respect – because it selects by merit.

Skill-based migration is one of the most common ways of immigrating. In countries such as Australia, Canada, and New Zealand, it is the *most* common way of immigrating (Aydemir, 2020). In Canada and Australia, there has been a sharp rise in the share of skilled migrants admitted (Aydemir, 2020). For example, in Canada, this increased from 41% of 256,641 immigrants admitted in 1993 to 58% of 321,035 immigrants admitted in 2018 (Aydemir, 2020). There is also a rise in skill-selective policy at the global level. In 2005, 22% of the world's countries had a policy to increase the level of immigration of highly skilled workers. In 2019, 40% of countries had such a policy (Aydemir, 2020). Governments are increasingly trying to attract the "best and brightest" (Kapur and McHale, 2005) in recognition of the importance of human capital to economic development (Czaika and Parsons, 2017).

These policies are often presented as a *fair* way of selecting immigrants. For example, in introducing the new points-based system, the British government claimed that it will "bring in a firm and fair points-based system that will attract the high-skilled workers we need to contribute to our economy, our communities and our public services" (GOV.UK, 2020). Michael Gove claimed in 2016 that a points-based system "is fair to everyone" (The Week Staff, 2020). In the Queen's Speech of December 2019, it was stated that "a modern, fair points-based immigration system" will be introduced that "will welcome skilled workers from across the world to contribute to the United

Kingdom's economy, communities and public services" (Walsh, 2020). Skill-based immigration is therefore often seen as fair.

While political theorists have generally assumed that skill-selective immigration policy is morally uncontroversial,[1] some are beginning to challenge this assumption. Skill-selective immigration policy has been criticised on the grounds that it disadvantages women (Lim, 2019), sends an insulting message to low-skilled workers in the receiving state (Lim, 2017), or leads to brain drain (Brock and Blake, 2015). Instead, I will focus on one way in which selection on the basis of skill is unfair: such selection is unfair against the backdrop of inequality of opportunity both within and between states.[2] The chapter will proceed as follows. In the first section, I will distinguish between two forms of fairness that arise in the case of skill-based immigration policy: the use of merit criteria at the point of selection, and the fairness of the background conditions in which skills are acquired in the first place. In the second section, I will argue that global inequality of opportunity between states makes skill-based immigration policy unfair. In the third section, I will show that even if, like many political theorists, we do not think the principle of equal opportunity applies between states, inequality of opportunity *within* states makes skill-based immigration policy unfair. The upshot of this chapter is that discrimination in immigration policy can be wrong if the selection disadvantages certain groups of people.

Recall, I also discussed hiring by merit and equality of opportunity in the context of age-preferential immigration policy in the previous chapter. Yet, my main focus there was the analogy I was making between age discrimination within a state and age discrimination in immigration policy. My aim was to show that this analogy holds so I did not devote much attention to closely examining and interrogating the ideas of hiring by merit and equality of opportunity. In this chapter, I will explore each idea in more depth.

[1] For instance, Lea Ypi (2008, p. 400) writes, "skill-specific principles appear therefore a reasonable means through which to establish restrictions on incoming freedom of movement in a way that benefits equally both immigrants and the citizens of receiving states."
[2] Lea Ypi (2018) consider the relevance of class in immigration policy. Ypi (2018, p. 145) argues that "migration-related distributive conflicts should be analyzed not as injustices in their own right, but as part of a larger account of social injustice that focuses on a common source of oppression for both vulnerable native citizens and immigrants." My work can be said to build on this insight by exploring global inequalities more fully.

Before I proceed, it is important to clarify what exactly is skill-based immigration policy are and why I focus on it. Canada and Australia have a similar points-based system, which awards points on the basis of factors such as level of education, language proficiency, age, work experience in the receiving state and outside of it. The United States has multiple entry tracks for skilled immigration, including the United States Employment Third Preference Visa and the temporary H1B visa. For example, the 'skilled' category of the permanent Third Preference Visa requires on-the-job training, while the 'professional' visa requires a bachelor's degree. Thus, different skill-selective immigration policies define skill differently, but they usually include criteria such as higher education.[3]

I will focus on what is often called highly skilled migration. There are so-called "low skilled" visas that do not make entry conditional on requirements such as university degrees. There is no one definition of low-skilled migration, but it can refer to "people with few formal qualifications, people working in jobs that do not require such qualifications, or people working in low-wage positions regardless of their own educational background" (COMPAS, n.d.). Canada, the US, New Zealand, and Singapore all have some form of low skilled migration policy. I focus on highly skilled immigration because countries are increasingly deterring low skilled migration in favour of high skilled migration. As Mathias Czaika (2018, p. 2) notes, "while the immigration of lower-skilled migrants from poorer countries is increasingly perceived as a problem in need of control, migration of highly skilled people is attracting growing attention in policy arenas and academia." To take just one example, Priti Patel claimed that the purpose of the new UK points-based system is "to encourage people with the right talent" and "reduce the levels of people coming to the UK with low skills" (BBC News, 2020). It is therefore important to focus on highly skilled migration, given its increasing popularity.

Section 1: Fairness in skill-based immigration policy

When politicians describe skill-based immigration policy as fair, they seem to think that it is fair because it selects the best-qualified applicants. Political theorists such as David Miller have made similar arguments in defence of the

[3] For more on this, see Anna Boucher (2020).

fairness of selecting by merit more generally.[4] Let us consider that argument to flesh out the popular argument for skill-based immigration policy. Miller (1992, p. 168) takes the best qualified to be "the one who *will* perform [the job] best, other things being equal." He argues that this person most deserves the benefits of the job because they will make the highest positive contribution to the job-giving institution. The rewards given to the best qualified, according to Miller, would therefore be fair because "they are proportionate to the value that the person creates for the institution" (Miller, 1992, p. 169). In other words, hiring by merit is fair because it brings about the closest match between an individual's contribution and their reward.

Similarly, selecting immigrants by skill could be said to be fair because states select the immigrants who will be make the greatest contribution to the economy, and fairness requires that people are rewarded in a way that is proportionate to the contribution they make. On this line of thought, to give the visa to the less qualified applicant is unfair because it would reward them with benefits that outweigh what they contribute. In other words, they would be contributing less than what the salary is rewarding. Again, fairness, according to Miller, requires that there is a match between what people contribute and the rewards they receive.

However, selecting immigrants by skill, I will argue, gives rise to another form of unfairness: the lack of fairness in the ways in which people acquire the skills required for these visas in the first place. This is a form of inequality of opportunity. Following Rawls (1999a), we can distinguish between two forms of equal opportunity: formal and fair equality of opportunity. Formal equality is the simplest conception of equal opportunity and is concerned only with the fair contest principle (Fishkin, 2014, p. 27). It states that desirable positions in society must be open to all applicants. Before I explain what Rawls means by fair equal opportunity, it is important to consider why formal equal opportunity is not an adequate conception of equal opportunity. To see this, consider Bernard William's famous Warrior Class example (Williams, 1973, p. 244). In this example, membership of the warrior class is very prestigious and requires great physical strength. At first, only members of the wealthy families were permitted to join this class, but egalitarian reformers later succeed in opening

[4] This is importantly different from arguments for hiring by merit that are based on efficiency or respect for agency. For the latter, see George Sher (1988).

membership to everyone in society. Despite this, it is still only wealthy families who can join the warrior class because everyone else is so malnourished, as a result of poverty, that they do not have the required physical strength.

This shows that formal equality of opportunity is an inadequate conception of equal opportunity. In Williams's example, "formal equality of opportunity has been achieved, but despite the fair contest, the non-warrior children have no way of passing the test and becoming warriors" (Fishkin, 2014, p. 27). It is not enough for desirable positions to be open to all applicants. What we want is fair equality of opportunity. Not only must positions be open to all, but people must also have an equal chance at attaining these positions. As Williams (1973, p. 110) puts it, "[equality of opportunity] requires not merely that there should be no exclusion from access on grounds other than those appropriate or rational for the good in question, but that the grounds considered appropriate for the good should themselves be such that people from all sections of society have an equal chance of satisfying them."

It is important to note that equal chances on its own does not capture what we think of as morally problematic cases inequality of opportunity. To see this, consider a revised version of Williams's example. Suppose there is a sub-group of adults who have access to adequate nutrition but choose to be vegans. As a result, they tend not to develop the physical strength required for warriors. This means that they do not have an equal chance of joining the warrior class. Yet, it does not seem morally problematic that some people are unable to meet the requirements of the Warrior Class because of the choices they made about their diets. Equality of opportunity therefore cannot just be a matter of having equal chances at attaining desirable positions.

Suppose instead that some cannot afford the diet to develop the strength required of warriors. In this case, these people do not have an equal chance at joining the Warrior Class, and, unlike the vegans case, this does seem to be clearly morally problematic. An account of equal opportunity must therefore be sensitive "to the background factors that may explain how candidates have come to have the features on the basis of which the allocation is made" (Miller, 2013, p. 118). What we care about is not simply the lack of an equal chance to attain a desired position – as we have seen in the vegan example – but whether

there are any background conditions that disadvantage some in having an equal chance to attain a desired position.

Rawls gives a similar account of equal opportunity that is helpful to consider. On his account of fair equality of opportunity, "background social conditions are such that each citizen, regardless of class or origin, should have the same chance of attaining a favoured social position, given the same talents and willingness to try" (Rawls, 1999, p. 115). These favoured social positions are positions such as well-paid careers or places at elite universities. According to Rawls, a society with fair equality of opportunity is one where people with the same talent and willingness to use it must have same chances in the competitions for favoured social positions. For example, whether someone is able to go to university should not depend on whether they are wealthy, and whether someone can become an engineer should not depend on whether their parents can afford a private school (Miller, 2013b, p. 93-4). As Rawls (2001, p. 44) puts it, "in all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed."[5] The fair equality of opportunity account gives us the right verdict in the vegans example: there *is* fair equal opportunity as there are no background conditions that prevent a talented vegan from becoming qualified for the warrior class. So, by equality of opportunity, I will mean fair equality of opportunity – whether there are any background conditions that prevent equally talented and ambitious individuals from pursuing favoured social positions.

In the case of skill-selective immigration policy, we do have *formal* equality of opportunity because the competition for these skill-based visas is open to all. But I will argue that we do not have fair equality of opportunity because background conditions significantly disadvantage certain groups in this competition. I will argue that this arises from inequalities both between states and within states.

Section 2: Inequality of Opportunity Between States

I will argue that skill-based immigration policy is unfair in one important way: access to these skill-based visas is unequal between countries. Some are disadvantaged in the competition for these visas solely because of the country

[5] However, it is worth pointing out that there are ambiguities in Rawls's conception of fair equality of opportunity (Miller, 2013a, p. 141).

they are born in. Before I survey the empirical evidence, we need to consider why the principle of equal opportunity should extend to the global level in the first place. We care about having equal opportunities within a state, but why should we care about equalising opportunities *between* states? Why should we care that, say, a Lebanese citizen does not have the same opportunities as, say, a British citizen? According to Simon Caney, we should care about global inequality of opportunity for the same reasons we care about inequality of opportunity within a state. We care about equality of opportunity within a state for reasons of fairness. That is, it seems unfair that people have unequal opportunities because of their class or race, which are things over which people have no control. Someone's place of birth is also something over which they have no control. It should therefore be just as unfair that people have unequal opportunities purely because of where they are born (Caney, 2001, p. 115). As Caney (2001, p. 115) puts it, "the rationale for accepting equality of opportunity within the state entails that we should accept global equality of opportunity."

Caney explains the idea of global equality of opportunity in two ways. Expressed negatively, it states that "people should not be penalized because of the vagaries of happenstance, and their fortunes should not be set by factors like nationality or citizenship" (Caney, 2001, p 115) Expressed positively, it states that "people are entitled to the same opportunities as others. If, then, we object to an aristocratic or medieval scheme that distributes unequal opportunities according to one's social standing, or to a racist scheme that distributes unequal opportunities according to one's race, we should … also object to an international order that distributes unequal opportunities according to one's nationality" (Caney, 2001, p. 115).

My argument is that skill-based immigration policy is unfair as people from low- and middle-income countries are disadvantaged in the competition for these visas simply because of where they are born. To begin, we need to survey some of the empirical literature on this issue. Economists generally define high-skilled migrants as migrants who have completed some tertiary education or as migrants who have an occupation that can be said to be skilled (Weinar and von Koppenfels, 2020). Some take a mixed approach that combines both (Weinar and von Koppenfels, 2020). However, the more common approach is the former, at least partly because tertiary education is "the most readily available international statistic" (Lowell, 2005, p. 2). Tertiary

education is in fact a requirement in most high-skilled immigration policies. In the points-based systems of Australia, Canada, and New Zealand, points are awarded for an immigrant's education level. To be clear, however, there are other criteria in different countries' skill-based immigration policy such as language skills, demand for particular skills, and professional experience.

Let us consider the tertiary education requirement in skill-based immigration policy. There is very stark global educational inequality: "in the countries where people have the best access to education – in Europe and North America – children of school entrance age today can expect 15 to 20 years of formal education," while "children entering school at the same time in countries with the poorest access to education can only expect 5 years" (Roser, 2019). Given this stark inequality in years of education, the tertiary education requirement in most skill-based immigration policy will be much less attainable for would-be immigrants from low and middle-income countries. Consider also income inequality: "the Central African Republic, the poorest country in the world, has a GDP per capita of almost $661, while Switzerland has a GDP per capita of $57,410. This takes into account purchasing power parity, which "means the Swiss can spend in 1 month what people in the Central African Republic can spend in 7 years" (Roser, 2019). This global income inequality also makes it much more difficult for people from low- and middle-income countries to afford tertiary education. Would-be immigrants from low- and middle-income countries are therefore disadvantaged in the competition for skill-based visas because of where they happen to be born.

As I mentioned, my argument here hinges on endorsing a global principle of equality of opportunity. In particular, it assumes that people around the world should have the same chances to acquire these skill-based visas. One prominent challenge to the idea of global equality of opportunity, which can also be levelled against my argument, is the metric challenge. To see this, consider the example Darrel Moellendorf (2002, p. 49) presents to illustrate the idea behind global equality of opportunity: "a child growing up in rural Mozambique would be statistically as likely as the child of a senior executive at a Swiss bank to reach the position of the latter's parent." According to Moellendorf, it is unfair that the child in Mozambique does not have the same opportunities as the child of the Swiss banker. But equality of which opportunities exactly? If it is the opportunity to become a Swiss banker, this does not seem to be something that

we care too much about, especially if the child from Mozambique has the chance to attain a similar post in Mozambique or elsewhere. David Miller (2005) argues that such a fine-grained metric of global equality of opportunity not only tracks something that we do not find particularly morally troubling but is also far too demanding. For example, it would require unlimited rights of migration to Switzerland and unrestricted admission to citizenship so that everyone can have the same chance to become a Swiss banker. Miller concludes that "unless advocates of global equality of opportunity envisage a borderless world in which everyone speaks Esperanto" (Miller, 2005, p. 60) the fine-grained metric of global equality of opportunity is not plausible.

What about a broad-grained metric of global equality of opportunity? Perhaps what we care about is not equality of opportunity for specific careers such as becoming a Swiss banker but equality of opportunity for broader things such as an education. Miller (2005, p. 63) argues that even this broad-grained metric is problematic: "if education, for example, takes different forms in different places, how can we judge whether a child in country A has better or worse opportunities than a child in country B?" In other words, Miller claims that it will be difficult to determine whether there even is morally problematic inequality of opportunity for education since people from different countries value different kinds and levels of education. He argues that the problem is that "we run into serious difficulties created by the fact that we can no longer rely upon a common set of cultural understandings to tell us which metric or metrics it is appropriate to use when attempting to draw cross-national opportunity comparisons" (Miller, 2005, p. 62). That is, we cannot determine whether there are better or worse opportunities in other countries because we do not know what sorts of opportunities people living in other states value.[6] Thus, Miller thinks both the fine-grained and broad-grained view of equality of opportunity have their problems:

> If we make it too fine-grained, then we will get lots of meaningless results like the one just mentioned – equalities and inequalities that just do not matter because they are too specific to engage our ethical

[6] For the sake of argument, I will assume Miller's objection holds. I will show that even if it holds, it does not pose a problem in the immigration context. However, Simon Caney (2007) does challenge Miller's objection. He argues that even within a state there is disagreement about what is valuable or not but that this does not imply that there should be no equal opportunity to some basic goods.

> attention. But if we try to make it as broad-grained as possible, then we run into controversy about how, if at all, different components of our metric should be evaluated relative to one another (Miller, 2005, p. 60-61).

The problem with the fine-grained metric of equal opportunity is that it is both too demanding and trivial, and the problem with the broad-grained metric is that it makes it difficult to compare opportunities in different countries.

As I mentioned, my argument rests on the assumption that individuals around the world should have the same opportunities to acquire skill-based visas. But what exactly do I mean by opportunities here? A fine-grained metric of global equality of opportunity for skill-based visas would claim that everyone around the world should have the same opportunity to acquire every skill-based visa available. For example, it would mean that everyone should have free classes to learn English, French, and all the other languages that are required by the various skill-based visas and the same employment opportunities to develop all the skills that are required for these visas. Like the Swiss banker example, this fine-grained metric of global equality of opportunity might be said to be too demanding. Also like the banker example, it is not clear that we are troubled by this inequality of opportunities. For example, it does not seem obviously morally problematic that an individual does not have an opportunity to qualify for the skill-based visas for one specific country, if they have other opportunities to qualify for the skill-based visas of similar countries. Thus, like the banker case, one might argue that the fine-grained metric of global equality of opportunity for skill-based immigration is not only too demanding but too trivial to matter from a moral point of view.

What about a broad-grained metric of global equality of opportunity for skill-based immigration? I will argue that this is the correct metric for our case. On this broad-grained metric, everyone should have roughly equivalent opportunities to acquire skill-based visas. This does not mean that everyone should have identical opportunities to acquire skill-based visas for every single country. But it does mean that it is morally problematic that people from low- and middle-income countries have significantly fewer opportunities to acquire any skill-based visas. People from these countries clearly cannot be said to have

roughly equivalent opportunities to acquire skill-based visas as people from high-income countries.

Does this run into the problems that Miller raises with the broad-grained metric of equality of opportunity? That is, does this broad-grained metric make it very difficult if not impossible to determine whether some have worse or better immigration opportunities because not everyone values immigration in the same way? Consider the following stylized example. Suppose no Amazonian Indian values becoming a computer programmer, but every Hong Konger does. Further suppose that computer science education is very strong in Hong Kong but non-existent in the Amazonian Indian community. If the UK opens a special programme to recruit computer trainees, then there would be an inequality of opportunity to acquire these skill-based visas. The Hong Konger, unlike the Amazonian Indian, has the opportunity to learn computer science and in turn to acquire these visas. There might be inequality of opportunity in a material sense between Hong Kong and the Amazon but arguably not one of any normative significance because the Amazonian Indians have no interest in these visas. Perhaps then the broad-grained metric I am arguing for does run into the problems that Miller raises: not all societies around the world will necessarily value these immigration opportunities and so the inequality of opportunity to acquire these visas will not be morally problematic.

However, we have very strong reason to think that skill-based visas have near-universal appeal. First, we know that many people around the world want to migrate. One poll reveals that 15% of the world's adults – over 750 million people – would migrate if given the opportunity (Esipova et al., 2010). Second, skill-based immigration in particular would have widespread appeal as it is one of the most common immigration routes. In many countries, it is by far the *most* common route. As I mentioned earlier in the chapter, Australia, Canada, and New Zealand tend to admit most immigrants based on skill. We certainly do not think that becoming a computer programmer appeals to most people, but it seems much more likely that the opportunity to immigrate more generally does, and skill-based visas are often one of the few if not only available immigration routes.

What about the possibility that there are some groups of people who are just not interested in immigration at all? Even if that is true, the opportunity to

immigrate, and all the opportunities that come with it, would nevertheless be valuable for *most* people. As long as most people value it, there *is* morally problematic inequality of opportunity when people do not have roughly equivalent chances at acquiring skill-based visas. Thus, this broad-grained metric avoids Miller's charge that cultural diversity makes it very difficult to determine whether there even is morally problematic inequality of opportunity.

Is it immigration that is universally appealing or the opportunities that come with it? Most people probably do not value immigration just for the sake of it. They value it for the opportunities that it brings. Does this undermine my argument? It is probably true that most people would prefer to have the opportunities provided by immigration without having to move. But given that there is no other way to enjoy these opportunities without moving, this point is not very relevant. What matters to people is the opportunity to immigrate, even if it is for instrumental reasons.[7]

This broad-metric view states that everyone must have roughly equivalent chances at acquiring skill-based visas. I discussed the evidence on global educational inequality to show that there is stark inequality of opportunity to acquire these visas. People from low- and middle-income countries have much fewer chances than people from high-income countries to acquire skill-based visas. Yet perhaps there could still be roughly equivalent chances to acquire these visas if people from low- and middle-income countries have opportunities to immigrate to other similar countries. They might not have the opportunity to acquire skill-based visas for certain countries, but they might have opportunities to acquire skill-based visas to *other* countries. The broad-metric view states that people must have equal chances to acquire visas to roughly similar countries but not to specific countries. This is similar to Miller's argument in the banker example. Recall, he argued that there would be no morally problematic inequality of opportunity between the child in Mozambique and the child of the Swiss banker as long as the child in Mozambique has the opportunity to pursue similar jobs in Mozambique or elsewhere.

[7] Is this a matter of timescale? That is, when countries develop and have these opportunities at home, would immigration no longer have this appeal? That might be true, but this does not seem to be a realistic possibility for the near future. For the time being at least, immigration does have this widespread appeal.

So the objection is that even though people from low- and middle-income countries do not have the opportunity to acquire skill-based visas to specific countries, they might have opportunities to acquire skill-based visas to other similar countries. This would mean that they have roughly equivalent opportunities as people from high-income countries to acquire such visas. In response, it is important to reiterate that economists and other social scientists generally use tertiary education to track highly skilled migration at least partly because it is a very common requirement for skill-based visas (Weinar and von Koppenfels, 2020). The problem then for this objection is that the countries that use skill-based selection are in fact converging on a narrow set of skills that are possessed disproportionately by those coming from certain places, in particular high-income countries. In other words, the lack of an opportunity to immigrate to a particular state will often mean the lack of an opportunity to immigrate to most states. It is therefore implausible to claim that people from low- and middle-income countries have roughly the same opportunities as people from high-income countries on the grounds that they can acquire skill-based visas to other comparable states.

Section 3: Inequality of Opportunity Within States

My argument in the previous section hinges on a global principle of equal opportunity. My assumption has been that people around the world should have the same opportunities to acquire skill-based visas. However, many political theorists reject the view that equality of opportunity should apply at the global level. While political theorists such as Simon Caney believe the principle of equality of opportunity applies even between states, others such as Miller believe that it is a principle of social justice – a principle that applies only *within* countries.[8] My argument would not be persuasive to the latter camp. They would reject the idea that everyone around the world should have the same chances to immigrate. The principle of equal opportunity, on this line of thought, simply does not apply between states. In what follows, I will argue that even if we think that the principle of equal opportunity only applies within states, inequality of opportunity *within* low- and middle-income states poses a problem for skill-based immigration policy.

[8] For an overview of arguments against extending equal opportunity to the global level, see Christian Barry and Laura Valentini (2009).

Let us focus again on the tertiary education criterion of skill-based immigration policy. Educational attainment is lowest in developing countries. Consider the lower secondary out-of-school rates: "the regions with the highest percentages of out-of-school adolescents are sub-Saharan Africa (34%), Southern Asia (20%), Western Asia (16%) and South-Eastern Asia (14%)" (UNESCO, 2016, p. 5). Consider also the upper secondary out-of-school rates: "58% of all youth between the ages of about 15 and 17 are out of school in sub-Saharan Africa, followed by Southern Asia (50%), South-Eastern Asia (37%) and Western Asia (33%) … Only the developed regions have a relatively low out-of-school rate" (UNESCO, 2016, p. 7).

In order to translate these figures into an opportunity metric, we need to ask why secondary school attendance is so low.[9] Is it because there are no schools available? Or because they cost too much? Or is it because there is a norm that says that more education is pointless, and that young people should start earning for themselves? The latter, for example, would not imply that there is morally problematic inequality of opportunity because people are simply choosing not to take up available opportunities. However, these figures do seem to translate to an opportunity metric as wealth plays a significant role in who receives an education. A recent report that uses data from UNESCO shows that "in developing countries, a child from a poor family is seven times less likely to finish secondary school than a child from a rich family" (Walker et al., 2019, p. 4). For example, in Pakistan, over 75% of the richest children complete primary school. By contrast, under 30% of the very poorest complete primary school (Walker et al., 2019, p. 20). There is even greater inequality after primary school: "in a large majority of developing countries, the poorest children have less than 10% of the chances of rich children to attend higher education" (Walker et al., 2019, p. 20). For instance, in Malawi, "a poor child has about 30% of a wealthier child's chance of enrolling in secondary school, and less than 1% of a wealthier child's chance of enrolling in higher education" (Walker et al., 2019, p. 20). Thus, there is educational inequality of opportunity in the sense that the opportunity to receive an education is usually enjoyed only by the wealthy.

[9] For more on how to translate empirical evidence into an equality of opportunity metric, see Adam Swift and Gordon Marshall (2007) and Adam Swift (2004).

Even if we do not think that the principle of equal opportunity should apply between states, inequality of opportunity *within* developing countries is a problem for skill-based migration policies. As we have seen, there are very large gaps between the educational attainment of the wealthy and the poor in developing countries. Skill-based immigration policy, with its tertiary education requirement, will be accessible mostly only to the wealthy in developing countries.[10] Thus, the skill-based immigration policies of the Global North exacerbate inequality of opportunity within developing countries. These policies offer skill-based visas to the wealthy and their offspring, who already enjoy greater opportunities within the state. By giving further opportunities to the privileged, skill-based immigration policy exacerbates inequality of opportunity within developing countries.

It is important to emphasize that such an argument does not rely on the principle of global equality of opportunity even though it says that we should care about what happens to equality of opportunity in other countries. For example, it seems perfectly possible to care deeply about the Taliban's denial of equal opportunities to women within Afghanistan without taking any view on whether Afghan women should have the same opportunities as women in Mexico, say. So, even if opportunities should not be equalised between countries, this does not rule out a concern for worsening inequality of opportunity within a state.

What will count as exacerbating inequality of opportunity will depend on the measure of equality of opportunity that we adopt. For example, Joseph Fishkin argues that equality of opportunity should be measured in terms of "bottlenecks," which are things that open up or close off many further opportunities. On this view, inequality of opportunity could be said to be exacerbated when these bottlenecks increase. To take another example, a luck egalitarian view of inequality of opportunity would claim that inequality of

[10] Stuart Tannock (2011) briefly makes a similar point. Tannock (2011, p. 1336) writes, "all else being equal, any immigration system based on skill and education will discriminate against the populations of poorer nations (which are predominantly non-white) as a whole. Further, in most if not all nations, individuals from lower socioeconomic classes and many racial and ethnic minority groups lack equal access to education and skilled employment. Thus, an education-based immigration policy will inevitably end up discriminating against these groups overall as well."

opportunity is morally problematic only if it is beyond one's control.[11] On this view, to exacerbate inequality of opportunity would be to increase these sorts of inequalities of opportunity. I will focus on the conception of inequality of opportunity that I began with in this chapter: fair equality of opportunity. Recall, this holds that there is inequality of opportunity if there are background conditions that prevent equally talented and ambitious individuals from pursuing favoured social positions.

Skill-based immigration policy exacerbates inequality of opportunity for two reasons: (1) more opportunities are given to an already privileged group; (2) these opportunities are among the most desired opportunities. I will explain each in turn. On the first point, consider the following potential objection. One might argue that it is not obvious that a policy that increases opportunities for some is exacerbating inequality of opportunity. For example, suppose that there is only one secondary school in a neighbourhood and that this school admits only those who get an A. Further suppose that 10% of students get an A and only 50% of those students are admitted to the secondary school. Suppose that another secondary school opens, and it has the same admissions policy as the first. This means that 100% of the A students are now admitted to one or other school, and the rest of the students are not admitted anywhere. Does the creation of this new school increase or reduce inequality of opportunity overall? It seems unclear. The new school is after all providing the opportunity to acquire an education to some children who have not had the opportunity before, even while creating an opportunity gap between them and those who do not get in. In the same way that the new school is increasing opportunities, a state is also increasing opportunities to immigrate through its skill-based immigration policy. So, why is it that skill-based immigration policy exacerbates inequality of opportunities?

There is an important difference between the school example and the case of skill-based immigration policy. In the school example, opportunities are extended to a wider group of people. In the immigration example, more opportunities go to the same group of people. Let us consider a revised version of the school example that is sensitive to this aspect of skill-based immigration. Suppose that A students are already the group of people with the most

[11] For example, G. E. Cohen (2009) calls luck egalitarianism a "socialist equality of opportunity."

opportunities in society in terms of employment opportunities, social opportunities, and so on. Now suppose that a university opens and admits only A students as they are the only students who received sufficient education. Only those who attend the university would be eligible for the new jobs for university graduates, which are the highest paying and most prestigious jobs. As a result, A students have even more opportunities – now the opportunity to go to university and receive the most coveted jobs. In this case, it seems clear that the university is exacerbating inequality of opportunity in society because the most privileged group of people are receiving even more opportunities. This is different from the previous version of the example where opportunities were increased for more than just the privileged group. So, inequality of opportunity is exacerbated in a morally problematic way when opportunities are increased for the group of people who already enjoy the most opportunities.

I will now move on to the second reason why skill-based immigration policy exacerbates inequality of opportunity within states: the opportunities that are given to this privileged group are opportunities for the desired positions. Let us again begin by considering a potential objection. Is inequality of opportunity really being exacerbated if there are positive knock-on effects? Presumably when the privileged go to university, this leaves spaces in the job market for the less privileged. Similarly, assuming that some of those given the opportunity to immigrate do actually immigrate, this will change the opportunity set of those who have no such opportunity. For example, the jobs that those migrating would have performed now become available to those left behind.[12] So, the opportunity set of those left behind is increased. Increasing opportunities for the already privileged group therefore does not always seem to exacerbate inequality of opportunity in a society.

However, it is morally problematic that the best or the most sought-after opportunities go to the most privileged in society. When an immigrant leaves a job in order to immigrate, it is probably because the option to immigrate is better than the option to stay in the job. In this sense, the option to immigrate is the best or the desired one. A policy that results in the privileged group of

[12] Some studies seem to back this. For example, Pryymachenko et al. (2013) show that emigration from the Central and Eastern European members of European Union decreased unemployment in these countries.

people receiving more of the most desired opportunities is one that exacerbates inequality of opportunity.

To further illustrate this, consider the following example. Suppose that in a certain school only the wealthy students are able to qualify for science classes thanks to the help of private tutors. All the other students take non-science classes. The wealthy students take science classes because jobs in science pay more. Now suppose that this school offers two new classes: law and economics. Jobs in law and economics pay even more than jobs in science. Again, only rich students qualify for these classes thanks to private tutoring. The wealthy students therefore move from the science classes to the law and economics classes, thereby opening spots in the science classes for the non-wealthy students. The new law and economics classes create more opportunities for the already privileged group, but they do have positive knock-on effects for non-wealthy students by giving them spots in the science classes. However, just because there are these positive knock-on effects does not mean that inequality of opportunity is *not* exacerbated in a morally problematic way. It seems that it is, because wealthy students receive even more opportunities and more of the *best* opportunities. It is morally problematic for the wealthy students to continue to receive even more of the *best* opportunities.

To sum up, skill-based migration exacerbates inequality of opportunity in a morally problematic way for two reasons: (1) it increases opportunities for the privileged group; (2) these opportunities are among the most desired ones. The first arises because, as I have discussed, it is the wealthy in developing countries who are able to pursue tertiary education and in turn apply for these visas. This means that the opportunity to acquire skill-based visas goes to the wealthy, a group that is obviously already privileged. The second reason arises because, as I have argued, even if there are positive knock-on effects of skill-based immigration, it remains the case that the best opportunities are going to the already privileged.

In what follows, I will consider two potential objections to my argument that skill-based immigration policy is unfair because it exacerbates inequality of opportunity within low- and middle-income states. The first claims that it is not morally problematic if a state exacerbates inequality of opportunity that it is not responsible for. One might argue for this as follows: via its skill-based

immigration policy, Country A is creating new opportunities for some of country C's members. If the result of this is that inequality of opportunity increases in C, that is the responsibility of C's government to fix. For example, they can counteract this by investing more in public education.[13] Country A would not be making it harder for C's government to protect equality of opportunity. If C's government invested more in education, then A would not be exacerbating inequality of opportunity because there would be no stark inequality of educational opportunity to begin with.

Blake considers an argument similar to mine and makes such an objection. He acknowledges that in some cases "to prefer the well-educated ... is to give privilege to those who have already gained benefits from an unjust social system and to punish those who have already been treated unjustly" (Blake, 2008, p. 972). He notes that "this problem is exacerbated when the injustice is one in which the society accepting immigrants has been complicit; if persistent underdevelopment is even partly the result of the unjust foreign policy and practices of our own state" (Blake, 2008, p. 973). In that case, he suggests that it may be unjust to exclude would-be immigrants on the grounds that they do not have adequate skills. Blake's argument implies that it would at the very least not be obviously wrong to exacerbate inequality of opportunity if a state is *not* complicit in this inequality.

However, even if a state is partly or wholly responsible for its inequality of opportunity, it would be unfair for another state to exacerbate this inequality. To see this, consider the following example. Suppose that a neighbourhood has stark educational inequality of opportunity because of the negligence of the neighbourhood's council members. Further suppose that a new scholarship program for an elite university is created for residents of this neighbourhood. Only students with an A grade are eligible for this scholarship, and there are A students only in the private schools and not the public schools of the neighbourhood. Even if we assume that the reason there are no A students in public schools is purely the result of the council's negligence – for example, because of underfunding these schools – the scholarship does seem to be unfair. The scholarship would exacerbate inequality of opportunity by providing more

[13] As an OECD report (Cervantes and Guellec, 2002, p. 42) notes, "governments can do quite a lot to address the causes of the brain drain. Science and technology policies are key in this regard."

opportunities to a group of people who already have the most opportunities. This example shows that even if society X is responsible for its inequality of opportunity, Y would be acting unfairly by exacerbating this inequality. Similarly, even if some of the low- and middle-income states are responsible for inequality of opportunity in their societies, this does not mean that other states would not be acting unfairly in exacerbating this inequality.

The second objection claims that even if a state has a duty to not exacerbate inequality of opportunity in other countries, this duty can be fulfilled in other ways than admission or immigration policy reform more generally. Before I respond to this objection, it is important to point out that, as I have discussed earlier in the chapter, my argument does not necessarily imply that skill-based immigration policy should be abolished. The benefits of the policy might outweigh the inequality of opportunity concerns. But one might argue that I have not even shown that immigration reform is required. Blake makes this sort of argument and illustrates it using the following example:

> I contemplate hiring you as my surgeon but carelessly burn your hand with coffee as I walk into your office. It is clear that I owe you something – compensation for your unjustly burned hand, at least – but it is not clear that I have any obligation to let you continue acting as my surgeon. However unjust it may be, you simply do not have the skills required to do the job. If this is so – and if no particular surgeon has a right to act as my surgeon – then my moral duties do not include a general prohibition on taking skills into account in choosing a surgeon, a fact which remains true even when the skill sets are the result of injustice (Blake, 2008, p. 973).

Similarly, he argues, "the foreign poor have a great many moral rights that are currently being ignored, but it is not clear to me that a right to entry into a foreign society is one of them" (Blake, 2008, p. 974) . In other words, if a state is harming the global poor by exacerbating inequality of opportunity, then a state must rectify that but not necessarily through granting immigration rights. This is illustrated by the surgeon example because we do not think that I should rectify spilling coffee on his hand by offering him the job. But this is not a very convincing analogy. A better one would be the following. Suppose that I always place my coffee in such a way that it spills on this person's hand. Further

suppose that this person has a skin condition and that I aggravate it every time I spill coffee on them. I obviously have a duty to place my coffee more carefully so that I can stop spilling coffee on this person's hand. This analogy is more comparable to our case. States are harming the global poor by exacerbating inequality of opportunity, which means that they have a duty to fix whatever they are doing that is exacerbating it. Thus, if, as I have argued, states are exacerbating inequality of opportunity through skill-based immigration policy, then they must at the very least reform these policies.

Conclusion

In this chapter, I argued that there are two ways in which inequality of opportunity makes skill-based immigration policy unfair. While the first argument relies on a principle of *global* equality of opportunity, the second one does not. For the first argument, I examined the empirical evidence that shows that would-be immigrants from low- and middle-income countries are disadvantaged in the competition for skill-based visas. I argued that skill-based immigration policy is unfair as people from these countries are disadvantaged in the competition for these visas simply because of where they are born.

I also argued that there is a second way in which inequality of opportunity matters to skill-based immigration policy. I discussed the empirical evidence that shows that it is wealthy citizens of low- and middle-income countries who have the chance to acquire skill-based visas. In light of this, I argued that skill-based immigration policy is unfair because it exacerbates inequality of opportunity *within* these states.

This chapter shows that discrimination in immigration policy can be wrong if the selection unfairly disadvantages certain groups of people. I demonstrated this by focusing on the two kinds of indirect differential treatment implicit in skill-based immigration policy. The first is the indirect differential treatment between would-be immigrants from low- and middle-income countries and would-be immigrants from high-income countries. The second is the indirect differential treatment between the wealthy and non-wealthy in low- and middle- income countries. I argued that both forms of differential treatment are wrong because the selection process unfairly disadvantages certain groups of would-be immigrants.

Chapter 6: National security and exclusion

Introduction

This chapter will examine a third way in which discrimination in immigration policy can be wrong. I will argue that discrimination in immigration policy can be wrong if it demeans would-be immigrants. In order to demonstrate this, I will focus on the differential treatment of would-be immigrants by nationality for national security reasons. I will refer to these policies as national security-based immigration restrictions.

These policies are a sobering reminder that the exclusion of would-be immigrants by race or ethnicity is not a thing of the past. Such exclusion still occurs, under the guise of national security concerns. Two examples from immigration policy in the United States stand out. In the weeks after 9/11, the Department of Justice implemented a new program, the National Security Entry-Exit Registration System, which imposed additional requirements on male nonimmigrants (temporary residents), aged sixteen and older, from twenty-five countries, twenty-four of which were Arab and other predominantly Muslim states, plus North Korea. The more recent example is former President Trump's Muslim ban,[1] which banned nationals of Iran, Libya, Somalia, Syria, and Yemen from entering the US. The Supreme Court upheld the ban on the grounds that "the President found that it was in the national interest to restrict entry of aliens who could not be vetted with adequate information – both to protect national security and public safety, and to induce improvement by their home countries" (Supreme Court of the United States, 2018, p. 11). In what follows, I will focus on Trump's Muslim ban, however, what I will say will apply to other policies such as the National Security Entry-Exit Registration System.[2]

These immigration restrictions have reintroduced exclusion by ethnicity and race by appeal to what many, including political theorists, think is a

[1] Even though it is referred to as a Muslim ban, it is technically a ban on immigrants coming from certain countries regardless of their religious affiliations. However, as it is often referred to as a Muslim ban and for good reason considering Trump's comments about the ban, I will also use this term.

[2] For more examples of nationality- based restrictions as a counterterrorism measure see Liav Orgad and Theordore Ruthizer (2010).

legitimate reason to exclude would-be immigrants: national security. There is in fact near consensus in the philosophical literature that it is justified to exclude immigrants on the grounds of national security. For example, Joseph Carens (2006, p. 104), a well-known proponent of open borders, writes, "all states use some sort of security screen, denying admission to people perceived to be threats to national security. There is nothing problematic about this in principle; it reflects an important public interest." Others have also endorsed security as an exclusion criterion but cautioned against its potential for abuse. For example, Sarah Song (2019, p. 159) writes, "we should recognise the potential for abuse in implementing the national security criterion, but this does not mean doing away with the national security criterion altogether." Similarly, Gillian Brock points out that while national security is in principle a permissible criterion of exclusion, "the problem is that this principle can be easily abused" (Brock, 2021, p. 71). Political theorists, however, have not seriously examined national security as a criterion of exclusion.[3]

As I mentioned, in the United States, the national security criterion has been used to exclude immigrants of certain nationalities. There is strong evidence that such bans are driven by Islamophobia and racism (Amnesty International UK, 2020; Beydoun, 2017; Bouie, 2020). But would such immigration restrictions be permissible if they can be shown to make some contribution to national security? In this chapter, I will argue that they would not be. This is important as security concerns seem to neutralise the worries many people would normally have with excluding would-be immigrants by ethnicity or race. This has been often noted in relation to the post-9/11 immigration policy of the United States: "a common locution was the 'yes, but' argument, that is, racial selection is forbidden *but* the War on Terror is a different context" (Orgad and Ruthizer, 2010, p. 241). In such a context, it was believed that "avoiding enhanced scrutiny of Muslims would be 'an invitation to further terror" (Orgad and Ruthizer, 2010, p. 241). This was also the case with former President Trump's Muslim ban. Delivering the majority opinion of the Supreme Court, Chief Justice John Roberts ultimately concludes that the White House has shown a "sufficient national security justification" (Supreme Court of the United States, 2018, p. 38). It is therefore important to articulate

[3] Carens makes the helpful distinction between criteria of exclusion and criteria of admission: "the former are used to identify people who will not be admitted, the latter to choose who among those eligible for admission will be taken in" (Carens, 2006, p. 104).

why even if there is this "sufficient national security justification," excluding immigrants by ethnicity or race is morally impermissible.

In this chapter, I will make two arguments regarding national security-based immigration restrictions. In the first section, I will argue that it is inconsistent for states to impose such restrictions only for religious extremism, as they do now. I will show that if states are genuinely concerned with national security, then it is not clear why there are immigration restrictions *only* for religious extremism. This should make us question the real motivation behind these restrictions. Yet this on its own is not an argument against national security-based immigration restrictions as one could argue that these restrictions should also be applied to these other cases. In what follows, I will argue that even if these immigration restrictions do contribute towards national security, they are generally not morally justified. In the second section, I will survey some of the empirical literature on national security risks in order to clarify the assumption that these immigration restrictions contribute towards national security. I will consider two potential arguments for why these immigration restrictions are wrong. In the third section, I examine the argument that these national security-based immigration restrictions are morally wrong because they treat would-be immigrants in an unfair way. In the fourth and fifth section, I explore the argument that they are wrong because they are demeaning. I conclude that national security-based immigration restrictions are morally wrong because they are demeaning to would-be immigrants.

Section 1: Is the focus on religious extremism inconsistent?

In this section, I will show that it is inconsistent for states to implement national security-based immigration restrictions only for religious extremism, as they do now, and not for other national security threats. To begin, what are the targets of existing national security-based immigration restrictions? Consider Trump's comments about the Muslim ban. For example, he claimed, "until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life" (Pilkington, 2015). He also called for "a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on" (Taylor, 2015). It is clear that the target of these national security-based immigration restrictions is religious extremism.

In order to see why these national security concerns justify immigration restrictions in cases beyond just religious extremism, we need to consider what we mean by national security. I will draw on Jeremy Waldron's (2010) distinction between two understandings of national security. The first conception of security that Waldron examines is what he calls the pure safety conception. According to this conception, "*I* am more secure against terrorist attack when the probability of *my* being killed or harmed as a result of such attack goes down; and *we* are more secure when this is true *of many of us*" (Waldron, 2010, p. 117). In the context of the laws and policies post-9/11, Waldron notes that this means that security is linked to "the probability that any given one of us will be affected physically by a terrorist outrage" (Waldron, 2010, p. 117).

Waldron raises seven problems with this conception of national security. One issue is that it does not explain why the focus is on terrorist attacks rather than other crimes. If what we really care about is avoiding harm or death, then there are obviously other crimes that would lead to this and that we should therefore be equally concerned with. As Waldron (2010, p. 117) puts it, "the pure safety conception offers no explanation of why we fear death or injury in some guises and not others—why we orient the notion of safety which we are using to form our conception of security towards violent death or injury and perhaps particularly towards violent death or injury at the hands (or as a result of the actions) of a particular sort of assailant, namely terrorists."

The same is true in our case. It is not clear why this pure safety conception would justify excluding would-be immigrants over a fear of religious extremism and not also, say, excluding would-be immigrants from countries that have a high rate of crime because of a strong and powerful mafia. States do not exclude would-be immigrants from the latter states so why do they exclude would-be immigrants from states that are believed to be a source of religious extremism? Thus, this definition of national security does not explain why states implement immigration restrictions only for religious extremism but not for other security threats.

Waldron puts forward a second conception of national security, which he refers to as a deeper notion of safety. He distinguishes between three important

aspects of this understanding of security. The first is economic loss and the loss of one's mode of life: "an adequate (adequately deep) conception of security should aim to protect people's individual and familial modes of living themselves, and not just the life, health, and possessions that are necessary for it" (Waldron, 2010, p. 122). The second important aspect is security and fear: "each person wants not only protection for his or her life, healthy, possessions, and mode of living, but they also want not to be fearful about these things" (Waldron, 2010, p. 123). Third, security requires assurance: "to sustain security … there must be an *assurance* that [terrorists] will be repelled, an assurance that people can count on and build upon in advance of the outcome of any particular attack" (Waldron, 2010, p. 127). Thus, on this deeper notion, security refers not just to "improbability of harm to life and limb, but protection of one's basic mode of life and economic values, as well as reasonable protection against fear and terror, and the presence of a positive assurance that these values will continue to be maintained into the future" (Waldron, 2010, p. 130).

However, it seems that this deeper notion of national security also seems to justify immigration restrictions in cases beyond just religious extremism. To see this, we can go back to the example of a country with a very powerful and murderous mafia. It is hard to see how such a mafia will not disrupt people's lives in the same way that the terrorist groups that the United States is concerned with would. Surely, people would also feel a heightened fear about the possibility of kidnapping, human smuggling, or a sharp rise in illegal drug trade. All these can also be said to disrupt one's basic mode of life and to undermine the assurance that things will go on as they did.

But perhaps the deeper notion of security can pick out a feature of religious extremism that singles it out from other security threats. Religious extremism, unlike other security threats, might be random. By contrast, mafia violence is not random: it is targeted at other mafia members, or people who refuse to pay for protection, for example. Stray bullets apart, large swathes of the population are unaffected. Whereas in the case of terrorism, it is the random impact that makes it so unsettling: anyone could be a target. Thus, the reason why we focus on religious extremism is perhaps because its randomness deeply disrupts our mode of life in a way other security threats do not.

This response is not convincing because we can turn to other examples of national security threats that are also indiscriminate and yet are not taken into account in immigration policy. Consider far-right extremism. Patti Tamara Lenard (2020, p. 6) points out that, "in the United States, for example, between 2009 and 2018, 73 percent of lethal attacks labelled terrorism were committed by far-right extremists, whereas only 23 percent were committed by violent religious extremists." Even abroad, the problem of right-wing extremism seems much more worrying than religious extremism and so states would have more reason to prevent admission on such grounds. At the global level, there are far more crimes committed by far-right extremists than those committed by religious extremists (Lenard, 2020, p. 7).

Unlike mafias, far-right extremism seems to be indiscriminate. Their targets tend to be "minority or disadvantaged groups, including religious, ethnic or cultural minorities" (Lenard, 2020, p. 7). Given that these are very broad groups of people, the violence that characterises far-right extremism seems to be best described as indiscriminate. Moreover, both religious extremism and far-right extremism aim to disrupt citizens' basic mode of life: "both violent religious extremism and far-right extremism intend to instil fear, by committing horrific crimes against innocents, in the hopes that the resultant fear and anxiety will undermine the state's capacities to provide the goods that citizens expect" (Lenard, 2020, p. 7). Thus, both far right extremism and religious extremism have a fairly broad group as a target and aim to be extremely disruptive to society as a whole. Yet states do not restrict immigration on a nationality basis because of the risk of far-right extremism.

My aim here has been to show that it is inconsistent for states to restrict immigration only for religious extremism and not for other national security threats. This should lead us to question if it really is a national security concern that is solely motivating these policies and not prejudice or another reason. That is, if countries have equally strong reasons to implement national security-based immigration restrictions in other cases, why do they not? It seems that it might not be national security concerns that are solely motivating these policies. Of course, one might argue that this gives states reason to implement national security-based immigration restrictions in a wider set of cases. In what follows, I will argue that such immigration restrictions are morally wrong even if they contribute to national security.

Section 2: What are the risks that states are guarding against?

I will argue that national security-based immigration restrictions are morally impermissible even if we assume that they contribute towards national security. Before I proceed, however, I will clarify this assumption. To begin, it is important to note that the likelihood of any given individual being killed by a religious extremist is extremely small in places like the United States. Mueller and Stewart (2021, p. 138) note that "in the United States, for example, some six people have perished each year since 9/11 at the hands of such terrorists—for an annual fatality rate of about one in 50 million for the period." To put this in perspective, "far more Americans are killed each year not only by such highly destructive hazards as drug overdoses or automobile accidents, but even by such comparatively minor ones as lightning, accident-causing deer, peanut allergies, or drowning in bathtubs" (Mueller and Stewart, 2021, p. 139).

What about the likelihood of any given individual being killed by a terrorist attack that is committed by an immigrant? One study found that "including those murdered in the terrorist attacks of September 11, 2001 (9/11), the chance of an American perishing in a terrorist attack on U.S. soil that was committed by a foreigner [between 1975 and 2015] is 1 in 3.6 million per year" (Nowrasteh, 2016). The study also examines this likelihood for each visa category. For example, the chance of being murdered in a terrorist attack by a refugee is 1 in 3.64 billion per year, and this chance is 1 in 3.9 million per year in the case of a tourist on a B visa. The likelihood of being murdered by a terrorist who immigrated is therefore extremely low.

What about the likelihood of being killed by a terrorist attack that is committed specifically by immigrants of the nationalities included in Trump's Muslim ban? As Shane (2017) notes, "since the terrorist attacks of Sept. 11, 2001, no one has been killed in the United States in a terrorist attack by anyone who emigrated from or whose parents emigrated from Syria, Iraq, Iran, Libya, Somalia, Sudan and Yemen, the seven countries targeted in the order's 90-day visa ban". So, the likelihood of any given individual being killed by a terrorist attack committed by an immigrant from the countries included in the Muslim ban is incredibly low.

One might think that these figures are so low precisely because of immigration control and internal monitoring of groups. However, we have strong reason to think that the likelihood of any given individual being killed by a terrorist attack abroad is also very low. Indeed, these risks seem to be very overinflated:

> The vast majority of what is commonly tallied as terrorism has occurred in war zones, and this is especially true for fatalities. But even this has been exaggerated by conflating terrorism with war: civil war violence that would previously have been seen to be acts of insurgency are now often labelled terrorism (Mueller and Stewart, 2021, p. 138).

So, the number of terrorist attacks around the world is probably exaggerated. In fact, it is the overreaction to the risks of terrorism that have caused more damage than terrorism itself. For example, "more than 3000 Americans have died since 9/11 because, out of fear, they drove in cars rather than flew in airplanes, or because they were swept into wars made politically possible by terrorist attacks" (Mueller, 2009, p. 3). Thus, not only is there a very small likelihood of any given individual being killed by a terrorist attack, but the perception that there is a high likelihood can be a harmful exaggeration. States must be careful then to base policy decisions on the actual risk of terrorism rather than subjective risk assessments.

Despite the very low likelihood that any given individual will be killed by a terrorist attack, many have continued to maintain that terrorism warrants an extreme reaction. For example, Jennie Easterly and Joshua Geltzer (2017) claim that the statistics on this issue are beside the point. They write, "so long as human nature yields a reaction to terrorism that shakes domestic politics, redirects foreign policy, and upends regional stability, terrorism demands our attention." In what follows, I will explore two arguments for why it is a morally wrongful way of excluding immigrants and will argue that the second argument is persuasive.

Section 3: Is it unfair?

First, we might think that national security-based immigration restrictions are morally impermissible because immigrants would be treated unfairly. We can take these national security-based immigration restrictions to be a form of

statistical discrimination, which is adverse treatment that is based on statistical information about the individual. These immigration restrictions are a form of statistical discrimination because they exclude individual would-be immigrants on the basis of how likely it is that immigrants of a certain nationality will commit a terrorist attack. It seems intuitively unfair to disadvantage these individual migrants because of the terrorist attacks that their co-nationals have committed. Kasper Lippert-Rasmussen (Lippert-Rasmussen, 2007) considers this fairness-based objection to statistical discrimination more generally: "since being statistically discriminated against involves various costs, it might be argued that statistical discrimination is unjust, provided, at least, that the object of statistical discrimination is not responsible for what others choose to do, because it involves imposing costs on innocents on account of what others choose to do." In other words, "it is unfair that the objects of statistical discrimination are being punished for what others do" (Lippert-Rasmussen, 2007, p. 397).

Lippert-Rasmussen argues against this account of the unfairness of statistical discrimination. He points out that it does not seem always unfair to burden people because of what others have done. To show this, he gives the following example. Suppose that we have an equal distribution of the appropriate food between two groups in a population: vegetarians and non-vegetarians. Then the following happens:

> A subgroup within the non-vegetarians begins to raise cattle. These sometimes stray into cultivated areas thereby depriving the vegetarians, who are all farmers, of their source of food and income, but leaving the other non-vegetarian subgroup, the hunters, unaffected. Suppose the only way to prevent the farmers from becoming very badly off is to impose restrictions on movement on all non-vegetarians, something that will damage the interests of members of the hunter subgroup in a minor way. Surely, here, it would not be unreasonable for the hunters to accept such a minor, uncompensated loss to prevent much greater loss to others and it would not be unreasonable of the vegetarian farmers to refuse to accept a great loss to avoid minor harmful restrictions on the innocent hunters on account of other people's choice, that is, the choice of some of the non-vegetarians to raise cattle (Lippert-Rasmussen, 2007, p. 399).

Lippert-Rasmussen concludes that "it may not always be unfair to impose uncompensated burdens on people on account of what others choose to do" (Lippert-Rasmussen, 2007, p. 399). Does this argument carry over to the immigration context? It does not, because the imposed burden is much weightier in the immigration case than in Lippert-Rasmussen's case. In his example, the burden is the "restrictions on movement," which is "a minor, uncompensated loss." By contrast, the uncompensated burden in the case of national security-based immigration restrictions is usually far from minor. This will of course depend on the specific case, but the burden will often be loss of all the educational, employment, and cultural opportunities of a state. This is clearly not just a minor burden that is imposed on migrants. Lippert-Rasmussen's example loses much of its force if the imposed burden is weightier than the one he presents in his example. That is, it is not clear that the hunters should accept very high, uncompensated costs for the sake of the vegetarian farmers because of what the cattle herders have done.

However, perhaps it would be justified to impose very high, uncompensated costs if, without the statistical discrimination, some will be left significantly worse off. That is, it would be justified to impose very high, uncompensated costs on the hunters – because of what the cattle herders have done – if the vegetarians will otherwise be left significantly worse off. Are the high, uncompensated costs to migrants also justified because citizens will otherwise be left significantly worse off as a result of terrorism? The answer seems to be no because, as I have discussed in the previous section, it is extremely unlikely that any given individual will be killed by a terrorist attack. By analogy, it seems unfair to impose very high restrictions on the movement of the hunters – because of what the cattle herders have done – only to avoid an extremely small chance that any given vegetarian will have their produce ruined.

Let us take a step back: are there morally relevant differences between this example and the case of immigration? Some would argue that it is wrong to restrict the movement of citizens and residents in a way that it is not when it comes to immigrants.[4] The justificatory burden for movement restrictions within a state is higher, if we assume a right to exclude. This might explain why we intuitively think it would be wrong to impose high restrictions on the

[4] For more on this see, Christopher Heath Wellman (2016).

mobility of the hunters for an outcome that is extremely unlikely. But since we do not think it is equally wrong to restrict the movement of immigrants into a country, states might be permitted to impose high restrictions for an outcome that is extremely unlikely. Thus, Lippert-Rasmussen's argument might be successful in the case of immigration: it is *not* unfair to impose national security-based immigration restrictions if the evidence is there.

Section 4: Is it demeaning to citizens?

I will argue that national security-based immigration restrictions are morally impermissible because they are demeaning. In fact, the United States in particular has long used national security as a way to exclude those who it viewed as inferior. As Gillian Brock (2021, p. 71) puts it, "the United States also has a long history of using national security as a reason to exclude all sorts of categories of people that were thought to be undesirable by governments of the time, such as homosexuals and those suspected of being communists because their values leaned left of those in power." There is something demeaning then about the ways in which countries use the national security criterion to exclude certain immigrants.

Who is demeaned by the national security-based immigration restrictions? Is it the immigrants themselves or the people living within the state? As we have seen in chapter 3, political theorists have distinguished between these two potential targets of ethnic or racial discrimination in immigration policy. One view, which I considered in chapter 3, holds that these policies are morally wrong because they are demeaning to citizens and residents who belong to the targeted ethnicity or race. As Michael Blake (2002, p. 284) puts it, "the state making a statement of racial preference in immigration necessarily makes a statement of racial preference domestically as well." For example, it would be wrong for Australia to exclude Asians on the basis of their ethnicity because it would be demeaning to all Asian Australians "who are thereby treated as second class citizens" (Wellman, 2020).

Are national security-based immigration restrictions also morally wrong because they demean people within the country? This argument is more persuasive in the case of racial or ethnic discrimination in immigration policy because we do think that citizens or residents should not be disadvantaged on the basis of their race or ethnicity. But the same does not seem to be true of

adverse treatment that is based on nationality. For example, non-citizens such as international students are not entitled to take out any loans, have certain work restrictions depending on their visa, and so on. There is not only differential treatment within a state between citizens and non-citizens but also differential treatment based on nationality. For example, there are privileges granted to those coming from nations with historic associations in the country such as the Irish in Britain, and those who come from Commonwealth countries have additional voting rights. Unlike the case of race or ethnicity, differential treatment on the basis of nationality does not seem very controversial. Nationality-based immigration restrictions will therefore likely not be demeaning to residents of that nationality.

Perhaps national security-based immigration restrictions *will* be demeaning to residents because of the sort of thing they prevent immigrants of certain nationalities from doing. For example, it would be insulting for a state to decide that all lawfully resident non-citizen Middle Easterners could no longer use public transportation because of national security concerns. Similarly, one could argue that national security-based immigration restrictions are demeaning to residents because they are a restriction on movement, which is something that this example shows would be perceived as demeaning. But there is a counterexample to this: freedom of movement within the European Union. This is obviously nationality-based: France grants free entry to, for example, Germans but not to, for example, Canadians. Canadians may find this inconvenient, but they would not find it insulting. A Canadian who now lives in France would not be demeaned by the fact that Canadians wanting to enter have to get visas while Germans do not. Thus nationality-based immigration restrictions are not always demeaning to residents.

There is, however, one way around these problems. In the case of the Muslim ban, we could argue that it is demeaning to Muslim Americans as it is a ban of immigrants from Muslim-majority countries. As with the case of ethnicity or race, we clearly do not think that adverse treatment on the basis of religion is permissible within a state. The national security-based immigration restrictions would therefore lead to the problems that Blake identifies: Muslims in the United States will be given a second-class status in society. Indeed, this was a common concern about the Muslim ban. In her dissent to Trump's Muslim travel ban, Justice Sonia Sotomayor argued that the ban would make

Muslim Americans "outsiders, less favoured members of the political community" (Hosein, 2019, p. 91). As Hosein notes, this concern "is supported by Blake and Wellman's point [that] refusing to admit members of an ethnic group in that country has implications for the members of that ethnic group who live within that country. The same goes for religious groups" (Hosein, 2019, p. 91). Another way of making the same argument is to view the travel ban as a ban on Arab immigrants. The ban can then be said to be demeaning to Arab Americans.

There are two potential issues with this line of reasoning – the first less worrying than the second. First, proponents of the Muslim ban have argued the ban is formally nationality-based. On this line of thought, it may be interpreted both by Muslims outside and Muslims inside the US as targeted at them, but this is a contingent feature of the case. However, given that much of Trump's commentary on the ban was about Muslims specifically, it is obvious that Muslim Americans will find the ban demeaning. The second problem is more powerful. Would this ban be perceived as demeaning by Muslims or Arabs within the United States if it is portrayed as a way of dealing with the issues of Arabs and Muslims who are *not* from the United States? Hosein does point out that "defenders of the ban will say that it merely points out some issues with Muslims out there, beyond the border, not Muslims within the country" (Hosein, 2019, p. 91), Perhaps that way the Muslim travel ban avoids being demeaning to Muslims or Arabs within the United States. Yet Hosein notes that this argument is dubious, given that Trump did not make such a distinction but instead targeted Muslims in general in his comments about the ban.

But what if Trump clearly stated that this ban is meant to deal only with the issues of Muslims or Arabs who come from countries other than the United States and not Muslims and Arabs from the United States? Hosein's response suggests that such a ban would not be demeaning to American Muslims or Arabs because it is only the non-American Muslims or Arabs who are portrayed as inferior. In what follows, I will argue that national security-based immigration restrictions are wrong because they are demeaning not to the citizens or residents but to the immigrants themselves.

Section 5: Is it demeaning to the would-be immigrants?

The second argument often given against racial and ethnic discrimination in immigration policy wrong is that it is demeaning to the immigrants themselves. For example, David Miller (2014, p. 204) writes, "to be told that they belong to the wrong race, or sex (or have hair of the wrong colour) is insulting, given that these features do not connect to anything of real significance to the society they want to join." I will similarly argue that national-security based immigration restrictions are morally wrong because they are insulting or demeaning to the would-be immigrants themselves to be told that they belong to the wrong nationality.

What exactly does it mean for something to be demeaning? As I discussed in chapter 3, Hellman takes an act to be demeaning not if the person subjected to the act *feels* demeaned but if it tracks a wider, problematic context. The racial profiling of black Americans is one example she uses to illustrate her account. She considers an example of convenience store employees who watch black teens more closely than others. Hellman argues that this racial profiling sends a demeaning message to the black teens: "because its content tracks familiar cultural stereotypes about blacks and crime, the practice also expresses something more troubling such as 'blacks are naturally disposed to be criminals'" (Hellman, 2014, p. 237). When the black teenagers notice that they are being more closely watched, they will find it demeaning because they will naturally assume that the shop owners hold racist views like much of the society. Thus, discrimination is demeaning "when a generalisation tracks negative cultural stereotypes, profiling expresses something more than the claim contained in the generalisation itself" (Hellman, 2014, p 243).

Note that whether a certain policy is demeaning depends on the context. Consider the following example from Hellman:

> In our culture, ordering African Americans to the back of the bus is conventionally understood as denigrating. This is not because there is something worse about the back of the bus, however. Teenagers covet that spot. Ordering blacks to the back of the bus is dramatically different because it is *blacks* that are ordered to the *back* and because of the history of racial segregation in public transport and much else in this country. In addition the fact that one *orders* blacks to the back makes a difference in

> what one does—ordering (rather than requesting, for example) has a greater potential to demean (Hellman, 2011, p. 27).

Similarly, different things will be demeaning in other countries with their own histories. Moreover, even when there is no history of a specific policy being used to denigrate, it can still be demeaning. For example, suppose that a lecturer in a US university separates the auditorium on the basis of race (Hellman, 2011, p. 28). Even though there is no problematic history of putting one race on a specific side of the auditorium, this would still be demeaning given the history of racism in the US. As Hellman points out, "this is because separation on the basis of race has a socially or conventionally understood meaning in our culture—particularly an *order* of racial separation" (Hellman, 2011, p. 28). So, the context matters to whether a policy is demeaning: it matters not just whether a specific policy has been historically used to denigrate but also whether the group that is targeted has been historically denigrated in similar ways.

My claim is that national security-based immigration restrictions are morally wrong because they are demeaning to immigrants. However, before I proceed, it is important to return to a question that I touched on earlier: states should not treat their own citizens in demeaning ways, but does the same apply to immigrants? I want to here briefly consider why it does matter if a state demeans those who come from other countries. For example, one of the moral wrongs of colonialism was the ways in which the colonisers demeaned the cultures of the colonised:

> At least one major reason why colonialism was deeply wrong is the way it created racial and religious hierarchies, including through symbolic means. For example, colonizing powers often enforced new hierarchies of status according to which local forms of dress, customs, and so on came to be treated as signs of backwardness and indicators of the need for "civilizing" rule by ethnic and religious superiors (Hosein, 2019, p. 91).

Colonialism was therefore partly maintained by putting the culture of the colonised in an inferior position. This is a wrong that states now denounce as one of the many wrongs of colonialism. Especially in light of these wrongs, states should be wary of policies that are demeaning to those who come from other countries. It is true that colonialism is a social and political relationship

between colonisers and colonised whereas inter-state relations are easier to see as relations between independent groups. This is a point that I will return to next section, which I will discuss the reasons why the states imposing such immigration restrictions and the affected states are more connected than we might think.

Just as the discrimination in Hellman's examples is demeaning because it tracks racism in America, national security-based immigration restrictions such as Trump's Muslim ban are demeaning because they track a pernicious and negative stereotype of Middle Easterners. The stereotype of Middle Easterners is that they are inherently – because of their religion or culture – more likely to be terrorists. This is a very widespread stereotype in American media. As Muniba Saleem and Craig A. Anderson (2013, p. 84) note, "the frequency of Arabs and Muslims in American media is more common today than 10 years ago, but negative images are much more prominent than positive ones … Across these outlets, Arabs and Muslims are frequently linked with violence and terrorism, perpetuating the stereotype that Arabs and Muslims are terrorists." It is important to emphasize that this stereotype has been observed across many different outlets. This negative stereotype is widespread in newspapers (Nacos and Torres-Reyna, 2007; Powell, 2011), movies and TV shows (Shaheen, 2009), games (Šisler, 2008), children's literature (Schmidt, 2006), and much more.

Of course, those who are outside the United States have to be aware of these stereotypes in order to be demeaned by them. However, it is hard to see how they would be immune to this when, as I have noted, negative stereotypes are found in a wide variety of media outlets. It thus seems inevitable that immigrants from the Middle East will make a connection between the national security-based immigration restrictions and these negative views of them. As a result, these immigration restrictions will be perceived as demeaning by these immigrants.[5]

[5] What if immigration restrictions did not target groups who are associated with negative stereotypes? While this is more of a hypothetical point as in reality these immigration restrictions do target groups that are associated with negative stereotypes, my argument does leave open the possibility that national security-based immigration restrictions would not be demeaning in the absence of such a context.

Are national security-based immigration restrictions only demeaning when they take the form of bans? What about policies that instead make it more difficult for those who come from certain countries to immigrate rather than banning them outright? For example, in her dissent to the Muslim travel ban, Justice Sonia Sotomayor "suggested a policy of rigorous individualized screening, which would look at the threat posed by particular people rather than placing a blanket prohibition on immigration from the countries singled out by the ban (and she claimed that there was already a rigorous congressionally approved scheme for such vetting)" (Hosein, 2019, p. 93). However, if the policy is that the rigorous screening only applies to those who come from certain places, it is hard to see how this would not be demeaning. This would single out immigrants of a certain nationality, and these immigrants would then similarly make the connection between these policies and the stereotypes of them.

Section 6: Objections

In what follows, I will consider two objections to my argument that national security-based immigration restrictions are demeaning to would-be immigrants. First, one might argue that these immigration restrictions are not demeaning, given who is doing the excluding. Suppose that Trump bans all immigrants from Libya on the grounds that all Libyans pose a security threat. Why should Libyans be demeaned when they discover this? If many of them do not take Trump's views seriously, why would they be insulted by what he thinks of them? In general, it seems that I would not find someone's views about me insulting if I do not care about what they think of me. For example, I would not really be insulted if a notoriously anti-social person thinks I am no fun. I simply would not care what someone like this thinks about how fun I am socially.

But even if we do not take a person's views seriously, we can still be insulted by them. This is especially true of cases where this person has some power over the group that they are demeaning. In fact, this is an important part of Hellman's account. She argues that an act is demeaning if "expresses that a person or group is of lower [moral] status" *and* is done by someone who has "sufficient social power for the expression to have force" (Hellman, 2018, p. 102). Consider the case of Muslim Americans during the Trump administration. Even if some Muslim Americans think Trump is unreasonable, they could still find his rhetoric against Muslims demeaning. But why exactly would they find

this insulting if they do not take him seriously? One important reason is that the President's views might influence or embolden their fellow citizens to adopt similar views. Another is that it might shape the policies that affect everyday life for Muslim Americans. So, even if Muslim Americans do not take Trump very seriously, they could still be demeaned by his views because of the power he holds over their lives.

The same is true of national security-based immigration policies: immigrants can be demeaned by the politicians that implement these policies because of the power they hold over their lives, even if they do not take the politicians very seriously. For example, the US also holds significant power over some states in the Middle East:

> But the United States still interacts substantially with, and exerts power over, various Muslims and Muslim-majority countries. Consider the many Muslim citizens of Iraq, Pakistan, Syria, and so on, who were – before the ban and at the time of its enactment – cooperating closely with the US government. They have fought alongside US soldiers, acted as translators on behalf of the United States, approved US use of their airspace, etc… (Hosein, 2019, p. 92).

This is not the only way that the United States interacts with people who are affected by the Muslim ban. As Hosein (2019, p. 92) notes, "the US government also exerts power in these areas of the world, even when it is not formally ruling over them. It influences elections, builds military bases designed to change the balance of power in the region, and so on." In many ways then, the United States holds significant power over those who are affected by the Muslim ban. Immigrants would therefore be demeaned by these immigration restrictions even if they do not take the views of US politicians very seriously.

There is a second potential issue with the argument that national security-based immigration restrictions are morally wrong because they are demeaning to would-be immigrants. What if the statistical generalisation underlying this policy is true despite the demeaning message it sends? In other words, if a statistical generalisation about a group is valid, we might want to take it into account even if it is perceived by the group as demeaning. For example, it may be demeaning to men to say that 'men are more violent than women.' But does

that mean we should not have a social policy that responds to that fact if it turns out to be true? The generalisation itself is either true or false. If it's true, why is it wrong to adopt policies that reflect it? In the same way, if migrants belonging to certain groups are statistically more likely to commit terrorist acts, why would it be wrong to have more police surveillance of migrants from the groups in question?

Lippert-Rasmussen makes a similar objection to arguments that claim that statistical discrimination is morally impermissible because it violates one's claim to be treated as an individual:

> Suppose we have reliable statistical information that racially motivated hate crimes are always committed by criminals from a race (however defined) different from that of the victim of the crime. It would seem obviously permissible for the police to base its investigation of such crimes on this assumption, and thus to concentrate on interviewing people who are not of the same race as the victim and known to have been in the vicinity of the scene of a racial hate crime. The complaint 'You can't do that—you must treat me as an individual' strikes one as shrill here (Lippert-Rasmussen, 2007, p. 394).

Similarly, we can say that the complaint "This is insulting" might also strike one as shrill here. If we know that each crime is committed by criminals from a race other than that of the victim, then we should clearly focus on all other groups even if it is demeaning to the groups being investigated.

I grant that the demeaning nature of a policy has to be weighed against the risks of not having the policy. In Lippert-Rasmussen's example, the demeaning nature of the policy might not outweigh the risks of not having this policy as we know for certain that the crime is committed by people of a race other than that of the victim. Under these circumstances, why should the police spend time investigating people of the victim's race just to avoid demeaning a certain group? We can imagine that this would lead to a delay in capturing the criminal and preventing them from committing further crimes. In such a case, the demeaning nature of the policy does not seem to outweigh the risks of not implementing the policy.

But we do not have this kind of certainty in the case of national security-based immigration restrictions. As I have discussed in the second section, it is in fact extremely unlikely that any given individual will die from a terrorist attack. In Lippert-Rasmussen's example, we know for certain that the criminals are of a different race than that of the victim. What should we think of cases where we do not have the kind of certainty present in Lippert-Rasmussen's example? In the domestic case at least, it seems that the risks to any given individual must be very high in order to justify a potentially demeaning policy. It seems morally problematic for a policy to demean, say, an ethnic minority just because of a very low chance that something bad might happen to any given individual.

Let's concede that at the international level the risks do not have to be as high in order to outweigh the demeaning signals sent by a policy. But we have established that the demeaning character of a policy is a weighty concern, so the risks of the alternative for any given individual do have to be somewhat high or at least not so low in order to outweigh this. However, as we have seen in the second section, the likelihood of any individual being killed by a terrorist attack is extremely small. Therefore, the demeaning signal sent by national security-based immigration restrictions *does* seem to outweigh the risks of not having this policy, given how low these risks are. In other words, the security gains are so marginal that they cannot outweigh the harm done by the demeaning signals.

Conclusion

This chapter showed that a third way in which discrimination in immigration policy can be wrong is if it is demeaning to would-be immigrants. In doing so, I focused on the case of national security-based immigration restrictions. I argued that what makes such differential treatment of would-be immigrants by nationality wrong is that it is demeaning to would-be immigrants. This and the two previous chapters conclude my application of the pluralist account of discrimination to immigration policy. In these three chapters, I've argued that discrimination in immigration policy can be morally wrong for three reasons: if it fails to select by merit, if it demeans would-be immigrants, and if the selection unfairly disadvantages certain groups of people. As I argued in the second chapter, this pluralist account gives us a richer and more comprehensive picture of discrimination in immigration policy. In the next chapter, I will explore one suggestion about what should change in immigration policy in order to address this discrimination.

Chapter 7: Lotteries as a Possible Solution?

Introduction

Lotteries are relevant to the problem of discrimination in immigration policy because they are often viewed as a solution to this discrimination. For example, Christopher Heath Wellman (2011, p. 144) points out that "after long histories of egregious prejudice, some countries have adopted lotteries to determine who may enter the country." If, as I have been arguing, significant parts of the immigration policy of countries in the Global North are discriminatory, could one solution be to have lotteries instead? A lottery that is open to all would not have any of the selection criteria – such as age requirements or education requirements or restrictions by nationality – that I argued are discriminatory. Does this mean that lotteries should be implemented?

Indeed, states sometimes select immigrants by lottery. For example, the U.S. selects immigrants by lottery for the H-1B visa for skilled workers. Last year, more than 200,000 people applied for the H-1B visa, and only 85,000 were accepted via the lottery. The U.S. also runs the Diversity Visa Program, otherwise known as the Green Card Lottery, which allocates 50,000 green cards by lottery. Each year, over 20 million people apply for the lottery. Canada, too, has used a lottery to allocate 10,000 family reunification places to Canadians wishing to bring in parents or grandparents. New Zealand also has a migration scheme called the Pacific Access Category, which grants residency each year via lottery to migrants from Fiji, Kiribati, Tonga, and Tuvalu.

There has been much controversy surrounding lottery-based programs that select immigrants and in particular, the Diversity Visa Program in the past few years. Former president Trump has been quick to level the charge that this program compromises national security. In line with the rest of his comments about the program, he claimed that, of those selected through the Diversity Visa Program, "one is a murderer, this one robbed four banks, this one I better not say, this one another murder, ladies and gentlemen, another murderer." However, as many have pointed out, most of Trump's claims about the Diversity Visa Program are blatantly false. Moreover, supporters of the program have been equally quick to point out its virtues. For many, the program is an exemplification of "the stereotypical American dream: chance, luck, opportunity, egalitarianism, diversity (Hing, 2017).

Should states select immigrants by lottery? This question has largely been ignored by philosophers in the normative literature on migration.[1] In this chapter, I will argue that lottery-based programs that select immigrants are not ideal either as an unbiased decision-making process or when justified on grounds of fairness or increasing diversity. I draw on what I take to be the three strongest justifications that have been used to defend lotteries in general, which I then apply to the specific case of immigration. The key takeaway of this chapter is that while lotteries are non-discriminatory in the sense that they avoid the criteria I argued are discriminatory, they are nevertheless not an appealing alternative to discriminatory policy. The lesson to be drawn here is that anti-discrimination cannot be the only standard by which we judge immigration policy. An immigration policy can be unappealing even if it avoids discrimination.

The chapter will proceed as follows. In section 1, I examine the argument that lotteries should be implemented because they "sanitize" the immigration selection procedure of bad reasons and biases. In section 2, I consider the fairness-based justification of lotteries, which claims that lotteries are a fair way of selecting would-be immigrants because it gives them all an equal chance to enter. In section 3, I consider the argument that an immigration lottery should be adopted as a way of increasing diversity in the immigrant population. I show that none of these arguments succeeds in its own terms. However, in section 4, I suggest that lotteries that are part of a wider immigration regime can sometimes be justified as a second-best policy device. I illustrate my argument by focusing on the case of the Green Card Lottery. It will generally be easier to defend existing lotteries on this basis than to argue for introducing new ones. However, the point that lotteries that form a small part of the immigration policy might be justified as a second-best policy does not undermine the argument that lotteries in general are not an appealing way of avoiding discrimination in immigration policy.

[1] There are two exceptions to this. First, Michael Blake (2020, p. 124-7) briefly considers this but focuses on randomization that results from idiosyncratic desires. By contrast, I consider potential justifications for selecting immigrants by lottery more broadly. Second, Aveek Bhattacharya (2015) examines whether various defences of open borders could justify selecting immigrants by lottery. By contrast, I am interested in whether defences of lotteries in general could apply in the case of immigration.

Section 1: The sanitizing justification of lotteries

In this section, I will consider the argument that states should implement a lottery to select immigrants in order to sanitize the decision-making process of bad reasons that may lead selectors to favour a particular person or group, or unconscious biases that have a similar effect. Here I follow Peter Stone's (2011) justification of lotteries.[2] On his account, we should use lotteries only when we are liable to be influenced by bad reasons or by unconscious biases, while there are no good reasons for selecting between people. To clarify, we can distinguish the two claims here. First, lotteries obviously stop us from consciously using any reasons to select a particular person or group and prevent us from being influenced by unconscious bias. Thus, lotteries are morally attractive, according to Stone, when there are bad reasons to favour a particular person or group – "the kinds of reasons that people would (or at least should) be actively ashamed to allow into their decisions" (Stone, 2011, p. 36) – or unconscious bias that we have reason to think might in fact distort the decision-making process. The second part of Stone's account is that if there are good reasons for selecting between people, then it does not make sense to use a lottery. We should obviously just choose the person using the good reason we have rather than use a lottery, which excludes all reasons from the decision-making process.

To illustrate Stone's view, suppose that a mother is trying to choose which one of her children should receive a family heirloom. Each child wants the heirloom, but none of them wants it more than the others do. Further suppose that the mother knows that she has a tendency to prefer her sons over her daughters because of a bias that she finds it hard to control. In this case, Stone's account tells us that the mother should use a lottery to allocate the family heirloom because there are clearly no good reasons to appeal to – we assumed none of them wants it more than the other – and there is unconscious bias that the mother might be influenced by.

Returning to the immigration context, the question is now whether we think there are bad reasons a state may use to favour certain immigrants, or unconscious biases it might be influenced by, *and* no good reasons for selecting

[2] I follow philosophers such as Jon Elster in distinguishing between the argument for lotteries based on the sanitizing effect and the argument for lotteries based on fairness. However, it is worth pointing out that Stone argues that the argument from fairness is essentially just a special case of the sanitizing effect (Stone, 2010).

between would-be immigrants. If that is true, then it follows from Stone's account that we should use a lottery to select immigrants. There is strong support for the claim that immigration selection procedures tend to be influenced by unconscious biases against certain immigrant groups. Fatma Marouf highlights the ways in which this happens in the case of immigration judges and notes that "studies using the [implicit bias Implicit Association Test] have replicated the existence of implicit attitudes towards many marginalised groups, including, but not limited to, racial and ethnic minorities, Muslims, women, and homosexuals. Since such marginalised groups routinely appear before immigration judges, especially in asylum cases, it is surprising that the role of implicit bias in immigration courts has not yet been scrutinised" (Marouf, 2011, p. 427-8). There is also strong support for the claim that immigration selection procedures tend to use bad reasons to select one immigrant over another. Not only do states sometimes use obviously bad reasons to select immigrants – as we have seen in chapter 6, this is the case with the Muslim ban – but also, as I argued in chapter 5, even ostensibly unproblematic selection policies such as skill-based selection policy can be discriminatory. Thus, if a state is concerned that its policy-makers might use bad reasons to select one category of immigrants in preference to another, and/or that its border officials are liable to be influenced by unconscious biases against certain immigrants, then it would follow from Stone's account that such a state should use a lottery to select immigrants as a way of sanitizing the selection procedure of these bad reasons and unconscious biases.

However, we must also consider Stone's second requirement for using a lottery, namely that there should be no *good* reasons for choosing particular candidates in preference to others. It seems that in the immigration case there are likely to be such reasons, whether on the side of the receiving state or on the side of the immigrants themselves. We can express this by saying that some immigrants will have stronger claims to enter than others. In that case, despite their desirable sanitizing properties, the use of lotteries appears not to be justified.

Especially because I will also rely on this point in the later section, it is here worth pausing to examine what we mean by immigrants having claims to enter. Since we are assuming for the sake of argument that states have the right

to exclude, having a *claim* to enter cannot mean having a *right* to enter.[3] I propose that a person has a claim to some good when there is some morally relevant reason why she should have that good. This is something less than a right, because often there will be several people with competing claims to the same good. In some cases, the good should be given to the person with the strongest claim, who will then have a right to it; in other cases, where the good is divisible, it should be divided up in proportion to the strength of different claims. Claims can be supported by reasons of different kinds, but note that merely *wanting* to have the good will not in normal circumstances be sufficient to generate a claim, whereas, for example deserving it or needing it may well do.

Applying this to the case of would-be immigrants, although all by definition must want to enter, only some will have reasons to enter of the kind that can support claims, and these typically will vary in strength. It is not necessary for present purposes to specify what can count as a relevant reason in this context, but by way of illustration, some will have claims based on the contribution that they can make to the economy of the receiving state, while others perhaps have claims based on the opportunity that entry will give them to acquire special skills that they can only acquire by studying in that country, and so forth. These claims do not translate directly into a right to enter, because there may be more claimants than there are entry places that the state is willing to offer. So, Stone's justification of lotteries implies that the would-be immigrant with the strongest claim should be admitted – a lottery should therefore not be used – but *not* that any would-be immigrant with a claim to entry should be admitted.

Finally, I assume for the sake of argument that these claims do have sufficient force to undermine the case for using a lottery to select immigrants according to Stone's justification for lotteries.[4] Recall that for Stone, a lottery is justifiable as a selection device only when a) using it will sanitize the system against bad reasons and unconscious biases and b) there are no good reasons for selecting some rather than others. Where immigrants have claims to enter of

[3] For much more on the many differences between claims and rights, see Alan White (1982).
[4] It is plausible to assume that states have duties of justice to select in certain ways, even if we assume they do not have duties to admit would-be immigrants. This is similar to how a company, for example, would be free to decide whether to hire employees or not, but if they decide to do so, they must select employees on defensible grounds.

varying strengths, the second condition will not, in general, be met. This still leaves open the possibility that a lottery is the preferred way of selecting for entry within groups all of whose members have equally strong claims. We might think of the following two examples as realistic instances in which the group of would-be immigrants all have an equal claim to enter a particular society. The first example is a group of would-be immigrants who have all been accepted to study for undergraduate degrees at various universities and are now applying for student visas to take up their offers. We might think that all have an equal claim to entry because they all need the undergraduate degree from the receiving state in order to pursue their choice of careers. The second example is a group of would-be immigrants all applying for a work visa. We might think that this is also a case in which all have an equal claim to enter because all equally need the job in the receiving state, again to pursue their choice of careers.

However, even if lotteries are justifiable when there are equal claims, claims to entry are rarely, if ever, equal. Consider the group of would-be immigrants all applying for a study visa for their undergraduate degrees. Even within such a group, some arguably have a stronger claim to entry than others. For example, does a student come from a state where there are few educational opportunities? Or is the degree they hope to study for only available in the state they are trying to enter? Or does the student have reduced opportunities to travel to other states for her education? Consider also the case of a group of would-be immigrants all applying for a work visa. Here, also, some arguably have a stronger claim to entry than others. For example, has someone lived or studied in the receiving state before applying for the work visa and so has an established life there? Does a would-be immigrant have no options other than this job to pursue their career ambitions? So, even within well-defined subgroups of immigrants, it seems likely that there will often if not always be some who have stronger claims to enter than others. And this defeats the sanitizing argument for lotteries in the form presented by Stone, which requires that are no such unequal claims.

Section 2: The fairness justification of lotteries

I will now examine the fairness-based argument for implementing a lottery. This is an intuitive and common rationale for lottery-based programmes for selecting immigrants. For instance, Brian Donnelly, the congressman who

sponsored the first Green Card Lottery, explained that the programme was "just a matter of fairness. No one area of the world should have access to the American dream at the expense of others … A lottery would be the fairest way, no favouritism. We literally couldn't think of a fairer way to do it"(Jamieson, 2017). Should lotteries be implemented because they are a fair way of selecting immigrants?

What exactly do we mean when we say a lottery is a *fair* way of selecting immigrants? We generally have the intuition that it is fair because it gives all immigrants an equal *chance* to be selected. I will here distinguish between the weak fairness view and the strong fairness view and consider each in turn.[5] The weak view claims that we have this intuition only when claims to enter are equal. To motivate this view, notice that we do not think we should use a lottery to, say, allocate a pill to one person in a group if only one of them will die without it. But we do think that we should use a lottery to allocate the pill if everyone in the group will die without it. Thus, the weak view states that it is fair to select immigrants by lottery only when claims to the good – in our case, the claim to enter – are equal. The problem with this, as mentioned above, is that claims to entry are rarely equal. Recall, even in the case of a group students applying for a study visa, some have a greater claim to entry than others. For example, some might not be able to study their subject of choice except in the receiving state. The weak view is therefore not very persuasive in our case because there will often if not always be no realistic case of a group of immigrants with equal claims on all relevant dimensions.

However, here one might argue that we can think of immigration cases in which claims to enter are equal. For example, we can imagine a group of equally well-off students from the same country applying for a student visa to study the same subject that is not available in their country. Perhaps, in this case, the students all have an equal claim to enter, and a lottery would therefore be appropriate on the weak fairness view. But, even in such a case, it is hard to imagine that some students will *not* have a stronger claim to enter. For example, one student might have a stronger claim to enter because her family expects her to be the primary breadwinner. Thus, the weak view does not seem very persuasive in our case because there will be no realistic case of a group of immigrants with equal claims on all relevant dimensions.

[5] I follow Jon Elster (1989, p. 113) in making this distinction.

Now, consider the strong view that holds that *even* when some have a stronger claim, a lottery is still a fair way to select immigrants because it gives each an equal chance. While in the previous case we considered a lottery that selects only among those with equal claims to the good, now we are considering a lottery that selects even among those with varying claims to the good. There are two ways of fleshing out the strong fairness view. First, we might think that a lottery offers "surrogate satisfaction" for those who do not win. A prominent statement of this comes from John Broome (1990). In cases such as the immigration one where some have a stronger claim to an indivisible good, Broome suggests the following:

> A lottery at equal odds may be fairer than giving the good directly to the candidates with the strongest claims. This depends on a complicated judgment. The result of the lottery will generally be that the good goes to the candidates who do not have the strongest claims. This is less fair than the result of giving it directly to those who do. The likelihood of this less fair result will have to be weighed against the contribution to fairness of the lottery itself (Broome, 1990, p. 98-99).

What is the "contribution to fairness of the lottery itself"? Broome takes this to be the surrogate satisfaction offered by a lottery. Broome (1990, p. 100) writes, "a lottery provides at least a surrogate satisfaction: a chance." The satisfaction here, according to Broome, is that "if you have a chance of getting the good you may actually get it" (Broome, 1990, p. 98). However, his version of the strong view does not justify selecting immigrants by lottery. His account, as we have seen, tells us that we should use a lottery only when the unfairness of not giving the strongest claimants a right to the good in question is outweighed by the fairness of providing this surrogate satisfaction to all. In the immigration context, it is hard to see how the unfairness of giving the right to entry to people other than the strongest claimants can be outweighed by the fairness of this surrogate satisfaction. For example, in the study visa case, it would mean that the unfairness of giving a right to entry to a student who has plenty of resources and opportunities to study elsewhere over a student who has no opportunities to study elsewhere, e.g. because of a travel ban, is somehow outweighed by the fairness of giving equal chances to both applicants. Or in the work visa case, it would mean that the unfairness of giving a work visa to a person who never

lived in the receiving state before over someone who has lived there for a long period and has an established life there is somehow outweighed by the fairness of giving an equal chance to both applicants. This seems to be an implausible claim.

However, one might argue that I do not seriously consider how the fairness of the surrogate satisfaction of giving each one an equal chance could outweigh the unfairness of giving the good to anyone other than the strongest claimants. I want to show that this is generally only plausible in cases where not giving the good to the strongest claimants is not very high stakes. To illustrate, compare the two following examples. First, suppose we again have the mother trying to choose who among her children to give the family heirloom to. Now suppose that all of them have a strong claim to the heirloom – some want it as a decorative piece for their homes and others want it in memory of their grandmother – but one daughter has the strongest claim because she grew up playing with the heirloom and so has the strongest emotional connection to it. In this case, it seems at least plausible that the unfairness of giving it to someone other than the daughter could be outweighed by the fairness of giving all of them an equal chance. In the second case, suppose that the mother is trying to choose which of her children will receive a certain pill. We can assume that all have a strong claim to it, e.g. they all need it to cure the discomfort they are suffering from, but that the daughter has the strongest claim because she will suffer discomfort *and* will be left paralysed without the pill. In this case, we do not think that the unfairness of giving it to someone other than the daughter could be outweighed by the fairness of giving an equal chance to all. The reason for this is that, unlike the case of the family heirloom, not giving the daughter the good in the second example is high stakes because it will leave her paralyzed. The immigration case is similar to the second one because not giving the right to entry to the strongest claimants is typically very high stakes. It can mean losing out on the only education opportunity the migrant has, missing out on the job that the migrant needs for their career ambitions, and so on. The migrant case is much closer to the pill example than to the heirloom example. Thus, the immigration case does not seem to be of the kind in which the unfairness of giving the good to anyone other than the strongest claimant is outweighed by the surrogate satisfaction of giving an equal chance to all.

Yet, here one might point to two disanalogies. The first is that only one child suffers the serious cost in the pill case, but more migrants than a state will plausibly admit will suffer a serious cost if a state excludes them. But this does not seem to change the conclusion. Let us instead suppose that in the pill example the others do suffer a serious and permanent discomfort that makes many everyday activities difficult, and that the daughter will in addition to this be left paralyzed without the pill. It seems that again because not giving the strongest claimant, the daughter, the pill is very high stakes, the fairness of the surrogate satisfaction of giving equal chances to all intuitively does *not* outweigh the unfairness of not giving her the pill. Second, one might point to the following version of the pill example: the parent has two pills, and one child will be paralyzed without the pill, whereas the others will all experience identical but less weighty symptoms. The parent, we might think, is surely not wrong to use a lottery to allocate the second pill after giving the first to the endangered child. Similarly, we might have one group of migrants living in poverty in their country of origin and another group of affluent students seeking to pursue tertiary education in a high-income country. Could we here not also use a lottery on the grounds of fairness within these categories?[6] However, while we can imagine that one group of people could have identical symptoms without the pill, my point is that in the immigration case there will be people with stronger claims to immigrate, something that is very high stakes, *even* within such categories. This is why, as I argued, the Broome-type fairness argument does not apply.

There is, however, another way of supporting the strong fairness view. On this version of the argument, we should use a lottery, even if some have a stronger claim to the good than others, because it is a way of respecting people and their claims. That is, we should ignore that certain people have stronger claims to enter by using a lottery to select immigrants. But why should treating people with respect mean ignoring relevant differences? One potential explanation for this invokes Ian Carter's (2011) notion of opacity respect. On this view, "we take the subject as given and ask no questions about his or her capacity to pursue the good or to understand the nature of the moral or aesthetic good life or to understand his or her place in the world" (Carter, 2011, p. 551-552). To illustrate this in the case of immigration, suppose we have the case of Sara, who is applying for a visa to study a subject she cannot study elsewhere,

[6] This is setting aside whether a state should have this two-part immigration policy.

and Ali, who is applying for a visa to study a subject he can study in many other states. A lottery would be fair, on this line of thought, because it would be disrespectful for a state to say to Ali that Sara will be chosen over him because of the subject he chose to study. The state would be evaluating the immigrant's life plans, something that is none of its business. Thus, on the second version of the strong view, a state should use a lottery because it shows respect for the would-be immigrants' claim to enter by refraining from evaluating their life plans.

However, this example misunderstands what counts as a violation of opacity respect. It is violated when one is assessing the capabilities of the migrants and not merely their life plans. For example, in the domestic case, it would be disrespectful for a state, on this view, to make a right to vote conditional on passing a public exam that includes an intelligence test. This is because the state would be evaluating its citizens' intellectual capacities. By contrast, we do not think it is disrespectful, on this view, for a state to give a student loan to someone with a plan to pursue a university education and not to give an equivalent loan to someone without that life plan. This is because, in this case, the state is not evaluating their capacities. It *would* be disrespectful if the state does not give student loans to certain people on the grounds that their intellectual or reasoning capabilities are inadequate. Thus, opacity respect tells us that it is the assessment not of life plans but of capabilities that is disrespectful. In the example above of Ali and Sara, the state is not evaluating their intellectual capabilities by, for example, assessing their test scores to determine who is more worthy of a right to enter. They are simply taking Sara and Ali as givens, one with a plan to study a subject not available anywhere else and one with a plan to study a subject available elsewhere.

One might here argue that evaluating certain life plans of the would-be immigrant sometimes does amount to a violation of opacity respect. For example, perhaps a state is violating opacity respect when it favours immigrants who study philosophy over those who study history. I will show that this is only disrespectful when the state is in fact evaluating the capacities of the would-be immigrant under the guise of evaluating their life plans. For example, a state can choose to favour immigrants who study philosophy over those who study history because it believes that those who study philosophy are smarter than those who study history. In this way, a state is evaluating the intellectual

capacities of citizens under the guise of evaluating their life plans. This amounts to a violation of opacity respect. However, it does not seem to be disrespectful – or at least much less disrespectful than the previous example – if the state chooses to favour immigrants who study philosophy over those who study history because it has a shortage of philosophy professors at its universities. What this shows, again, is that it is not the evaluation of life plans but the evaluation of capacities that constitutes a violation of opacity respect. Thus, the second version of the strong view does not justify using a lottery because opacity respect does not require us to ignore whether someone has a stronger claim to enter. Thus, neither of the two versions of the strong fairness view nor the weak fairness view justifies implementing a lottery to select immigrants.

Section 3: A diversity-based justification of lotteries

In this section, I will consider the argument that states should implement a lottery to select immigrants because it brings about diversity in the immigrant population. More generally, diversity is often the motivation for implementing lotteries for other policy areas. For example, an intuitive and prominent argument for implementing a lottery to select political officials is that it would represent the diversity of a multicultural society and incorporate a wide range of viewpoints (Hennig, 2017; Landermore, 2013). A similar diversity-based justification also underpins the Green Card Lottery (Schuck, 2003, p. 75-113). For example, Ahdowah A. Newton (2005, p. 1051) argues that "the diversity visa program presents an opportunity to reduce some of the effects of the past exclusion of Africans and to increase their representation in the U.S. immigration population." Should we implement a lottery because it promises to increase diversity in the immigrant population?[7]

The problem with this diversity-based argument for selecting immigrants by lottery is that there are other more direct ways of achieving a diverse immigrant population than lotteries. For example, immigration officers can instead admit more immigrants who belong to nationalities that are under-represented in the state's immigrant population.[8] In this way, a state can directly

[7] I here set aside the question of whether this would be a lottery for those with roughly equal claims to enter or a lottery for even those with varying claims to enter.

[8] Does this run into the problems that I raised with nationality-based immigration restrictions in chapter 6? It does not because my argument there is limited in scope: it is only restrictions on certain nationalities, which are associated with negative stereotypes, that I argued are morally problematic.

achieve diversity in its immigrant population rather than attempt to achieve diversity indirectly by using a lottery. However, I might be accused of putting this unfairly. That is, one might argue that an indirect way should be used *because* there's something objectionable about using the direct way. And there may be many reasons why the direct way is objectionable. To illustrate, consider how a company wanting to employ a more diverse workforce will typically behave. The direct way to achieve this goal is obviously just to hire people that belong to minority groups. But in practice the company is much more likely to opt for more indirect methods such as running outreach activities and events to encourage more applicants from minority groups to apply. With a more varied pool of applicants, the company can then hire on the basis of merit while still achieving its diversity goal. There are many reasons why a company would adopt this indirect method of diversifying its new hires. One powerful argument is that people might have low self-esteem if they suspect they were accepted only because of affirmative action (Nagel, 1981, p. 7). There is strong empirical support for this worry (Nacoste, 1990). For example, one study finds that women managers who believed that they were promoted to their position mainly because they are women, felt dissatisfied with work and had less commitment to the organisation (Chacko, 1982).[9]

One might wonder if the same problem will arise in the immigration case. However, it seems clear that, in most cases, admitting immigrants of underrepresented nationalities will not result in low self-esteem among the beneficiaries. This is because, unlike the university or company case, people are not *always* admitted on the basis of merit in most immigration selection procedures in the first place.[10] People are admitted for all sorts of reasons that do not have to do with merit, such as family ties, medical purposes, and so on. So, if some are admitted on the basis of their nationality, there is no obvious reason they will feel low self-esteem because other immigrants are also admitted on grounds other than merit. By contrast, beneficiaries of affirmative action in the company or university case may feel low self-esteem at least partly because everyone around them at university or the company is accepted on the basis of merit.[11]

[9] See also Madeline Heilman, Michael Simon, David Repper (1987).
[10] It is true, as I discussed in chapter 5, that skill-based migration is often the most common immigration route, but it is nevertheless not the *only* immigration route.
[11] For example, there is evidence that shows that non-beneficiaries of affirmative action question the abilities of beneficiaries (Heilman et al., 1992).

However, perhaps this self-esteem issue nevertheless poses a problem in cases of immigration policy where people *are* admitted on the basis of merit. We might think we can find such cases in skill-selective immigration policy. To illustrate, suppose a state awards 100,000 work visas each year. Further suppose that they normally pick the best 100,000 people to receive these visas. Now suppose the state decides to reserve a quota of 20,000 to award to the top applicants who belong to underrepresented nationalities. The remaining 80,000 spots will be awarded to people regardless of their nationality. The question is now whether the immigrants selected via the quota will feel low self-esteem in a similar way to, say, a minority university student who suspects they were admitted because of affirmative action. The answer is that they probably will not, and this is because there are two separate admission processes in the immigration context: the company hiring decision and the immigration decision. In general, a company will hire someone and then that person will apply for a visa. Assuming that the company hiring process was merit-based, we do not have reason to think that someone will have low self-esteem if they suspect they were given a visa only because of their nationality. This is because they were assessed and hired on the same basis as everyone else in the company. That is, even if they do strongly suspect that they got the *visa* because of their nationality, they would still know that they are as good as everyone else who was hired by their company. And that is what ultimately matters because it is their colleagues that the immigrants will be compared to.

What if we know that in practice, companies will begin to offer jobs in part based on diversity considerations? Companies might be more likely to do so given that they desire that their employees receive a visa, and they know that "diverse" candidates are more likely to succeed. If so, it seems that the self-esteem worries will re-appear since diversity considerations will have been used in both of two stages. However, even if employers are incentivised to sponsor minority candidates, there is no reason to assume that this will become apparent to the successful candidate. In fact, we would think that they have every reason to conceal this because otherwise the state selectors for visas would likely demote their candidates. Therefore, the reasons that discourage us from directly selecting people who belong to minority groups in the small group cases, such as a university or a company, do not apply in the immigration context. Thus, the diversity-based justification of selecting immigrants by lottery is not successful

because states can directly achieve greater diversity rather than use an indirect method such as a lottery.

Section 4: A second-best policy solution

So far, we have seen that a lottery would not be the best policy for fairness, diversity, or a sound decision-making process. However, in this section, I will suggest that these principles can still support lotteries, when they are a small part of a wider immigration regime, as a second-best policy device.[12] I will show that lotteries can be justified as a second-best policy in the sense that they are both less morally optimal than the ideal policy, as we have seen in previous sections, but more optimal than other likely policies. I will explore how lotteries can be morally optimal in terms of the three principles I considered. I believe arguments for lotteries as a second-best policy device will be strongest when they are framed in terms of these three principles because I took these principles to be the among the strongest potential arguments for lottery-based programs that select immigrants.

To illustrate, I will focus on the Green Card Lottery, which selects applicants from countries with low rates of migration to the US and awards only 5% of the overall number of green cards the US issues every year. After examining the fairness argument, I concluded there that it is unclear why selecting immigrants by lottery is a fair selection procedure. Now consider the ways in which US immigration policy unfairly prioritises the exceptionally talented and the very wealthy in programs such as the EB-5 program which offers permanent residency in return for a $1 million investment. While it is true that the Green Card Lottery has some prerequisites – for example, migrants have to come from countries with low rates of migration to the US – its selection process, by contrast, does not prioritise the very wealthy or exceptionally talented neither in who can apply nor in who is selected. The Green Card Lottery then can be said to offset some of this unfairness present in the rest of immigration policy.[13] As one put it, "[the green card lottery] is the only instance where an average Joe, housewife or a mechanic, just an ordinary

[12] This touches on the problem of second best. See Robert E. Goodin (1995) and Adam Swift (2008).

[13] David Miller (2020, p. 101) briefly notes that this how the Green Card Lottery is often defended.

person – not a PhD holder, not a Harvard professor, not an engineer – could apply. And that continues to be the beauty of it" (Jamieson, 2017).

With respect to the sanitizing argument for lotteries, I concluded that states are not justified in selecting immigrants by lottery because while bad reasons and unconscious bias might influence the selection procedure, there are good reasons for favouring particular immigrants, which is that some can be said to have stronger claims to entry. However, note that even when there are differences in the strengths of the claims made by would-be migrants, these differences could be opaque for at least two reasons. The first is that it is unclear that officials can straightforwardly determine which of several claims is strongest. Officials might not be well trained to make such moral calculations, and cases are often muddier than our thought experiments, with multiple competing types of claims of varying strengths. Second, even if they were able to make such distinctions, it will likely lead to very invasive screening procedures. In other words, it is not clear that immigration officials can or should try to make such fine-grained distinctions between applicants. So, we have reason to think that the sanitizing effect of lotteries is still important given that the alternatives that the sanitizing account puts forward will in reality likely come with significant drawbacks.

Finally, on the diversity-based argument for lotteries, we can grant my claim that diversity can be achieved by directly selecting immigrants of underrepresented nationalities. However, there is resistance to selecting people purely on the basis that they belong to minority groups, and selecting would-be immigrants from underrepresented nationalities might raise similar concerns. It might face the same hostile reaction from the American public as with the cases of domestic policies of affirmative action that also explicitly aim to benefit people that belong to minority groups.[14] So, the Green Card Lottery might not be an ideal way to achieve diversity, but it is nevertheless more socially acceptable than other methods of achieving that goal. The common thread running through these three arguments is that the Green Card Lottery can be justified as a second-best policy device because it is morally optimal to have such lottery, according to the three principles I explored, than to not have one.

[14] It is important to note that this depends on the framing of the affirmative action program (Kinder and Sanders, 1990).

What does this tell us about *other* lottery-based programs that select immigrants? Since it is another lottery-based program in the US, the H-1B visa lottery system, which allocates by lottery tens of thousands of work visas to the US every year, could also be justified for similar reasons. But I also mentioned that there are lottery-based programs that select immigrants in Canada and New Zealand. Many of the problems that I have argued the Green Card Lottery can help to offset have also been noted to arise in other countries' immigration policy. For example, it has been argued that several countries including Canada and New Zealand unfairly prioritise very wealthy would-be immigrants through policies such as immigrant investor programs (Shachar and Hirschl, 2014). This might give us reason to think that, for example, New Zealand's lottery-based program for allocating residence permits to people from Fiji, Kiribati, Tuvalu, and Tonga could also be a second-best policy on a similar line of reasoning. However, a closer inspection of these policies is beyond the scope of this chapter.

I have here illustrated the second-best argument using an example of an existing lottery-based program, but one might wonder if this argument would only justify keeping lotteries that already exist, as opposed to introducing lotteries where none currently exist. Is there a risk that by introducing new lotteries the public will be blinded, so to speak, to other problems in immigration policy, as lotteries will be viewed as exhaustive of immigration reform? However, this merely suggests that the bar for justification is very high in implementing a lottery where one does not already exist. This is because it is not clear that implementing a lottery – or a second-best policy more generally – to deal with some problems would have the effect of blinding us to further problems. Suppose that we audition musicians behind a screen in order to eliminate bias on grounds of physical appearance. It seems implausible for someone to object to this on the grounds that it would blind us to the more general problem of sexism in the music business. Similarly, just because we introduce a lottery to deal with certain undesirable features in the immigration regime, it does not mean that it will necessarily blind us to further problems. So although there may be concerns about the possible effects of introducing lotteries in countries that have not so far used them, those concerns are not decisive. Thus, a second-best argument can also justify implementing lotteries where none currently exist, but it will be harder to argue for this than to defend existing lotteries such as the Green Card Lottery.

Conclusion

Lotteries are often seen as a solution to discrimination in contexts beyond just the immigration one. In the case of medical school admissions, it has been argued that lotteries are "a simple way to address persistent admissions disparities by being truly non-discriminatory" (Mazer, 2021, p. 1216). Some have also suggested that lotteries can avoid discrimination in hiring practices. For some, "lotteries are the fairest route to prejudice-free hiring" (Burke, 2022). Thus, "because there is no weighing of good and ban, a lottery decision is also amoral; it is also, by the same token, non-discriminating" (Dowlen, 2008, p. 15-16). A lottery then can be a straightforward solution to discrimination in various contexts.

Could lotteries also be a solution to discrimination in immigration policy? In this chapter, I have argued that a lottery that selects immigrants is not the best policy option. Such lotteries may be non-discriminatory, but they are nevertheless not ideal from the perspective of an unbiased decision-making process, fairness, or diversity. The broader lesson here is that the fact that a policy is non-discriminatory cannot be sufficient reason to implement it. There can be other reasons against this policy that do not have to do with discrimination. At the same time, I did point out that lotteries that form a small part of the immigration system such as the Green Card Lottery could be justified as a second-best policy device. However, this does not undermine my point that lotteries in general should not be viewed as a solution to discrimination. In thinking about ways to address discrimination, we cannot be guided only by what is non-discriminatory.

Chapter 8: Conclusion

At the time of writing, more than 13 million people have left Ukraine amid Russia's invasion. In Europe, they were welcomed with open arms. To take just one example, the European Union for the first time ever triggered the Temporary Protective Directive, which allows Ukrainians to travel without a visa in the EU and gives Ukrainians access to education and employment. As admirable as this is, many have accused these states of double-standards. The Temporary Protective Directive was never activated when one million Syrians, Afghans, and Iraqis arrived at Europe in 2015. Moreover, the same countries giving a warm welcome to Ukrainian refugees had a markedly different and indeed hostile response to the 2015 refugee crisis.

This has led many to accuse these countries of "racism and hypocrisy" (Amnesty International UK, 2022) in their response to refugees. In the New Arab, Nyasha Bhobo (2022) writes, "the subtle rhetoric here ... is that refugees of white-European, Christian orientation are preferable. Others who are Black, Arab, and especially of Muslim faith are to be violently kept out." However, others have pushed back against this accusation. For example, some have justified the partiality to Ukrainians on the grounds of shared history and family connections. In the Guardian, Karolina Wigura and Jarosław Kuisz (2022) argue that while "it is too easy to misinterpret this as being motivated entirely by sympathy for those who share the same ethnicity, culture or religion," this partiality is in fact "primarily moulded by geography and shared history."

Questions about discrimination and what should count as discrimination have consequently been brought to the forefront of debates on immigration policy. Is it always morally wrong to select immigrants by origin or does a shared history or family connections make it permissible? Should history bear on present-day immigration immigrant policy in the first place? Also, does it matter that certain immigration policies – such as the ones that favour Ukrainian refugees – are perceived as demeaning by immigrants from some countries in the Global South? Are states morally permitted to select immigrants on whatever grounds they like?

This thesis was an attempt at answering some of these questions. I examined the ways in which states select immigrants and whether this can be

said to be discriminatory. I focused on discretionary admissions, which are often seen as less vulnerable to the charge of discrimination than the selection of refugees is. Indeed, the ethics of refugee selection is often met with skepticism. This is especially true of the selection of refugees for sanctuary, which is the initial access to asylum. The selection of refugees for sanctuary is typically viewed as morally objectionable because it is wrong to deprive refugees of access to asylum. As Kasper Lippert-Rasmussen and Annamari Vitikainen (2020, p. 2) point out, "we think that denying or otherwise obstructing access to asylum would straightforwardly constitute a violation of refugees' basic human rights." And the selection of refugees for sanctuary, by definition, implies that some will not be granted asylum. *Any* selection of refugees for sanctuary is thus morally problematic.

But the case of selection in discretionary admissions is different. It is much less clear what, if anything, makes such selection morally wrong. Recall, discretionary admission is the admission of immigrants I assume for the sake of argument that states have no moral obligations to admit. Since states have no duties to admit this category of migrants, it is not obvious why certain forms of selection would be morally wrong. In the case of refugees, selection is said to be wrong because access to asylum is owed to refugees, but admission is not similarly owed to migrants in the case of discretionary admissions. Thus, it is unclear what, if anything, makes selection in discretionary admissions morally wrong.

The thesis explored the ways in which selection in discretionary admissions is discriminatory. This is crucial precisely because discretionary admission is often seen as one in which states have significant leeway. While there is heated debate on the selection of refugees – especially currently with Ukrainian refugees – the morality of selection in discretionary admissions tends to be brushed aside. My thesis reveals the often-hidden ways in which immigration policy can be discriminatory.

While my thesis does not explore discrimination in refugee selection, it does raise the question of whether there are parallels between selection in discretionary admissions and the selection of refugees for resettlement. According to the UNHCR, "resettlement is the transfer of refugees from an asylum country to another State, that has agreed to admit them and ultimately

grant them permanent residence" (UNHCR, n.d.). It is often said that sanctuary is owed to refugees in a way that resettlement is not. This is because while sanctuary provides refugees protection from immediate threat, resettlement does more than this. In resettlement cases, refugees are already in the country of first asylum and so are presumably protected from the dangers in their home country. David Miller (2020a, p. 108) argues that this makes resettlement similar to discretionary admissions as what is offered "goes considerably beyond the protection of basic rights". According to Miller (2020a, p. 108), in resettlement cases, it is "reasonable to ask, as with immigrants generally, whether he is likely to be a net contributor to the scheme or a net liability." I leave it an open question whether some of the criticisms I make of discretionary admissions would also apply to resettlement cases.

In my thesis, I examined discrimination in both present-day and past immigration policy. I have shown that it is fruitful to look back on the history of immigration policy to inform our normative theorising. Indeed, political theorists are increasingly calling for a deeper engagement with the long history of racism in immigration policy. For example, Sarah Fine (2016, p. 130) notes, "the undeniable truth is that racism and racial and ethnic discrimination cast a long shadow over the history and politics of immigration controls." However, the normative implications of this are not fleshed out. What, if anything, should be done about the racist origins of immigration policy? What, if anything, should change about present-day immigration policy to reckon with this history? In chapter 2, I explored the normative implications of discrimination in the history of immigration policy. There I argued that states should grant immigration rights as reparations to descendants of those who were wrongfully excluded by race and ethnicity. I examined what two common approaches to reparations, the counterfactual approach and the inheritance approach, can tell us about discrimination in the history of immigration policy. I concluded that the counterfactual approach tells us that descendants are owed immigration rights as reparation.

This raises further questions about the normative implications of discrimination and racism in the history of immigration policy. Is there more to making amends for this historical injustice? Is it merely, as I argued, giving immigration rights to descendants as reparation or is it something more demanding such as reforming immigration policy in a comprehensive way?

Indeed, Janna Thompson (2002) distinguishes between 'legalistic' reparation, which is concerned with rights and compensation, and reconciliatory reparation, which focuses on ensuring that both parties have reconciled, and that forgiveness is granted by the victims. While I explored the first approach in chapter 2, perhaps it is important also to consider a reconciliatory approach to historical injustice in immigration policy. Is it appropriate to think of historical injustice in immigration policy through the lens of forgiveness and reconciliation? If so, would this require more demanding reform of the immigration policy to signal a break from past racism and discrimination? Does this history make certain forms of selection – such as selection that indirectly disadvantages those from the Global South – at odds with true reconciliation? These are just some of the questions that a reconciliatory approach would raise for discrimination in the history of immigration policy.

However, much of my thesis has focused on the present-day immigration policies of countries in the Global North. I adopted a pluralist account of discrimination in contrast to what I referred to as the monist accounts of discrimination in immigration policy. As I explained in chapter 3, there is an implicit assumption in the philosophical literature that discrimination in immigration policy must be explained by one single disvalue. I highlighted this by examining the debate on what explains the wrongfulness of racial or ethnic discrimination in immigration policy. Each account that I surveyed attempts to explain this by appeal to one single disvalue. I argued that a limitation of this monist approach to discrimination in immigration policy is that it fails to explain the wrongfulness of all cases of racial or ethnic discrimination in immigration policy. What we need, I argued, is a pluralist approach to discrimination in immigration policy that holds that discrimination can be morally wrong for different reasons.

I argued that there are three ways in which immigration policy can be discriminatory. First, in chapter 4, I argued that age-preferential immigration policy is discriminatory against older would-be immigrants. On my view, age-preferential immigration policy is discriminatory for the same reason that the countries that implement these policies take mandatory retirement policies to be discriminatory: they fail to select by merit. Second, in chapter 5, I argued that skill-selective immigration policy is discriminatory against would-be immigrants from low- and middle-income countries and the poor in those

countries. This is because the selection process unfairly disadvantages these groups of people. Third, in chapter 6, I argued that national security-based immigration policy is discriminatory against would-be immigrants of the targeted nationalities as it is demeaning to them. These polices are demeaning because they track pernicious negative stereotypes about the targeted groups.

My thesis challenges one widespread reading of the history and trajectory of immigration policy. On this reading, the 1960s and 1970s witnessed a shift from discriminatory to nondiscriminatory immigration policy (Ellermann, 2019). The race- and ethnicity-based immigration policies of the Global North were replaced with "clearly stated meritocratic criteria, on the potential contributions that the individual will make to her host community, on her relationship to citizens or permanent residents, and, under certain conditions, on the individual's need for protection" (Ellermann and Goenaga, 2019). On this reading, immigration policy has moved past the racial and ethnic discrimination of the early twentieth century.

My thesis, especially chapters 5 and 6, challenges this narrative. In chapter 6, I focus on policies that explicitly exclude immigrants on the basis of nationality. These are very reminiscent of the racial and ethnic selection of the early twentieth century. But I show that even ostensibly neutral immigration selection criteria can be discriminatory along racial or ethnic lines. In chapter 5, I argued, as I mentioned, that the requirements for skill-based visas – such as the education requirements – are discriminatory against those from the Global South. Thus, even criteria that might appear neutral – as the education requirement does – can nevertheless have an impact that reproduces some of the racial or ethnic discrimination of past immigration policy. The racial and ethnic discrimination that marked the history of immigration policy is far from over.

Of course, the selection criteria that I explored are not exhaustive of states' immigration policy. However, these three criteria are all central to most states' immigration policy. First, skill-selective immigration policy is one of the most common ways of migrating, and in many countries, it is *the* most common way of migrating. Its popularity is growing so high-skilled migration is becoming even more of a significant part of states' immigration policy. Second, age requirements are part and parcel of the skill-selective immigration policies of Australia, New Zealand, and Canada. It is almost impossible to migrate to

these countries if you are older than around 56 without family connections or large sums of investment. Third, national security concerns are increasingly being wielded to exclude immigrants by nationality. One notorious recent policy is Trump's Muslim ban, but this in fact came after a long string of policies that made it more difficult for Middle Easterners to migrate on the grounds of national security (Orgad and Ruthizer, 2010).

There is no doubt that these policies are each very significant to the immigration policy of countries in the Global North. The charge of discrimination therefore cannot be dismissed as an insignificant one or as a miniscule flaw in a large system. What should states do about discrimination that is so entrenched in their immigration policies? In the Ukrainian case, many highlighted the discrimination in order to show that reform of refugee policy is possible. For example, a Times (McDonald-Gibson, 2022) article that covered this discrimination was titled "Europe's Embrace of Ukrainian Refugees Shows a Better Asylum System is Possible." An article in Human Rights Watch (Sunderland, 2022) is similarly titled "EU's Generous Response to Ukraine Shows Another Way is Possible." By highlighting discrimination in the response to refugees, many hoped to persuade states to extend this generosity to *all* refugees.

Similarly, perhaps a project that scrutinizes discrimination in immigration policy should be read as a call for the reform of immigration policy. Indeed, an assessment of the flaws and virtues of immigration policy is useful to a project of reform. This can help us determine what are the problems that need fixing in the first place. For example, if a university wants to reform its admission policies, it seems wise to begin by a study of what parts of the selection process are fair and what parts are not. If it turns out that the interview style disadvantages quieter students, then this is very valuable information for reforming the admission process. Thus, my thesis can lay the groundwork for a project of reforming immigration policy by revealing the problems that need fixing.

My project on discrimination in immigration policy raises other questions about the future of immigration policy beyond just a call for reform. It raises questions to do with how we should respond to institutions or systems that are marked by discrimination, and reform might not be the only alternative here

(Fine, 2016). For example, Tommie Shelby (2012, p. 346) writes, "in light of our discussion of racism and racial discrimination, we might say that the appropriate response to racial injustice is to abolish or reform any institution that operates on the basis of, or is otherwise distorted by, racism." Reform, as I have noted, is one obvious response to discrimination in institutions. But what about, as Shelby notes, abolishing? When, if ever, do we think that discrimination and other problems in an institution mean that it has to be abolished? Some have also argued that border restrictions should be abolished to address entrenched discrimination. For example, Teresa Hayter (2003, p. 13) argues that we must abolish border restrictions because "they have their origins in racism, and they are explicable only by racism." If, as I argued, discrimination is entrenched in immigration policy, would the appropriate response be something more radical such as a world of open borders?[1]

However, as Chapter 7 "Lotteries as a Possible Solution?" has shown, antidiscrimination cannot be the *only* standard by which we judge immigration policy. There I considered three potential arguments for lotteries to show that a lottery that selects migrants is not very appealing. The first claims that lotteries can sanitize the immigration selection procedure of bad reasons and biases; the second that it is fair because it gives all immigrants an equal chance; and the third that it helps increase diversity in the immigrant population. Even if a policy is non-discriminatory, as a lottery is, this does not necessarily mean that this is the ideal policy. There might be other values that make it morally problematic. What does this tell us about the proposal to abolish border restrictions to address discrimination? It tells us that even if discrimination is entrenched in immigration, an alternative is not always appealing simply because it avoids this discrimination. There could still be flaws with the alternatives.

But even if discrimination is the only standard by which we judge immigration policy, it does not follow from my pluralist account that a policy must necessarily be abolished if it is discriminatory. As I explained in chapter 3, my pluralist account leaves open the possibility that a policy can be at once discriminatory and non-discriminatory. For example, one upshot of my thesis that I discussed in chapter 3 is that skill-based immigration policy is at once discriminatory – because it unfairly disadvantages certain groups of people –

[1] One might argue that a total closing of borders would also do the trick.

and non-discriminatory – because it selects by merit. This idea adds a layer of nuance to the debate on whether immigration restrictions should be abolished or reformed in order to reckon with discrimination. Even if what we care about is only discrimination, we must be sensitive to the ways in which a discriminatory policy might nevertheless guard against another form of discrimination.

It is nevertheless illuminating to examine the issue of discrimination in immigration policy alongside debates on reforming or abolishing other institutions that are marked by discrimination and racism. These questions gained traction during the Black Lives Matter protests in 2020, and the call from some quarters was to abolish the police. The movement to abolish the police was framed as a "[fight] for a future … without police, a future without prisons, because we believe that these institutions actively work to oppress Black communities" (Newton, 2020). Against this, many argue that these are unrealistic proposals, with no obvious alternatives, and that the police can be reformed to overcome its issues. This debate is insightful for the problem of discrimination in immigration policy. Does entrenched discrimination require abolishing border restrictions and enacting open borders? Or should we instead aim to reform these restrictions to expunge them of discrimination? Is the charge of infeasibility a strong one against those who argue for abolishing these restrictions? All these questions arise when we grapple with the problem of discrimination in immigration policy.

Yet this study of discrimination in immigration policy brings to the fore issues beyond this abolish versus reform question. Above all, it gives us a more nuanced perspective of the debate on migration. When political theorists focus on diagnosing what is wrong or right with open or closed borders, this overlooks an important part of the reality of immigration control. States open their borders selectively – some people enjoy a world of open borders while others are met with closed borders. Whether borders are closed or open depends less on the state's stance on a right to exclude and more on where you come from, how wealthy you are, how skilled you are, and so on and so forth. This, as I have hoped to show in the thesis, opens up an avenue for much-needed philosophical analysis on the ways in which states select immigrants and what this tells us about border restrictions at large.

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