REPLY TO CRITICS

Travel bans, climate change, refugees and human rights: a response to my critics

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ABSTRACT

In responding to stimulating commentaries by David Owen, Shelley Wilcox, Tyler Paytas, Desiree Lim, and Lukas Schmid I develop my model of migration justice, showing how it has the resources needed not only to deal with these challenges but also to provide a fruitful approach to a full range of contemporary migration problems.

I am very grateful for the many insightful comments offered by the contributors to this symposium. Authors offer an interesting range of challenges. Desiree Lim and Taylor Paytas engage primarily with the chapter on Muslim bans and interrogate whether the reasoning offered for their indefensibility applies to other bans such as those associated with Covid-19. Shelley Wilcox and David Owen critically analyse my proposals concerning how to assist refugees. Lukas Schmid explores my position on why deportation is frequently impermissible arguing that a harm-based rather than a rights-based account is superior. In responding to these stimulating commentaries I develop my model of migration justice, showing how it has the resources needed not only to deal with these challenges but also to provide a fruitful approach to a full range of contemporary migration problems.

It may be useful to begin by highlighting a few central features of my account that serve as key resources from which we can draw when responding. A core question motivating my analysis arises when we review the history of how most settlements came into being. How can any current occupants of a territory justifiably prevent anyone from migrating into their space, given what we know about how most settlements arose? What case can be made that states and the boundaries they guard so vigilantly are justified? In seeking a justification for states’ claims to have rights to self-determination within the state system that are sufficiently robust to include the right to control admission to their territory, I argue that several conditions must be met.
These centre on shouldering important responsibilities. Contributing to robust arrangements capable of effective human rights protection both within the state and across states are the focus of these responsibilities.

While there are several aspects to making the proper contributions, they have in common promoting practices that sustain human rights supporting communities. These include advancing sustainable development and abiding by specific requirements. The two requirements that are especially important for our discussion here are:

The Accountability Requirement: A commitment to practices of accountability concerning performance on core human rights.

The Ethos Requirement: A commitment to maintain an ethos conducive to respect for the practice of human rights, such as that everyone deserves to be treated with dignity and respect as a human being.¹

The requirement to act in ways that promote accountability for compliance with core human rights is especially important. We have obligations to offer robust accounts of how our activities are in fact demonstrating our good faith, credible efforts to comply with our human rights obligations. As we discuss, contextual factors will play a central role in judging the plausibility of any accounting we attempt to offer. This condition requires us to offer compelling reasons for how we are orienting ourselves towards the project of taking up a fair share of our responsibilities in relation to core normative aspects of our human rights practice.

As I write in early 2021, we do in fact have several significant international agreements worthy of our support. The international agreements we have are not perfectly just; rather they are shared understandings of what fairness entails here and now given non-trivial real-world constraints. And 85% of the world’s states have agreed to abide by these understandings. These agreements are not useless; they are very often much better than no attempt at collective action to solve core problems. And they frequently represent a significant achievement in a world sometimes quite hostile to progress on protecting human rights, such as appears to have characterized the last few years.

One such especially noteworthy international policy agreement is the Global Compact for Safe, Orderly and Regular Migration. This is a global cooperative framework for managing a comprehensive range of migration matters. It sets out the terms for a new understanding on a number of issues offering better protections for migrants before, during and after migration. The Global Compact (or Compact, henceforth) also offers guidance on expected standards, and commits many different people to undertake important actions. The Compact is embedded in, and builds on, a host of other international agreements that aim to support decent work, sustainable development, and secure human rights. Its 23 central objectives aim to reduce vulnerabilities in migration (such as those that give rise to forced migration), strengthen international efforts to address migration-related harms (such as those caused by human trafficking),

¹The other two main requirements are: The Constraint Against Worsening: A general commitment not to promote arrangements in which respect and protection for people’s human rights is significantly worsened, ceteris paribus. So, in the absence of compelling countervailing reasons, states should not reject arrangements in which protection for people’s human rights deteriorates markedly, especially when such protections are reasonably secure. The Commitment to Action Under Relevant Circumstances: A general commitment to show appropriate international concern as required by the practice, to undertake action when one is the agent capable and appropriately placed to have sufficient reason to act.
and promote co-operation in collecting accurate information to facilitate policies informed by relevant evidence. States have many obligations. One important set concerns eliminating discrimination and promoting evidence-based dialogue concerning migration matters. Too often populist leaders have been promoting division and conflict, as they try to demonize migrants for their own political purposes. The compact prohibits such activities. And we can all hold states to account for the promises they have made in the international arena. Citizens, governments and organizational actors all have roles to play in helping to implement and enforce policies that will be human rights sustaining, and to hold governments to account for the migration policies they adopt and implement. Indeed, states have committed to a process of periodic review and effective follow-up processes to ensure implementation of core principles proceeds smoothly. As I argue in Justice for People on the Move (Brock 2020, especially Chapter 9), the Compact can play an important role in bringing into being the kinds of human rights aligned practices and institutions for which I am advocating. I explore some further details concerning the Compact in responding to David Owen’s critiques.

Travel bans and Covid-19

Desiree Lim usefully applies the analysis I offer concerning banning Muslims from entering the US to two recent cases of travel bans. The first concerns the US response to the Covid-19 pandemic in which the US banned those non-citizens who had travelled from China and Europe from gaining admission to the US in efforts to prevent transmission of the virus. The second involves the US suspending entry of immigrants who would allegedly negatively affect the US labour market, given the covid-related economic downturn. She argues that regional travel bans are certainly justifiable, and arguably are also necessary from the perspective of legitimacy. Travel bans might in some cases well be required to limit the spread of Covid-19. And we could also argue that enacting such travel restrictions are necessary for legitimacy. Failing to take measures to control the outbreak of Covid-19 would show inadequate regard for citizens’ human rights by failing to protect citizens’ health-related rights.2

However, more problematic might be justifying travel bans to assist with economic recovery that have also been implemented. In the US under such travel ban policies, issuing work visas and green cards were temporarily suspended. She argues that while a case can be made that region-based travel restrictions to limit the spread of Covid-19 and economic recovery can be justifiable in principle, we should be wary of them in practice. In the interests of protecting compatriots’ ability to secure jobs necessary to meet their basic rights it does not seem unjust for states to restrict some entry to those workers who would compete for local jobs necessary to sustain citizens’ basic rights and avoid financial precarit. While there is a theoretical case for such bans we should be mindful that sometimes the language of prioritizing and promoting the interests of citizens can conceal a more sinister agenda including to scapegoat and stigmatize immigrants for political purposes. So, we need to examine the social context more

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2In her view, even when travel bans are justified they must have in place clear guidelines about who can apply for exemptions. States should also consider alternatives where possible such as the imposition of 2-week quarantine periods or mandatory testing. These are sensible suggestions.
closely when making judgements about whether such restrictions are motivated by concerns for compatriots’ economic needs or rather are part of a political agenda. As Lim says:

At least in the case of the US, there seems to be insufficient rationale or evidence provided for the claim that immigrants will pose a threat to economic recovery. What needs to be shown, in order to justify the ban, is that the would-be immigrants excluded under the work visa suspension are indeed vying for jobs with local workers (as opposed to persons who will perform essential labor for the state and have the potential to create new jobs for US workers). In the absence of empirical evidence for its premises or the willingness to refer to such evidence, the economic travel ban seems to be a thinly masked attempt to restrict immigration – one of the Trump administration’s long-term professed goals. Put differently, the weak justification for the proclamation seems to be an attempted spin on the oft-repeated talking point that immigrants “steal” local workers’ jobs, particularly with the scaremongering language of “threat” (Lim 2021, 11–12).

I thoroughly agree with Lim’s analysis. Indeed, in Chapter 8 of Justice for People on the Move I analyse how demonizing migrants frequently has political advantages in politicians’ quest to secure electoral support. While this familiar course may have short-term political advantages, politicians have pragmatic and normative reasons to reject such tactics. Importantly, they have obligations that derive from their human rights commitments not to use such strategies and state legitimacy hangs in the balance should they do so.

As Lim also points out, even if economic bans are an effective way to promote economic recovery, they fail accountability tests in being unable to justify the travel ban to those non-citizens significantly affected and the international community more generally. Economic travel bans can considerably set back migrant’s basic interests. Migrants may find their visas are revoked, their ability to continue studies in the US cancelled, their work visas are not renewed, or their applications for permanent residency are unable to progress, in some cases requiring deportation or separation from family members. Given the harm the economic travel ban causes to non-citizens, it may well not meet the contribution requirement, as it may fail to be justifiable to the migrants affected and the international community. So, as Lim concludes, my human rights contribution requirements offer a principled basis through which we can understand complex immigration cases.

I am grateful to Lim for extending the analysis to these other migration ban cases which have helped deepen our understanding of how apparently similar policies can be justified or not. We must give special attention to the important role of social context in evaluating the defensibility (or otherwise) of migration policy. This theme will continue to play an important role in discussing authors to come beginning next with Tyler Paytas’s article, ‘Human Rights and Liberal Values’.

Human rights, liberal values and religious bans

Tyler Paytas asks the question of whether religion-targeted immigration bans can be justified. I argue that such bans fall afoul of international human rights doctrine and thereby undermine a state’s claim to legitimacy and self-determination. There are several arguments offered for these claims such as that ‘religion-targeted bans are …
said to violate ethical requirements for legitimacy by not treating immigration applicants fairly and by signaling the acceptability of hatred and intolerance’ (Paytas 2021, 1).

Paytas raises two challenges for my arguments. He wonders whether there is in fact a case for banning immigration of individuals from certain Muslim majority countries under certain conditions such as when a large portion of the population from those countries reject core liberal values like the equal rights of women and homosexuals. Considering such a case helps with his primary objective to argue that discriminating in immigration policy on the grounds of religion may sometimes be justified. He suggests that religions are sometimes similar to political ideologies and when they are antithetical to liberal values, banning such religions can be justified as compatible with respect for human rights. Consider how studies suggest that a high proportion of Muslims resident in some Middle Eastern countries hold views such as that Sharia should be the law of the land, which would include the permissibility of stoning as a form of punishment for offences like adultery. He cites other examples of widespread troubling attitudes concerning gender equality; for instance, in some of these countries, only 25% believe sons and daughters should have equal inheritance rights. Also, 93% believe that homosexuality is morally wrong. Paytas argues that prima facie, it is not objectionable for a state to exclude the immigration of people who hold such illiberal beliefs.

As Paytas rightly observes, sometimes a central concern with immigration bans that target identity groups is that they do not treat people as individuals. So he spends a good part of his argument attempting to justify when and how such policies could be defensible. For instance, they must include a functioning waiver process so individuals who do not hold the anti-liberal beliefs are not unjustly excluded. Clearly, one major issue is that not everyone resident in a particular country and who identifies as Muslim holds the illiberal attitudes. So a genuine waiver system needs to allow for the possibility that such people can still be admitted.

Paytas argues that we can find cases where policies that exclude on the grounds of political ideology are acceptable, such as, refusing to hire someone who is a member of a neo-Nazi organization. And these cases are permissible because neo-Nazi’s ethical commitments are antithetical to liberal values central to the flourishing of society. Clearly people could join organizations for all sorts of reasons but having a blanket ban system combined with a fair waiver process could take account of that variation. The collateral damage to innocent parties could be minimized through such a functioning waiver process.

An obvious objection to this line of argument concerning the permissibility of banning Muslims is that even if some people hold extreme Islamic views, Islam is not an inherently illiberal religion, so this could still cause offence to other Muslims or be unjust for other reasons. To make the general principle more plausible Paytas then introduces a hypothetical case. Imagine a religion that is firmly centred on principles of hatred and violence and aims to undermine liberal ideals. He introduces the case of a religion called Z-ism.

‘Adherents of Z-ism worship a god called ‘Z’, and they subscribe to the following core tenets, which are written explicitly in the sacred texts (1) All non-adherents of Z-ism are morally and intellectually inferior, and they should be viewed with contempt; (2) Women
must never speak unless spoken to; (3) The appropriate punishment for leaving Z-ism is death by hanging’ (Paytas 2021, 13).

He imagines it could be perfectly permissible to ban immigration of members of such religions. As he notes, however, individuals can deny that they subscribe to the problematic doctrines. We need to ensure that the policy does not treat such individuals unjustly, hence the need for a functioning waiver process. But in principle a state could be within its rights to deny immigration from those who adhere to a particular religion without this undermining a state’s claim to legitimacy.

It seems to me, however, that even in such cases we cannot be so confident that banning Z-ists is justified and we must examine much social context before making judgements. For instance, perhaps a whole generation of children brought up in the church of Z-ism are actively working to reform Z-ism, participating in a lively reformist movement working to change these dominant beliefs in a more liberal direction. And their views might not yet have been captured in the data on which governments are relying for their policies.

In addition, the weight we should give to a person’s Z-ism might also vary depending on the reasons why they wish to be admitted to a territory. Even if someone is a subscriber to traditional Z-doctrine, there are many cases where we might want to weigh that issue as less important to other salient normative considerations. Migration related to family reunification, for work purposes, study and tourism might all present such cases. An ailing, elderly parent who subscribes to Z-ism might apply to enter the state on grounds of family unity and pose no real threat to liberal institutions. A person may wish to enter the state to attend a business conference to present her innovative new medical technologies, to study, or to tour some great archaeological sites. A person may apply to work temporarily in the state, work that satisfies compatriots’ critical needs. These different reasons why people wish to enter a state are all relevant to whether they do indeed pose threats to liberal institutions. Notice how Trump’s Muslim ban failed to distinguish among any of these salient differences, and Paytas’s analysis seems similarly insufficiently attuned. Unless a potential traveller undertakes the typically onerous and costly task of applying for a waiver, she will be barred from entry. And, as the Muslim ban revealed, chances of success in the waiver process were close to zero unless the applicant employed costly legal representation.

As we saw in considering Lim’s challenges concerning recent pandemic-related travel bans, ban and waiver systems can, in theory, be justified. Administrative simplicity and the costs of policy enforcement might be overriding considerations for a state when a global pandemic is raging. Notice however, that unlike the pandemic issue, there is an important messaging issue with real (not fictitious) religious bans which is in significant tension with human rights requirements more generally. In these cases the human rights implications of the expressed message are significant. If we are aiming to create communities capable of sustaining robust human rights practices, we have to be willing to do more work to counter unjustified damaging sentiments. While administrative simplicity might be an overriding consideration in deciding on bans in the case of pandemics, this may well not be the case with other proposed wholesale bans. In the case of banning religions, the messaging concern is so potentially problematic and the
human rights at issue so central to the core purposes of the human rights practice, the bar of what can be required in the name of protecting human rights sustaining communities can reasonably be much higher. Making use of an extensive application process, possibly supplementing a written application with a regime of personal interviews for all applicants for permanent residency might be a better, more consistent approach, given the *Ethos Requirement*.

Notice that even in the geographical case where travel restrictions were justified, leaders had to counteract stigmatizing messages, for instance when many returning New Zealand residents were arriving from particular countries. The educational campaign included slogans like 'People are not the problem. The virus is the problem. People are the solution'. Even when there is a cost-based argument for a system of bans plus waivers, we must be attentive to the way policies can create social or other costs that must be mitigated.

What we have learnt so far is that under certain conditions administrative simplicity and cost of policy enforcement can be relevant to the permissibility of imposing travel restrictions on a class of people who have been present in certain geographical spaces. It is also important to treat each person on their merits. What it means to treat each case respectfully, mindful of the fact that there is an individual human being whose specific case deserves fair consideration, depends a great deal on the particular features of the case. And it will also involve the question of how much cost it is reasonable to impose in ensuring justice is done. Sifting through evidence imposes a cost. Ensuring just arrangements frequently requires us to undertake such costly processes, but not always – it depends on what is at stake and whether the practice can withstand robust accountability requirements.

We must look at social context very carefully as well. In the chapter concerned with the Muslim ban (Chapter 4), I introduced a great deal of information about the social context and other background information to the Trump Muslim ban. I believe all of that is quite relevant to discerning the real purpose of the ban and how it was functioning in a particular time and place. That elaborate contextual information was crucial to making the case that banning Muslims in that case was not permissible. To make any other judgements we would need to look at salient context as well.3

In discussing both Lim and Paytas we have usefully introduced ideas about the importance of social context in offering a robust accounting for migration policy. We have seen how several features of a case may be relevant to judging whether a decision is human rights compliant. Further elaborations have been offered as to what might count as a fair and accountable process. And we have introduced the idea that sometimes we may be obligated to absorb costs in ensuring justice, especially when failure to do so casts doubt on our commitments to sustaining a human rights supporting community. We continue to examine such issues in critical engagement with theorists to come.

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3 Paytas might respond to all of these concerns by insisting that the functioning waiver process for which he advocates might take care of the issues raised. If that is to be the case, as I have been arguing, there are important contextual and human rights issues at stake that a sufficiently functioning waiver process must accommodate. Perhaps Paytas has all of this in mind and would have drawn out such implications in a longer essay.
Climate refugees and migration justice

Does my account have much to say about the plight of climate refugees? Shelley Wilcox initially wonders whether my more development-focused approach excludes climate migrants, but on reflection, she argues that the account actually yields significant obligations to assist them. This is indeed my view. Wilcox draws on several features of my account to show that my analysis must be so committed.

As she rightly notes, on my account refugees are those in urgent need of protection from another state because the state in which they usually reside is either unable or unwilling to protect the fundamental human rights or interests of its citizens. I focus on those fleeing violent conflict because their needs are particularly urgent. As I argue, we need to supplement humanitarian approaches to assisting refugees with those focusing on development, employment and economic empowerment opportunities. Temporarily displaced climate migrants would seem to be entitled to exactly the same assistance as others displaced by violent conflict and so be owed safety, temporary work permits, and opportunities to learn skills. If they cannot return to their territories, they are also owed resettlement options. But, Wilcox wonders, what about those whole communities from environmentally displaced states for whom return home is not an option. Members of environmentally displaced states are vulnerable to unique losses such as their political autonomy and their institutionally-supported ways of life on their territory. So, they have strong interests in resettling together immediately so they can continue their shared ways of life on a new territory, as a self-determining community.

She correctly reconstructs what she thinks my account entails about duties to climate refugees, drawing on ideas such as human agency and derivative needs, respect for located life plans, and the conditional right to occupy territory. Respecting located life plans entails the importance of enabling climate refugees to re-establish their ways of life in a new home insofar as possible. It also requires solutions that enable them to relocate as a community to fulfill other derivative needs such as for community and political self-determination. Furthermore, from an original position perspective those in the situation of climate refugees would find it highly unfair unless those wealthy, industrialized countries that bear a major share of responsibility for climate change support extensive protections for environmentally displaced states, which would enable their collective self-determination. So, this ‘suggests that environmentally displaced states are owed access to a new territory in addition to collective self-determination. Political communities need jurisdiction over some territory in order to exercise self-determination and, as Brock argues, reasonably secure access to territory is essential for developing located practices for meeting needs’ (Wilcox 2021, 11). A state system that did not include such provisions would not be justifiable to everyone.

As Wilcox also notes correctly, the right to occupy specific territory is a qualified right and features of justified occupation can change in response to relevant factors. To tease out the central intuitions I make use of a case in which a volcano destroys one of two nearby islands that, absent the volcano, residents have a justified right to occupy. In such cases, as I point out in the book, ‘the terms on which occupants may rightfully occupy the remaining island have shifted. In particular, they may not rightfully occupy that territory and exclude the population whose island was destroyed . . . the size of the territory that continued occupation justifies would need to alter to these new
circumstances . . . such natural disasters can alter how much territory the original group may justly continue to occupy in the face of a population that is now in dire straits’ (Brock 2020, 26).

Wilcox notes a potential problem with the implications of this view. She says:

‘Now, of course, providing access to a new territory to environmentally displaced states will involve significant costs. Land is valuable, and uprooting long-settled citizens to make room for new occupants would involve considerable disruption to their located life plans. Thus, we might also expect impartial agents to demand that these costs be minimized and that the associated burdens be distributed fairly among states. More work must be done to identify specific strategies for accomplishing these goals, but it is reasonable to expect that current inhabitants would be allowed to continue to live on transferred territory, if they so choose, and that relocated political communities must protect their rights and accommodate their unique needs. It is also likely that burden sharing would involve material support or compensation for donor states, particularly if they are not historically high carbon emitters. These sorts of provisions would likely be justifiable from the perspective of everyone, regardless of their position within this system. They are also consistent with the primary objectives of Brock’s development approach, namely, to promote mutually beneficial cooperative arrangements that take seriously the needs of both displaced and host populations’ (emphasis mine) (Wilcox 2021, 12).

So, in conclusion she argues that ‘the international community owes members of environmentally displaced states collective resettlement, continued political self-determination, if not statehood, and access to a new territory’ (Wilcox 2021, 12). I agree with Wilcox’s main lines of reasoning. Displaced people should be given the opportunity to resettle as a community so they can re-establish their located life plans or adapt them more easily together. I want to point out, however, that such relocation need not disrupt other communities as much as imagined. Several creative possibilities are worthy of further exploration.

How can we reallocate land fairly to minimize costs and ensure associated burdens are fairly distributed? Here we should broaden our thinking away from the idea that the amount of land available is some finite quantity and inevitably involves displacing others who are currently occupying land. Not all habitable land is in fact inhabited. And we need to be open to new possibilities about what counts as giving people access to a life-sustaining environment. For instance, vast reclamation projects have shown that we are able to convert land currently under water into land that is fit for human habitation. Consider in this regard the projects of spectacular land reclamation to build new airports such as in Hong Kong and Singapore. In addition, previously uninhabitable patches of land can become habitable as we learn to make them more habitable. So in this regard consider how desalination, solar power, and advancements in food technologies have allowed humans to occupy desert land or islands with no sources of fresh water.

There are also other innovative technologies that could in the future play a substantial role in assigning climate refugees access to the space they need. The idea of floating islands could considerably assist with the many possible environments that will soon be inundated with water, including low-lying coastal cities now frequently prone to flooding. And coupling the idea of floating islands with innovations in solar power, ocean-based wind farms and sustainable aquaculture could add to the ability of such configurations to be adapted to many parts of the ocean. Such ideas are
being explored and implemented in contemporary practice, for instance in a floating school designed for Bangladesh, where sea level rises are a real threat to low-lying coastal settlements. A recent Kiribatian president, Anote Tong, commissioned an expert study on the feasibility of artificially raising Kiribati’s islands as a climate adaptation strategy. In April 2019 the UN Deputy Secretary-General released a press statement in which he outlined how sustainable floating cities can offer solutions to climate change threats facing urban areas. Cities such as Seattle, Jakarta, Mexico City, and Bangkok have already adapted to make way for more houseboats or floating markets. With these examples we see that we already have migrated to forms of floating communities as an inevitable aspect of urban expansion where sea levels are rising. When designed from scratch even more innovation is possible. Settlements could grow some of their food through sustainable aquaculture or hydroponics. In Rotterdam there is a floating dairy farm. These examples show that researchers, engineers, innovators and planners can develop the necessary technologies to allow floating cities to thrive in sustainable, resilient and desirable ways. And international assistance might take the form of supporting such efforts so that they are channelled into appropriate projects like sustainable land reclamation, floating islands or other innovative technologies to enable the collective relocation of peoples displaced by climate change.

Refugees, legitimacy and development

I thank David Owen for raising so many excellent points in conversation with my views. Here I have space to take up only some of the key issues and for thematic unity with the other essays and to progress debates profitably in this forum, I focus my engagement on the part of his argument that highlights key methodological and strategic differences, along with some alternative perspectives on how to increase fulfilment of human rights.

First, I consider some methodological differences. We both aim to correct for deficiencies in current arrangements by pursuing a practice-based account and make good use of the importance of basic rights. Owen explores what refugee arrangements were designed to do and looks backward in developing his practice-based account. While he reconstructs the norms of the international refugee regime by considering that historical practice, my gaze is more firmly focused in the future of how that practice should evolve to take account of the multiple salient needs of the vast numbers of vulnerable people in the neighbourhood of refugee populations. While development-based approaches are not necessarily the best approaches in all circumstances, they are certainly neglected ones in the current conversation about how to help refugees in durable ways. In many cases failure to attend to the complex conjunction of refugee protection, host state development and post-conflict reconstruction, can result in solutions that are not well suited to promoting resilient human rights supporting communities.

As Owen rightly points out, to repair the situation for refugees often requires providing refugees with conditions in which they can reasonably experience themselves as effective social agents and this highlights the importance of political rights. As he notes, I do not talk much about political rights, except in so far as I consider those stuck in limbo for a decade or so. But, Owen argues, the time taken before I think it is
imperative refugees get political rights is too long, as this could be up to 13 years. He says: ‘Refugees are vulnerable to arbitrary exercises of private and public power, and unlike voluntary migrants do not have meaningful access to the protections that may be offered by external citizenship rights (diplomatic protection and right to automatic re-entry to home state). This would seem to provide good reasons for refugees to have access to naturalization on better (i.e. faster) terms than voluntary migrants’ (Owen 2021). He finds my neglect of this issue a perplexing feature. This is apparently especially noteworthy given my emphasis on restoring autonomy.

In response, we might begin by noting that autonomy clearly has several features. While Owen might focus on political autonomy, my focus is on one of the aspects of autonomy most often mentioned by refugees, namely the ability to be economically autonomous. In fact, my approach aims to restore more rights to refugees in ways that are conducive to robust human rights sustaining communities. Citizenship is, as Hannah Arendt so well put it, ‘the right to have rights’ (Arendt 1951, 177). My aim is to embed my proposals in nested understandings of how to secure more rights for refugees. In this regard, once again, drawing attention to the connection to the Compact is especially useful. Here I take the opportunity to highlight some of the key reasons why I believe my approach secures more rights for more migrants in a way that is worthy of our support. I will also indicate why I believe the approach avoids some important difficulties and tensions associated with granting refugees political rights, while also promoting a pathway for refugees to find new homes.

As I argue, the Compact can play an important role in bringing into being the kinds of human rights aligned institutions for which I am advocating. The Compact expresses the collective commitment to improving cooperation on international migration matters, setting out common understandings and acknowledged shared responsibilities. I highlight next just some of the objectives with important implications for rights.

States have obligations to address adverse drivers and structural factors that compel migrants to leave countries of origin, and to establish mechanisms for the portability of social security entitlements. There are obligations to provide migrants with enhanced consular protection, assistance and cooperation throughout the migration cycle. And there are obligations to offer them accurate and timely information, while ensuring they have adequate documentation. State parties must address vulnerabilities in relation to migration, empower migrants and societies to realize full inclusion and social cohesion, provide access to basic services for all migrants, invest in skills development, and create conditions for migrants to fully contribute to sustainable development. There are also responsibilities to implement evidence-based policies and promote evidence-based dialogue, eliminate all forms of discrimination, and generally strengthen international cooperation to ensure global partnerships for safe, orderly and regular migration. In exploring all the details of the 23 central objectives we notice that much further necessary support from the international community is expected. For instance, states should be promoting inclusive economic growth, food security, employment creation, decent work, gender equality and empowerment, as well as creating peaceful and inclusive societies with effective, accountable and transparent institutions. And all of these kinds of rights-promoting activities are mandated by the agreements that states have signed up to. These are not hollow commitments. States have also agreed to review
progress periodically in two significant fora. The International Migration Review Forum is the main intergovernmental platform for states and relevant stakeholders to share progress. States also aim to have an annual informal exchange on implementation at the Global Forum on Migration and Development where they can report best practices and innovative approaches. If there is a high-level of compliance with these kinds of responsibilities, the international community would be doing well in protecting and fulfilling a wide set of migrants’ rights.

The Compact has considerable authority. Some of this derives from states’ own commitments to act in certain ways and their agreement to follow up, review and hold each other to account. The legitimacy requirements give rise to a number of important responsibilities to abide by and promote arrangements capable of respecting, protecting and fulfilling human rights. This also entails particular responsibilities to support institutions and initiatives that are capable of securing everyone’s rights including migrants’. And so this also entails responsibilities to support or improve arrangements that can exercise effective oversight in migration matters.

I also argued for an additional set of rights that should go along with the many rights the compact promotes. Migrants should have a right to a fair process and accountability for determinations concerning their rights. So this additional set of rights entails not only having a fair process governing determinations of their rights, but also states being held accountable for the reasoning they offer in defence of migration decisions. That reasoning must be human rights compliant and states must be held to account for that compliance in international fora.

So all things considered, I argue that we have responsibilities to support a constellation of global arrangements that facilitate migration justice and we must supplement these with fair processes for determining migrants’ rights and holding states accountable for these determinations. Holding states to account for their migration decisions can occur in a variety of existing institutions and processes, such as the regular Human Rights Treaty bodies and processes, but we could also create further spaces for such accountability. It is also worth noting the normative effect over time that commitments to holding states accountable can have. As I argue, a certain amount of self-regulation and improvement happens over time when states know they will be called to account for the commitments and agreements they have undertaken. So, altogether, I believe my framework offers a huge improvement on genuine protection for a range of rights.

In addition, as we see all over the world, insisting on rights for foreigners is likely to raise tensions between community members who are long-settled and those more newly settled. Are there ways for refugees to gain more protection for their rights in less confrontational and more successful ways? I think there are and I pursue an alternative strategy that seeks to secure more rights for refugees by trying to emphasize policies that are mutually beneficial to both host populations and refugees. And this highlights one of the different methodological approaches underlying Owen’s and my different accounts. The general issue concerns how we transition towards implementing better policies in our actual world. Stressing mutually beneficial courses of action can frequently be effective. There are tensions between arguing straight to policy that best aligns with normatively compelling accounts and ones that advocate for policy which takes account of current real-world challenges. In this book I take those real-world
challenges seriously and see what can be done to progress justice for migrants in ways that will yield real improvements and position us for further gains in the future.

Approaches that emphasize the benefits of refugees to host populations should not be underestimated in efforts to create environments in which refugees are welcomed. Once again a more pragmatic economy-centred view can assist. As I discuss in Justice for People on the Move, a dominant reason why there is tension between local populations is the largely mistaken belief that refugees inevitably reduce wages, compete with host citizens for jobs and undermine the quality of services. However, none of these feared consequences are inevitable and everything depends on the policy choices that surround decisions. Under the right complementary policy conditions, refugees can help raise incomes and employment rates for natives, contribute to net positive fiscal effects, and generally contribute to more efficient, innovative and productive economies (Clemens et al. 2018; Clemens, Huang, and Graham 2018). For all of this to work well, robust support systems should be in place so that potential costs do not accumulate, especially costs for local workers, which can be counter-productive if these trigger political backlash (Clemens, Huang, and Graham 2018). An inclusive approach that supports the livelihoods of both refugees and host populations is worthwhile in many circumstances (Jacobsen 2002). Not only does this create goodwill among host populations (counteracting host population fears and hostilities), but host governments are more likely to view programmes as desirable and support them in such cases. In addition, bringing refugees and host citizens together in an environment that fosters learning, such as vocational training or business services development, can create further benefits, as neighbours learn to partner to create communities that are human rights supporting. Working and learning together in the right circumstances is good for social relations (Jacobsen 2014).

We can summarize some central points from this section as follows:

1. Political rights and citizenship are valuable because of the way they underwrite rights to have rights.
2. If we can secure a wider set of rights that are more robust through other means, we should consider such strategies valuable too.
3. My account delivers on (2), especially if we take account of obstacles and aim for progress in our actual world.
4. In addition, holding each other to account better for the international framework we have agreed to that would deliver on a more expansive set of rights is another way to ensure refugees gain robust rights to have rights that are actually fulfilled in our world.
5. Insisting on political rights for refugees can sometimes be counter-productive, as this might lead countries to reduce refugee resettlement numbers.
6. If we aim to create resilient communities that are human rights supporting, as we should, a more nuanced approach to our contemporary situation is often preferable.
Deportation, harms and human rights

Schmid argues that my framework ‘cannot always satisfactorily explain when and why it is impermissible for legitimate states to remove irregular migrants from their territory’ (Schmid 2021, 2). He aims to show that my intuitions about at least one case involving ‘the removal of long-settled immigrants whose irregular immigration was tacitly approved at the time’, cannot be accommodated by my framework. He argues that my account should be more ‘systematically elaborated’ and he suggests that ‘a purely harm-based framework is fully able to negotiate’ my moral worries about deportation. He argues that harm in deportation reaches the threshold for wrongdoing only when ‘it satisfies the joint desiderata of necessity and proportionality’ (Schmid 2021, 2). Indeed, overall, Schmid argues that a ‘reliance on human rights practice is too constraining to account for the normative subtleties at play’ (Schmid 2021, 2). He suggests that a systematic framework evaluating the necessity and proportionality of harm-infliction explains better ‘when and why legitimate states may permissibly inflict harm through deportation and when and why such harm constitutes impermissible wronging’ (Schmid 2021, 3–4).

In building his case, Schmid argues that we cannot assume deportation is human rights violating without further information about the deportee’s circumstances, relationships, and so on. In particular, whether or not deportation is cruel, inhuman, or degrading varies. Consider attempts to deport a long-settled cave-dwelling hermit who is not attached to others. Some long-settled Mexican labourers in the US might be in a similar position where they feel at home in both Mexico and the US, even though they happen to work in the US. In such cases deportation would not necessarily constitute cruel, inhuman or degrading treatment and so would not therefore be impermissible.

I agree that whether or not banishment counts as cruel, inhuman or degrading treatment depends on what is at stake for those to be banished. We may encounter people who are not at all bothered by deportation; they may in fact welcome the government-sponsored trip back to their country of origin. But it is also reasonable to make assumptions about human beings and how they standardly behave in social settings where they have formed located life plans over many years. So the issue might come down to claims about what is typically, ordinarily or characteristically the case and something like that is behind what informs our ideas about human rights. The presumption in making human rights claims is based on how human beings typically respond to actions we might characterize as human rights violations, based on analysis of how humans function especially in social settings.

Furthermore, we might note that all human rights violations function similarly to some extent. Consider for instance, the right to marry and have a family. The harm resulting from being denied this right might also vary according to individual circumstances. Some have no interest in marriage or families. But many do have such interests. Indeed, such desires are widespread across the globe. Being denied such rights typically causes significant harm to those who value such activities. Consider also rights against torture. We can’t always know that torture does cause harm in a particular case; someone might have a high threshold for pain or a perverse psychology. But we can make assumptions that certain kinds of torturing actions typically cause certain levels of pain and harm. And we can prohibit such activities based on these typical cases.
So I agree with Schmid that there can be variations in whether there is wrongdoing in a particular case, but this brings me to a second resource in my account that can take account of this variation, namely the accountability process. It is open to the state to argue in a particular case that no harm would be caused and no human rights violations are in play. A fair and accountable process means the state can challenge a default assumption such as whether deporting a cave dweller is impermissible. Of course, in deciding whether or not to make such cases the state must also consider whether this would be a worthy investment of its time. There is a normative opportunity cost issue as well. The state must consider what else it could be doing with the time and resources it might expend on such a challenge. In Chapter 8 of Justice for People on the Move, I argue that state actions can involve significant opportunity costs that are relevant in judging how well a particular state meets a justice standard. So in responding to Schmid, I would emphasize that human rights do some of the valuable work needed to make justice-relevant judgements. Human rights draw on a widely endorsed picture about what it is to live a dignified human life and simplify many of our important judgements about fundamental wrongdoing. In reflecting on Schmid’s arguments it seems there may be a fundamental disagreement about the usefulness of human rights discourse as shorthand for capturing widely held ideas about what kinds of harms matter such that we ought to protect people from their infliction.

In concluding this response essay I want to underscore again the power of human rights to bring about progressive change. Human rights discourse has been and will continue to be a discourse that proves effective in mobilizing both domestic and international publics, and so can be very helpful in reducing injustice in our contemporary world. Also important to note might be that progress on human rights is often most impressive in places where there are both strong regional human rights institutions and robust social movements. There is an important role for domestic and international human rights advocacy, along with the constellation of international agreements and institutions and other more formal mechanisms that, over time, can protect human rights gains. The UN periodic review system provides good opportunities for constructive engagement concerning improving human rights performance and the process also affords excellent opportunities for appropriate offers of assistance (capacity-building, technical, financial and so forth). So in concluding this essay, I emphasize again the power of human rights and the work it can do in helping us solve a range of migration justice problems. Using some of the real-world instruments to progress migration justice is a welcome opportunity that we should seize.

Disclosure statement
No potential conflict of interest was reported by the author(s).

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