Normativity, Legitimacy, and Strengthening Migration Justice Mechanisms: A Reply to My Critics

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Abstract
Matthew Lindauer, Peter Higgins, Jiewuh Song, and Ana Tanasoca have engaged thoughtfully with the work I present in *Justice for People on the Move*. I am very grateful for their insightful comments, critical remarks, observations about areas of agreement, useful suggestions for progressing important conversations, and invitations to elaborate on core issues. I cannot possibly discuss all the important issues they cover here, but in this response essay I address some of their most prominent concerns in the next four sections. The first section engages with Matthew Lindauer’s critique. It covers the normative grounding for my account and its relationship with the human rights practice that I support. In the second section I discuss why legitimacy has such a prominent role in my argument, thus addressing Peter Higgins’s commentary. The third section reviews some points about the human rights practice. These clarifications help address Jiewuh Song’s and Ana Tanasoca’s queries about practical implications and strengthening implementation avenues. In the final section I cover how my contribution requirements function in judging state legitimacy. Drawing on this discussion I address points from Song’s and Tanasoca’s papers, such as epistemic challenges in assessing contributions to the legitimacy of the state system.

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agreement, useful suggestions for progressing important conversations, and invitations to elaborate on core issues. I cannot possibly discuss all the important issues they cover here, but in this response essay I address some of their most prominent concerns in the next four sections. The first section engages with Matthew Lindauer’s critique. It covers the normative grounding for my account and its relationship with the human rights practice that I support. In the second section I discuss why legitimacy has such a prominent role in my argument, thus addressing Peter Higgins’s commentary. The third section reviews some points about the human rights practice. These clarifications help address Jiewuh Song’s and Ana Tanasoca’s queries about practical implications and strengthening implementation avenues. In the final section I cover how my contribution requirements function in judging state legitimacy. Drawing on this discussion I address points from Song’s and Tanasoca’s papers, such as epistemic challenges in assessing contributions to the legitimacy of the state system.

The Normative Grounding and Its Relationship with the Human Rights Practice

In his paper for this symposium Matthew Lindauer argues that while there is much agreement between us, we diverge most on how to diagnose policy injustice. In Chapter 4 of Justice for People on the Move I argued that President Donald Trump’s 2017 executive orders were indefensible. These directives prohibited citizens of several majority Muslim nations from entering the USA. Lindauer argues that my reliance on a practice-based account of human rights does not offer a compelling basis for arguing that Muslim bans are wrong. In the paper he also offers some highly constructive remarks on how my project’s use of the practice-based account of human rights could be strengthened and reframed to avoid his objections. In this section I engage with both these points, starting with his critique.

As Lindauer understands my view, ‘we are supposed to understand the concept of a human right by grasping the role that the concept plays within this recent historical practice. No deeper normative grounding is needed than the practice itself and the role of the concept of a human right within it to understand the basis for human rights as generating obligations for states’ (Lindauer 2022, pp. 415–416). As he sees it, I rest part of my case on the voluntary agreements states have undertaken. Thus the argument is vulnerable when states have not signed up to particular agreements, or allowed for special qualifications and he discusses certain notable cases in which states failed to sign particular agreements, as happened when the US Senate ratified the International Covenant on Civil and Political Rights (ICCPR). At that time, ratification proceeded subject to ‘Reservations, Understanding, and Declaration’. One such qualification ‘was that the ICCPR does not authorize actions or legislation that would restrict the Constitutional right to free speech, which some of Trump’s remarks could be thought to fall under’ (Lindauer 2022, p. 416). As Lindauer argues, my case would be stronger if it appealed more directly to the harms or other wrongs involved in the discriminatory policies I target, such as Trump’s notorious Muslim ban.

Given Lindauer’s understanding of the role the practice plays it is not surprising that he also believes my account ‘has difficulties diagnosing similar discriminatory
immigration policies that predate the human rights practice’ (Lindauer 2022, p. 418). In fact many worrisome cases predate the start of that practice, such as the *White Australia Policy* (1901) and *The Chinese Exclusion Act* (1882). Furthermore, he wonders about those states that have not signed up to core treaties in the human rights practice. It looks like we have no framework from which to evaluate their policy. He elaborates on the worry by discussing cases from Saudi Arabia, such as this:

Suppose that the Kingdom of Saudi Arabia announces in public that it will deny visas to Jewish people, as has sometimes been the case, although the government typically states that the restriction only applies to Israeli passport holders. How should we diagnose what is wrong with such a policy using Brock’s framework? We cannot argue that Saudi Arabia has committed to the UDHR and other treaties that Brock cites in ruling out the U.S. Muslim ban. We might try to argue that because Saudi Arabia has signed three other conventions, they are somehow committed to the practice of human rights as a whole. This response, however, seems not to take their refusal to vote for the UDHR and sign other HR documents seriously.

More generally, the practice-based account seems to give an implausible diagnosis of what is wrong with discriminatory immigration policies, which is brought out by reflection on states that haven’t committed to the UDHR or other relevant HR treaties. These states wrong prospective immigrants if they ban them on the basis of characteristics like religion, ethnicity, race, gender, sexual orientation, gender identity, or other statuses because they treat these persons as less than equal human beings, denying them equal respect and dignity. Treating all human beings with equal respect and dignity may be the spirit and ethos of human rights, as Brock states, but it isn’t the practice itself. (Lindauer 2022, p. 419)

So the worry is whether we can appeal to something other than the human rights practice to answer the diagnostic question as to why an immigration policy is unjust and if not, we have an implausible diagnosis ‘grounded in contingent features of the practice rather than the moral reality that the practice is supposed to respond to.’ (Lindauer 2022, p. 420). In the face of these concerns it is worth clarifying the normative groundings for my position.

So what are the normative underpinnings of my views? In my account, we have multiple normative vantage points from which to critique individual state’s behavior, which I first list and then discuss in more detail:

a) I present four justice scaffolds that give us the ultimate underlying normative justification for political arrangements.

b) I argue that there is a requirement to support institutional schemes currently delivering on core justice goals, which points us in the direction of why we ought to support our human rights practice.

c) If claims to self-determination are to be plausible, there are important underlying conditions which must be met, and this gives rise to a different level of normative justification.
In this section I discuss (a) and (b) while leaving (c) for discussion in the next section. Here are five points relevant to my arguments for (a) and (b).

1. As I argue, justice requires attention to four particularly important aspects: protection for basic liberties, enabling people to meet needs, fair terms of cooperation, along with social and political arrangements that support these core elements. These are the four central scaffolds that orient much of my early justification. Each of these four justice scaffolds is densely packed with normative resources. For the purposes of responding to the concerns, it is worth mentioning that I find space for Lindauer’s grounding notions of treating people as equals who deserve equal respect and dignity, within each of the four scaffolds. For instance, fair terms of cooperation and ensuring supportive social conditions conducive to justice require that we adopt a relational egalitarian view that requires such treatment.

2. A significant characteristic of human lives is that human beings form located life plans. Just occupation of territory and border controls are necessary for us to be able to realize our located life plans. Securing key justice goals requires considerable reflection and planning in setting up institutions, policies, and practices that can deliver on what is required. Administrative arrangements are important in planning to meet needs, protect basic liberties, coordinate actions productively, regulate our activities in ways designed to promote harmonious living, and so on. This is all part of the practical business of securing our justice goals. Administrative units can be configured in different ways, so it is a further question how to define and justify them (a task we return to in the next section).

3. What is the relationship between the four scaffolds of justice and the human rights practice I endorse? As I argue, we have duties to support institutional schemes already in existence that are either delivering effectively on core components of justice or are credible prospects for doing this here and now. And this requirement derives from the importance of cooperation on fair terms. The human rights practice offers us some important ready-made channels for attempting to realize justice in our contemporary world, so we have good reasons to support the practice.

4. If there is conflict between how the human rights practice evolves, my justice scaffolds provide enduring touchstones and therefore have more normative force. And the justice scaffolds can be used to marshal arguments as to how the human rights practice should evolve. Using such considerations along with core tenets of the practice, I argue that our human rights practice should add an additional right, namely to a fair process for determining migrants’ rights.

So, if a particular state has chosen not to support key human rights policy, we can still evaluate their actions on several grounds, such as failure to support key policies that offer good channels for implementing justice or the four justice scaffolds. I take the practice as a convenient real-world tool, while reserving normative space for critiquing both the practice and individual state’s poor performance regarding that practice. Note also that we can argue how the practice should evolve given its core commitments and underlying justice concerns.
So, we have a normative vantage point for critiquing individual state’s behavior at several levels, such as (1) the justice scaffolds and (2) the requirement to support institutional schemes currently delivering on the core goals. (In addition, in discussing Peter Higgins’s concerns I also draw attention to the resources involving requirements of legitimacy, which we cover next.) How can we use these tools to critique Saudi Arabia’s activities in the situation described? First, we can compare with the four fundamental justice requirements. Second, we can evaluate how well Saudi Arabia is supporting institutional schemes currently delivering on core justice goals, such as the requirement to support the human rights regime. And third we can discuss its failures to meet legitimacy requirements, by failing to uphold core contribution requirements such as ethos or accountability requirements, issues which will become clearer once I cover material discussed in later sections.

Drawing on material introduced in this section, I would argue that Saudi Arabia’s policy would be a violation of several normative requirements. There are violations of the four justice scaffolds, such as violations of core basic liberties, fair terms of cooperation, and arrangements that support core justice elements. Failure to support core documents from our human rights practice provides further grounds for criticism, since these offer good channels for implementing more of what justice requires. Unpacking just one of these strands here somewhat briefly, fair terms of cooperation require that we endorse relational egalitarianism. Treating people as equals who deserve equal respect and dignity is a core part of such fair terms.

Having discussed why I believe my account can address Lindauer’s queries about the sources of normativity, I end this section by noting an important point he raises. I applaud Lindauer’s positive suggestion concerning how we might in general think about the our human rights practice, namely: ‘The framework can pivot towards treating the practice of human rights not as the ultimate normative grounding for diagnosing the wrongs of any particular policies, but instead as the best ground for coordinating the commitments and actions of states with respect to the permissible terms of migration policy.’ (Lindauer 2022, p. 421). I think this is a significant suggestion. There are clearly multiple normative groundings available to support the human rights practice and different justifications might appeal to different audiences. Ultimately, we might view the practice as a helpful tool in coordinating commitments, as we seek to implement policy that better approximates justice in our imperfect world. Lindauer’s suggestion is quite compatible with my account and is to be welcomed.

Why Give Legitimacy Such a Central Place in the Argument?

In Peter Higgins’s ‘Migration Justice and Legitimacy’ he argues that the legitimacy standard I defend is:

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1 Elements of the practice can act as proxies for some of the deeper normative tools. So I do make use of that proxy reference strategy at key places where (1) states have committed to the core treaties and (2) it will be an efficient way to reference some salient normative considerations. But other deeper normative options are available, as I argue.
…an obstacle to the justified adoption of the migration-related policies Brock demonstrates here and in previous work to be substantively morally justified, if not required by justice. If a state is not legitimate, then it lacks the moral standing to adopt migration policies that are otherwise morally justified. I do not intend to question the importance of the concept of state legitimacy for political philosophy generally. However, I wish to argue that in the context of migration justice, considerations of state legitimacy may be contrary to the goal of defending a view on what policies a state ought to adopt. It may be more useful simply to consider whether or not there is moral justification for a particular state to adopt a particular policy. (Higgins 2022, p. 426)

So in the face of Higgins’s critique the reader might wonder: Why do I center my argument on the concept of legitimacy? Invoking any concept has various advantages and disadvantages. Different theorists might weigh these advantages and disadvantages differently. So let me outline why I have made the choices I have. In short, I believe, a legitimacy framework can give us a good set of tools for considering rightful authority. The default assumption in our current world is that states have authority over prospective migrants. Those migrants are expected to comply with states’ immigration law. What grounds this authority, migrants may well ask? And is that authority legitimate? Do migrants have an obligation to respect that authority and comply with states’ immigration laws? Taking the perspective of the migrants we might well wonder what answers are available to such important questions. So, starting with those default assumptions concerning authority that states make, I seek a compelling justification for such a view. Let me retrace some of those steps to show how the search reveals some neglected obligations for states.

In Chapter 3 I begin with an idea that I anticipate many readers will share, which is that members of a state have a right to decide what is best for them and that every state has the right to adopt policy that concerns itself almost exclusively with the wellbeing of its citizens over others (a position often referred to as ‘compatriot favoritism’).2 If every state has the right to self-determination, its citizens would seem to be free to determine their economic, social, and political affairs, and to manage them in ways that rightfully privilege citizens’ wellbeing. Because I expect many readers hold these views and our international order is based on such assumptions, I begin a search for a justification for state’s rights to self-determination within the state system, which can also yield a justification for compatriot favoritism. I first discuss one crude attempt at justification by considering this argument:

**Premise 1** States should have the right to decide what is in their citizens’ interests and to make policies and laws on the basis of their perception of those interests and their own views of what is good for citizens.

**Premise 2** Everyone belongs to some state or other, so all persons have a government committed to advancing citizens’ interests and respecting their human rights,

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2 For more on this position see, for instance, Brock (2002) and Ypi (2013).
ensuring the persons on their territory can enjoy relevant freedoms and opportunities characteristic of a good life in their home state.

**Conclusions** So, these arrangements are fair.³

Premise 2 is clearly false in our contemporary world. All persons do not live in a state governed in such a way as to respect their human rights and advance their interests, assisting them to enjoy core freedoms and opportunities. If they did indeed do so, many people would not seek to migrate away from such situations. Might the argument be strengthened and an improved version made to work?

Before we begin trying to marshal a new defense, we should note that there is an important burden of proof issue, affecting who has to make an argument to whom. We should not start from the assumption that states are justified as natural units. Rather, the question we must ask is: How can we justify a world carved up into states (the state system)? This question must be answered before we can decide whether states’ self-determination rights are defensible. The justification needs to be made in terms that everyone, especially those excluded from the state, can appreciate as compelling. We need to adopt a perspective that is mutually acceptable to both insiders and outsiders. What vantage point is available for this task?

Following John Rawls, I have explored a way to answer this question in several places.⁴ An accessible entry point into this perspective is to ask: If people did not know whether they would be insiders or outsiders of particular communities, what kind of justification for the state system might they find compelling? If it were the case that all persons have a government committed to protecting and promoting their interests and human rights, ensuring the persons on their territory can enjoy freedom and opportunities characteristic of justice, as Premise 2 describes, the view might be plausible. In the absence of such a state of affairs (with adequate provisions for failures), those substantially disadvantaged by such international arrangements have no reason to find such justification for either the state system or compatriot favoritism robust. Importantly, privileging the interests of fellow members when others fail to have their basic human rights secured would remain undefended. So if we want to pursue this kind of argument strategy, one clear implication is that we must cooperate in a host of cross-border activities, policies, and institutions that have as their aim securing good arrangements that can deliver on human rights and other aspects of justice. A justification along these lines will require that we fulfill many international responsibilities, as a requirement of enjoying self-determination and the defensible right to privilege our compatriots’ interests.

In making these ideas more usable for action-guiding policy in our world, once again our human rights practice is enormously useful. In our actual world, human rights discourse is fundamental to the public morality of world politics and a significant language through which international policy has been developed. So understanding how human rights function in our contemporary international practice is important, an issue about which I have more to say below. For now I hope to have at

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³ For more on this see Brock (2020), pp. 34–37.

⁴ For an accessible and comprehensive treatment see Brock (2009), especially Chapter 3.
least highlighted how obligations to comply with certain standards is a key underlying part of what states need to legitimately engage in many of the actions they take for granted, such as exercising their self-determination in ways that exhibit compatriot favoritism.\(^5\)

Beginning with the observation that we find ourselves in a world of states with presumptive self-determination rights should not strike anyone as particularly controversial, because it merely describes the status quo. However, in searching for a compelling argument for these common assumptions I take readers on a journey that challenges many sets of assumptions that go along with that worldview. As I show, there is no plausible justification for readers’ default assumptions unless we also accept a range of human rights related requirements. These include requirements that involve contributing to resilient communities that are human rights sustaining.

Returning now to Higgins’s critique, in his view we do not need the concept of state legitimacy to make the case for the migration policies I favor. In addition, ‘relying on legitimacy to support the claim that states ought to adopt certain policies (specifically, arguing that they must adopt certain policies in order to be legitimate) implies that states that have not already adopted those policies lack legitimacy. If they lack legitimacy, they cannot yet have the rightful authority to enact and enforce those policies.’ (Higgins 2022, p. 431). So, can illegitimate states enact policies that aim at legitimacy?

In response to this reasonable question, I note that my argument has a slightly different nuance to it. The argument is centered on the rights states have to exclude, in particular whether their right to exclude is justified. A key conclusion I draw is that states may have no right to exclude if they are illegitimate. When they are illegitimate, it is a further question what actions they may permissibly undertake. Noting that legitimacy may be domain-specific and also come in degrees (Brock 2020, pp. 59–62), I also discuss the obligations that all agents, including states and individuals, have to take steps to improve arrangements so that they may become more aligned with legitimacy (Brock 2020, e.g. Chapters 5 and 9).

While an illegitimate state has no right to exclude, it is permissible—indeed it may sometimes be obligatory—to undertake action that would better align with a just world. When a state is illegitimate it is permissible to undertake actions that align with more legitimacy, such as in ways that can better secure human rights that are under threat or are being violated. Indeed such corrective action is necessary in order to gain legitimacy, so it is not only permissible but to be encouraged.

In defense of my legitimacy-based strategy, I would emphasize that in this project I want to focus on how the world looks from the perspective of the migrant. How do states legitimately get to favor insiders while keeping their borders closed to outsiders and assuming a hostile or callous attitude toward them? I argue that such a position is not one that can be justified. Those states that do assume such an attitude do not deserve to have their immigration laws regarded as having rightful authority. And we should not be surprised if migrants reject immigration law as having rightful authority over them in such an apparently cruel and indifferent world.

\(^5\) I go on to develop what these obligations require in further detail in Brock (2020), Chapter 3, but there is also some more discussion of these ideas in the next section.
So, in closing, I take Higgins’s point that alternative (non-legitimacy based) arguments for the policies I support are available. I was drawn to the argument strategy I press, given that too much appeal is made to state’s rights to self-determination as some sort of fundamental premise that is so obvious as not to require robust defense. This project aims to challenge that perspective. In a world seemingly focused on state’s rights to self-determination, we should consider exactly why we are so confident that that right should be taken as a given, natural point of departure. My argument reveals that we cannot, and for that right to be robust we must pay attention to the situation of the excluded in ways that many fail to appreciate.

**Strengthening Implementation**

Both Jiewuh Song and Ana Tanasoca make useful suggestions for how we can strengthen practical implementation. They also invite me to elaborate on matters such as what my account entails in practice and how we can strengthen practical implementation. In responding to their concerns in this section I first summarize some significant points about the human rights practice for which I argue, which assist especially with appreciating some avenues available to us for strengthening implementation. I then address some specific matters related to strengthening, enforcing, and better implementing migrants’ rights.

Let us review nine important elements of the human rights practice for which I argue in *Justice for People on the Move*.

(1). There are several ways in which human rights ideas get implemented into progressive policy in our contemporary world. These different ways include through various accountability mechanisms and strategies of inducement, assistance, domestic engagement, compulsion, and external adaptation. Here I draw attention only to a few points necessary for my discussion with critics and elaborate only on those concerning accountability (in point 2) and domestic engagement (in point 3).

(2). Within our international system, there are some reasonably good regular channels available for calling states to account. The UN has a system of extensive reporting and auditing processes. Various UN human rights agencies require regular reporting. The treaty bodies review and audit reports that states are required to provide evidencing their compliance. Nongovernmental organizations have a significant role to play as independent sources of information that can also be used to judge compliance. The treaty monitoring systems require states to publicly account for their conduct (Beitz 2011, pp. 34–35). These formal, treaty monitoring systems play an important role in being accountable to external audiences showing the international community how particular states are performing in relation to international standards.

(3). The pathway of domestic engagement is probably one of the most under-appreciated mechanisms for progressing the human rights agenda. As we have seen in countless instances, when local actors understand that there is an unfulfilled human right within their state, this can mobilize domestic actors to challenge and remedy the situation. Mobilizing domestic political agents can be strengthened through transnational coalitions.
(4). Human rights offer rules and standards, but they do so much more than that. Human rights also function as standards of aspiration offering ideals that can guide desirable political change. Along with the institutional and quasi-institutional apparatus there are also informal processes for propagating and implementing human rights. I discuss some institutional and juridical aspects of our human rights practice below, but for now we must note that informal processes are also part of the practice.

(5). A range of political forms of action have developed both within and outside the UN system. The role of domestic agents and social movements is very important. Some of their human rights promoting activities are primarily persuasive and involve the support, coordination, and mobilization of domestic political agents. Others rely on transnational coalitions of nongovernmental agents that are effective at public advocacy or communication.

(6) Human rights also function as elements of a shared moral language, and ideals that guide efforts at political change by individuals and nongovernmental organizations. So they can be significant vehicles for redefining goals and political change. As Sally Merry observes, reflecting on studies of human rights activism especially in Asia, ‘[i]nstead of viewing human rights as a form of global law that imposes rules, it is better imagined as a cultural practice, as a means of producing new cultural understandings and actions’ (Merry 2006, pp. 228–229).

(7). It is worth underscoring the power of human rights to bring about progressive change. Human rights discourse not only has been, but will continue to be, a discourse that proves highly effective in mobilizing domestic and international publics. Human rights discourse can be a very helpful mechanism by which we can reduce injustice in our contemporary world. In addition, progress on human rights is often most impressive in places where there are both strong regional human rights institutions and robust social movements. Domestic and international human rights advocacy is an important complement and catalyst to international agreements and institutions and other more formal mechanisms that, over time, can protect human rights gains. It is also worth noting that 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). And several of the other human rights-oriented agreements, mechanisms, and real-world instruments constitute important opportunities for us to progress migration justice goals, such as the Global Compact on Migration (which I discuss at some length in Justice for People on the Move and which I discuss more briefly below).

(8). So, the practice has many disparate elements that all play valuable roles and engage diverse agents. Some parts of our human rights practice are more like law (some parts resemble soft law, while others are closer to hard law). Other parts are aspirational and provide goals. Still other parts play the role of well-supported vehicles for challenging cultural understandings. While we might start by examining the history of the practice, what it was intended to achieve, and looking at some of its formal and institutional mechanisms, we should not end there. Reviewing the history, the Bill of Rights and other core documents give us some insights. Attending to some of the more aspirational parts that serve as goals gives us others. The institutional and formal features shed valuable light on some pathways for change, but so does looking...
at the inspirational activities of human rights advocates and NGOs. The constellation of forces associated with the human rights practice, including NGOs, social movements, journalists, and other agents and agencies all have an invaluable role to play in bringing to fruition some of the goals and ideals of the UDHR and they are all part of the human rights practice in its contemporary manifestation. The practice clearly has many disparate elements. The institutional rules, while important, are sometimes less important than more informal processes and activities that can be important catalysts for changing hearts, minds, and cultural understandings. The combined power of institutional agents, social movements, dedicated NGOs (and so forth) all contribute to processes that can become forces for positive change.

(9). The issue of enforcing human rights standards is highly complex. I capture some of this complexity next. The original Human Rights Commission aimed to promote a declaration of human rights, draft a binding international convention, and work out mechanisms for how the convention might be implemented. They envisaged that enforcement would occur at two levels. States would be the primary agents responsible for ensuring human rights adherence in their territory and human rights requirements would be incorporated into domestic law or policy. A second level would deal with government failures; such failures would become a matter for international concern. A working group discussed several ways to implement international concern including through mechanisms of mandatory reporting, ‘petition and inquiry by special commissions or a special human rights court’ (Beitz 2011, p. 24), and where violations had been found ‘public censure and “extreme action involving reprisals and the use of sanctions”’ (Beitz 2011, p. 24). The working group settled on a scheme that combined several elements including periodic reporting, monitoring, and adjudication, though the recommendations were not straightforwardly implemented. The practice in operation today currently includes several recommended features, such as reporting and monitoring elements and there are some provisions for complaints.

While the framers had in mind a juridical paradigm with human rights ideally becoming part of domestic law enforceable in domestic courts or woven into state policy, this ideal was at best only partially realized. They hoped that international monitoring for compliance by auditing state’s self-reports would gradually have a normative effect over time. Some of the framers had hoped an international judicial capacity, such as a human rights court, would be instituted, to deal with disagreements between monitors and states, and assign any penalties that might be needed. However, this did not occur and monitoring agencies’ powers were limited to consultation, reporting, and public censure. While those were the agreed arrangements some 70 years ago, it was hoped that in due course more robust forms of accountability might be put in place to incentivize better domestic compliance.

In fact our current global practice is quite complex. In some parts a juridical paradigm is in force, for instance in the regional human rights systems which include human rights courts with legal coercive capacity to insist on compliance with rulings. The European human rights court is a good example. And, importantly, various types of agents participate in human rights practice. UN human rights agencies are tasked with monitoring and reporting, while international organizations and nongovernmental agents (including social movement organizations and business firms) have a range of other ways of promoting the human rights agenda. Considering the vast number
of agents involved in aspects of the human rights practice devoted to accountability, inducement, assistance, domestic contestation, engagement, compulsion, and external adaptation, there are a variety of ways in which our practice can assist with implementation and enforcement.

I take seriously the issue of pathways to justice in our imperfect world. An important question for me is therefore how can we make progress in our actual world on human rights implementation and enforcement issues? The original human rights commission had hoped for a global law paradigm, but this was not implemented. The fact that it was not is, I think, quite important if we are to support feasible pathways to implement more human rights gains. In fact, having drawn attention to the diversity of our human rights practice, we should be aware of the multiplicity of pathways to make progress. Reflecting on some of the human rights gains over the last 70 years, it is clear that we have made significant progress using our diverse toolbox, even if there is more work to do to live up to the full promise of the human rights agenda.

Having canvassed quite a bit of relevant material about our human rights practice let us turn now to some of the concerns particular to migrants’ rights. There is useful migration policy that is not only embedded in our human rights practice but also helps to expand it. The Global Compact on Migration (CGM) is an important achievement in this context as it sets out shared understandings and expectations about migration justice. In addition, all parties have agreed to hold each other to account for the terms and conditions it specifies. So we have a useful basis for important migration governance arrangements that can assist in implementing migration policies as we aim to reduce migration injustices in our current world. In Justice for People on the Move I discuss the progressive potential of this landmark compact. Jiewuh Song believes we need to ‘dig deeper into the institutional trenches to work out how this approach could be strengthened and specified in the requisite ways’ (Song 2022, p. 442). I agree with her that there are some general issues about how we can strengthen enforcement and implementation capacity. And it is heartening to see that she highlights how my framework and mechanisms for recognizing a right to a fair process in migration decisions, goes some way in the right direction. Her analysis of these issues seems exceptionally helpful and progresses debates well.

On this theme I will also add a few further remarks about how current developments have benefited from the CGM discussions and framework that have already taken place. The cooperative mechanisms built in to the CGM framework have resulted in improvements in consular protection for irregular migrants and identifying child trafficking operations (IOM 2022). The CGM framework has also been successful in generating heightened concern for the plight of refugees and the need for speedy responses to large refugee populations (IOM 2022). In the face of the escalating Ukrainian refugee situation, many states have moved with urgency to provide sanctuary. Such measures have included EU states issuing a Temporary Protection Directive that effectively grants Temporary Protected Status to Ukrainians that happen to be on their territory, along with those currently fleeing their war-torn country. The UK has swiftly expanded its family migration visa options to include a large number of relatives, such as grandparents, siblings, and adult children of UK citizens. The UK has also introduced an uncapped sponsorship scheme whereby communities and private citizens can sponsor Ukrainians for residence. I believe the fact that states
had already committed to the principles and processes embedded in the CGM, and had already committed to holding each other to account for performance in relation to those standards has helped to create a culture of responsiveness to the plight of people on the move. The CGM and the human rights practice on which it rests have helped to implement some of the core requirements contained in the CGM in ways that have helped migrants substantially in our actual world. Would this responsiveness have happened even if the CGM had not been in place? Perhaps, perhaps not. What is different post-CGM agreement is that all states have committed to undertake the kinds of actions they are now taking and, more importantly, to be held accountable by the international community for doing so. I think this added element has made a substantial difference to state motivations, willingness to act in a timely manner, and to act in ways recommended in the CGM for which they will be answerable to the international community.

In closing, I note that when we view the long arc of history we can better appreciate the gains our human rights practice has achieved, even if there is still more progress that is urgently needed. Supporting a robust human rights practice, one that supports a diverse assortment of human rights along with ones more central to migrants, helps to strengthen implementation and enforcement of various measures required by migration justice, especially when coupled with some core commitments, such as the commitment to accountability. The firmer the basis on which the CGM rests, the more readily we can expect the arrangements outlined in the Compact to be implemented.

**Defending My Contribution Requirements**

Both Jiewuh Song and Ana Tanasoca raise important issues about how to understand contribution requirements, a key criterion necessary in assessing state legitimacy. In judging whether states are legitimate, one important factor is an evaluation of states’ contributions to sustaining a robust human rights practice. Ana Tanasoca notes various problems here and that contribution requirements require more specification. She argues that to assess each state’s performance on these contribution requirements we must first establish what we can reasonably expect of each state. Such expectations should be differentiated depending on capacities to fulfill human rights. Economic capacity, geopolitical abilities, political and legal systems, and the cultural environment will all influence what can be expected of particular states in promoting a just state system. We need country-specific expertise and information to make such judgments. And it is difficult to make judgments when states have mixed human rights records, as Turkey clearly does. Getting the moral mathematics correct in such cases is tricky for individual states, let alone all states. She believes these difficulties in calculations present important epistemic limitations to our ability to judge reasonable expectations on internal and contribution requirements. The judgments lack epistemic reliability. So, while she applauds my ambitious account of state legitimacy that takes seriously states’ obligations as participants in the state system, she is concerned that in practice the account cannot offer sufficient guidance.
While I acknowledge the difficulties to which she alludes, we can get a reasonable sense of how to navigate these judgments and one that enjoys sufficient precision for the job at hand, as I go on to discuss next. But first, I note that on the matter of being able to make rough but reasonable judgments about comparative shares of responsibilities, footnote 6 of Tanasoca’s paper (2022, p. 449) gives good examples of how we can navigate key issues, thus partially answering the questions she has raised for me. She writes, ‘we should expect way more from affluent states who have almost eradicated poverty within their borders (e.g. Scandinavian states), states that carry significant weight in world politics or that are permanent members of the UN Security Council’. I completely agree with her intuitive sense of how this works and so how we would share responsibilities, if we can agree on the content of what those responsibilities are. So can we do that?

In efforts to sketch that content I discuss the role that can be played by my four central contribution requirements (Ethos, Accountability, Constraint Against Worsening, Commitment to Action Under Relevant Circumstances) shortly to be discussed. In addition, the Commitment to Development Index can play a pivotal role in providing important granular comparative assessments, taking account of current data and complexity as Tanasoca notes. Let me elaborate.

When I introduce discussion of how to measure contributions I note that it would be advantageous to appeal to metrics that already enjoy broad support and are widely used in the world today. Starting with the metric of Overseas Development Assistance I note its defects and observe that more reliable measures are available. I discuss the virtues of using the Commitment to Development Index (CDI) as an important metric we can use in this project. The multi-dimensional CDI is one rough proxy of state contributions to building the kinds of societies conducive to sustaining a robust human rights practice. It measures countries’ performance in multiple domains (aid, trade, investment, migration, environment, security, and technology) and considers a comprehensive range of factors. It also takes a more holistic approach, and one conducive to comparative measurement. I also suggest in a footnote (Brock 2020, Chapter 3, footnote 56) that we could use an index composed of various indices, which could take account of many factors that sustain strong support for human rights, should we desire more complexity. But for the project I have in mind I believe the proxy of the CDI is a suitable metric.

In addition, I argue that there are four key contribution requirements that act as important constraints on state action. Failure to meet any one of these four important contribution requirements is a huge obstacle for a state’s meeting its contribution requirements and hence being declared legitimate. These are:

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 an individual human being (Ethos Requirement).

A commitment to practices of accountability (Accountability Requirement).

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 reject policies in which protection for people’s human rights deteriorates markedly, especially when such protections are reasonably secure (Constraint Against Worsening).

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 (Commitment to Action Under Relevant Circumstances).

Now, clearly, there is much more to say about which state actions meet or fail to satisfy these criteria. In Justice for People on the Move I discuss several examples of each, noting important failures, especially regarding migration. Rich contextual detail is needed to make careful judgments and is a feature of the analysis throughout the book. In addition, for the project I have in mind, there are adequate metrics available to act as relevant proxies for getting at some important contributions to environments capable of sustaining human rights practice. The careful work being undertaken by several respectable organisations (such as the Center for Global Development, Freedom House, the International Organisation for Migration, and the United Nations Development Program) in providing useful fine-grained metrics and comparative assessments are sufficiently useful for the project. In future work, I intend to develop further some of these proxies and broad ideas to give these ideas even more precision. And I am grateful to critics for pressing me on these points.

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