Exit and the duty to admit

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Abstract
Conventionally, it is presumed that while citizens have the right to exit the state in which they are located, no particular state (except a citizen's home state) is required to admit them. Yet, this convention has produced, and continues to produce, injustice; to understand why, I focus on defining and protecting a right to exit, as distinct from the right to move in general. This analysis leads me to propose that whereas the political theoretic literature appears to have converged on a commitment to decisive asymmetry (in favor of accepting a state's right to exclude), I propose that only a weak asymmetry is justified. I argue that receiving states are duty-bound to act in ways that enable migrants to exercise their right to exit. In particular, I argue that receiving states have a perfect duty to collectivize the process by which needy migrants can exercise the right to exit.

Keywords: immigration; right to exit; duty to admit; global governance; imperfect duties

It is widely presumed that the right to exit is one among the rights possessed by citizens of all states. The right to leave has been protected in international law since 1948, when it was listed among the foundational human rights in the Universal Declaration of Human Rights, which acknowledged that 'everyone has the right to leave any country, even his own'. As a result, a state's legitimacy, whether democratic or not, depends (among other things) on whether its citizens can freely leave. Typically, the right to leave is interpreted to have three distinct implications: citizens have the right to travel outside of one's state (and to return to one's state); citizens have the right to emigrate, that is, the right to leave one's state to reside elsewhere on a permanent basis (subject to the agreement of the hosting state); and the right to expatriate voluntarily, that is, to abandon one's existing citizenship in favor of settling elsewhere and taking up another citizenship (subject to the agreement of the second state). States that fail to respect the right to exit are subject to criticism by outsiders; for example, when Ivory

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Coast attempted in 2011 to close its borders in response to post-election violence, it was heavily criticized by the international community.

At least one component of the right to exit, the right to seek asylum, is understood to be a universal, and fundamental, human right. The right to seek asylum is the right to be admitted to a territory and offered at least temporary sanctuary, in cases where one can credibly claim to be at risk of violence or persecution. But, considerable evidence suggests that access to a certain subset of wealthy, developed, countries is increasingly being restricted by the adoption of what Mathew Gibney has termed ‘non-arrival procedures’. Citizens of countries that are known to be a source of irregular migrants and asylum-seekers are increasingly required to secure visas to permit travel to specific countries; transportation companies are increasingly being fined for transporting foreign nationals across borders with inadequate documentation; in some states, immigration officials have themselves moved into airports in sending countries to inspect the documentation of those intending to board flights to their countries. Some states (e.g. Switzerland, France, Germany) have declared their airports to be ‘international zones’, a designation that legally permits countries to offer only restricted rights to those in airports (i.e. not those that are typically available to all people on the state’s territory). All of these procedures are developed with one intention, that is, to make it more difficult for asylum-seekers to reach one’s state territory, and therefore to make it more difficult for them to claim the protection to which they are entitled—as a matter of international law—on one’s territory. The consequence of such actions is to restrict many people’s ability to exercise their right to exit; they highlight the relationship between the actions taken by potential admitting states and the capacity of individuals to exercise their right to exit. If only one of these countries had made concerted efforts to restrict entry, the right to exit would not be in jeopardy (even if that one country would be abrogating its responsibilities to refugees); that multiple countries are doing so in concert, however, has jeopardized the basic human right to exit.

It is therefore time to revisit the importance of the right to exit, in asylum and other cases, and doing so is the purpose of this article. I focus on the obligations this right imposes on potential receiving states, with respect to migrants who aim to emigrate, that is, to reside outside of their home states, or who aim to expatriate, that is, to live outside of their home state and take up the citizenship in their new home. I argue, fundamentally, that receiving states are duty-bound to enable migrants to exercise their right to exit, and thus that although states maintain the right to employ their discretion in admitting and excluding migrants (i.e. I am not defending an open borders view), this right is contingent on their more general participation in a collective scheme that enables migrants to exercise their right to exit. States maintain discretion over admittance to their territory only insofar as they meet their duties to enable the right to exit to be exercised in general.

I begin with an account of the interests that are protected by the right to exit; I examine the standard defenses offered on its behalf, all of which point to the interests that the right protects. Here I distinguish between the grounds for the right to move in general and the right to exit in particular; the grounds for each of these
rights, I shall suggest, are sufficiently distinct that they should be understood as two distinct rights, that is, the right to exit is not best understood as one element of the right to move in general, a right which is typically grounded in the importance of individual autonomy, but rather as a right to safety and security. The reason to understand the right to exit in terms of its roots in seeking security and safety is that it enables us to understand that the costs of exercising this right are very high for the migrant; I outline these costs next. The purpose here is to highlight that not only do migrants accept significant costs by migrating, but also that these costs should suggest that migrants move only where there are significant reasons to do so. As a result, it is incumbent on potential receiving states to avoid increasing the costs of migration.

I then examine an assumption that is accepted in most normative political theory, that there is a legitimate asymmetry between the right to exit one’s state and the right to enter another state. Conventionally, it is presumed that while citizens have the right to exit the state in which they are located, no particular state (except a citizen’s home state) is required to admit them; I explore and reject this convention in part by evaluating the right to exit as it has been understood in the multicultural literature. Although the dis-analogy with movement across borders is strong, an analysis of the right to exit from illiberal communities suggests nevertheless that we must recognize that the simple desire to exit one’s state does not necessarily translate into the capacity to do so. For many political philosophers of migration, this asymmetry is justified by the requirement that a state’s sovereignty, and therefore its right to admit whom it chooses, be respected. However, I suggest, a casual acceptance of this asymmetry has made the exercise of the right to exit too difficult for many potential migrants including, but not limited to, refugees. In order to understand why the acceptance of this asymmetry has produced, and continues to produce, injustice, it is important to refocus attention on the purpose of defining and protecting a right to exit, as distinct from the right to move in general. Whereas the political theoretic literature appears to have converged on a commitment to decisive asymmetry, I propose that only a weak asymmetry is justified; states have discretion over admittance, certainly, but only insofar as they meet the duties imposed by the importance of respecting the right to exit. Finally, I propose that while it may appear that the duty to respect the right to exit is imperfect, that is, not clearly assignable to any state in particular, in fact the duty to institutionalize a mechanism by which all those who wish to exercise their right to exit can do so, is a perfect duty. In this case, there is a duty to perfect imperfect duties.

**WHY IS THE RIGHT TO EXIT VALUABLE?**

One might simply propose, as do many open border advocates, that the right to exit is just one instantiation of the more general right to free movement; the right to exit does not therefore stand in need of special defense, since were the right to free movement adequately respected, citizens could freely exit their states. Why not simply defend the right to free movement, then? I shall argue, however, that we have
good reason to distinguish between the right to exit and the right to move more generally; the grounding of these two rights is fundamentally distinct.

On the open borders view, the ability to move to the location of one’s choice, whether or not this movement requires crossing borders, appears to be a key component of living an autonomous or flourishing life. Moreover, a commitment to individuals as free and equal appears to demand that constraints on movement, among many other constraints, be limited as much as possible. The ability—that is, the right—to move freely is sometimes defended in instrumental terms, for its contribution to protecting fair equality of opportunity, or simply to enable individuals to pursue the range of goods that they value. If it is right to claim that we have a strong interest in living a fully autonomous life, and if the ability to move freely is an essential component of living an autonomous life, then there appears to be a case for treating the right to move, including the right to take up residence and citizenship elsewhere, as a basic human right. 5

One way to object to the claim that the right to move is a basic human right is to begin as David Miller does by observing that ‘freedom of movement is severely restricted in a number of ways’ in all liberal societies—citizens cannot in most cases enter onto (or into) the private property of others without permission and access to public space (parks, roads, etc.) is heavily regulated, for example. These restrictions appear largely unproblematic, even though they restrict our movements. Miller points to these restrictions as part of a more general argument against treating a right to immigrate as a basic human right. Yet, observing the widespread acceptance of these restrictions does not help us to understand why, when states that have refused to respect the right to exit—think the Soviet Union, East Germany and North Korea, for example—they have been, and are criticized for their aggressive attempts to restrict their citizens from leaving. When the Soviet Union forcibly restricted Jewish citizens from leaving for Israel (and elsewhere), it was condemned for violating its citizens’ basic right to exit. In the former case, where the restrictions appear unproblematic, they are unproblematic because they do not infringe the ability of citizens to live in a safe and secure environment. Where restrictions on movement are problematic, however, it is (often) because this ability is precisely what is at risk; at the same time, exit is necessary in order to access such a safe and secure environment and its restriction serves to prevent access to such an environment.

These cases tell us that there is a crucial distinction between internal restrictions of movement and restrictions on the ability to exit one’s state. Movement can be restricted internally in a democratic state for at least two reasons: 1) citizens have access to the environments in which these restrictions are agreed, and 2) these restrictions are, within a democratic state, subject to a commitment to equality which ensures that wherever restrictions on movement are implemented, doing so does not violate the fundamental equality that underpins liberal democratic practice. These standards do not apply in the international environment, and we therefore need another strategy to explain why the right to exit, but not the more general right to move, ought to be defended as a basic human right.
In my view the right strategy is to distinguish between the right to exit and the right to move in terms of the interests each of these rights protects. Doing so enables us to distinguish, in particular, between the admittedly strong interests we have in moving from the much stronger interests we have in being able to exit our state, should we need to do so.

What then, are the reasons to defend a right to exit? Perhaps, the most familiar reason to value the right to exit is for its fundamentally protective role—as Frederick Whelan has written, the right to leave protects citizens ‘in the face of possible excessive demands for allegiance’. When states behave oppressively towards their citizens, the right to exit offers a safety valve by providing citizens with an avenue to escape that oppression. Refugees seeking asylum are understood to be exiting to gain protection from a less oppressive, violent or persecuting state.

An alternative way to understand the protective role for the right to exit suggests that a state that has acted oppressively towards its citizens may over time be persuaded by its citizens’ actions that it prefers to transform itself into a state that is legitimate rather than continue its oppressive actions. On this view, the right of exit may serve to ‘cure’ a government of its oppressive tendencies by ‘exerting pressure to bring about their reform’. If citizens can exercise their voice to demand reform—in effect, to make credible threats about the consequences of failing to institute reform (i.e. mass exodus)—governments may be encouraged to eschew oppressive and violent strategies to secure obedience from their citizens in exchange for democratic (or at least non-oppressive) institutions. On this view, governments are prompted to act in order to avoid the mass exodus of citizens who would, in the absence of reform, choose to leave. It may be, for example, that Arab leaders facing protests from their citizens over the past many months were in part motivated to adopt reform in the face of concern that too many citizens would choose to exit in the absence of these reforms.

A second instrumental reason to value the right to exit highlights its contribution to securing the accountability of a governing entity, and this accountability role is often attributed to Albert Hirschman’s discussion of market competition in Exit, Voice and Loyalty. On his account, customers are informally able to hold companies accountable for the quality of their products, so long as they can, at any time, exercise an ‘exit’ option—they can purchase goods elsewhere. For the ‘exit’ option to be exercised, says Hirschman, there must be alternative companies providing goods that are at least as good (or offer a comparative advantage of some kind, at least). In a market environment, ‘the customer who, dissatisfied with the product of one firm, shifts to that of another, uses the market to defend his welfare or improve his position’. The company, knowing that customers can deploy the exit option at any time, will thus remain committed to providing high-quality goods; via the existence of a live exit option, the company is held accountable to its customers. By apparent analogy, a state that protects its citizens’ right of exit may be held accountable by the existence of the very right it protects; citizens can, on this view, be thought of as customers who may choose to exit if the product is perceived to be inadequate and alternatives can be found elsewhere.
Perhaps the best-known instrumental reason to value the right to exit is its apparent connection to preserving the legitimacy of a government. According to John Locke in his *Second Treatise of Government*, any government requires the consent of its citizens in order to govern legitimately, and this legitimacy is in part granted by its acknowledging and respecting the natural right of citizens to leave the territory. If citizens can leave the territory, he proposes, and they choose against doing so, they can be taken to have consented to a governing entity and thereby to have granted it the legitimacy it needs to rule. On this logic, the restrictions on exit to which citizens of North Korea are subject are such that the governing entity in North Korea cannot claim to have legitimacy grounded in consent, whereas the Canadian government can claim legitimacy in the face of its citizens’ choice to remain on Canadian territory. David Hume responded skeptically to this argument, suggesting instead that the costs of exiting the state into which one is born are so high that it is a mistake to infer consent to governance from citizens’ ongoing residence in that state. Even in the absence of physical restraint by state authorities, citizens may be too poor, or too invested in the community in which they live (they may prefer to remain in their communities, or with their families), to consider exiting to be a viable option. Moreover, the proposition that our political obligations stem from our having consented to a government is itself controversial. Thus, in many cases, where citizens remain resident in a state, their doing so is not adequate to imply their consent to a specific government, and this is the case even where the state respects its citizens’ right to exit. Yet there remains a fundamental plausibility to Locke’s argument: while Hume may have been right that remaining on a territory is inadequate to infer citizens’ consent, legitimate states may not actively prevent citizens from leaving.

These defenses in fact share a common core. They are all focused on the very strong interests we have in living in a safe and secure environment, and especially in being able to escape where our state is no longer providing this environment; these interests are sufficiently weighty to justify acknowledging receiving states as duty-bound to respect this right as a basic human right. As Joseph Raz has suggested, it is helpful to understand rights in terms of the very strong interests they protect. Additionally, he tells us, where we protect a very strong interest by designating it a right, we acknowledge that others are duty-bound to respect that right. As Henry Shue explains, physical security is on the list of basic human rights because, like any basic human right, it is a ‘necessary condition for the exercise of any other right’. Defending the right to leave in these urgent cases does not seem, in other words, to demand a commitment to the right to move in general.

As with even basic human rights, the right to exit is not absolute, of course; yet, the conditions under which it can be restricted are few and far between. That is, the claim is not that there are no legitimate reasons to bar the right of citizens to exit their country. Although we are quick to condemn states that bar their citizens from exiting, like many rights, the right to exit is nevertheless subject to a series of justifiable constraints. The clearest case of justified border closing is in the case of health emergencies, where the risks of transmitting diseases across borders are such that
they may temporarily justify preventing citizens from exiting. Additionally, states are permitted, for example, to (temporarily) deny the right of suspected or convicted criminals, and the forsaking of one’s passport is often demanded of those who have been convicted of a crime and are awaiting trial. More controversially, in some cases, states deny the right to exit of those who have not fulfilled national obligations—for instance, to serve in the military in cases where all citizens are required to do so. Its Human Rights Committee ruled that the Finnish state was permitted to refuse to issue a passport to a citizen who had not yet fulfilled his national service obligations, for example. The point here is simply that, whereas freedom of movement and a more narrowly understood right to exit are both subject to legitimate constraints, the bar that must be passed in order for such a constraint to be deemed legitimate is much higher in the case of the right to exit.

**COSTS OF EXIT**

As I described above, the right to exit is valued for its contribution to securing the legitimacy and accountability of states, and most significantly for its protective role. Each of these defenses is based on the fundamental interest citizens have in residing in a safe and secure environment. Yet, exiting itself is challenging, even for the most motivated of migrants; doing so entails a range of costs, which can be broken down into three broad categories: physical, material, and emotional. States attempting to deter exit may deliberately aim to increase the costs of exit along all of these dimensions; few of these attempts are legitimate, however.

In some cases, physical barriers, or other aggressively coercive disincentives, deter citizens from exiting. In these cases, there are guards preventing the crossing of these physical barriers as, for example, was the case with the Berlin Wall. Where citizens attempt to exit through these barriers, they often do so at the risk of their lives. In others, citizens are not themselves barred physically from exiting, but know that doing so will put themselves and their families at risk of retribution.

What is objectionable about physical barriers to exit like the Berlin Wall, beyond their forceful restriction of exit, is that they restrict the right to exit as a right that is held against one’s one state. Yet, physical barriers—think of the fence between the United States and Mexico, or the Wall between parts of Israel and Palestine—which are presented as restricting entry, and therefore as legitimate attempts by states to keep control over those on their territory also make exiting difficult, if not impossible. I shall suggest below that it is a mistake to understand the right to exit as held uniquely against one’s own state, and therefore that states can be criticized for restricting entry because it makes the exercise of exit objectionably difficult, if not impossible.

The existence of physical barriers preventing exit are, fortunately, infrequent. More frequently, it is the material or emotional costs of leaving that deter the exercise of the right to exit. Leaving a community in which one has lived one’s entire life can be expensive. In many cases, potential migrants are not wealthy, and thus the material challenges that necessarily accompany exiting are such that they make exercising an
exit option impossible or unreasonably difficult; these material challenges are exacerbated in cases where the average level of education is low, or where the skills one possesses are of little value in the would-be receiving community, since in both cases the challenges to providing for oneself post-exit may be (or may seem to be) insurmountable. Sending states may intend further to deter migration by imposing exit taxes or by confiscating exiters’ property. Whereas in the case of physical barriers, where consensus exists in condemning states that deploy them to prevent exit, the case for identifying where states can impose legitimately impose material costs on exiters is less clear. There is room for debate, here, to explore what material costs exiters can be expected to bear. For now, what I mean to highlight is that, again, the ability to exit is hampered both by actions taken by home states and by receiving states. If, again as I shall argue below, the right to exit is held against both home and receiving states, then the costs imposed by receiving states that make exit difficult or impossible will be worth considering with a critical lens.

Other factors dissuading exit are connected to the loss of the specifically emotional benefits that membership provides. As Will Kymlicka has observed, leaving one’s cultural environment is not easy, even in the best of cases. Leaving any community, including but not limited to national communities, may mean cutting oneself off from family and friends, from a culture that has framed one’s worldview, and in which one has cultivated one’s identity. In (most of) even the best of cases, exiting will mean leaving loved ones and the ‘sense of belonging and rootedness from community’ that membership provides behind. In other cases, state leaders may increase the costs of leaving by describing exiters as traitors, or by encouraging members to ostracize ‘deserters’, or by denying exiters the right to return to see their family. Whereas the former, ‘standard’ emotional elements of migration cannot be bypassed, states can be criticized for attempts to make maintaining ties with friends and family members left behind difficult or impossible, because they are making the exercise of the right to exit unreasonably challenging.

To summarize the above, there are costs to be borne, certainly, by exiters. At issue, here, is where and when states impose costs that can justifiably be borne by exiting migrants, and where these costs are unreasonable. The standard understanding—and I will begin to examine this in the next section of the article—is that the state from which the migrant is exiting must at least passively enable the exercise of the right to exit, and that attempts to prevent this exercise often impose unreasonable burdens on would-be migrants. In my view, however, this understanding rests on a poorly justified commitment to understanding the right to exit as held simply against one’s own state. But, in fact, given the right to exit’s status as a basic human right, the obligation to respect this right also falls on potentially receiving states, and therefore the costs that some receiving states impose on would-be entrants demand criticism.

RIGHT TO EXIT: FORMAL VERSUS EFFECTIVE

The right to exit is a subject of intense debate among theorists of global migration justice, and it may be instructive to examine how it has been treated in the
multicultural literature: I’ll suggest that it helps to illustrate the point I’m intending to drive home over the course of this article, namely, that it is a mistake to understand the right to exit as held only against one’s own state.

In the multicultural literature, a central concern is with the obligations that a wider community has to enable the exit of unhappy members of illiberal cultural or religious communities. Where illiberal communities persist within a larger, democratic, environment, it is assumed that, when the right to exit can be exercised (i.e. when the costs of doing so can be mitigated) exiters can join this wider community: ‘if exit is supposed to be an option, there is need of places to go. Theorists of exit typically postulate a mainstream society’, that is, a ‘neutral public space’ of some kind. In other words, no formal borders divide illiberal communities from the wider community that would, in principle, receive exiters; informal borders often do circumscribe the space in which illiberal communities live and work, but state-provided and internationally sanctioned documentation (like passports or identity cards) are not required to cross them.

What obligations does the receiving community have with regard to potential exiters, if any? Some scholars suggest that protecting citizens in an illiberal community requires only ensuring that the communities are abiding ‘by liberal norms forbidding slavery and physical coercion. More generally, they would be bound by liberal traditions on “cruel, inhuman or degrading treatment”’. On this view, although the costs of leaving illiberal communities are high, citizens do not need to be enabled to exit their community in the face of them. All that is necessary is that their basic human rights are respected, and that the receiving community will welcome them should they exercise their exit right. The purpose of defending a merely ‘plain’ right to exit is nearly entirely protective: liberal political theory, says Chandran Kukathas, emphasizes that the ‘freedom to separate’ is of ‘critical importance’, for its role in repudiating ‘force as a means of determining how people should live’. In the face of this demand, receiving societies are required to refrain from active intervention in any illiberal community that does not exercise extreme force or coercion to compel its members to remain: ‘what the principle of exit therefore requires of outsiders or third parties is a stance of neutrality and, so, non-intervention in the terms of association of any group’.

A contrasting view proposes that the ‘plain’ principle of exit is inadequately protective, if it is not accompanied by active efforts to protect vulnerable community members. For these scholars, liberal communities are thereby obligated to act, in order to secure the right to exit for all members of illiberal communities, especially their most vulnerable members. In some cases, this action requires merely providing a welcoming environment in which to receive exiters who would otherwise find themselves within a wider community without the resources needed to survive. The state may be obligated to ‘[establish and fund] respective shelters, where refuge can be temporarily taken’, for example. These kinds of activities do not require actively violating the informal borders that divide illiberal cultural groups from the wider community. For others, the wider liberal state is required to do more than provide resources to ‘refugees’ from illiberal communities, in order to protect the right to exit.
It can require enforcing minimal levels of education or actively providing members with information concerning possible exit paths. The purpose of delineating the wider community’s greater obligations in support of the right to exit is to make this right effective rather than merely formal or ‘plain’.  

The dis-analogy with the international environment is strong of course: whereas members of illiberal communities can cross ‘borders’ to enter the wider, mainstream, society, without being formally blocked from doing so by the receiving community, citizens desiring to exit a state require permission from another state to enter. The right to grant this permission, or not, is taken nearly axiomatically to be an element of state sovereignty. And while most accounts of justified state sovereignty are predicated on refraining from making exit difficult or impossible, very few are predicated on the proposition that admission is required, in more than the most limited of cases.

At least historically the right to exit has been thought of as a right, the protection of which is entirely the domain of one’s home state. As Frederick Whelan explained, ‘the right to leave is held by citizens against their own country, in the face of possible excessive demands for allegiance’. Similarly, David Miller has proposed, by analogy to the case of marriage (we possess the right to marry, but not that a partner be provided to us), that the right to exit is a right held simply against one’s state, in particular that we are provided with the most basic of means necessary to leave the state. It is not, he says, a right held against other states that they provide us with a home. In other words, if the state doesn’t engage in measures that deliberately obstruct the capacity of its citizens to exit, it has fulfilled its duties with respect to this right. When states refuse to grant passports to its citizens, or when they require them to secure exit visas, or when they close borders to leavers using physical obstructions, they are obstructing the right to exit. But, so long as states willingly grant passports to citizens who request them (at reasonable cost), and allow them to pass through the borders without confiscating their property and without depriving them of their right to return to visit, they are typically perceived to have met the obligations imposed on them by the right to exit, even where exiters have nowhere apparent to go.

What we learn from the multicultural literature, then, is that the domestic obligation to protect a right to exit, even on its plainest interpretation, is robust compared to the obligations apparently demanded of potentially receiving states. Rather than dismiss the multicultural case as irrelevant, however, I think it points us to what is essential to the right to exit, namely, that it is intended to protect the right to seek a safe and secure environment for those to whom it is unavailable in the communities in which they reside. This right appears, necessarily, to demand something of receiving states: in particular, it appears to demand acknowledging that the right to exit is held not only against one’s own state, but also against receiving states that they offer a secure and safe environment to exiters.

THE APPARENT ASYMMETRY OF ADMISSION AND EXCLUSION

Identifying the duties that states have to respect the right to exit is complicated by the widespread acceptance of the asymmetry between exit and entry. While individuals
are said to possess the right to exit their states as one among their basic human rights, states are equally said to possess the right to control their borders as one among their basic sovereignty rights. This tension is resolved in practice, and often in principle as well, by adopting what Frederick Whelan has termed a ‘middle position’, in which:

we acknowledge and actually grant a largely unqualified right to leave, in accordance with basic liberal values centering on individual autonomy and initiative. The right to leave is combined, however, with acceptance of substantial state sovereignty, epitomized so far as this issue is concerned in the state’s authority to regulate and even prohibit immigration.30

As a result, the right to exit one’s state and the right to enter another is said to be justifiably ‘asymmetric’—one can possess the right to leave one’s own country without the concomitant right to enter any other country in particular.

For relatively few scholars the asymmetry is absolutely illegitimate. For so-called open border advocates, there is no legitimate reason to defend the right of states to deny admission to those who desire to exercise their right to free movement by entering; the basic right to movement, which includes the right to exit, is so strong that states cannot legitimately prevent their entry.31 Scholars who absolutely reject the legitimacy of border control are few and far between, however, and many instead advocate what Veit Bader has termed ‘fairly’ open borders; here, the presumption is that, in an ideal world, borders would be considerably more open than they are now (for some, absolutely open), but that in the short term there are legitimate reasons to refrain from opening borders this widely.32 For others—Lea Ypi holds this view, for example—we should accept a symmetry between exiting and entering, but the symmetry should be understood to be elsewhere, that is, not primarily with respect to the ease migrants experience in exiting one state and entering another, but rather with the costs and benefits associated with exit and entry, on the sides of both sending and receiving states. On this view, scholars of migration have been too concerned with assessing the costs of admitting migrants, without considering in adequate depth the costs (for sending societies) of exiting migrants.33 A symmetrical evaluation of costs and benefits is essential, she suggests, to achieving justice in global migration—a prospect she provocatively terms a ‘closed borders utopia’, in order to encourage a panoptic view of the effects of migration on both sending and receiving societies.34 The intuition motivating this article that, in some cases, the right to exit should be prioritized over the right to restrict entry, is not a central concern in Ypi’s account, beyond the acknowledgement that legitimate refugees require the right to enter independently of the costs they will impose on the receiving state.

More generally, however, scholars are willing to accept a partial asymmetry between the right to exit and the right to enter. The general strategy proposed to justify the asymmetry might be termed the ‘valuable goods’ strategy, which emphasizes the goods that may be in jeopardy in the face of large-scale uncontrolled migration into a political community. On this view, there are goods other than the right to exit that must also be weighed against the demand to migrate. For some, only the strongest of values can
justify closed borders; Joseph Carens for example suggests that only ‘public order’ concerns can justify denying the right of migrants to enter. For others, democratic and social justice goods, which are often best provided within and by bounded political states, can justify closing borders, if there is evidence that opening them will limit the ability of these states to provide these goods to members. For others still, among the goods that deserve protection from large-scale immigration is the political community itself; individuals value their membership in non-global political entities, and this value to individuals justifies their right to at least partially control the terms of entry and membership in that political community.

For some, the valuable goods strategy can be justified only if it recognizes that the needs of some are such that they unambiguously overwhelm the claim that a state’s self-determination entitles it to protect itself. On this view, a state is entitled to protect itself if and only if it can show that those who are most vulnerable are preferentially admitted. The migration prioritarian thus begins her justificatory strategy by ranking the reasons a migrant may desire to enter a country, and grants that those with the most compelling reasons to enter ought to be granted the right to do so first and foremost. In offering such an account, Rainer Bauböck, for example, distinguishes among five distinct categories of possible migrants, whose reasons to demand entry can be ranked in descending order of strength: whereas those who can demonstrate legitimate fear of persecution in the country from which they hail demonstrate the most compelling case for entry, those who wish to migrate for idiosyncratic reasons (to study opera for example) demonstrate the least compelling case for entry. Migrants who hail from desperately poor states, or who wish to join family members, or who desire to labor (temporarily) in a receiving state in an attempt to improve the quality of their lives ‘back home’, fall in between these extreme cases. Insofar as an asymmetry exists between the right to exit and the right to enter, it is smallest in the case of legitimate refugees.

Above, though, the focus is ultimately on entry, even where attention is given to those who may be most needy, and therefore the concern is primarily on the impact entrants have on the host society. Whether the right to exit finds adequate respect as the costs of entry are measured is, in general, not a central concern in these discussions. We might therefore describe the views above as decisively asymmetrical, that is, they are views where priority is given to the costs (allegedly) borne by the host state in admitting migrants, and where the limit on entrants is by and large determined by the host state. The mistake these views make is in ignoring the right to exit that demands respect. The view I defend prioritizes the right to exit, not ultimately, but significantly over the right of states to restrict entrants. In my view, in other words, it is worse to deny the right to exit, or to be complicit in denying the right to exit, than it is to allow for the good provided by receiving states to be rendered less good for its members. In general, since states can in general afford to admit some migrants, it is therefore reasonable to consider under what circumstances they should be obligated to do so. While I agree that a migrant’s home state is not duty-bound to identify a receiving state on her behalf, I do believe that there exists a duty that the right of exit is
made effective rather than merely formal. This duty lies (largely) with receiving states and requires that some state be willing to accept any given migrant.

It is worth noting one consequence of my view, namely, that in its emphasis on protecting a right to exit by reference to the strong interests everyone possesses to live in a safe and secure environment, where individuals already live in such an environment, their right to exit may seem more difficult to access. It may even seem like my view traps citizens of liberal democratic states in their home states, and indeed there is a way in which this is indeed a consequence of my view. Recall that I am distinguishing the grounds that underpin the right to exit from the grounds that underpin the right to move more generally. The right to exit is one that applies only where individuals do not already have access to the safe and secure environment to which they are entitled. Where they have access to such an environment, their demand to cross borders must be understood rather in terms of their right to move, which is grounded instead on the interests we have in living an autonomous life. As I suggested earlier, however, the demands that other states respect these interests can more easily be denied than can the interests that underpin the right to exit.

To summarize, then: accepting that there exists an asymmetry requiring a balance in the form of a ‘middle position’ makes a fundamental error: it assumes that the grounds for the right to move in general and the right to exit are identical, and therefore that we are simply balancing two rights—the right to move against the right to exclude. In fact, however, there are two distinct rights at stake, with two distinct groundings, as I identified above. The right to move, since grounded in individual self-determination, can be legitimately balanced against a state’s right to political self-determination. The right to exit, however, because grounded in the basic right to security, cannot be compromised in the name of political self-determination.

**MAKING THE RIGHT TO EXIT EFFECTIVE**

Above, I described the general strategy by which states defend their right to exclude many migrants. Whatever variant on the strategy that is taken, most agree that political communities can at least sometimes identify reasons, which are widely perceived to be legitimate, to close their borders to potential migrants. In attempting to balance these reasons against the claim that migrants have a fundamental right to exit, which requires gaining admission to another state, these scholars typically observe that, in most cases migrants can gain admission somewhere, and this ‘somewhere’ is adequate to satisfy the requirements imposed by the right to exit. There appears to be no moral requirement in other words that a migrant be admitted to the state of her first (or second, or third . . .) choice, and this is the case even when the migrant possesses the strongest possible reason to be admitted (i.e. is a legitimate refugee). Whereas in adopting either a valuable goods or a prioritarian strategy with respect to migrant admissions, it seems to be the case ‘there can be no guarantee . . . that every bona fide refugee will find a state willing to take her in’, in fact there is a moral requirement imposed by the strong interests protected by the right to exit that every bona fide
refugee, and many more migrants with urgent needs, be able to find admittance somewhere. Fundamentally, I shall argue, the duties that receiving states have to support the right to exit are not being met.

On the one hand, the challenge in remedying the rights deficit I have identified is the general unwillingness of states to accept an obligation to interfere in support of the right to exit of citizens of other states, as well as a rejection of the claim that other states might be legitimately permitted to interfere to make it possible for and perhaps even encourage their own citizens to exit. Yet, as I suggested above, an examination of contemporary circumstances suggests that it is a mistake to assume that home states are solely responsible for protecting the right to exit of their citizens. On the other hand, there are cases where states accept a duty to respect the right to exit. For example, in the case of refugees, and also in cases of humanitarian disaster, external states accept a duty to respect the right to exit of suffering individuals, and this duty is widely recognized and acted upon. When a recent hurricane devastated Haiti, the United States not only admitted many thousands of Haitian refugees, it provided transportation to the United States to many of them. Moreover, there are historical examples of states having taken great steps to secure the right to exit, for certain categories of migrants. For example, the United States actively campaigned on behalf of Soviet Jews (as well as other Jews from Eastern Europe) and made it known that they were willing to admit those who managed to exit the Soviet Union, and it has historically encouraged and extended support to migrants exiting Cuba. Similarly, Israel made Ethiopian Jews’ right to exit effective when it surreptitiously airlifted thousands of them from Ethiopia to Israel in the mid-1990s. These are highly unusual examples, however.

Instead, contemporary state practice has produced an environment in which the right to exit, even on its plain interpretation, is increasingly difficult to exercise, even by the neediest of migrants. As I observed above, the independent actions of several states have served in effect to restrict the right to exit in ways that are objectionable. Given an understanding of the right to exit based on protecting the strong interests we have in living in safe and secure environments, the preceding discussion suggests that the right to exit imposes a series of duties on potential receiving states.

First, as it is widely acknowledged, states have duties to admit exiters fleeing conditions that grant them the status of ‘genuine refugee’; this duty is strongest where exiters have managed to arrive on the territory of a particular state, which is then obligated to admit them and offer them at least temporary sanctuary. Second, states have a duty to refrain from acting in ways that make claiming this status in a safe territory impossible or nearly so; this duty is the one that is being violated by states acting contemporaneously to prevent potential exiters from exiting. What if only one state acts in this way, in a global environment that generally admits needy migrants? Is that state failing to carry out its duty to admit needy migrants, if (hypothetically) all needy migrants had found safe spaces elsewhere? In this case, we can say that although the right to exit is met, the deliberately excluding state is failing to do its fair share to bear the costs of admitting needy migrants. These two duties—to admit needy migrants and to refrain from acting to make it impossible for needy migrants
to access safe space—flow naturally what I have already discussed in this article, and are widely accepted and uncontroversial (even if unmet in the current global environment). A third related duty that states possess is the duty to pressure other states, in which individuals’ right to exit is at risk, to permit their citizens to exit; this duty can be carried out, for example, by making clear a willingness to admit potential exiter, and in some cases by threatening to impose sanctions or other penalties on states that refuse to permit their citizens to exit. Fourth and crucially, states have duties to provide aid to migrants who desire to exercise their right to exit, especially in the form of admitting them, once they have secured permission to exit, especially but not limited to cases where they are genuine refugees according to whatever definition is agreed. This duty can impose on receiving states, for example, the obligation to provide the resources fleeing refugees need so that they can arrive in safe spaces.

This latter duty, however, highlights a challenge to ensuring that the right to exit is respected. As I indicated earlier, whether a migrant desiring to exit can exercise this right depends on at least one state being willing to admit her. Yet, which state possesses this duty is heavily dependent on a range of factors, including whether other states are willing, or better placed (geographically, materially, culturally) to admit her. Identifying which state is obligated to admit a given migrant, that is, which state has the specific duty to ensure that the right to exit is respected for a given migrant, is complicated.

This indeterminacy with respect to which states possesses the duty to admit an exiter suggests that some coordination is essential in order to ensure that needy migrants are able to exercise their right to exit. States are typically worried about two things: that admitting needy migrants will be costly and, perhaps more importantly, that the costs of admitting migrants will fall heavily on states that are willing to admit migrants in a global environment in which others are trying to avoid doing so. In other words, they are worried not simply about the costs of admitting migrants, but also about doing more than their fair share in carrying the costs of doing so. The institutional mechanism by which to protect the right to exit is therefore necessarily collective: what appears essential is an institutional mechanism able to coordinate the demands by migrants to exit with states that are able and willing to admit them, and which is simultaneously able to ensure that the costs of doing so are shared fairly among admitting states. Such an institutional mechanism will solve the assurance challenges of what is clearly a collective action problem, so that costs are distributed fairly among participating states.

In the absence of such a global mechanism, the duties imposed by the right to exit may appear to be what Kant termed imperfect. Perfect duties are those that are absolutely required or prohibited of all individuals, for which no exceptions can be made; the duty to refrain from lying, or to keep promises, or to not kill others, are all examples of perfect duties. Imperfect duties are also absolutely required of all individuals, but the way in which they are discharged is in some way indeterminate. They can be indeterminate for a variety of reasons, for example because meeting the demands of the duty (to relieve global starvation for example) cannot be fulfilled by an
individual or state acting alone, or because the demands of the duty on a particular person or state are at least in part dependent on what others do (for example, when humanitarian aid to victims of natural disasters must be provided). One might think therefore that the right to exit imposes an imperfect duty, to admit some exiters, at some point. This conclusion would be mistaken, however, because it would permit the right to exit, a basic human right, to be inaccessible in some cases. Instead, the right imposes a fifth perfect duty on states, to institutionalize the mechanisms by which the right to exit is protected, globally, that is, to ensure that the duty to protect the right to exit does not remain unmet.

In summary, the weakly asymmetrical view that I am defending here acknowledges that states have a right to exclude migrants (I have not said anything about what reasons may legitimately be provided in defense of the right to exclude, however) in at least some cases. But it also takes seriously the observation that, only where exiters can find admittance somewhere is that right respected. It may be that exiters cannot find admittance in their first choice of state, but it is incumbent on states in general to ensure that exiters can exercise their right to at least some degree. In the introduction, I described that the actions taken by states acting independently makes the exercise of the right to exit difficult, if not impossible, for many migrants. Just as the current challenges refugees in particular face in gaining admission is the result of states acting collectively, though perhaps not purposively so, the fifth and final duty imposed by the right to exit—in light both of these empirical conditions and the right to be admitted somewhere—is necessarily collective. In the absence of such a collective solution, the right to exit will remain unprotected.

CONCLUSION

The objective of this article has been to examine the right to exit as well as obligations that states, receiving states in particular, have to respect it. Conventionally, the right to exit is a right that is held against one’s own state; part of this article’s objective has been to argue that receiving states are equally duty-bound to act in ways that enable the exercise of the right to exit.

I began by observing recent events in the global environment, in which wealthy states have converged on a set of tactics which combine to make the exercise of the right to exit more difficult to exercise than ever. I then turned to outlining the defenses typically offered on behalf of the right to exit. Historically, the right to exit is best defended for its protective role; the right protects citizens who might otherwise be governed by a violent and oppressive state. I then outlined the costs that migrants accrue as a result of leaving their states, when they are doing so with the intention of migrating more or less permanently (i.e. not when they are travelling abroad only). In considering the obligations that states have to allay these costs, I observed that a widespread acceptance of the asymmetry between the right to exit and the right to enter obscures that, frequently, the uncoordinated actions of individual states produce an environment in which the right to exit is difficult, if not impossible,
to exercise. This, I argued, was objectionable; a full understanding of the right to exit and what it entails enables us first to understand the migratory injustices perpetrated on the world’s neediest citizens, and second and more importantly, that the remedy is necessarily collective.

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NOTES

1. Matthew Gibney, ‘A Thousand Little Guantanamos: Western States and Measures to Prevent the Arrival of Refugees’, in Migration, Displacement, Asylum: The Oxford Amnesty Lectures 2004, ed. Kate E. Tunstall (Oxford: Oxford University Press, 2006), 150.
2. I owe the terms ‘decisive’ and ‘weak’ as a way to distinguish between two forms of asymmetry to Zofia Stemplowska.
3. This expression is Allen Buchanan’s. See Allen Buchanan, ‘Perfecting Imperfect Duties: Collective Action to Create Moral Obligations’, Business Ethics Quarterly 6, no. 1 (1996): 27–42.
4. Lea Ypi put this objection to me.
5. Kieran Oberman, ‘Immigration as a Human Right’, in Migration in Political Theory: The Ethics of Movement and Membership, ed. Sarah Fine and Lea Ypi (Oxford: Oxford University Press, forthcoming).
6. Frederick G. Whelan, ‘Citizenship and the Right to Leave’, American Political Science Review 75, no. 3 (1981): 637.
7. Though it might also encourage such actions; in 1968, the Polish state ‘encouraged’ its Jewish citizens to leave by treating them oppressively. Thanks to Zofia Stemplowska for this example.
8. Oonagh Reitman, ‘On Exit’, in Minorities within Minorities: Equality, Rights and Diversity, ed. Avigail Eisenberg and Jeff Spinner-Halev (Cambridge: Cambridge University Press, 2005), 189.
9. Albert O. Hirschman, Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations and States (Cambridge, MA: Harvard University Press, 1970), 15.
10. The analogy is limited, of course, since where there are few companies who legitimately desire fewer customers, states may believe themselves to be overpopulated and therefore encourage their citizens to leave. Or, they may be concerned only with the exit of some—presumably wealthy—citizens.
11. For a distinction between safety and security, see Jeremy Waldron, ‘Safety and Security’, Nebraska Law Review 85 (2006): 301–353.
12. Joseph Raz, ‘On the Nature of Rights’, Mind XCIII, no. 370 (1984): 194–214.
13. Henry Shue, Basic Rights: Subsistence, Affluence and U.S. Foreign Policy, 2nd ed. (Princeton, NJ: Princeton University Press, 1996), 21–2.
14. Eszter Kollar, ‘Medical Migration between the Human Right to Health and Freedom of Movement’, in Health Inequalities and Global Justice, ed. Patti Tamara Lenard and Christine Straehle (Edinburgh: Edinburgh University Press, 2012), 240.
15. Colin Harvey and Robert P. Barnidge, ‘Human Rights, Free Movement, and the Right to Leave in International Law’, *International Journal of Refugee Law* 19, no. 1 (2007): 9.

16. Defining coercion in the migration context is difficult—here I simply follow David Miller’s account, in which he proposes to understand coercion as an attempt to influence someone’s actions by threatening them with significant harm. See his David Miller, ‘Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh’, *Political Theory* 38, no. 1 (2010): 111–20.

17. I am leaving aside the difficult question of the costs imposed by the receiving state.

18. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1996), 85.

19. Reitman, ‘On Exit’, 195. See also Jennifer Leaning, Sam Arie, and Elizabeth Stites, ‘Human Security in Crisis and Transition’, *Praxis: The Fletcher Journal of International Development* 19 (2004): 5–30.

20. As Lea Ypi has pointed out to me, these costs—as are all of those I am considering here—are not unique to exiters. Those who stay behind also bear the costs of losing their loved ones. But, in this case, I’m focusing on the experience, and the moral questions, that arise from the perspective of the exiter.

21. Elisabeth Holzleithner, ‘Interrogating Exit in Multiculturalist Theorizing: Conditions and Limitations’, in *On Exit*, ed. Dagmar Borchers and Annamari Vitikainen (Berlin: de Gruyter, 2012), 28.

22. Chandran Kukathas, ‘Are there any Cultural Rights?’, *Political Theory* 20, no. 1 (1992): 128.

23. Chandran Kukathas, ‘Exit, Freedom, and Gender’, in *On Exit*, ed. Dagmar Borchers and Annamari Vitikainen (Berlin: de Gruyter, 2012), 36 & 38–39.

24. Ibid., 40.

25. Holzleithner, ‘Interrogating Exit in Multiculturalist Theorizing’, 29.

26. This distinction is Dean Machin’s.

27. For example, see A. John Simmons, ‘On the Territorial Rights of States’, *Nous* 35 (2001): 300–26.

28. Whelan, ‘Citizenship and the Right to Leave’, 637.

29. It might be the case, in fact, that sending states have a duty to make effective the right to exit in some way. This is certainly the argument in the case of illiberal communities, where property is held in common, which according to some must be willing to provide resources to exiter.

30. Whelan, ‘Citizenship and the Right to Leave’, 651.

31. Joseph Carens and Phillip Cole express the two paradigmatic ‘open’ borders perspective: Phillip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000); Joseph Carens, ‘Aliens and Citizens: The Case for Open Borders’, *Review of Politics* 49, no. 2 (1987): 251–73. See also Chandran Kukathas, ‘The Case for Open Migration’, in *Contemporary Debates in Applied Ethics*, ed. Andrew Cohen and Christopher Heath Wellman (Oxford: Blackwell, 2005), 207–220.

32. Veit Bader, ‘Fairly Open Borders’, in *Citizenship and Exclusion*, ed. Veit Bader (London: Macmillan Press, 1997), 28–60.

33. A variant of this objection can be found in Sarah Fine, ‘Freedom of Association Is Not the Answer’, *Ethics* 120, no. 2 (2010): 338–56. She proposes that arguments (she is objecting in particular to Christopher Wellman’s view) that prioritize the right of states to select members ignores the harm that exclusion can and does often cause.

34. Lea Ypi, ‘Justice in Migration: A Closed Borders Utopia?’, *Journal of Political Philosophy* 16, no. 4 (2008): 391–418.

35. Carens, ‘Aliens and Citizens: The Case for Open Borders’.

36. Margaret Moore, ‘Cosmopolitanism and Political Communities’, *Social Theory and Practice* 32, no. 4 (2006): 627–58.
37. Rainer Bauböck, ‘Free Movement and the Asymmetry between Exit and Entry’, *Ethics and Economics* 4, no. 1 (2006): 1–7. See also Philip Cole, ‘Towards a Symmetrical World: Migration and International Law’, *Ethics and Economics* 4, no. 1 (2006): 1–7.

38. To be fair, this is not true of Lea Ypi’s account, which is concerned equally with the costs and benefits accrued by both sending and receiving states.

39. At issue of course is whether this ‘somewhere’ is principled or contingent; I say more about this in the final section of the article.

40. David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 227.

41. Mathew Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004); and Andrew E. Shacknove, ‘Who is a Refugee?’, *Ethics* 95, no. 2 (1985): 274–84.

42. As described in the already cited Gibney, ‘A Thousand Little Guantanamo’s’.

43. For the general observation that institutions will serve to coordinate the assigning of imperfect duties, thereby making them perfect, see Onora O’Neill, ‘Children’s Rights and Children’s Lives’, *Ethics* 98, no. 3 (1988): 445–463.

44. Buchanan, ‘Perfecting Imperfect Duties’, 30.

45. There are of course multiple accounts of the distinction between perfect and imperfect duties. For a delineation, see George Rainbolt, ‘Perfect and Imperfect Obligations’, *Philosophical Studies* 98, no. 3 (2000): 233–56.