Beyond lockdown? The ethics of global movement in a new era

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ABSTRACT
A collection of recent works offer a route into rethinking the ethics of borders at a time when the rules and practices of global mobility have been called into question by the coronavirus pandemic. What counts as a legitimate justification for the closure of borders and who gets to decide? Who has responsibility for the protection of refugees? Just how practical is the ideal of ‘open borders’ and is there a trade-off between justice in immigration and the stability of a liberal political order? While some commentators have claimed that the coronavirus pandemic sounded the death knell for the ideal of open borders, its true import is to highlight our mutual vulnerability and the need for effective global co-ordination of migration and asylum. The four contributions I discuss provide vital moral arguments and conceptual distinctions relevant to thinking about the contours of a post-pandemic regime of global mobility. While they differ on the question of who the liberal state may justifiably exclude, and on the desirability and practicality of cosmopolitan reform, they converge in assigning states a far greater role in protecting the human rights of vulnerable non-citizens and in their condemnation of a cruel and repressive status quo.

Introduction

The international state system affords freedom of movement and residency rights to individuals in inverse proportion to the degree that they need them. Those with power and resources can – in ‘normal’ times – easily circulate between the world’s countries, while the impoverished and oppressed – including those who count as refugees under international law – face severe, life-threatening obstacles to finding liveable conditions. This situation arises from a system that gives states discretionary power over who to admit onto their territory, subject to important (though limited) legal constraints on refugees and human rights that they can flout without serious repercussions. The mobility-curtailing lockdown measures deployed against COVID-19 forced many people otherwise unaffected by border controls to confront the fraught question of who gets to move and why. The pandemic has underlined the many reasons, from care to
subsistence, that human beings need to travel, the pain of being separated from loved ones and the intrinsic value of feeling unrestricted. At the same time, the public health crisis dramatically worsened pre-existing trends towards more restrictive and repressive modes of enforcement, prompting a mass shutdown of borders (with many states not recognizing exemptions for asylum)\(^1\); a dramatic expansion in state surveillance and a spike in xenophobia and racism; all at a time when the economic and political fallout is pushing millions across the globe into destitution and conflict.

For some commentators, the pandemic sounds the death knell for unchecked movement as a political ideal and underlines the primacy of the nation state (Glasman 2020). But the triumph of exclusionary nationalism is by no means inevitable. The virus has provided undeniable evidence of humanity’s shared vulnerability and interdependence; the fact – as the director of the WHO put it – that ‘no one is safe until everyone is safe’ (Tidley and Bauomy 2020, August 18). The example of countries, such as Portugal, which at the start of the crisis automatically accorded residency rights to irregular migrants and asylum-seekers, shows that greater repression and precarity are not inevitable (Drury 2020, March 28). At this juncture, it pays to revisit some fundamental principles regarding border controls. The basic moral situation entails that, when a person presents themselves at the borders of a state, they find themselves confronted by an authority which demands their compliance as a matter of right and which can deploy legal threats and violence against them without any of the mechanisms of accountability we expect in other contexts. Four recent works of political philosophy address themselves to this complex and morally fraught reality, adding to a burgeoning and increasingly sophisticated literature on migration and refugees. The four books – by Chris Bertram (2018), David Owen (2020), Alex Sager (2020) and Michael Blake (2020) – cover the institution of refugeehood and what states owe to those in extreme need; the moral grounds and limits of a state’s purported ‘right to exclude;’ the case for open borders, and the ethics of resisting an unjust status quo. Written before the global health crisis began in 2020, their arguments are even more salient in its aftermath as the rules and practices governing international mobility are redefined.

All four authors share the view that the international status quo is deeply unjust, but disagree on the reasons why and just how radical the response should be, ranging from Sager’s full-blooded defence of open borders as a practical goal we should move towards to Blake’s ‘institutional conservatism’ (Blake 2020, 10), involving a defence of the right to exclude tempered by human rights and the political virtue of ‘mercy’. These authors are also grappling with vexed questions about the role of philosophical thinking on migration faced with the simplistic dogmas and undisguised cruelty of populist nationalism. Like the rest of political philosophy, the sub-field of immigration ethics has been confronted by recent methodological calls for a suitably ‘realistic’ approach that can meaningfully guide change in our ‘non-ideal’ – that is, deeply unjust – world (Little and MacDonald 2015). As these works show, however, appeals to realism are rarely conclusive. On the one hand, we are urged to confront the uncomfortable electoral reality of widespread public hostility towards greater immigration and, on the other hand, the immense suffering caused by real-world border enforcement practices and their

\(^1\)The UNHCR estimated that out of the 167 countries who had fully or partially closed their borders to stop the spread of the virus, 57 made no exception for people seeking asylum (UNHCR, 2020a).
pervasive racism disturbs neat, idealized defences of the state’s ‘right to exclude’. Just how ambitious reform should be, and which facts about contemporary immigration practices philosophy should take into account, is a matter of ongoing dispute at a time when fundamental assumptions about movement and membership are in question.

Refugees and humanitarian assistance

The 1951 Refugee Convention defines a refugee as someone with a well-founded fear of persecution on account of their ‘race, religion, nationality, membership of a particular social group or political opinion’. This ‘political’ category of refugees focuses on the distinct wrong which comes from the denial of membership by a persecuting state. It is commonly distinguished from ‘humanitarian’ refugees, who are the unfortunate victims of violence, war, crop failure, climate change and ‘natural’ disasters. From the perspective of the moral interests of the refugee, the exclusion of this latter group from the Convention appears arbitrary. As Bertram puts it, the Convention ignores many people who ‘common sense would suggest have a valid claim to protection’ (2018, p. 42).

To some extent, international practice recognizes the claims of those not covered by the Convention. As the refugee system developed, the norm of ‘non-refoulment’ was extended to those whose human rights are under threat but who do not meet the Convention’s definition, while the UN High Commission on Refugees also works with humanitarian refugees. Some scholars have argued that the Convention itself should be extended to those who are not threatened from persecution (Shacknove 1985). Others argue that the focus on persecution is justified, since the provision of asylum has a distinctive expressive role to play in condemning oppressive states internationally (Price 2009).

Owen’s insightful book aims to reconcile these concerns, arguing for an expansion in protection to all those whose rights are under threat, but one which takes account of the distinct political responses that different categories of refugee call for. Both Owen and Bertram’s books are published as part of Polity’s handy ‘Political Theory Today’ series with both offering short, accessible introductions to their subjects, which are also original contributions in their own right. Owen’s approach is to analyse the institution of refugeehood in light of how it has historically developed taking seriously the state interests that underpin the system along with its guiding normative ideals.

The world today is parcelled up between sovereign states whose legitimacy derives from their role in protecting the human rights of those individuals within their territory. For Owen, it follows that the existence of refugees is always evidence that some states are failing in their role, requiring international society to step in ‘in loco civitatis’ and offer substitute protection (2020, p. 12). The institution of refugeehood thus acts as a ‘legitimacy repair mechanism’ that reaffirms ‘the minimal conditions of the imagined reconciliation of an international order of sovereign states and a cosmopolitan order of human rights’ (2020, p. 47). Understood in this way, the protection of refugees not only answers to the morally urgent need of the world’s most vulnerable groups; it functions as a global ‘public good’ from which all states benefit in terms of their legitimacy (2020, p. 100).

An important contribution of Owen’s work is the three categories of refugees he proposes, each with their specific vulnerabilities and calling for different institutional responses. Refugees needing ‘asylum’ are threatened politically by their state and stand
in need of substitute membership, the provision of which expresses condemnation of the state that persecutes them. Those who require ‘sanctuary’ face a situation of political breakdown and/or generalized violence and need a society they can integrate into, which requires admission to a country with a similar language and culture. Refugees needing ‘refuge’, meanwhile, are fleeing disasters and ought to be accorded safe temporary shelter in a nearby country (Owen 2020, Chapter 3). Owen offers a nuanced set of considerations for determining ‘fair shares’ in the allocation of refugee protection among states, which takes into account a state’s capacity and resources and the type of protection required, along with the family ties and preferences of refugees themselves. Importantly, it also takes into account special obligations derived from a state’s contribution to background global injustices that generate refugees (Owen 2020, pp. 86–94). The full practical implications are not set out, though we might assume that participation in recent unjust wars and out-sized contributions to climate emissions would figure.

In the current context, where destination states are making aggressive efforts to violate the existing legal rights of refugees, there seems to be little prospect of achieving such a dramatic expansion in protection, even while the pandemic presents a humanitarian crisis comparable in its global reach to that which precipitated the formation of the current refugee system after world war two. Still, Owen’s approach strikes a useful balance in offering moral critique that is attuned to the role human rights play within the existing international order of sovereign states concerned to safeguard their own legitimacy. The current under-supply of protection to refugees is the product of a motivational deficit among citizens and political leaders rather than states’ lack of capacity. In theorizing about refugees, of course, we are already adopting a ‘non-ideal’ perspective (in the Rawlsian sense) in supposing that at least some states are not protecting human rights. Yet it would be too concessive to assume that the present unwillingness of receiving states to act justly is a consideration we should give significant ethical weight to in the name of realism since this risks holding up something as a model that is ‘unpalatable, unbearable and unjust’ (Fine 2020, 9–10).

In ‘Justice, Migration and Mercy’, Michael Blake starts from a cosmopolitan commitment to human rights shared with Owen, Bertram and Sagar, and likewise laments the callous treatment of refugees by self-interested states. Of the four authors, however, Blake is the most sceptical when it comes to institutional schemes that will require significant amounts of collective co-ordination and reform at the global level, focusing instead on state policy-making with particular reference to the US. In the literature on migration, Blake is well-known for offering a ‘jurisdictional’ argument for a state’s right to exclude that focuses on what is distinctively owed by states to those under their coercive power (Blake 2013). In this thoughtful and intricately argued book, he provides a more fully worked out vision of what the jurisdictional approach implies, including some notable reflections on refugee protection.

The starting point for Blake is that all human beings have a right to membership in a state in which their human rights are protected, but not to a state of their own choosing. This is because when a state takes on a new member its citizens assume a set of obligations for the protection and fulfilment of that person’s human rights. Even where there are no direct financial costs, these new obligations impinge on citizens’ freedom and morally speaking citizens are only obliged to assume them when the human rights of the person in
question are not protected elsewhere (Blake 2020, Chapter 4). This is an argument for the right to exclude, then, but one which entails greater rights of entry than the status quo arising from the basic claim each individual has to secure protection of their human rights. In focusing on the co-operative character of states as coercive entities, Blake’s argument at least aims in the right direction, singling out the most pertinent facts about statehood relevant to the justification of a public system of rights and obligations. By contrast, rival discussions of a state’s ownership of its territory (Risse 2012) or political institutions (Pevnick 2011) and national culture (Miller 2005) each understand exclusion with reference to something ‘accidental’ about the state as a political community, as Blake puts it (2020, p. 51). Blake is less convincing, however, when it comes to defending the principle that individuals have a right to be free from unwanted obligations which is necessary for his defence of unilateral rights of exclusion to succeed. We regularly incur new obligations towards individuals without giving our consent, as with the obligations we incur to a new neighbour or someone else’s new-born child, and Blake’s response to these counter-examples is not wholly persuasive.

His standout proposal on refugees is that states should offer the persecuted not merely admission, but active protection, including through coercive intervention in the affairs of persecuting states (Blake 2020, Ch., 5). States, then, would be under not merely a negative duty to not prevent Syrian refugees from entering their territory, but a positive duty to provide them with carriers and to coerce the Syrian state if necessary to stop them interfering. In this way, for Blake, the Refugee Convention can be interpreted in line with the doctrine of R2P, as one of a ‘set of legal and moral guarantees offered to those facing persecution, which collectively provide the authorization for coercive force to be directed against their persecutors’ (2020, p. 111). While the proposal of a duty to provide evacuation to refugees is valuable, the wider argument would seem to involve a significant expansion in the justifications states have for the use of armed force and Blake says little about how such a system would be managed to prevent self-interested intervention and dangerous escalation.

Blake hopes to show that the argument for coercive intervention is a natural extension of the positive duties of assistance to refugees that we already recognize. However, this leads him to make the unconvincing claim that carrier sanctions (which states levy on airlines who allow refugees to board without the correct documents) are wrong because they violate a positive duty of assistance, rather than refugees’ negative rights to be free from coercive interference (Blake 2020, 101). Yet, as with David Miller’s attempt to deny that certain forms of external border controls involve coercion, the view rests upon an implausibly narrow conception of coercion (Miller 2010). It would seem to entail, for instance, that a state that levies fines against a publisher who publishes my political tract would not be coercively interfering with my freedom of speech, but merely withdrawing a positive duty of assistance. While generating these unpalatable conclusions elsewhere, this view has the unfortunate effect of obscuring the power exercised when states seek to legally stop people from moving.

**How open should borders be?**

Questions of what counts as coercion and what is owed morally speaking to those who are coerced, are of course central to thinking not merely about the claims of refugees, but the whole permissibility of immigration enforcement. Typically, those most
sceptical about claims to unilateral state discretion over immigration draw moral comparisons between a state’s use of force at the border and its use of force on its own territory, while those who defend a right to exclude point to purported disanalogies. In ‘Do states have a right to exclude?’, Bertram stakes out a position firmly in the former camp. He begins from the Kantian idea that the use of force against others must be justified on terms that they are capable of accepting and then considers which global norms for the governance of immigration could justify a state’s use of force at the border (Bertram 2018, pp. 51–55).

While Blake and Owen take an immanent approach that departs from existing institutions and practices, Bertram’s approach is more philosophically systematic. He adapts the Rawlsian device of a ‘veil of ignorance’ to model an impartial choice situation for arriving at a just immigration regime. In this procedure, the representative choosers who must live under such a regime are ignorant of their citizenship, race, religion, and social class, though they are aware of certain general facts about human beings and the functioning of societies, which – importantly – includes an awareness that human beings have certain generic human interests that mobility can secure (Bertram 2018, pp. 56–60). A Rawlsian method of this kind was famously used by Joseph Carens to argue for open borders in his path-breaking article that helped establish the sub-field of immigration ethics (Carens 1987), though Bertram’s approach differs in according greater significance to state interests in the regulation of competing claims, resulting in a set of recommendations that are procedural in character.

Four possible models are considered from behind the veil of ignorance. The first entails total state discretion over borders. This would be rejected, Bertram suggests, because it would effectively consign those suffering extreme disadvantage to their home states. A second model is an idealized version of the status quo affording states discretion over borders, constrained by human rights and refugee law, but under conditions of full compliance (rather than the current widespread flouting of international law). This, too, Bertram argues, would be rejected given the risks of assuming a form of citizenship which leaves one’s basic interests unprotected if one cannot meet the visa requirements of a state with robust rights protection and falls outside the protection of the Convention (Bertram 2018, pp. 62–65). The third possible model is open borders. Bertram thinks this would be more appealing than the first two to impartial choosers, given the more extensive opportunities it offers individuals to secure their life chances. Bertram believes, however, that there are sometimes good reasons why states can control borders, highlighting the limits on the numbers who can sustainably live in ‘ecologically fragile areas of the planet’ (Bertram 2018, 67).

We might likewise note justifications based on public health brought into view by COVID-19, though here it is important to be cautious. The appropriate rationale for these acts of territorial quarantining is that they are exceptional and time-limited acts employed by states to fulfil their primary obligation to protect the lives of their citizens, rather than a more permanent abridgement of mobility rights (Lanard 2020). Despite nationalist claims to the contrary, the closure of borders to migration would not provide much protection from infectious diseases short of an extreme move towards national autarky. It was, after all, international trade and tourism that propelled the spread of the pandemic, rather than the settlement of refugees and immigrants (Caplan 2020). The challenge here, of course, is to prevent the identification of a legitimate state
interest from being weaponized by rich states as a rationale for socially distancing from the citizens of poor states now labelled as ‘contagious’. Crucially, Bertram’s fourth procedural model – the one he believes impartial decision-makers would choose – introduces a test of global public justification designed to filter out sectional defences of privilege of this kind.

A global constitutional convention would flesh out global norms to govern immigration which would then be enforced by an international adjudicatory body. The details of this are somewhat sketchy, but we are told that it ‘would involve a range of different actors, including states, NGOs and a representative selection of affected persons, including, most important, migrants themselves’ (Bertram 2018, 70). A convention process would, Bertram predicts, establish a presumption in favour of freedom of movement, but it would also consider under what circumstances it can legitimately be curtailed by state interests. Those inclined to a realist perspective might regard Bertram’s approach as an exercise in top-down cosmopolitan ‘moralism’, which is insufficiently attentive to the role of power politics in the international arena. Yet it is notable that the recommendations he arrives at are distinctly political ones aimed at bolstering political processes and empowering groups who are routinely ignored in shaping the laws and institutions that determine global mobility. His recommendations centre respect for the autonomy of migrants and refugees as political agents, rather than seeing them as mere objects of coercive regulation or humanitarian pity. It is an ideal worth heeding even if we are some way off the much more utopian prospect of a global constitutional convention.

For his part, Blake’s identification of states as the appropriate arena for political claim-making among equals does not require the empowerment of all those whose interests are affected by border controls. It makes sense therefore that he should think that citizens’ decision-making power over admissions is most appropriately disciplined by internal constraints – in the form of the political virtues – rather than the external constraint of democracy. The most novel part of Blake’s book is an intriguing defence of the relevance of the virtue of ‘mercy’ to discourse on migration policy where the language of justice has limits. Mercy, for Blake, is exercised when an agent refuses to enforce their rights against a person out of concern for the success of that person’s life. Someone without mercy does no wrong, but is a ‘bad example of what a person can be’ (Blake 2020, 8). According to Blake, when a state fails to grant entry rights for those seeking family unification or valuable career options, and even when it fails to grant residency to undocumented migrants who have been settled for many years, they are not committing an injustice. Rather, they are failing to be sufficiently merciful (Blake 2020, Chapter 9).

I seriously doubt that many of these categories of migrants do not also have claims grounded in justice – and the case of long-term undocumented residents facing deportation stands out as a particularly glaring case – but Blake’s efforts to broaden the moral vocabulary with which philosophers discuss migration is welcome. Perhaps with an eye to US evangelicals, he notes that mercy has strong resonance in the Christian tradition, and that a number of Christian groups have a proud history of providing support framed in this way (Blake 2020, pp. 197–198). There remains the concern however that mercy leaves power-divides unchallenged in taking the perspective of powerful rich Westerners, affording mercy to the weak. A contrasting approach
is taken by Luis Cabrera, who likewise offers an analysis of migration policy through the lens of the political virtues, but talks instead of the need for ‘political humility’ among states so as to reorient global institutions towards the moral claims and perspectives of those they exclude (Cabrera 2019).

A reliance on mercy sits uneasily with the equal respect owed to migrants and their sense of self-respect, positioning them in the submissive position of requesting gifts and charity, rather than demanding what is due to them as a matter of right (Feinberg 1970). It is no coincidence that, in the republican tradition, the antonym of freedom as non-domination is to be ‘at the mercy’ of another (Skinner 1998, 43). Indeed, for Alex Sager, whose work draws on republican political theory, the fact some groups are placed at the mercy of others by borders provides an additional reason to condemn them (Sager 2014). Like Blake, he thinks that the language of abstract justice does not capture all we want to say about immigration. Instead of reaching for the classical virtues, however, he aims to offer arguments that speak to activists engaged in life-and-death struggles against the violence of border controls.

Sager is concerned that other open borders advocates, such as Carens, see their proposals as meant for some indeterminate future, rather than the here and now. His short and punchy book aims to galvanize activism by foregrounding those at the rough end of the immigration system and giving ‘a central place to the violent policing of political borders and how this promotes structural injustice against (often racialized) immigrant groups’ (Sager 2020, 3). For Sager, arguments for open borders are ‘among the strongest in political philosophy and applied ethics’ (Sager 2020, 2), and the movement for open borders represents the next step in liberatory struggles, comparable to women’s suffrage and the LGBT movement.

Sager mounts a multi-pronged case for open borders with a handy overview of philosophical arguments based on freedom, democracy and economic justice. The most interesting and original part of his contribution however focuses on the need to dismantle systems of violence and oppression. The core idea is that, even if a state’s right to exclude was in principle justifiable, the way in which this right is enforced, through a brutal and unaccountable system of containment, involves unacceptable harms (Sager 2020, Chapter 4). The argument resonates with the analysis of empirical scholars, such as that of geographer Reece Jones in ‘Violent Borders’ and anthropologist Ruben Andersson in ‘Illegality inc’, making a case for inclusion, based on the violence of the existing system and its historical role in upholding race and class-based inequalities (Andersson 2014; Jones 2016). Sager is sceptical of any methodological approach which assumes – as Blake does (2020, pp. 3–4) – that historic issues of racial justice can be bracketed in thinking about immigration policy. Drawing on critical migration studies, Sager demonstrates how immigration controls construct people as citizen and migrant, inferior and subordinate, so as to generate a pool of cheap exploitable labour. In our existing world – and not the idealized world of philosophical imaginings – border controls are structurally racist, he argues, bearing analogy with notorious past projects of racialized containment, including Apartheid and even slavery (Sager 2020, 36).

Refreshingly, Sager seeks to demonstrate that open borders are not just desirable but practically achievable. In doing so, he mobilizes a wide range of arguments and empirical evidence, drawing from history and the social sciences. Much of this is vital
and riveting stuff, debunking some of the persistent myths of pro-borders advocates around the supposed ‘threat’ immigrants pose to the economy, the rule of law and so on. Other arguments look a little too quick. At one stage, for instance, Sager cites the fact that more migrants currently move to adjacent countries than further afield as evidence for the fact fears of ‘mass migration’ under a system of open borders are misplaced. It is indeed likely that many of these fears are exaggerated. But it is not obvious that migration trends, under the hugely coercive containment regime Sager criticizes, are useful in predicting how many people would move were there no such obstacles and automatic membership, as he favours (Sager 2020, 68).

More broadly, there is an unacknowledged tension between, at one moment, using empirical literature to paint a dark picture of a deeply racist and unjust status quo in Western countries in the context of comparatively limited immigration, before sketching a much more optimistic and tolerant vision of how things will play out in the event that borders are opened. As someone who leans towards the open borders side of Sager, I have no obvious answer to this. It strikes me as worth acknowledging that, in the event of fully opening borders, many people are likely to want to move and that this has the potential to place considerable strain on political institutions if left unaddressed. In future debates, advocates of open borders ought to think much more systematically about the various potential trade-offs involved and how the proposal sits within a wider project to create the conditions for background justice and resilient human rights protection at a global level.

**Resistance to immigration law**

Part of the practical turn in migration ethics has involved theorists focusing attention on the permissibility of resisting unjust border laws. Ever since the migration and refugee ‘crisis’ of 2015, when record numbers of people from Syria, Afghanistan and Iran attempted to enter Europe, we have become accustomed to seeing spectacular forms of disobedience to immigration controls. Media images portray flimsy overcrowded dinghies, the slow march of refugee collectives, the breaching of fences and barbed wire, makeshift protests at border sites and violent repulsions by border guards. Over the course of the COVID-19 pandemic, there have likewise been courageous acts of resistance by migrants who have protested the closure of encampments and their exposure to the virus in cramped, unhygienic camps and detention centres (Guerrero 2020, 01 September). Key ethical questions here include what authority (if any) immigration law carries for non-citizen outsiders, whether such actions count as civil disobedience, what moral considerations ought to constrain resistance and the duties of citizens (Hidalgo 2019).

Bertram endorses extensive rights to evade, deceive and resist border guards on the basis that existing immigration law lacks legitimacy as a sectarian assertion of state power. He suggests the normal reasons for complying with unjust law, which apply to citizens, are not relevant to migrants who are not co-authors of the law and derive no benefits from membership (Bertram 2018, Chapter 3). Sager in turn defends rights of resistance to any immigration laws that would ‘make people worse off than they would otherwise be by interfering with their ability to access opportunities’ (Sager 2020, 92). Yet, accepting that the violation of border laws can be justified, how should we
categorize such acts and how (if at all) should they be constrained? Should migrants aspire to be ‘civil’, for instance, in the sense denoted by the traditional understanding of civil disobedience?

For Owen, the efforts of refugees to thwart containment measures are indeed acts of ‘transnational civil disobedience’, involving ‘a refusal to be governed unjustly’ (Owen 2020, 110). By violating entry laws – often at serious risk to themselves – refugees highlight how the international state system falls short of its own claims to legitimacy. Owen’s analysis here dovetails with recent arguments by other theorists (Benli 2018; Celikates 2019). There is an undoubted appeal to this labelling, which associates refugee’s efforts with the heroic historical tradition of the Suffragettes, Martin Luther King and others and calls attention to their demands as disenfranchised agents. Yet there are also concerns. In the case of refugees, the focus on the supposed illegality of their actions may detract from the fact that seeking asylum is a right under international law and it is often states themselves who are behaving illegally in forcefully repelling refugees (Scheuerman 2018, 175).

The label of civil disobedience may be a better fit for border-crossing by ‘economic’ migrants and others who do not fit the definition of the Convention (Cabrera 2010). Even here, however, there is a basic tension with the traditional normative core of civil disobedience as a public, political act in which agents accept the moral burdens of action (including acceptance of arrest in some accounts) in order to demonstrate their conscientiousness and convince others (Smith and Cabrera 2015). There have been some cases of unlawful border-crossing that are consciously conducted as civil disobedience (Nigg 2015). As a general framework for the justification of illegal immigration, however, the theory of civil disobedience risks burdening migrants with a set of expectations that, given their precarious status, heighten their risk of detention and deportation. Instead, it may be better to think of such actions as a form of principled political resistance unconstrained by the normative expectations traditionally attached to civil disobedience (Blunt 2018; Delmas 2018)

**Immigration ethics in an era of populist nationalism**

The gulf between philosophical reflection and popular political discourse is never more glaring than in the case of immigration ethics. The recent coronavirus crisis has superimposed itself on a much more prolonged crisis of the liberal order which has seen populist nationalists make headway in a number of established democracies using xenophobic and racist language to drum up fears of immigrants taking jobs, putting pressure on public services, and bringing crime and terrorism. In a 2018 interview, Hilary Clinton posed this challenge in the following terms, in a passage quoted by both Blake and Sager:

I think Europe needs to get a handle on migration because that is what lit the flame … I admire the very generous and compassionate approaches that were taken particularly by leaders like Angela Merkel, but I think it is fair to say Europe has done its part, and must send a very clear message - ‘we are not going to be able to continue to provide refuge and support’. - because if we don’t deal with the migration issue it will continue to roil the body politic (Blake 2013, 140).
The claim by Clinton that Europe ‘has done its part’ in the provision of asylum is not defensible. As Owen points out, 85% of refugees around the world are living in developing states near those they have left (Owen 2020, 98). The Syrian conflict has produced 5.6 million refugees living abroad of which Turkey hosts 3.6 million, Lebanon 879,000 and Jordan 661,000 (UNHCR 2020b). The EU – with a population of 500 million – saw just over 1 million asylum applications (UNHCR 2019). According to Owen’s analysis – and any minimally plausible account of ‘fair shares’ in refugee hosting – wealthy Europe states have not done their part. Indeed, through their aggressive policing of ‘Fortress Europe’, they are complicit in a catastrophic humanitarian situation.

For Sager, Clinton’s words merely give succour to racism and xenophobia, acting as ‘fodder for far-right or populist parties’ (Sager 2020, 86). Such claims, he suggests, need to be confronted and exposed as bigotry. On the other hand, Blake interprets Clinton’s argument as identifying a genuinely tragic choice: states can keep liberal institutions or admit everyone with a just claim, but not both. He worries about a ‘bigot’s veto’ which entails any vote for more open borders, in line with the demands of liberalism, would increase support for authoritarian nationalism whose resistance could ‘place the future of that polity at risk’ (Blake 2020, 118). He thinks his own proposals for justice in immigration would increase support for nationalists, while open borders definitely would (Blake 2020, 139).

In regard to the nationalistic attitudes of fellow citizens, much hinges on whether we regard antipathy to immigration as a fixed constraint, deeply rooted in human psychology, or something more malleable and contingent. Both Bertram and Sager do a good job showing just how recent and constructed is the notion of homogenous nation-states maintaining their demographic balance through restrictive immigration controls. There has, nonetheless, been a fairly consistent pattern of opposition to immigration among voters in prosperous destination states.2 As is well-known, this opposition is often accompanied by false empirical beliefs about both the scale of immigration and its negative impact across salient policy domains, such as welfare, crime and the economy (see e.g. Denvir 2020, p. 183; Goodfellow 2020, 152). Unfortunately, shifting these beliefs is not simply a matter of exposing voters to the appropriate evidence or countervailing arguments. This is because false beliefs on immigration are themselves frequently derived from ethnic bias rooted in identity-based loyalties, which accounts for why these beliefs uniformly cast immigration in a negative, rather than positive, light. As Peter Higgins argues, the ‘pervasiveness and persistence of the belief that immigration is economically harmful in the face of compelling evidence to the contrary is a testament to the power of xenophobia and racism’ (2013, p. 202).

The solution is not simply a matter of pointing out the correct empirical facts or ‘exposing’ the underlying prejudice at work. Rather, the task is to confront the nexus of interests that reinforce nationalist framings that turn issues of distributive justice and power into identity-based arguments, which includes the echo chamber of right-wing media and social media that amplifies nationalist partisans (Müller 2019). As well as being intrinsically unjust, the path of appeasing nationalists who hold democracy to ransom is

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2Between 1989 and 2012, for example, the number of Britons who thought there was ‘too much’ immigration has never dipped below 54% (Goodfellow 2020, 156).
that it has a tendency to embolden them, advancing their goals and legitimizing their narratives (Denvir 2020; Goodfellow 2020). While there is nearly always a hard core of voters who lean towards populist nationalism, it flourishes best under conditions of fear and precarity where its scapegoating message takes root. Many of the policy solutions to address the electoral threat of populist nationalism are therefore in line with those made urgent by the pandemic, including social welfare provision, decent healthcare and housing and putting an end to low-paid and insecure work (Solberg and Akufo-Addo 2020).

**Conclusion**

While the contours of a post-pandemic regime of global mobility are as yet unclear, the crisis presents a unique moment to re-evaluate the most basic assumptions that should govern it. One danger is that pro-borders nationalists will assert a disturbing new justification for excluding the disadvantaged which stigmatizes them as bearers of disease and that ‘emergency’ measures to close borders will become normalized, as happened after 9/11. It is to be hoped that, in the aftermath of a crisis that impacted the freedom of many unaccustomed to restrictions on their movement, those with relative privilege in the citizenship power they possess might reflect on the immense cruelty and harm caused by borders. There is an urgent need for effective international co-ordination of migration and asylum with the perspectives of those most directly impacted by border controls included as a matter of justice. The four contributions I have discussed offer illuminating conceptual distinctions and compelling moral arguments to feed into this debate. While they disagree on what the contours of an ideal system would be, they converge in foregrounding the moral claim of every human being to a minimally decent existence and their condemnation of a lethal and repressive status quo.

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