Zeitschrift für Ethik und Moralphilosophie (2024) 7:47–67
https://doi.org/10.1007/s42048-023-00164-z

SUBMITTED PAPER

A right to exclusion or a right to migration? – Neither!

Paul Tiedemann

Accepted: 25 October 2023 / Published online: 17 November 2023
© The Author(s) 2023

Abstract The discussion about the open-border postulate, initiated by Joseph H. Carens in 1983, is developing an ever-increasing dynamism in both Anglo-American and German-speaking philosophy. There are two positions in this discussion: (1) the view that states have the sovereign right to decide whether and under what conditions they grant entry and residence to aliens (the right to exclusion); (2) the view that all people have a moral right to global free movement (the right to migration).

The essay defends the thesis that there is neither a moral right to migration nor a moral right to exclusion. In the relationship between states and aliens, the state of nature prevails. In the state of nature there are no moral rights and duties other than human rights. Neither the alleged right to migration, i.e. global free movement nor the alleged right to exclusion can be considered a human right.

The study is focused solely on ethics. Positive law, which depends on many coincidences anyway, is not considered.

Keywords Border-regime · Exclusion · Human rights · Legitimacy · Migration · Morality · Right to free movement · Sovereignty · State of nature

1 Introduction

There is hardly any opinion in international law that is less undisputed than the statement that every nation-state has the sovereign fundamental right to determine

The author thanks Felix van Groningen (Justus-Liebig-University Giessen) for reviewing the text in terms of grammatical, stylistic, and orthographic mistakes. Any remaining errors are the responsibility of the author.

✉ Paul Tiedemann
Justus-Liebig-University, Giessen, Germany
E-Mail: paul.tiedemann@recht.uni-giessen.de

whether and under what conditions non-citizens are allowed to enter and stay in its territory (Wolfrum 2001, 23; Dahm, Delbrück, Wolfrum 1989, pp 316). This principle is recognized in the context of the international human rights law in particular and is part of the standard repertoire of the case law of the European Court of Human Rights (EChHR 1985 § 67; 1988 § 28; 2011 § 54; 2017 § 120).

The view that states are sovereign in terms of migration has also been part of the traditionally unquestioned standard assumptions in social and political ethics since Hugo Grotius (2007, II. II. XVI) and Immanuel Kant (2006, 82). In 1983, the American social philosopher Michael Walzer has tentatively wondered how the world would look like without state borders, and thereby he came to rather nightmarish ideas (Walzer 1983, 39).

This very unified phalanx of defenders of a fundamental right of states to exclude outsiders from their territories and control of migration was unsettled in 1987, when American/Canadian social philosopher Joseph H. Carens argued against a general state right to exclusion from migration and instead argued for a general individual right to global free movement (Carens 1987; 2013, pp. 225).[1] In the first decade of the 21st century, Carens' essay was received and discussed not only in the English-speaking world (Anderson et al. 2011; Oberman 2011) but also in the German-speaking world, with a strikingly large number of Swiss philosophers and lawyers leading the way (Kirloskar-Steinbach 2007; Mona 2007; Cassee, Goppel 2012; Cassee 2016).

In the increasingly lively discourse on the open-border postulate, there are two opposing views, both of which invoke a right. On the one hand, the right of the state is alleged to exclude non-nationals from entering the territory of the state and to reside there (right to exclusion). On the other hand, the right of every individual is alleged to enter and stay in a foreign country for any reason (right to global free movement – RGFM). While the opponents acknowledge that both the right to exclusion and the RGFM may be subject to certain restrictions, they consider that the limits of the alleged rights are in any case not subject to the free discretion of the nation-state or to the arbitrariness of those who wish to enter. Rather, the limitations and reservations must be justified by very specific, narrowly, and well-defined reasons. For example, it is recognized that the individual's right to migration is restricted in the case of a specific threat to the public order of the receiving state by a mass influx. Conversely, it is recognized that the states' right to exclusion does not apply if the immigrants need protection against political persecution in their homeland. What is decisive, however, is that these restrictions are always exceptions that do not affect the fundamental existence of the respective right. As far as the rights themselves are concerned, there seems to be consensus that there is either a right to exclusion in favor of the state or a right to migration in favor of human individuals. Two cases are not considered, namely that: (1) there could be one *and* the other; and that (2) there could be neither one nor the other.

The first of these alternatives, however, can be rejected with few words. The right of the state to deny entry and the right of individuals to free access contradict each

[1] The thesis of a universal right to global free movement was already defended by Roger Nett (1971), however without deeper philosophical reflections.

other. In one and the same normative order conflicting rights cannot exist. From the contradiction follows rather that none of these rights can exist in this normative order.

It remains the second alternative. In what follows, I will defend the view that there is neither a foreigners' moral right to migration nor a states' moral right to exclusion. From the absence follows that there are even no duties that could correspond to these alleged but not existing rights. Since the foreigner has no right to free movement, the state is not obliged to tolerate the foreigners crossing the border. Since the state has not the right to refuse entry, the foreigner is not obliged to respect the state's border. Both the state and the foreigners are not in a moral relationship of rights and obligations. Its normative relation (beyond the positive law) is determined solely by what in the philosophical tradition is called the *state of nature*.

2 The alleged moral right to global free movement

The idea of a RGFM refers to a position of every human individual toward every nation-state in the world. Upon request, every state is obliged to grant every holder of the right free access to its territory and to tolerate their stay in the state territory. This duty implies that the state is doing injustice if it hinders foreigners to cross the border or if it expels those who have already entered the country. The RGFM does not imply any entitlement of the outsider to be integrated in the society and to access to the public and private institutions of the state in question. However, a longer stay of the foreigner necessarily leads to forms of cooperation with the locals and this can result in moral claims to integration (Carens 2013, 159). In what follows in this chapter I will discuss the arguments in favor of a *moral* RGFM.

2.1 The human rights argument

The analysis of Carens' argumentation in favor of a moral RGFM shows that his main attention is directed on the refutation of the arguments of those who defend a right of the nation-state to exclusion. But from the claim that states do not have such a right does not follow a right to migration in favor of outsiders. In order to defend such a right we need substantial arguments that cannot be derived solely from a lack of rights of states or other entities. A right is a specific position of power over those who are obliged to accomplish the right, i.e. those who have to bear the corresponding duties. From the fact that A has no normative power over B does not follow that B has normative power over A. Carens presents only two substantial arguments in favor of a RGFM and he does this with only few words and only in vague hints. He claims that the right to migration has to be considered a "basic human freedom" and that nation-states are bound on the "right to equal treatment" (Carens 1987, 267). His adherent Andreas Cassee explains the idea of "basic human freedom" more precisely. He considers the RGFM as a moral human right (Cassee 2016, pp. 181). By defending this thesis, he delivers two different lines of argumentation, which can be considered quite independently. The first line of argumentation that is shared by many other proponents of the open boarder

postulate (Bertram 2018; Oberman 2016; Carens 2013, 239; Freiman & Hidalgo 2013; Schotel 2012; Wilcox 2009) is based on an obvious confusion of the concept of *moral* human rights and *legal* human rights. It goes as follows: From the fact of a right to movement inside a state as it is codified in Article 13 (1) of the Universal Declaration of Human Rights (UDHR) and in Article 12 (1) of the International Covenant on Civil and Political Rights (ICCPR) follows that there is a right to global free movement since there are no sufficient reasons for making a difference here. However, it is not convincing to conclude from a legal to a moral right. The positive law is not the standard of morality but conversely morality should be considered a standard for positive law. For this reason, it is also wrong to conclude from the codified right to emigrate (Article 13 (2) UDHR; Article 12 (2) ICCPR) that there is a moral right to immigrate (Ypi 2008, 393; Dummett 2001; Wellman & Cole 2011, 198).

The second line of Cassee's argumentation (see also Oberman 2016, 38) is based on a specific definition of human rights, according to which human rights are rights that allow one to do whatever one pleases – except there are good reasons to restrict this freedom. Cassee is not concerned with people having "genügend Auslauf" (sufficient room for exercise), but with expanding the number and scope of their options as much as possible (Cassee 2016, 182, 223). For Cassee, there is a human right to the maximum extension of options to choose places of residence, because according to him this is central to "individual autonomy." In terms of this individual autonomy, global freedom of movement is valuable both instrumentally and intrinsically. So, one could enjoy numerous other human rights (such as the freedom of assembly, the freedom to go into intimate relationships with people of one's own choice, or to choose a profession) only if one enjoys global freedom of movement (Cassee 2016, 218). Otherwise, it would not be possible to find certain spouses simply because they live abroad, to perform certain professions because the jobs are abroad, or to attend certain meetings because they take place abroad. In addition to this instrumental significance, there was also an intrinsic significance. In this sense, freedom of movement carried its own value. People simply appreciated being able to move where they want for whatever reason. In that sense, freedom of movement itself was a dimension of individual autonomy (Cassee 2016, 220).

Cassee's argument is based on a lack of differentiation between human rights and the principle of liberty. However, the concept of human rights is not without controversy. There are numerous very different views about it. Many academics do not distinguish between human rights and the principle of liberty. Within the frame of this essay, it is not possible to discuss these approaches in detail. For that, I must refer to other publications (Tiedemann 2023). According to the approach taken here, the crucial difference between human rights and the principle of liberty is that the latter refers to freedom of action and the former to freedom of will. Those who cannot do what they want (injury of the freedom of action) may suffer greatly, but their identity as a person (personhood) is not endangered. On the other hand, those who are prevented from developing a free will ceases to be a person. They become a tool in the hands of others. They cease to lead their life according to their own goals and standards. They lose the abilities that make the difference between human beings and non-humans.

The moral validity of human rights is not dependent on their legalization. They also exist in the state of nature. The principle of liberty on the other hand is a legal principle. It is not the freedom of the stronger over the weaker. It is also not the natural freedom that one who is living outside a society and without any contact to companions can enjoy. Liberty is rather what a legal order allocates to its members in order to reconcile the interest of the single individuals in maximization of their freedom of action with the equal interest of all others. A legal authority is needed for this reconciliation. It is the law's most important function to define the set of conditions "under which the freedom of choice of each can coexist with everyone's freedom" (Kant 2017, 26). This quotation is not complete. It follows in Kant: "in accordance with a universal law". But in fact, the reconciliation of the conflicting interests in freedom of action is not determined by a universal law. It is always a matter of politics and positive law. Therefore, it does not make sense to argue with the principle of liberty when a conflict of interests does not take place in the frame of a legal order, but beyond such an order. This is the case for conflicts between states and outsiders.

While the principle of liberty serves the protection of the freedom of action, human rights serve the protection of the freedom of will.[2] This becomes clear if we consider the close connection between human rights and human dignity as it is expressed in the preamble of the international human rights covenants of 1966 (ICCPR 1966). In the language of morals, the term *dignity* refers to the opposite of *price*. This distinction goes back to the original distinction between the absolute good and the relative goods in the ethics of the ancient Stoa (Forschner 1995, 171). Stoic philosophers used different concepts for this distinction. In Seneca we find for the first time the usage of *dignitas* and *pretium* (Seneca 2011, 33). Immanuel Kant took over these concepts in his ethics (Kant 2018, 46). Both *price* and *dignity* are moral value concepts. So, there are two basic categories of values, namely those which fall under the term *price* and those which fall under the term *dignity*. The main difference between these two categories of values is that *price* expresses a relative value while *dignity* expresses an absolute value.

In Kant's metaphysics, reason alone has an absolute value and, therefore, in the actual sense, only reason has dignity. One does not have to share Kant's rationalist approach. Independent of Kant's metaphysics, we can say that an object has an absolute value when its value is "above any price" (Kant 2017, 201). This is the case if this object is the condition of the possibility of attributing a relative value at all. Absolute value is attributed to that very object without which nothing in the world would have any (relative) value. But what is a value? – If we want to avoid strong metaphysical constructions, we are forced to follow the subjective theory of value as it is developed in Victor Kraft (1951) and John L. Mackie (1977). According to this approach, values express the more or less reflected preferences of a judging

[2] The distinction between freedom of will as an object of human rights and freedom of action as the subject of the principle of liberty as part of the rule of law is often not worked out sufficiently clearly in philosophical literature. This often leads to an insufficient persuasive power of argumentation. Example: The somewhat helpless distinction between "basic freedom" and "bare freedom" in Miller 2005. For the distinction between freedom of will and freedom of action see Zimmermann 2018.

subject. From this follows that the ability of judging is the necessary condition for anything to have value at all. We must possess the capacity of judging and evaluating, otherwise nothing has any value for us. The ability to evaluate is constitutive for the ability to determine oneself on the basis of one's own free will. We call this ability *personhood*. An absolute value, i.e., dignity, can therefore only be assigned to those entities that are endowed with the capacity of personhood. We call such entities *persons* (Tiedemann 2023, 90). Since personhood is a typical attribute of human beings, we speak, in quite a vague manner, about *human dignity* (more precisely: dignity of the person).

The connection between human dignity and human rights is as follows: The ability of self-determination by forming one's own free will is very fragile. It is exposed to various dangers and can easily be damaged or destroyed. We lose this capacity when we live in existential fear or anxiety; when we are deprived of the leisure to think calmly about how we want to lead our lives; when we are ignorant and therefore cannot properly assess the options available to us; when the process of forming our will is externally controlled by manipulation and indoctrination; when we have no private space to find ourselves and to be able to experience ourselves directly as what we are and what we want to be (Tiedemann 2023, 141–267). The meaning and function of human rights is the protection against these risks and dangers. The protection scope of human rights refers therefore only to the protection of personhood, in other words: the protection of the freedom of will.

It is obvious that RGFM cannot be considered a human right. In general, it is not necessary to move from one point on earth to another in order to develop or to maintain one's own personhood. Only if the freedom of will is at risk in a certain place can it be necessary to escape from there and to move to another place. But such a situation does not deliver a justification for a general human right to global free movement but only a right to escape from dangerous situations and a right to seek asylum elsewhere.

Cassee defends the idea that the RGFM has to be considered a human right not only with its intrinsic function but also with its instrumental function for the realization of other human rights. However, this argument is not convincing either. The value of X (e.g.: finding a spouse in a foreign country) cannot be concluded from the value of all conditions of X (here among others: the condition of crossing the border). The following case shows this clearly: It does not follow from the desirable good of a gold medal at the Paralympics that paraplegia is a desirable good, although it is essential for the participation in the Paralympics and therefore a needed condition of the gold medal.[3] Furthermore: Neither the human right of marriage nor any other human right are rights on maximization of all chances of entering into marriages, attending meetings, expressing one's opinion, etc. Human rights ensure the freedom of will, but not the freedom of action. By equating the concept of autonomy with the freedom of action, Cassee misjudges the specific meaning of this term in the context of human rights, namely self-determination through self-legislation (autonomy) and absence from manipulation, i.e., the formation of one's own will on the basis of one's own reflections and considerations. The optimization

[3] I take this illuminating example from Löschke 2015, 144.

or maximization of options for action is initially only a possible subject of political struggle, which can only be effectively carried out by those whose human rights are already respected.[4]

2.2 The "veil of ignorance" argument

The alleged moral right to global free movement is still defended in a second way, namely by referring to John Rawls' theory of justice (Carens 1987, 257; Cassee 2016, 235). In doing so, they build on a line of argument that has been worked out very carefully and profoundly by Martino Mona (Mona 2007). The argument is based on a cosmopolitan extension of John Rawls' contract theory of justice. In his main work *A Theory of Justice*, Rawls asks about the basic rules of living together, in which people who want to establish a political community for themselves and their offspring would agree on a social contract if their considerations would be free from any distortion by subjective interests and based solely on fairness. To clarify this question, Rawls takes up the famous thought experiment on the *Veil of Ignorance* (Rawls 1999, 118). Behind this veil people do not know their future position in society, their wealth, their status, or their class; they do not know what physical and mental endowment or gender they will have, and what life plans they want to pursue.

The function of the *veil of ignorance* is only to make inaccessible the knowledge which determines the specific personal interests of human beings, and which consequently, if known, leads to the promotion of selfish ends. Unspecific general facts and circumstances are well known to those behind the veil of ignorance (Rawls 1999, 119). This includes the knowledge that there may be scarcity of goods, that there are two (or more) genders, that skills may be unevenly distributed, etc. Given this general knowledge and the absence of special knowledge of their personal position, individuals will rationally choose those principles of justice that are acceptable even if they are to be given the worst position in society. They will therefore first agree on a catalog of freedoms that will guarantee them the greatest possible freedom, compatible with the equal freedom of every other member of society.[5]

Carens, Cassee, and Mona argue that among the general circumstances that individuals know behind the veil of ignorance is the fact that there are territories on the surface of the earth that are less favorable than others to human life and welfare. They know that environmental disasters, political tyranny, or family struggle can happen so that there can be very good reasons for certain inhabitants of certain territories to leave it and settle in another part of the world. However, behind the veil of ignorance, people have no knowledge whether, if the veil falls, they have been born and live in a comfortable world, or in an area of the world that strongly motivates

[4] David Miller runs into difficulties when arguing that the limitation of movement by borders would not violate a human right while respective restrictions inside the country of residence would constitute a violation of human rights. The reason for this difficulty is his unclear concept of human rights. While he warns against the "rights inflation [...] in our culture", he refrains from examining whether the right to free movement has to be considered a human right at all. See Miller 2013.

[5] The other principles of justice that Rawls develops need not be discussed in our context.

them to leave their present residence and to settle elsewhere. Therefore, behind the veil of ignorance, they will demand the freedom of global free movement.

Although this consideration seems conclusive and consistent at first glance, what attracts attention is the fact that John Rawls himself has just not extended general knowledge or individual ignorance in the original position (state of nature) of these aspects. The authors explain this fact by claiming that Rawls simply overlooked this aspect. Martino Mona sees no problem in improving Rawls as it were, and to expand his theory with those aspects that he himself did not consider, but which are in the logic of his reflections (Mona 2007, 72).[6]

In fact, it has to be admitted that in Rawls' *Theory of Justice* there is no truly elaborate and valid argument for the particularistic restriction of his theory and against its cosmopolitan extension. He mentions only briefly that one should not imagine the gathering of the people in the original state, who negotiate the social contract, as a popular assembly of all human beings, but only as a meeting of a particular group. He rejects the cosmopolitan extension of his model with the very vague argument that this "conception would cease to be a natural guide to intuition and would lack a clear sense" (Rawls 1999, 120). The fact that Rawls tries so weakly to justify his particularistic approach seems to me to have its reason in the fact that it is based on conceptual assumptions that are beyond question for Rawls and therefore need not be made the subject of careful reasoning. For Rawls' theory of justice, a specific concept of *equality* is decisive for this background. Therefore, to clarify the question of whether it is permissible to improve Rawls over Rawls by transforming his particularistic approach in a cosmopolitan approach, it is necessary to do a thorough analysis of Rawls' implicit concept of equality. Only if the cosmopolitan extension of his theory on the basis of the same concept of equality is possible, one may claim to improve Rawls over Rawls. But if enlargement of Rawls' approach is based instead on the exchange of the concept of equality, then one cannot argue with Rawls for the cosmopolitanization of his theory, but only against Rawls. In that case, it would be important to demonstrate that Rawls' concept of equality is inadequate and that it is justified to substitute it for a more powerful alternative concept.

Rawls' theory is convincing only if it is based on a concept of equality whose definition includes the characteristic of exclusivity. For only such a concept of equality can explain why Rawls refuses to expand his theory to a cosmopolitan approach: The concept of equality, which Rawls bases his theory of justice on, is an equality that derives its justification from a relationship of cooperation (Rawls 1999, 47). According to this, the moral principle of equality is to distribute fairly the burdens and benefits of cooperation to all those involved in the cooperation. The metaphor of equality can therefore be replaced by the theoretical expression of the fair participation of all cooperation partners in the costs and gains of cooperation. This concept of equality implies the aspect of exclusion. It differentiates between those who are partners in cooperation and those who are not. Of course, the latter need not be considered when it comes to the question of which principles must apply in order to fairly spread the costs and benefits of cooperation. Those included

[6] Critical to Rawl's particularism see also *Sichieri Moura* (2015), in particular p. 368 footnote 2.

in the specific case and those excluded are determined by the specific cooperation in question. The question of distribution refers only to those costs and benefits that are precisely attributable to *this* cooperation and not to any other.

The cooperative concept of equality derives its ethical justification from the prohibition of instrumentalization, as expressed in Kant's third version of the categorical imperative: "Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end." (Kant 2018, 42)[7] A distribution of cooperation gains and burdens that does not comply with the principle of cooperative equality means that the contributions of some cooperation partners are not adequately compensated, so that they either wholly or in part no longer work in their own interest, but *merely* for the interest of the preferred cooperation partners. So, they are instrumentalized by the latter.

Cassee thinks that the cooperative concept of equality, despite its inherent exclusiveness, cannot justify the particularism in the model of Rawls' social contract. For Rawls overlooked the fact that nation-states are not closed systems but integrated in a variety of ways into global cooperation that transcends national borders (Cassee 2016, 244). However, Cassee does not show that the freedom of global movement is in any case an appropriate means of fair distribution of the benefits and burdens of this global economic cooperation. Someone who works in a factory in China for the European Market should have an appropriate income but must not have a right to access to the European States. So, it cannot be shown that the fact of international and global economic cooperation necessarily has to lead to a universal right to global free movement.

Open-border theorists make things too easy if they think they can complete Rawls's approach by simply extending it to a cosmopolitan level. The particularistic perspective in Rawls is not accidental but it is necessarily connected with his concept of equality. Therefore, the thought experiment of the veil of ignorance for the justification of a right to global free movement cannot be made fruitful. It is rather necessary to construct a different concept of equality from scratch and independent of Rawls. This is what open-border-philosophers really do when they talk about "basic equal treatment" (Kukathas 2012; Shachar 2009, Cole 2002, XII; Nett 1971).

2.3 The equality argument

The notion of equality, which can bear the burden of justifying a right to global free movement, must itself have a global scope. It must be an equality that can be ethically justified for reasons other than cooperation. There are two candidates for such a concept.

According to the first of these concepts there is a global claim for universal equal treatment of all human beings following from the idea of human rights, as suggested by Heiner Bielefeldt. According to Bielefeldt, the principle of equality is part of human rights. Consequently, such a concept of equality would be applicable independently of specific ties of cooperation. It would be applicable to all human

[7] My translation.

persons, without any further qualifications being required. Bielefeldt further states that the principle of equality is not separate from and independent of human rights, but freedom and equality form, in addition to solidarity, "mutually dependent structural elements of one and the same human rights principle" (Bielefeldt 1998, 91).[8] The principle of equality thus follows from the fact that human rights are in the same way rights of every human being. It follows at the same time that the principle of equality is itself a human right.[9]

However, there is a categorical difference between human rights on the one hand and equality on the other. The confusion is caused by a lack of differentiation between *equality* and *universality*. The justification for the fact that not only some but all human beings are regarded as bearers of human dignity and human rights does not follow from the fact that they are equal to each other. It follows rather from the fact that each of them is a person. This is independent from any comparison with others. Humane living conditions are needed for the development and maintenance of personhood. Wherever these conditions are not met this situation is contrary to human dignity. Whether such an inhuman situation is equal or unequal to the situation of others does not play any role (Frankfurt 1987; Raz 2009, 217–225).

The second variant of justification of a universal principle of equality is based on the idea of the *presumption of equality*. This principle implies that the unequal distribution of any morally significant good is fair if and only if it can be justified positionally independent toward every person as an equal. If such justification is not available, equality is the only fair solution. In other words, if inequality cannot be justified, an ethical presumption speaks for equal treatment (Williams 1973; Westen 1990, pp. 230; Gosepath 2021; Tugendhat 1993, pp. 374). The defenders of this conception – they call themselves egalitarians – base this rule on the idea that the presumption of equality is unavoidable, that is, rationally compelling. In many cases there might be good reasons for an unequal distribution of goods and burdens. But if no relevant reason can be given, then only the egalitarian division remains. This seems compelling to egalitarians because it simply results from the fact that there are no reasons to distribute unequally.

Applied to the question of a right to global free movement, the principle of the presumption of equality leads to the following reasoning: There is no reason for outsiders to agree with the rule according to which the right of entry is only granted to a privileged part of humanity, namely the citizens of the respective state. Since there is no justification for inequality in the eyes of every individual concerned, everyone should be treated equally. As long as persons who are citizens of the respective state are granted right to entry and citizenship, this right is also to grant all other interested individuals. It follows that there is a moral RGFM (Ladwig 2011, pp. 81; 2012, 72).

This argument can be criticized under two aspects. First, it can be contested that there really is a case of unequal treatment here. That foreign nationals do not have the right to enter the territory of another state without permission is a rule that is applicable for all human beings in the same way. Every human being has

[8] My translation.

[9] See also Pribytkova 2020, 393.

only the right to enter the borders of a state whose national they are. All human beings enjoy the same privileges – in their capacity as nationals; and the same restrictions – in their capacity as foreigners. A problem only arises in the case of stateless persons. Stateless people have no right to cross the borders of any state. However, the situation of stateless people does not justify a general right to global free movement. It requires only the avoidance of statelessness and the recognition of a right to citizenship of stateless people toward the state in which they permanently reside.

The other aspect relates to the basic idea of the presumption of equality. Why should all human beings worldwide be treated equally? – Bernd Ladwig, who tries to justify a universal RGFM this way, argues that they are to be treated equally because they share the same moral value. From this same moral value of all human beings follows, according to Ladwig, that everyone's life, well-being and self-determination are morally equally important, so that the unequal distribution of life chances must be justified in relation to each affected person. If such a justification is not possible, then it remains only equal distribution (Ladwig 2012, pp. 72). But what justifies the claim that all human beings have the same moral value? Egalitarianism denies that there are absolute rights or absolute values. For egalitarians, all conceivable protected goods of human rights are initially only objects of subjective desires. From an egalitarian point of view, unfulfillment of subjective desires does not constitute a ground for compensation because mere wishes as such do not merit moral consideration. Only when it turns out that subjective wishes are unequally fulfilled does egalitarianism face a moral problem that must be solved according to the principles of distributive justice (Gosepath 2003, 279).

But, if there are no absolute rights or values, then respect for the moral value of the person cannot be based on such a right or value. However, it is also not possible to derive the moral value of human beings from the principle of equality because the applicability of that very principle already requires the existence of the moral value of human beings. Egalitarians presume the equal moral value of all human beings, but they do not deliver arguments in favor of the assumption that human beings have a moral value at all. At the point where one would have to introduce an absolute human right to respect human dignity, Gosepath introduces the claim of an "egalitarian plateau" upon which all present moral theories moved (Gosepath 2003, 285). He thus already presupposes the "egalitarian plateau", although he would have to justify it first. Thus, he moves in a petitio principii.

What people owe each other for respecting their equal moral value is expressed in the human rights. As has been shown above, there is no human right to enter a foreign country and settle at random anywhere on the surface of the earth. Global freedom of movement cannot be reconstructed as a necessary condition of the possibility of free will and personhood, but only as an object or aspect of interest in maximizing options for action. However, the limitation of options does not call into question the moral value of a person concerned. It does not affect its personhood as the ability to determine one's own will from one's own considerations and reflections.

2.4 The Common-Ownership argument

The Common-Ownership argument, as represented by Mathias Risse, starts with the assumption that no nation-state can claim property rights concerning the territory and resources below and above the land that it has occupied. Therefore, no nation-state is entitled to exclude non-nationals from access to the territory. Risse draws the following logical conclusion from this assertion: Since no nation-state can be considered to be the exclusive owner of its territory, the surface of planet earth (including all the resources below and above the land) must be considered the common property of mankind. Every single individual has to be considered a co-owner of the earth. In this capacity, everyone has, in principle, the right to access every piece of land on earth. Therefore, everyone has, in principle, the right to freely cross every state border (Risse 2012).

Risse explicitly refers to the teachings of Hugo Grotius (Risse 2012, pp. 89). What Risse does not mention is that Grotius dealt with the issue of migration for the first time in his expert report for the government of Holland and West-Vriesland concerning the status of the Jewish migrants from Portugal and Spain, who had fled from persecution by the Inquisition (Grotius 2019). Here Grotius argues that the state has a natural duty to offer hospitality to foreigners who are in need of protection. This duty follows from a certain kinship between all human beings, as all of them are descended from the first human couple. Although Grotius refers here to the Biblical book *Genesis* he claims that the idea of an original kinship of all human beings can also be defended by pure secular arguments. In this respect, he refers to sources of the Roman law and the philosophy of the Stoa (De Wilde 2017). However, this approach does not support Risse's idea of the earth as a common property of mankind. Relatives do not necessarily share a common property. However, Risse does not refer to Grotius (2019) but to his famous main work of 1625, where we find another argumentation. Grotius starts here with the story that God, after having created the world, gave dominion over his creation to mankind, i.e., to the first humans (Grotius 2007, II.2.II.1). In order to be able to understand this argument we have to add an unspoken additional condition, namely the idea of the Roman inheritance law. Present day mankind can only enjoy the gift of God to the first humans if we can consider ourselves as members of a community of inheritance, so that every human individual is to be regarded as a co-owner of this inheritance.

Risse holds the opinion that Grotius' theory can be freed from the religious elements (Risse 2012, pp. 108). This is also the opinion of Grotius himself, who stresses that his considerations would be valid even in the case that God would not exist (Grotius 2007, Introduction 11). Risse's argument is a logical one. It can be displayed as follows:

1. If there is no exclusive ownership in x then there is collective ownership in x.
2. No one has exclusive ownership on earth.
3. It follows: There is collective ownership on earth of everybody.

Unfortunately, Risse does not deliver a sufficient argumentation for the first premise. It seems he considers this premise to be compelling. However, there is no logical mistake in the idea that if there is no exclusive ownership then there is

no ownership at all. Furthermore, from the conclusion does not follow what Risse concludes. Even if the conclusion could have been considered as true, the collective ownership of the mankind would not follow. It is also possible to ascribe collective ownership to flies or trees, particularly if we consider that flies or trees form the majority of living beings compared to humanity.

Risse, however, focuses on a very specific situation, namely whether a state with a large territory and many resources but a small population is obliged to grant foreigners access to the territory (Risse 2012, 154). But this consideration can only matter if would-be migrants do not have enough land in their home country to live a decent life. One can imagine that whole peoples will have to look for a new place to live in the future because their ancestral land will become uninhabitable due to climate change. This essay, however, is not about the question of whether and to what extent states are obligated to save people in need. Rather, it is exclusively about whether there is an unconditional right to migrate. Such a right, however, cannot be justified by the mere fact that the state has a large territory and a small population.

In order to show that humans have common ownership in the world as a whole, we need at first both a valid property law as well as a valid inheritance law. It is only possible to identify a first owner and humanity as its heirs on the basis of positive law. Both conditions are met by the biblical story told by Grotius. However, if we delete this story because it is based in a religious myth, we lose the basis of the entire argumentation. Only believers but not unbelievers can be convinced by Risse's approach.[10]

2.5 The democracy argument

Arash Abizadeh defends the opinion that there is a RGFM that might not be asserted against all states, but that can be exercised against those who have given themselves a democratic constitution (Abizadeh 2008; Abizadeh 2010; Carens 2013, 258). Even in his view the mere fact that some people team up, demarcate an area of land, and prevent others from crossing the border does not create normative relationships toward the people outside the border. But as soon as a democratic constitutional state is established within the demarcated territory, the situation should change. Now the state is no longer free to exercise compulsion against third parties at its borders. Rather, rejection and exclusion are justified only to the extent that the third party has agreed to the border regime or at least democratically participated in the decision on this regime.

This is obviously based on the idea that anyone who affirms the rule of law and the principle of democracy within the state has unavoidably accepted two ostensibly universal moral principles; namely the principle of autonomy in the sense of Joseph Raz, which underlies the rule of law (Raz 2009); and the discursive principle in the sense of Jürgen Habermas, which underlies the principle of democracy (Habermas 1993). The principle of autonomy requires that persons should not be subjected to the will of others, unless there are good reasons to do so exceptionally. The principle

[10] Bretherton 2006 presents a different argumentation based on Christian theology. For a libertarian view on common ownership see Steiner 1992.

of discourse requires that third parties may be subjected to the will of others only if they have participated equally in the process of forming the common will.

According to this theory, the state obviously has no right to prevent foreigners from entering and staying. Rather, the border regime is to be considered illegitimate and thus illegal because the non-nationals neither agreed to this regime nor were they democratically involved in its foundation. However, can we conclude a right to global free movement from this lack of legitimacy? This could only be the case if the mere fact that a citizenry takes on the rule of law and the principle of democratic self-legislation would lead to normative consequences in the relationship to people outside that community and would establish a moral relationship to them which goes beyond mere respect for human rights.

This would only be plausible if it were incoherent to advocate democracy and the rule of law within the borders of a state, and at the same time reject the validity of constitutional and democratic principles for the relations of the state to persons outside its borders. However, such incoherence is not apparent. A group of people is able to organize themselves on the basis of self-legislation and at the same time exclude others from this community. In contrast, if it would not be allowed to organize such a democratic community without simply embracing every human being, self-legislation would become an impossible venture.

3 The alleged right to exclude outsiders

3.1 The property argument in favor of the state

Some philosophers believe that a state's right to exclusion is based on a right to property (Marti 2012; Nida-Rümelin 2017, pp. 158). Ryan Pevnick is one of the defenders of this idea (2011). He draws on the idea of John Locke, according to which the creation of (added) value through work generates property rights claims (Locke 2017, chap. V). Accordingly, the processor and refiner of raw materials acquires ownership not only in terms of the work result, but also in terms of the raw material.

Pevnick points out that the inhabitants of a state territory have a special claim to the goods they have created because they contributed to the establishment and maintenance of state institutions (such as through taxes). On this basis, the citizens of a state do not wrong in excluding outsiders from the use of the institutions that they jointly sustain. Without their contributions the institutions would not exist, and in this sense, outsiders will lose nothing if they are denied access to these institutions.

Pavnick's argument is convincing at first glance. It is well justified that those who established an institution should have the right to decide whether or not non-members should have access to it. The argument does not go wrong because the RGFM cannot be understood as right to the access to institutions. It refers only to the access to the mere territory. However, in our times it is not possible to enter a territory without using public institutions of the state. For example, it is not possible to move around on a territory without using public roads. Someone who uses public roads at the same time benefits from the road traffic regulations, from

the road lights, from all the public facilities that make road traffic possible. What the argument makes wrong, however, is the fact that the right to exclude foreigners from the use of institutions does not include the right to deny foreigners access to the territory. The following case shows this: A group of people want to play music in a public park only for their friends. They create, in this respect, an institution. Nevertheless, they have no right to exclude other people from the public park in order to prevent them from listening to the music. So, we have to show that the state has property not only of its institutions but also of the territory.

Since the territory itself cannot be considered a work or an accomplishment of the state and its citizens, ownership of state territory can hardly be justified. It does not help here to fall back on John Locke's labor theory of property. According to this theory, ownership of a thing arises from the mixing of a natural resource (here: the land) with human labor (here: development and cultivation of the land). This conclusion, as I have shown elsewhere, is based on a quaternio terminorum, that is, a logical error that renders the theory invalid (Tiedemann 2023, 331).

One would have to resort to the property theory of Plato or Cicero in order to justify the claim to property in the territory of the state with philosophical authority (Plato 2016, IX, 877d; Cicero 1913, I. 21). According to them, land ownership is acquired by seizing uninhabited lands or by warlike conquest. The logical conclusion from the de facto seizure of land and from the factual control afterwards to the ownership of land, however, is obviously based on an error of reasoning, namely what is called a naturalistic fallacy: From facts do not follow norms. Ownership cannot be based on factual possession, but only on the law: property can exist as an institution only within a legal system that this institute envisages. Taking possession of a part of the earth's surface by a clan or a people and excluding all human beings who do not belong to this people is merely a de facto act of occupation, and as such has no normative consequences. A right to exclusion, which can claim validity vis-à-vis foreigners as far as they can be regarded as obligated to respect the borders of the state, cannot be concluded from this.

The idea of ownership in the territory of a state that is based on norms requires a mythical construction similar to the idea of the earth as common property of mankind. We need an authority above mankind that can be considered as the owner of earth and that can transfer ownership of a piece of land to a particular people. Interestingly we only have few examples for such a myth. The best-known example is the biblical myth of the promised land that God transferred to the Jews (Genesis 26, 3; Exodus 3, 8). As is well known, this story is powerful up to the present day. But it is ultimately a myth whose ideological function is obvious. A philosophically viable legitimation of state ownership of the territory cannot be constructed this way.

3.2 The club argument

Another strategy for defending the right of states to exclude foreigners refers to the human right on freedom of association (Wellman 2008; Wellman & Cole 2011). This right embraces the right of the association to determine whether or not candidates should be accepted for membership. This aspect of the freedom of association is invoked to justify the assertion that states have a right of exclusion. According to

Christopher H. Wellman, states are associations that in principle, are no different to any golf or tennis club. Therefore, states have the right to decide who should be allowed to move into the state territory and be included in the state community and who does not.

The argument is similar to the institution-argument of Pavnick. It can be criticized with the same counterarguments. However, there is a much more fundamental argument against the club-theory. This theory is based on the idea that the right to the freedom of association has to be considered a human right. Only if it is a human right can it be binding and valid as a moral right. The right to the freedom of association is a human right only insofar as it refers to the freedom of communication and belongs to those human rights, which are referred to as *communication rights*. The communication rights are real human rights as long as they serve the free process of opinion making and will formation (Tiedemann 2023, pp. 175). Communication is the necessary condition of the intellectual integrity of the person and therefore a condition of the maintenance of personhood. However, there are associations that do not serve the exchange of thoughts and information. Communication can be only a side-effect while the main purpose of the association is the creation of synergy and social power to effectively enforce certain interests of members through coordination and cooperation. Associations of that kind do not primarily serve the development and maintenance of personhood through communication. They do not fall under the protection scope of the human right to the freedom of association.

States cannot be regarded as associations that serve the communication among its members. Communication is the task of civil society and not the task of the state. The state's purpose is, for example, the increase of welfare through the organization of division of labor and the equitable sharing of burdens and benefits of cooperation, but also, for example, the organization and financing of public security or the protection of the environment. The state, therefore, is to be regarded as a community of cooperation and not as a community of communication. Consequently, the state does not fall under the protection scope of the human right to the freedom of association.

3.3 The public interest argument

Occasionally there are attempts to justify a right to exclude immigration by reference to the fact that the influx of a large number of people from abroad may conflict with fundamental public interests of the receiving state and its society (Gärditz 2016; Gill 2011; Nida-Rümelin 2017, 165; Viehoff 2013). These fundamental public interests include not only the concern for economic prosperity, the price level, or the housing market, but also the interest in protecting the cultural or national identity (Kymlicka 2006; Miller 2016; Song 2012; Walzer 1983).

Whether the arguments discussed in this context are based on reasonable self-interests or on rather irrational fears should not be discussed here.[11] Crucial in our context is the very fact that the given interests of an individual or a collective subject do not create normative bonds for other persons or collectives. The interests of a person or a community are, in the eyes of other persons or communities, only facts –

[11] Cf. Mende 2015; Cassee 2016, pp. 97; Mona 2007, pp. 351.

and from facts do not follow norms. The cultural identity or economic prosperity is not protected by human rights, so foreigners are strictly prohibited from interfering with them. Even if immigration would lead to the complete impoverishment of parts of the host society, there is no normative bond obliging foreigners to refrain from unauthorized immigration, because foreigners do not have the duty to protect the economic or cultural interests of the locals.

From the fact that there are no rights based on mere interests follows the failing of Michael Blake's argument, which concludes from the state's self-understanding as a peace order that states must have the right to exclusion (Blake 2023, pp. 67; Blake 2013). The state as a peace order protects the basic rights of all people in its territory. The duty of protection is a burden connected with huge material and ideal efforts. Immigration of large numbers of foreigners enlarge the number of those who should be protected and the number of those who are a threat to public security. Immigration therefore involves an increase of the efforts in a state's duty to protect. Of course, a state can be interested in reducing immigration in order to reduce the burdens and the costs of protection, but this interest does not oblige foreigners to refrain from illegal immigration.[12] This is why Will Kymlicka, who emphasizes the high value of a national identity for the cohesion of a society, derives from this interest no right to exclusion, but only asks whether it is wrong to protect the national identity by controlling the borders (Kymlicka 2006, 566). No, it is not wrong – as long as the exclusion does not lead to a violation of the human rights of migrants. But from the fact that it is not wrong does not follow that there is a right of the state to exclude foreigners.

4 Conclusion

As a result of this study, we can state that there is neither a moral right to global free movement in favor of potential immigrants nor a moral right of states to exclude foreigners from immigration. Since there is no right on both sides, there is also no corresponding duty. Potential immigrants are not obliged to refrain from immigration when lacking permission of the receiving state. The state is not obliged to tolerate the illegal immigration. Foreigners do not violate a moral duty by illegally crossing the borders and the state does not violate a moral duty by hindering them to cross the border or by sending them back. The state may also use direct force in this context, provided it does not violate human rights.

Following Thomas Hobbes and John Locke, I call a relationship between human beings which are not ruled by mutual moral duties and rights (except of human rights) *the state of nature*. The natural state is to a great extent free from any specific normative relationship between human beings. Morality comes in this cold world only through special relationships like solidarity, cooperation, or trust. Such special relationship does not exist between a nation state and foreign individuals who illegally want to immigrate. Only the human rights are valid and binding in the natural

[12] Blake itself, in response to other justifications, argues: "From the fact that we have an interest in a particular set of politics, we cannot infer that we have a right to it..." (Blake 2013, 105).

state because the mutual respect of personhood is unavoidable in order to maintain one's own personhood (Tiedemann 2023, pp. 123). Since there are no mutual moral rights and duties apart from the human rights, there is no moral legitimation for criticizing those who try to cross borders of foreign countries where they hope for a better life – as long as they do not violate the human rights of anybody. Therefore, it is not adequate to consider illegal migrants as criminals and punish them with criminal sanctions, especially imprisonment (Blake 2023, 184). But there is also no moral legitimation for criticizing those who in their capacity as politicians or border policepersons make efforts in preventing foreigners to cross the border - as long as they do not violate the human rights of anybody. A violation of human rights, however, occurs when border police shoot at people who try to cross the border.

Whether all this applies even if those who are willing to enter a foreign country are persecuted or in existential distress is another matter. This special case is not the subject of this investigation.[13]

This result leads us quite casually to the follow-up question of whether anything changes if we regard the relationship of a foreigner to a state not as a question of morality, but as a question of positive law. Answering this question requires a thorough investigation, which can only be done in a separate article. At this point it may only be noted that the answer will have something to do with the concept of law on which it is based.

Funding Open Access funding enabled and organized by Projekt DEAL.

Open Access This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit http://creativecommons.org/licenses/by/4.0/.

References

Abizadeh, Arash. 2008. Democratic Theory and Border Coercion. No Right to Unilaterally Control Your Own Borders. *Political Theory* 36 (1): 37–65.

Abizadeh, Arash. 2010. Democratic Legitimacy and State Coercion: A Reply to David Miller. *Political Theory* 38 (1): 121–130

Anderson, Bridget, Nandita Sharma, Cynthia Wright. 2011. Why No Borders? *Refuge* 26 (2): 5–18

Bertram, Chris. 2018. *Do States Have the Right to Exclude Immigrants?* Cambridge: Polity Press.

Bielefeldt, Heiner. 1998. *Philosophie der Menschenrechte. Grundlagen eines weltweiten Freiheitsethos*. Darmstadt: WBG

Blake, Michael. 2013. Immigration, Jurisdiction, and Exclusion. *Philosophy & Public Affairs* 41 (2): 103–130

Blake, Michael. 2023. *Justice, Migration & Mercy*. Oxford: OUP 2nd ed.

Bretherton, Luke. 2006. The Duty of Care to Refugees, Christian Cosmopolitism, and the Hallowing of bare Life. *Studies in Christian Ethics* 19 (1): 39–61

[13] On this issue see Tiedemann 2021.

Carens, Joseph H. 1987. Aliens and Citizens. The Case for Open Borders. *The Review of Politics* 49 (2): 251–273
Carens, Joseph H. 2013. *Ethics of Immigration*. Oxford: OUP
Cassee, Andreas. 2016. *Globale Bewegungsfreiheit. Ein philosophisches Plädoyer für offene Grenzen*. Berlin: Suhrkamp
Cassee, Andreas, Anna Goppel. 2012. *Migration und Ethik*. Münster: mentis
Cicero, Marcus T. 1913. *De Officiis*, quoted from Loeb Classical Library, Harvard University Press, vol. XXI, 1913; Latin text with facing English translation by Walter Miller – https://bit.ly/DeOfficiis. Accessed 14 September 2023
Cole, Philipp. 2002. *Philosophies of Exclusion*. Edinburgh: EUP
Dahm, Georg, Jan Delbrück, Rüdiger Wolfrum. 1989. *Völkerrecht* Bd. I/1 Berlin: de Gruyter
De Wilde, Marc. 2017. Offering hospitality to strangers: Hugo Grotius's draft regulations for the Jews. *Tijdschrift voor Rechtsgeschiedenis / Revue d'histoire du droit / The Legal History Review* 85: 391–433
Dummett, Michael. 2001. *On Immigration and Refugees*. Abingdon: Routledge
EChHR. 1985. European Court of Human Rights, judgement of 28/05/1985 – 9214/80; 9473/81; 9474/81 –, "Abdulaziz, Cabales, Balkandali v. UK", http//hudoc.echr.coe.int
EChHR. 1988. European Court of Human Rights, judgement of 21/06/1988 – 10730/84 –, "Berrehab ./. The Netherlands." http//hudoc.echr.coe.int
EChHR. 2011. European Court of Human Rights, judgement of 14/06/2011 – 38058/09 –, "Osman v. Denmark", http//hudoc.echr.coe.int
EChHR. 2017. European Court of Human Rights, judgement of 12/01/2017 – 31183/13 –, "Abuhmaid v. Ukraine", http//hudoc.echr.coe.int
Forschner, Maximilian. 1995. *Die stoische Ethik*. Darmstadt: WBG
Frankfurt Harry G. 1987. Equality as a Moral Ideal. *Ethics* 98 (1): 21–43
Freiman, Christopher, Javier Hidalgo. 2013. Liberalism or Immigration Restrictions, but Not Both. *Journal of Ethics and Social Philosophy* 10 (2), pp. 1–22
Gärditz, Klaus F. 2016. Territoriality, Democracy, and Borders, A Retrospective on the 'Refugee Crisis'. *German Law Journal* 17 (6), http,//www.germanlawjournal.com/volume-17-no-06. Accessed 14 September 2023
Gill, Nick. 2011. Whose 'No Borders'? Achieving Border Liberalization for the Right Reasons. *Refuge* 26 (2): 107–120. https://doi.org/10.25071/1920-7336.32082, https://refuge.journals.yorku.ca/index.php/refuge/article/view/32082
Gosepath, Stefan. 2003. Verteidigung egalitärer Gerechtigkeit. *Deutsche zeitschrift für Philosophie* 51 (2): 275–297
Gosepath, Stefan. 2021. Equality. In *Stanford Encyclopedia of Philosophy* https://plato.stanford.edu/entries/equality. Accessed 14 September 2023
Grotius, Hugo. 2007. *De Iure Belli ac Pacis Libri Tres* [1625], here quoted from the German translation by v. H. J. Kirchmann [1869] Reprint Boston: Elibron
Grotius, Hugo. 2019. Remonstrantie nopende de ordre dije in de landen van Hollandt ende Westvrieslandt dijent gestelt op de joden [Remonstrance concerning the order to be imposed upon the Jews in the lands of Holland and West-Vrieslan. [1615]. In *Hugo Grotius's Remonstrantie of 1615: Facsimile, Transliteration, Modern translations and Analysis*. eds. David Kromhout and Adri K. Offenberg. Leiden: Brill
Habermas, Jürgen. 1993. *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*. Frankfurt/M: Suhrkamp
ICCPR (1966) International Covenant on civil and political Rights of 19/12/1966 – https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf. Accessed 14 September 2023
Kant, Immanuel. 2006. Toward Perpetual Peace: A Philosophical Sketch [1796] Trans D. L. Colclasure. In *Toward Perpetual Peace and Other Writings in Politics, Peace, and History*, ed. Pauline Kleingeld. New Haven/London: Yale University Press
Kant, Immanuel. 2017. *Metaphysics of Morals*. [1797/1798] Trans Mary Gregor. 13th ed. Cambridge: CUP. https://doi.org/10.1017/9781316091388
Kant, Immanuel. 2018. *Groundwork for the Metaphysics of Morals.* [1786] Trans Allen W. Wood. New Haven/London: Yale University Press.
Kirloskar-Steinbach, Monika. 2007. *Gibt es ein Menschenrecht auf Immigration? Politische und philosophische Positionen zur Einwanderungsproblematik.* München: Wilhelm Fink
Kraft, Viktor. 1951. *Die Grundlagen einer wissenschaftlichen Wertlehre*. Wien: Springer
Kukathas, Chandran. 2012. Why Open Borders? *Ethical Perspectives* 19 (3), pp. 649–675
Kymlicka, Will. 2006. Staatsgrenzen. *Deutsche Zeitschrift für Philosophie* 54 (4): 549–576

Ladwig, Bernd. 2011. *Gerechtigkeitstheorien als Einführung*. Hamburg: Junius
Ladwig, Bernd. 2012. Offene Grenzen als Gebot der Gerechtigkeit? In Andreas Cassee and Anna Goppel (eds.), *Migration und Ethik*. Münster: mentis
Locke, John. 2017. *The Second Treatise of Government* [1690], ed. by Jonathan Bennett https://www.earlymoderntexts.com/assets/pdfs/locke1689a.pdf. Accessed 14 September 2023
Löschke, Jörg. 2015. *Solidarität als moralische Arbeitsteilung*, Münster: mentis
Mackie, John L. 1977. *Ethics. Inventing Right and Wrong*, Harmondsworth: Penguin Books
Marti, Urs. 2012. Mein und Dein. Eigentum oder Eigenart? Überlegungen zur Begründung eines Rechts auf Exklusion. In *Migration und Ethik* eds. Andreas Cassee and Anna Goppel. Münster: mentis
Mende, Janne. 2015. *Kultur als Menschenrecht. Ambivalenzen kollektiver Rechtsforderungen*. Frankfurt/M: Campus
Miller, David. 2005. Immigration. The Case for Limits. In: Cohen, Wellman (eds.), *Contemporary Debates in Applied Ethics*. Malden Mass, Blackwell
Miller, David. 2013. Border Regimes and Human Rights. *The Law & Ethics of Human Rights* 7 (1): 1–23 – https://doi.org/10.1515/lehr-2013-0001
Miller, David. 2016. *Strangers in Our Midst: The Political Philosophy od Immigration*. Cambridge: Harvard University Press
Mona, Martino. 2007. *Das Recht auf Immigration. Rechtsphilosophische Begründung eines originären Rechts auf Einwanderung im liberalen Staat*. Basel: Helbing Lichtenhahn
Nett, Roger. 1971. The Civil Right We Are Not Ready For, The Right of Free Movement of People on the Face of the Earth. *Ethics* 81 (3): 212–227
Nida-Rümelin, Julian. 2017. *Über Grenzen denken. Eine Ethik der Migration*. Hamburg: Körber Stiftung
Oberman, Kieran. 2011. Immigration, Global Poverty, and the Right to Stay. *Political Studies* 59: 253–268
Oberman, Kieran. 2016. Immigration as a Human Right. In *Political Theory*, eds. Sarah Fine, Lea Ypi. 32–56. New York: OUP
Pevnick, Ryan. 2011. *Immigration and Contraints of Justice. Between Borders and Absolute Sovereignty*. Cambridge: CUP
Pribytkova, Elena (2020) What Global Human Rights Obligations Do We Have. *Chicago Journal of International Law* 20 (2): Article 15 https://chicagounbound.uchicago.edu/cjil/vol20/iss2/15. Accessed 14 September 2023
Rawls, John. 1999. *A Theory of Justice.* Revised Version Cambridge (Mass): Belnap
Raz, Joseph. 2009. *The Morality of Freedom*. Reprint 2009. OUP, Oxford.
Risse, Mathias. 2012. *On Global Justice*, Princeton: PUP
Plato. 2016. *Nomoi*, quoted from M Schofield (ed.). Plato: Laws. Cambridge Texts in the History of Political Thought. Translated by T Griffith, Cambridge: CUP
Schotel, Bas. 2012 . *On the Right of Exclusion: Law, Ethics and Immigration Policy*. Abingdon: Roudledge
Seneca, Lucius A. 2011. Ad Lucilium / An Lucilius (letter 71), 18–42. In Rosenbach (ed), *L. Annaeus Seneca, Philosophische Schriften*, vol 4, Darmstadt: WBG
Shachar, Ayelet. 2009. *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge: Harvard University Press
Sichieri Moura, Julia. 2015. Cosmopolian Egalitarism. A new Paradigm of Distributive Justice. *Rechtsphilosophie* 1 (4): 368–376
Song, Sarah. 2012 The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State. *International Theory* 4 (1), pp. 39–68
Steiner, Hillel. 1992. Libertarianism and the Transnational Migration of People. In *Free Movement. Ethical Issues in the Transnational Migration of People and if Money*, eds. B. Barry, R. E. Goodin, 87–94. Pennsylvania: State University Press
Tiedemann, Paul. 2021. Are There Moral Duties Toward Refugees? Considerations in Legal Ethics. *LAWS* 10/1 (4): 2-28. https://doi.org/10.3390/laws10010004
Tiedemann, Paul. 2023. *Philosophical Foundation of Human Rights*, 2nd edition. Cham/Heidelberg/New York: Springer – https://doi.org/10.1007/978-3-031-32292-1
Tugendhat, Ernst. 1993. *Vorlesungen über Ethik*, Frankfurt a.M.: Suhrkamp.
Viehoff, Daniel. 2013. The Right against Interference: Human Rights and Legitimate Authority. *The Law & Ethics of Human Rights* 7 (1): 25–46. https://doi.org/10.1515/lehr-2013-0003
Walzer, Michael. 1983. *Spheres of Justice. A Defense of Pluralism and Equality*, New York: Basic Books
Wellman, Christopher H. 2008. Immigration and Freedom of Association. *Ethics* 119 (1): 109–141
Wellman, Christopher H., Philipp Cole. 2011. *Debating the Ethics of Immigration: Is there a Right to Exclude?* New York: OUP

Westen, Peter. 1990. *Speaking of Equality. An Analysis of the Rhetorical Force of 'Equality' in Moral and Legal Discourse*, Chapter 10, Princeton University Press – https://doi.org/10.1515/9781400861484
Wilcox, Shelly. 2009 The Open Borders Debate in Immigration. *Philosophy Compass* 4 (5), pp. 813–821
Williams, Bernard. 1973. The Idea of Equality. In B Williams, *Problems of the Self,* Cambridge: Cambridge University Press, pp. 230–249
Wolfrum, Rüdiger. 2001. Völkerrechtliche Rahmenbedingungen für die Einwanderung. In *Einwanderungsrecht – national und international. Staatliches Recht Europa- und Völkerrecht*, ed. Thomas Giegerich, Rüdiger Wolfrum. Opladen: Leske + Budrich
Ypi, Lea. 2008. Justice in Migration: A Closed Borders Utopia? *Journal of Political Philosophy* 16 (4), pp. 391–418
Zimmermann, Stephan. 2018. Kant on 'practical freedom' and its transcendental possibility. In *Metaphysics of Freedom? Kant's Concept of Cosmological Freedom in Historical and Systematic Perspective*, ed. C. H. Krijen. Leiden: Brill. https://doi.org/10.1163/9789004383784_008

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.