

Immigrant Admissions and Global Relations of Harm

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According to the conventional view on immigration, the principle of national sovereignty gives states an essentially unlimited right to control their borders. Although states typically admit immigrants whose talents, assets, and skills are perceived to be in the national interest, they are morally free to exclude foreigners at their discretion, with few exceptions. Historically, the conventional view has received widespread support, both in legal practice and the work of political philosophers.¹ However, some contemporary liberal egalitarians reject it. Endorsing an “open borders” position on immigration, they deny that the right to national sovereignty includes a broad right to prohibit immigration. Proponents of the “open borders” position typically defend it with a version of the “freedom of movement” argument.² According to this argument, freedom of international movement is a basic human right, either in itself or as a prerequisite for other rights, including equal opportunity. The argument concludes that since the right to freedom of international movement includes the right to immigrate to the country of one’s choosing, states have a *prima facie* duty to maintain open borders.

The “open borders” position on immigration is an attractive cosmopolitan ideal, and the freedom of movement argument may be plausible at the level of ideal theory. However, I will suggest that this argument fails to provide adequate normative guidance concerning immigration in the world as it is today. Notwithstanding the presumption for open borders, proponents acknowledge that immigration restrictions are likely to be justified under certain non-ideal conditions. In such cases, a principled means for determining which immigrants have the strongest moral claims to admission will be needed. Yet the freedom of movement argument cannot establish admissions priorities because it construes the right to immigrate strictly as a universal human right. Moreover, by focusing solely on the right to freedom of international movement, the argument ignores alternative moral grounds for claims to admission, grounds that may entail particularly strong moral claims.

This paper develops a new principle for establishing immigrant admissions priorities in the non-ideal world. Based upon a global extension of the Harm Principle, it assigns liberal states with strong duties to admit particular prospective immigrants, duties which must be fulfilled before states may use immigration policy in service of other national goals. This principle, which I call the Global Harm Principle (GHP), is consistent with a presumption for open borders, as it would establish admissions priorities in cases in which immigration restrictions

could be justified. However, since my defense of the GHP appeals to independent liberal premises, its validity is not contingent upon the soundness of the freedom of movement argument. This essay proceeds as follows. Section I sets the stage for my subsequent arguments by describing the moral dilemma posed by contemporary migration and demonstrating that the freedom of movement argument is incapable of guiding an adequate response to this dilemma. Section II develops my interpretation of the GHP and discusses the duties to admit immigrants that it entails. Finally, Section III briefly situates the GHP among other necessary elements of a just and comprehensive liberal immigration policy.

I. Immigrant Admissions in the Non-Ideal World

International migration is an essential feature of the globalizing world; each of the fundamental economic, political, cultural, and technological transformations associated with globalization contribute to large-scale population movements. Free international flows of capital and trade contribute to large-scale labor migration, and growing inequalities in wealth, both between the global North and global South and within countries in each hemisphere, produce significant numbers of economic migrants. Ecological pressures, repressive states, and intensified violent political and ethnic conflicts create millions of refugees, many fleeing for their lives. Amplified global cultural interchange, facilitated by improved transportation, global telecommunications, and the proliferation of electronic media, also contribute to population movements. It should be no surprise, then, that international migration is on the rise. According to the International Organization for Migration, the number of worldwide migrants increased from 176 million to 191 million between 2000 and 2005, with migrants currently comprising at least three percent of the global population.³

These empirical conditions give rise to a pressing dilemma: most human migration is initiated by severe need, yet in every affluent destination society, the overall demand for entry greatly exceeds immigrant admissions. This situation raises two important moral questions: Do these societies have unacknowledged moral duties to admit immigrants? If restrictions on immigration can sometimes be justified, which prospective immigrants ought to receive priority when not all are admitted? A viable, non-ideal theory of immigrant admissions must offer plausible answers to both these questions. However, while the freedom of movement argument may provide a persuasive answer to the first, it cannot offer an adequate response to the second.

Joseph Carens, the best-known proponent of the “open borders” position, presents two versions of the freedom of movement argument; each shares a common, two-step argumentative structure. The argument begins by ostensibly demonstrating that fundamental liberal egalitarian premises entail a basic human right to freedom of international movement, including a right to immigrate to any country one chooses. For instance, in an early formulation, Carens contends that

parties in a global extension of the original position would choose freedom of international movement, including the right to immigrate, as a fundamental, universal liberty.⁴ Then, having arguably established a human right to immigrate, the argument concludes that states have a *prima facie* duty to respect this right by admitting those individuals who seek entry.

The freedom of movement argument provides a robust, affirmative answer to our first ethical question: societies have an unacknowledged moral duty to admit virtually every prospective immigrant. This presumption for open borders is certainly appealing, as it shifts the burden of proof to those who wish to justify immigration restrictions. In doing so, the freedom of movement argument rules out the conventional view on immigration, which maintains that states are morally free to exclude immigrants at their discretion. It should be noted, however, that proponents of the freedom of movement argument acknowledge that restrictions on immigration will likely be justified under certain empirical conditions. Since immigration restrictions involve overriding a basic right, they can be justified only by the weightiest of reasons and only on the basis of rationales that are compatible with the liberal commitment to the freedom and equality of persons. Carens suggests that states may legitimately limit the overall number of immigrants admitted if such restrictions are necessary to maintain public order, protect liberal institutions, or preserve a distinct culture or way of life. These criteria rarely will be satisfied at the level of ideal theory because the sorts of large-scale migrations necessary to jeopardize public order, liberal institutions, or a distinct culture are unlikely to occur in a perfectly just world, even if every state were to embrace the presumption for open borders. However, the non-ideal world is characterized by unjust states, unfair global institutions, and vast economic inequalities among nations. If affluent states were to open their borders in this world, Carens argues, the sheer size of the demand for admission would be likely to justify restrictions on immigration, especially in affluent destination countries.⁵

If Carens is correct that immigration restrictions are likely to be justified under real-world conditions, then a viable non-ideal theory of immigrant admissions must also provide a reasonable answer to our second ethical question; it must offer a principled means for determining which prospective immigrants should be assigned priority when not all are admitted. However, the freedom of movement argument cannot provide such normative guidance, for three reasons. First, it is difficult to see how the argument could offer *any* guidance concerning admissions priorities in such cases. As we know, the freedom of movement argument purports to establish a basic human right to immigrate to the country of one's choosing. But if the right to immigrate is a basic human right, then it is not clear what grounds there could be for prioritizing one prospective immigrant's right to admission over another prospective immigrant's equally stringent right to admission.

Moreover, the idea that there is a basic human right to immigrate is at least *prima facie* inconsistent with the liberal egalitarian intuition that priority in admissions ought to be given to those prospective immigrants who are poorest or most in need. If every person has a fundamental right to immigrate to the country

of her choosing, then admissions policies that assign priority to the neediest prospective immigrants would essentially prioritize the satisfaction of the rights of needy persons over those of non-needy persons. Such differential treatment is incompatible with the very nature of a human right, which requires the equal treatment of all persons who wish to exercise their rights. Thus, one commentator suggests that in cases in which some prospective immigrants must be excluded, the best way for states to respect the force of the human right to immigrate would not be to prioritize the neediest prospective immigrants in admissions decisions, but rather to institute a lottery system that gives every prospective immigrant, rich or poor, an equal chance to enter.⁶

Finally, the claim that there is a human right to immigrate is in tension with the idea that certain states have particularly strong duties to admit immigrants. If every person has a fundamental right to immigrate to the country of her choosing, the corresponding duties to admit immigrants must be assigned equally to all states. Yet this would seem to be incompatible with the liberal egalitarian intuition that affluent societies have stronger duties to admit immigrants than poorer societies. The claim that immigration is a human right also sits uneasily with the notion that states may have special obligations to admit particular prospective immigrants based on their historical or current relationships with these persons.

II. The Global Harm Principle

My discussion of the freedom of movement argument suggests that a new principle is needed to establish immigrant admissions priorities in the non-ideal world. This principle should be sensitive to the relative need of prospective immigrants, as well as to their historical and current relationships with particular states. I will now discuss the principle that I believe meets these criteria. The GHP is based upon a global extension of the Harm Principle, which maintains that agents should not harm other persons. The Harm Principle entails a primary duty to refrain from harming others, as well as two derivative duties, according to which: (1) agents who are in the process of harming others must cease their harmful conduct immediately; and (2) agents who have already harmed others must compensate their victims for the harm they have caused them. Thus, a preliminary version of the GHP can be stated as follows: societies should not harm foreigners; and societies that violate this duty must: (1) stop harming these foreigners immediately; and (2) compensate their victims for the harm they have already caused them.

The Harm Principle is firmly grounded within the liberal philosophical tradition and needs no further justification here.⁷ The injunction against harming persons, at least without their full, voluntary consent, is a core liberal principle, as is the notion that compensation is owed to persons who have been harmed. The inclusion of foreigners, defined as non-citizens who have not been granted legal permanent residency status, in the category of individuals whom societies should not harm is easily justified on egalitarian grounds: since all persons deserve equal

moral respect, there are no legitimate grounds for claiming that harm to non-citizens is any less morally problematic than harm to citizens. However, several critical questions concerning the content and scope of the GHP remain: What constitutes harm according to the GHP? How should we understand the collective duty not to harm foreigners? What specific duties to admit immigrants does the GHP entail? In the following sections, I will develop an interpretation of the GHP that attempts to resolve these issues.

II.1 Harm and Human Rights

The plausibility of the GHP depends crucially upon how “harm” is understood. Since this principle is concerned primarily with harm that occurs across state borders, it should be based on a conception of harm that is likely to gain widespread cross-cultural acceptance. Minimally, such a conception should meet two criteria. First, the notion of harm should be substantial enough to capture serious setbacks to human well-being without unduly restricting the freedom of states to pursue legitimate national goals. Second, the definition of harm should be based on a conception of human welfare that is modest enough to be compatible with a wide range of substantive conceptions of human flourishing. These criteria ensure that the conception of harm will be consistent with the ideals of individual and national autonomy.

What, then, constitutes harm with respect to the GHP? It is commonly understood that for a person to be harmed by an event, her interests must be impeded, thwarted, set back, or defeated by that event. To have an interest in something is to have “a stake in its well-being,” that is, to stand to gain or to lose depending on its advancement or impairment.⁸ For instance, I have interests in my health, the success of my projects, and the well-being of my friends and family. So much is clear: harm is a setback to a person’s interests. But should *any* setback to *any* interest qualify as harm in the relevant sense of the GHP? If so, our conception of harm would certainly be broad enough to capture a wide range of important setbacks to human well-being, since it would include all possible interest setbacks. But surely this conception would set the bar for harm too low. A principle that prohibits states from causing any setback to even the most idiosyncratic individual interests would essentially tie the state’s hands, thereby unduly restricting its freedom to pursue legitimate national interests.

It is possible to avoid these problems by developing a more modest conception of harm that is sensitive to the relative importance of people’s various interests. This conception draws on the distinction between aspirational interests and basic welfare interests.⁹ Aspirational interests, on the one hand, involve a person’s own particular attachments, aims, and goals given her conception of the good life. Aspirational interests tend to be particular to individuals and thus to vary considerably from person to person. Welfare interests, on the other hand, are those fundamental interests that are necessary means to one’s aspirational goals, whatever these goals may be. Whereas aspirational interests tend to be idiosyncratic,

welfare interests are general; they involve those basic goods that people normally need to live a minimally decent life according to a broad range of conceptions of human flourishing. Welfare interests include physical integrity, adequate food, drink, clothing, shelter, health care, and education, a safe environment, and basic political liberties. This understanding of welfare interests is consistent with human rights discourses, which contend that people's welfare interests are so fundamental that every person has a right to their protection.

It is now possible to formulate a conception of harm for the purposes of this paper: harm consists in a setback to a person's basic welfare interests. Or, in the language of human rights: harm consists in a human rights deficit.¹⁰ I realize that this is a very narrow conception of harm, and thus, that the GHP is a minimalist principle of international justice. A broader conception of harm doubtlessly would be more appropriate for international criminal law and civil law, and more suitable for a robust theory of international distributive justice. However, conceiving of harm as an infringement of human rights is appropriate for the GHP for at least two reasons. First, this conception sets a moral baseline of harm that meets the two criteria set out above. It captures serious setbacks to people's most vital interests while preserving sufficient latitude for states to pursue legitimate national agendas; and as we have seen, this conception of harm is based on a thin notion of human welfare that is by definition compatible with a range of substantive conceptions of human flourishing. Moreover, conceiving of harm as a human rights deficit provides a fitting baseline for triggering the collective duty to admit immigrants, given the arguable costs of large-scale immigration to receiving societies.

II.2 The Duty to Refrain from Imposing Human Rights Deficits

The GHP entails a collective duty not to harm foreigners. According to the conception of harm I defended in the previous section, this duty requires societies to refrain from imposing human rights deficits upon foreigners. To explain this duty fully, it is necessary to set out the account of collective moral responsibility upon which it rests. For the purposes of my argument, I will stipulate five general, common sense conditions under which a society is collectively responsible for imposing a human rights deficit.¹¹

First, in order for a society to be collectively responsible for imposing a human rights deficit, some members of the society must be causally responsible for that deficit. According to a standard account of causal responsibility, an agent (A) is causally responsible for another agent (B)'s human rights deficit if and only if the following two conditions are met:

- (a) A's conduct is *causally relevant* to the production of B's human rights deficit;
- (b) A's conduct is a *critically necessary causal factor* in the production of B's human rights deficit.

Further analysis of these conditions is in order. Condition (a) stipulates that A's conduct must be a condition in the set of antecedent conditions that were jointly sufficient to produce B's deficit. Any such conduct qualifies as a causally relevant factor, even if it merely allowed an antecedent sequence of events to play out. Condition (b) states that A's conduct must be a critically necessary causal factor in the production of B's human rights deficit. To count as a *necessary* causal factor, A's conduct must be a necessary condition in the production of B's deficit. To qualify as a *critically* necessary causal factor, A's conduct must be substantial enough for the deficit to be attributed to it as a consequence. In other words, A's conduct must not merely allow a sequence of events to unfold, but rather must actively "initiate, facilitate, or sustain" B's deficit.¹² Importantly, this analysis allows us to distinguish between imposing a human rights deficit and failing to mitigate a deficit that was caused by a third party or a natural event. While conduct that merely fails to mitigate a deficit may be causally relevant to that deficit, it does not qualify as a critically necessary causal factor in its production. Thus, the duty to refrain from imposing human rights deficits is a negative duty in the sense that it requires societies to refrain from acting in ways that would produce such deficits.

A is causally responsible for imposing a human rights deficit upon B, in the sense required by the GHP, if conditions (a) and (b) are met. However, two additional conditions must be added to our account of collective responsibility to prevent the GHP from being unreasonably demanding:

- (c) A could reasonably avoid producing B's human rights deficit in the sense that alternative conduct would not produce comparable harm;
- (d) A's conduct foreseeably gives rise to B's human rights deficit.

Condition (c), the avoidability criterion, limits A's moral responsibility for B's deficit to those cases in which A genuinely could have avoided imposing a human rights deficit upon B, either by engaging in an alternative course of action or by refraining from action altogether. Condition (d), the foreseeability criterion, limits A's moral responsibility to those cases in which B's deficit was a foreseeable consequence of A's conduct. This condition is satisfied if A's conduct posed at least a moderate risk of producing B's deficit and a reasonable person in A's position ought to have been aware of this likelihood. Generally speaking, the higher the risk posed by A's conduct, the more likely the deficit qualifies as foreseeable.

A is morally culpable for imposing a human rights deficit upon B, in the sense required by the GHP, if conditions (a)–(d) are satisfied. However, since the GHP is concerned specifically with collective responsibility for human rights deficits, one final condition must be added to our account:

- (e) The members of a society (Society C) are collectively responsible for A's conduct.

It will be helpful to clarify the conception of collective responsibility implicit in condition (e). Given the structure of the GHP, the claim that members of a society are collectively responsible for a human rights deficit means that these individuals are collectively accountable for remedying that deficit, regardless of whether they themselves played an active role in producing it. This account of collective responsibility rests on a distinction between two senses of moral responsibility: culpability and accountability. To suggest that an agent is morally culpable for imposing a human rights deficit implies that she is causally responsible for wrongfully imposing that deficit. Or, in other words, A is culpable for B's human rights deficit if her conduct satisfies conditions (a)–(d). Accountability, in contrast, involves a different kind of moral responsibility. To suggest that an agent is accountable for a human rights deficit implies that she is obligated to remedy that human rights deficit, regardless of whether she played an active role in producing it. While culpable agents are typically accountable for the harm they impose, accountability may also be assigned vicariously. A common example involves parents and their children. A parent is obligated to remedy the harm her child causes even if she herself plays no causal role in producing it. Accountability is legitimately assigned to the parent on the grounds that she was in a position to affect the child's conduct and is better able to compensate for it. Importantly, vicarious accountability may be shared among two or more agents. For instance, parents are collectively accountable for harm brought about by their children, that is, each parent is responsible for doing his or her part to remedy that harm.

Collective vicarious accountability also applies to citizens and their democratically elected governments. In this case, accountability derives from the relationship between citizens and their elected representatives, specifically from the process by which citizens authorize their elected officials to represent them. By investing their government with the power to act in their name, citizens assume collective accountability for the consequences of its conduct and policies. Thus, while citizens may not themselves be morally culpable for wrongs done by their government, each citizen is responsible for doing her part to remedy the wrongful harm that her government causes.¹³ The case for collective accountability is strengthened if citizens benefit from the harmful policies of their government, as is often the case. However, citizens need not profit from governmental wrongdoing in order to share in collective responsibility for remedying it, as such responsibility derives from their role as citizens, not from the receipt of benefits produced by unjust practices or policies.

One might object to this account on the grounds that unlike parents and their children, ordinary citizens have little power to affect the conduct of their government. Indeed, many citizens are altogether unaware of the policies of their government, which may have been negotiated behind closed doors. However, this objection rests upon an implausibly attenuated conception of democratic citizenship.¹⁴ While individual citizens may not be able to affect government policies themselves, several together can influence policy outcomes, at least in small ways.

Nor does the fact that so many citizens choose to ignore their government's conduct or to allow it to conceal its decision-making processes release them from responsibility for the ways in which their collective power is used in their name. It should also be noted that endorsing this objection would in practice leave essentially no one accountable for remedying some of the most severe harms caused by governments. While government agents may (and should) be held personally liable for all wrongful harm for which they are morally culpable, no matter how severe, they may not be in a position to remedy severe harms such as human rights deficits using their own personal resources. In such cases, rejecting collective democratic accountability would create a moral loophole through which many human rights violations would go without remedy.

If conditions (a)–(e) are met, and B is a foreigner, the members of Society C have violated the duty to refrain from imposing human rights deficits upon foreigners entailed by the GHP. For purposes of illustration, it will be helpful to consider several cases in which a society violates this collective duty. These examples are meant to be illustrative and not necessarily exhaustive.¹⁵ In the most straightforward case, a government explicitly mandates the imposition of human rights deficits upon the citizens of another country or implements policies that directly produce such deficits. Real-life instances are regrettably common; the U.S. military herbicide operations during the Vietnam War are a frequently cited example. Between 1961 and 1971, the U.S. military sprayed nearly 20 million gallons of highly toxic herbicides over Southeast Asia with the stated aims of defoliating the jungle and destroying crops. It is estimated that between 2.1 and 4.8 million South Vietnamese people were sprayed directly with these “rainbow herbicides,” most commonly the infamous Agent Orange. Many more people were exposed through contaminated food and water. Critics charge that these operations resulted in the widespread imposition of avoidable human rights deficits.¹⁶ Citing epidemiological studies, they claim that herbicide exposure has caused high rates of cancers, neurological and metabolic disorders, and birth defects among the South Vietnamese people. Moreover, they argue that the destruction of thousands of acres of crops produced widespread hunger, as well as long-term environmental devastation, including the loss of arable land.

If these arguments are sound, the herbicide operations were both a causally relevant factor and a critically necessary causal factor in the imposition of avoidable human rights deficits, and thus conditions (a)–(c) of our account of collective causal responsibility would be satisfied. Many critics contend that condition (d), the foreseeability criterion, is also met in this scenario, since the destruction of crops was a stated goal of the operations. Furthermore, they argue, while large epidemiological studies of the health risks posed by rainbow herbicides had not been conducted at the time when their widespread military use was authorized, the scientists who developed these herbicides were aware of their dangers and the White House had access to this information. Finally, many critics insist that the case satisfies condition (e) since the operations were authorized at the highest level of legislative command.

Although many human rights deficits follow directly from official mandates, governmental policies may also indirectly engender the imposition of deficits upon foreigners. For instance, some commentators argue that U.S. military strategies indirectly caused some of the most egregious human rights atrocities during the Vietnam War, including the My Lai massacre, in which U.S. soldiers brutally executed several hundred unarmed civilians.¹⁷ While critics acknowledge that many factors contributed to the intentional killing of Vietnamese civilians, they often single out General Westmoreland's "strategy of attrition" as playing a particularly important role. The strategy aimed to eliminate the Viet Cong by inflicting the highest death toll possible. Given the natural environment of Vietnam, this strategy frequently pitted the U.S. soldiers against Vietnamese civilians, creating an atmosphere in which civilian casualties were considered permissible, even expected. The "strategy of attrition," together with the ensuing "body count culture" and the systematic dehumanization of the Vietnamese throughout all levels of the military, encouraged soldiers to produce large numbers of civilian casualties.

It will likely be more difficult to prove that the conditions for collective causal responsibility are satisfied in this scenario than in our previous case. Establishing a necessary causal connection between the relevant military strategies and the subsequent killing of civilians, as required by conditions (a) and (b), may be particularly difficult. However, assuming this connection can be established, demonstrating that the case meets condition (c), the avoidability criterion, should be relatively unproblematic, since military strategists surely could have refrained from implementing the relevant tactics without imposing comparable human rights deficits upon Vietnamese civilians. The next step is to determine whether the killing of civilians was a foreseeable consequence of these military strategies, as required by condition (d). This too ought to be relatively unproblematic. While there is no guarantee that strategies that promote civilian casualties while creating a deeply racist military culture would actually engender attacks upon Vietnamese civilians, such strategies do pose a considerable risk of promoting such attacks, and military strategists ought to have been aware of this danger. If conditions (a)–(d) are satisfied, condition (e), the criterion for collective responsibility, would also be met in this case, assuming the relevant military strategies were implemented at high levels of command.

While military examples are commonly cited, many commentators insist that international trade and global economic policies also indirectly engender the imposition of human rights deficits upon foreigners. For instance, some human rights activists contend that the unfair trade policies of developed countries foreseeably promote the imposition of avoidable subsistence deficits upon citizens of developing countries, through tariffs on imports, subsidies to domestic agriculture, and intellectual property rights protections.¹⁸ Political philosophers increasingly argue that the policies of global institutions, such as the World Trade Organization, the International Monetary Fund, and the World Bank, indirectly promote human rights deficits among the world's most vulnerable people.¹⁹ Some

philosophers, most notably Thomas Pogge, further assert that the citizens of affluent, Western countries share collectively responsibility for the human rights deficits produced by unjust trade and global economic policies because these policies were created and implemented by representatives acting in their interest and under their democratic authority.²⁰

While a defense of these provocative charges is beyond the scope of this paper, two important insights follow from my discussion of these examples. First, a government may either directly produce or indirectly engender human rights deficits; and in democratic societies, citizens may be collectively accountable for these deficits in either case. Second, collective accountability for human rights deficits may be shared among two or more democratic societies in several scenarios. For instance, as the last example suggests, accountability will be shared if representatives from several countries jointly agree to implement global economic policies that engender the imposition of human rights deficits upon foreigners.²¹

II.3 Duties to Admit Immigrants

It is now possible to discuss the obligations to admit immigrants that the GHP entails. As we know, the GHP entails a collective duty to refrain from imposing human rights deficits upon foreigners. Of course, in a perfectly just world, societies would never violate this primary duty. However, since the GHP is formulated to apply to the non-ideal world, it entails two derivative duties which are triggered whenever the primary duty is violated: the duty to stop imposing deficits and the duty to compensate victims for deficits already imposed. Each of these duties may be a positive duty in the sense that it requires its bearer to perform some action. I will briefly explain these derivative duties and then discuss the cases in which immigrant admissions will be the best means by which to fulfill them.

If a society violates its duty to refrain from imposing human rights deficits upon foreigners, it immediately incurs a duty to stop imposing such deficits. First and foremost, this derivative duty requires a society to cease its deficit-producing conduct. Thus, a government that has implemented policies that produce human rights deficits must rescind these policies immediately. However, in some cases, merely withdrawing the relevant policies may not be sufficient to stop the imposition of deficits. For instance, a deficit-producing military strategy may have become so deeply entrenched in everyday practice that troops will continue to employ it long after the original initiative has been rescinded. Furthermore, if a military has already caused significant damage in an enemy country, then merely rescinding the mandates that initiated this destruction may not prevent the human rights deficits that will continue to be generated by it. For instance, if the U.S. forces had successfully destroyed the majority of the cropland in South Vietnam, then merely terminating the herbicide operations would not have prevented the subsistence rights deficits that would have continued to follow from that destruction. In such cases, additional positive action must be undertaken in order to fulfill the duty to stop imposing

human rights deficits. For example, top military leaders may need to prohibit entrenched military tactics explicitly and to discipline troops who violate these proscriptions. The accountable society also must do whatever is necessary to ensure that no additional human rights deficits result from the destruction it has already caused, such as restoring damaged cropland.

The GHP also assigns compensatory duties to societies that violate their primary duty to refrain from imposing human rights deficits upon foreigners. These derivative duties require societies to compensate their victims for the deficits they have imposed upon them. The legitimacy of compensatory duties is widely acknowledged; however, there is some controversy as to exactly what actions they require. The debate hinges on the question of how fair compensation ought to be conceptualized. The conception that is appropriate for the GHP must be sensitive to the serious nature of the harm with which the principle is concerned. It is generally agreed that fair compensation ought to reflect the *status quo ante* principle, which maintains that the goal of compensatory justice is to return the situation to what it was before the harm occurred.²² On a strict interpretation of this principle, fair compensation is whatever is necessary to restore the original situation exactly. This standard would be appropriate for many of the cases with which the GHP is concerned. For instance, it would require the United States to compensate the victims for its herbicide operations by providing for their medical needs and restoring the croplands destroyed by its military. However, a strict interpretation of the *status quo ante* standard is not suitable for cases in which it is impossible to restore the pre-deficit situation exactly, such as those in which victims have suffered permanent disabilities. Since human rights deficits often involve such severe harm, the GHP requires a more flexible standard of fair compensation, which requires the responsible society to “make the injured party whole” by rendering her at least as well off as before she was harmed.²³ In many cases, making the victim whole will consist in restoring the pre-deficit situation exactly. However, if this is not possible, the victim must be provided with whatever is needed to restore her to the level of well-being she enjoyed before the human rights deficit was imposed upon her. Thus, for instance, the United States must compensate any Vietnamese herbicide victims who suffered permanent disabilities with medical treatment, housing, education, training, and monetary compensation as needed.²⁴

Of course, the best means of discharging the derivative duties entailed by the GHP will vary according to context. Ideally, a society will stop its deficit-producing conduct and compensate victims in their own communities. In many cases, however, immigrant admissions will be an appropriate means of discharging these duties. Indeed, admissions will be mandatory if the resettlement of victims or potential victims is the only means by which these duties can be fulfilled. Consider the duty to stop imposing human rights deficits. All too often, one society creates deficit-producing conditions in another country that cannot be quickly or easily remedied. If these conditions cannot be rectified before additional deficits are produced, then resettling the individuals at risk is the only way

to avert the imposition of these human rights deficits. In such cases, the society must fulfill its duty to stop imposing deficits by admitting these individuals as immigrants.

Take the war in Iraq for example. Many commentators contend that the U.S. military forces and private military contractors have violated the rules of engagement so as to impose foreseeable and avoidable human rights deficits upon Iraqi civilians, both by wounding them directly and by destroying their schools, food production facilities, hospitals, and power plants. If these claims are true, the United States has violated its duty to refrain from imposing human rights deficits upon foreigners and has incurred the derivative duties entailed by the GHP. The duty to stop imposing deficits requires the U.S. government immediately to rescind whatever mandates or policies originally led to the imposition of human rights deficits in Iraq and to ensure that military troops abide by these proscriptions. Furthermore, if the United States has already caused destruction severe enough to produce additional deficits, then it must also undertake additional positive action to prevent these deficits. While such action ideally may include the provision of basic services to the Iraqi people in their local communities and the reconstruction of the Iraqi infrastructure, these strategies have proven difficult in the midst of the ongoing conflict and may be impossible during a full-scale Iraqi civil war, which most commentators now acknowledge or imminently predict. If preventing these additional deficits requires resettling Iraqis in a territory in which their subsistence needs can be safely met, then the United States must offer admission to these individuals and provide for their basic needs within the United States.

It is important to distinguish between immigrant admissions from forced relocation. The GHP should not be interpreted as requiring people to resettle against their will, since forcing people to do so could cause them serious harm. Instead, the GHP requires societies to grant admission to those persons who choose to immigrate as the best means to escape imminent human rights deficits for which those societies are collectively accountable. Such immigrants must be given the opportunity to return to their country of origin if they wish to do so once conditions there have improved; however, they cannot be required to return to their homeland if they have lived in the receiving society long enough to establish significant social, economic, cultural, or political ties with it or its members. In this case, immigrants must be granted access to full citizenship.²⁵ Of course, some Iraqis would not choose to immigrate to the United States for obvious reasons. Nothing in principle prohibits the United States from forming agreements with other more amenable states so that resettlement occurs there. Indeed, such agreements may be advisable in cases in which some particular prospective immigrants would pose a genuine national security risk if admitted to the deficits-imposing society.²⁶ However, it must be emphasized that duty to provide admission is borne solely by the society that is collectively accountable for producing the conditions that necessitate resettlement, not the global community. Thus, such agreements must be fully voluntary; a powerful state like the United States must not evade its admissions duties by passing them off on a less powerful state.

Immigrant admissions will also be mandatory if resettlement is the only means by which to fulfill the duty to compensate for past human rights deficits. In many cases, societies will be able to compensate victims in their home countries, either by restoring the local, pre-deficit states of affairs exactly, or by otherwise returning victims to their pre-deficit levels of well-being. In other cases, however, it may not be possible to compensate victims as long as they continue to live in their own communities. Individuals suffering from severe injuries or illnesses may need to be relocated in order to receive proper medical treatment. Local roads, transportation systems, schools, hospitals, food production facilities, and government offices may be damaged so extensively that it will not be possible to restore victims to their pre-deficit levels of well-being under local conditions. Of course, most communities eventually can be rebuilt. But individuals who have sustained human rights deficits must be compensated without delay. When it is not possible to provide fair compensation on a timely basis to victims in their home countries, the accountable society must grant admission to these individuals and compensate them there.

Implicit in my discussion so far is the assumption that the interests of the foreigners to whom derivative duties are owed should be given priority in decisions concerning how best to discharge these duties. The idea that the interests of individuals who stand in particular relations to harm—those who are at immediate risk of being harmed and those who already have been harmed—ought to be given special consideration in such deliberations is reasonable on any formulation of the Harm Principle, and particularly so on the GHP, given the severity of the harm involved in human rights deficits. It follows that in cases in which immigrant admissions is one of several possible means of discharging either derivative duty, it would be desirable, even if not obligatory, for societies to give special consideration to foreigners' preferences regarding which course of action should be chosen. If they would prefer immigrant admissions to other strategies (e.g., institutional reconstruction or monetary compensation), then societies should honor these preferences.

III. Toward a Just and Comprehensive Liberal Immigration Policy

The GHP maintains that societies have a duty to refrain from imposing human rights deficits upon foreigners; and societies that violate this duty must: (1) stop imposing such deficits immediately; and (2) compensate their victims for deficits already imposed upon them. Immigrant admissions will be a mandatory means of discharging duties (1) and (2) if admissions are the only way to fulfill these duties satisfactorily; immigrant admissions will be a desirable means if victims prefer admission to other alternatives. The GHP is consistent with a presumption for open borders, as it would provide a principled means for establishing admissions priorities in cases in which general restrictions on immigration could be justified. However, since the GHP rests upon independent liberal premises, it would be valid even if the freedom of movement argument were proven unsound. For this reason,

it will be helpful to close with a brief discussion of the implications of the GHP provided the right to immigrate cannot be established.

In the absence of a right to immigrate, the non-ideal world would look much like it does today: societies would have a fundamental right to national sovereignty, including a general, though morally constrained right to regulate immigration, and the demand for admission to most affluent societies would be quite high. In this world, establishing immigration priorities often requires societies to balance their moral duties to foreigners against their own national interests. Presently, most affluent Western countries attempt to resolve this tension by prioritizing the admission of immigrants whose skills are perceived to be in the national economic interest, along with a small number need-based admissions, typically assigned to refugees, narrowly defined as persons who have been forced to flee their countries due to a well-founded fear of persecution based on religion, sex or gender, nationality, or membership in a particular political group. The GHP would shift these admissions priorities to favor prospective immigrants who either are at risk of sustaining human rights deficits for which the destination society is accountable or have already sustained such deficits. Thus, the GHP would alter existing immigration flows in at least two important respects. First, since societies must satisfy their deficits-based admissions obligations before using immigration policy in service of other national goals, including the advancement of national economic interests, the GHP would effectively shift the balance from economic-based admissions to deficits-based admissions in countries that have produced widespread human rights deficits abroad. Second, by assigning admissions priority to persons who must emigrate from their homelands due to externally imposed human rights deficits, the GHP would expand the category of need-based admissions to include individuals suffering from persecution, war, and serious subsistence deprivations, thereby enabling greater numbers of desperately needy immigrants to immigrate legally.

The GHP is a powerful admissions principle; however, it is not the only normative principle required to guide a just liberal immigration policy. Many persons are at imminent risk of sustaining human rights deficits, at the hands of their own governments or as a result of natural forces. In some of these cases, resettlement is the only means by which these deficits can be averted. Liberal societies may also have duties to admit their share of these prospective immigrants, and an additional principle will be required to guide such humanitarian admissions. While it is not possible to develop a full account of such a principle here, it is clear that any plausible formulation must assign humanitarian admissions duties fairly, taking into account the needs of prospective immigrants and the relative ability of receiving states to accommodate them.²⁷ An additional principle will be also required to regulate family-based admissions.²⁸ Finally, the GHP must be supplemented by domestic policies which ensure that the immigrants who are admitted under its auspices are treated justly by the receiving societies. Minimally, liberal societies must extend basic social and civil rights to these immigrants upon

their arrival, as well as the option of naturalized citizenship after a reasonable period of residency.²⁹ A more forward-thinking immigration policy will also extend political rights to immigrants once they satisfy a short residency requirement.³⁰ Together, these principles and policies—the GHP, the humanitarian and family reunification admissions principles, and domestic immigrant integration policies—lay the foundation for a comprehensive liberal immigration policy that would move the non-ideal world significantly closer to the ideal of open borders, even in the absence of a human right to immigrate.

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Notes

¹Michael Walzer is the best-known proponent of the conventional view. See Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Oxford: Blackwell, 1983), 31–63.

²See Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” in *Theorizing Citizenship*, ed. Ronald Beiner (Albany, NY: State University of New York Press, 1995), 229–54 (originally published in 1987) and “Migration and Morality: A Liberal Egalitarian Perspective,” in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (University Park: The Pennsylvania State Press, 1992), 25–47. For alternative formulations of the freedom of movement argument, see Roger Nett, “The Civil Right We Are Not Yet Ready For: The Right of Free Movement of People on the Face of the Earth,” *Ethics* 81, no. 3 (1970): 212–27; and Michael Dummett, *On Immigration and Refugees* (New York: Routledge, 2001).

³International Organization for Migration, URL: <http://www.iom.int/jahia/page254.html>.

⁴Carens, “Aliens and Citizens,” 233–41. Carens forgoes specifically Rawlsian concepts in subsequent versions of the freedom of movement argument, arguing instead that freedom of international movement, including the right to immigrate, is entailed by general liberal egalitarian values, such as human freedom, autonomy, and equal opportunity. Carens, “Migration and Morality,” 25–47. Interestingly, Article 13 of the *United Nations Universal Declaration of Human Rights* stipulates the right to freedom of movement and residence within the borders of one’s country of citizenship, together with the right to leave and return to one’s country, and Article 14 specifies the right to seek asylum in other countries. However, the Declaration includes neither a general right to freedom of international movement nor a right to immigrate to the country of one’s choosing.

⁵In his words, “Given the size of the potential demand, if a rich country like Canada or the United States were to open its borders, the number of those coming might overwhelm the capacity of the society to cope, leading to chaos and a breakdown of public order. The risk would be especially great if only one or two of the rich countries were to open their borders.” See Carens, “Migration and Morality,” 30.

⁶James Woodward, “Commentary: Liberalism and Migration,” in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin (University Park: The Pennsylvania State Press, 1992), 61. One could object that privileging the

neediest prospective immigrants is consistent with equal treatment insofar as immigration is a legitimate means for fulfilling basic subsistence rights. However, this objection is not available to the proponent of the freedom of movement argument because the argument construes the right to immigrate as a negative right.

⁷The Harm Principle originates in John Stuart Mill's *On Liberty*. Roughly stated, Mill argues that a state may coercively interfere in the liberty of individuals only if it can thereby prevent harm to others. While Mill provides a utilitarian justification for the Harm Principle, other liberals defend it on alternative, including deontological, grounds. For instance, see H. L. A. Hart, *Law, Liberty, and Morality* (Stanford, CA: Stanford University Press, 1963). Joel Feinberg, *Harm to Others: The Moral Limits of Criminal Law* (Oxford: Oxford University Press, 1984). Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

⁸Feinberg, *Harm to Others*, 33–34.

⁹Feinberg sets out a similar distinction, using the alternative terms “focal aims” and “welfare interests.” *Ibid.*, 55–61.

¹⁰I use the term “human rights deficit” in place of the more common “human rights violation” because it better conveys the idea that setbacks to basic welfare interests may involve both infringements upon liberties and subsistence deprivations. I adopt the language of human rights as convenient shorthand for the serious harms with which the GHP is concerned. I acknowledge that there are significant controversies concerning the nature and politics of human rights. However, my arguments do not depend on the recognition of human rights *per se*.

¹¹This account draws upon the work of philosophers engaged in the project of developing a comprehensive theory of collective responsibility, including the following. Christian Barry, “Applying the Contribution Principle,” *Metaphilosophy* 36, no. 1/2 (2005): 210–27. Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), and “Severe Poverty as a Violation of Negative Duties,” *Ethics & International Affairs* 19, no. 1 (2005): 55–83. Larry May, *The Morality of Groups: Collective Responsibility, Group-Based Harm, and Corporate Rights* (Notre Dame, IN: University of Notre Dame Press, 1998). The essays in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman (Lanham, MD: Rowman and Littlefield, 1991). I also draw upon classical work on legal causal responsibility, particularly Feinberg, *Harm to Others*, and H. L. A. Hart and Tony Honoré, *Causation in the Law*, 2nd ed. (Oxford: Oxford University Press, 1985).

¹²In Barry's words, “A's conduct did not merely allow a causal sequence that had antecedently put B under threat of acute deprivation to play out, but rather *initiated, facilitated, or sustained* it.” See Barry, “Applying the Contribution Principle,” 212.

¹³Pogge, *World Poverty and Human Rights*, 166 and “Severe Poverty as a Violation of Negative Duties,” 78–83. Although there are controversies concerning the extent to which agents are accountable for the actions of others, this general account of collective democratic accountability is widely endorsed. See also Satz, “What Do We Owe the Global Poor?” *Ethics & International Affairs* 19, no. 1 (2005): 50. A. Zvie Bar-On, “Measuring Responsibility,” in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman (Lanham, MD: Rowman and Littlefield, 1991), 265.

¹⁴Satz and Pogge give similar answers to this objection. See Pogge, “Severe Poverty as a Violation of Negative Duties,” 78–79; and Satz, “What Do We Owe the Global Poor?” 50.

¹⁵Although the following examples focus on the institutional imposition of human rights deficits, citizens of democratic societies may also bear some collective responsibility for deficits imposed by individual agents acting on their own volition under certain circumstances, such as if these individuals are acting within an official state capacity and the deficits are officially tolerated throughout the agencies they represent.

¹⁶Peter Shuck, *Agent Orange on Trial: Mass Toxic Disasters in the Courts* (Cambridge, MA: Belknap Press, 2006); Phillip Jones Griffiths, *Agent Orange: Collateral Damage in Vietnam* (London: Trolley Press, 2004); and Robert Allen, *The Dioxin War: Truth and Lies about a Perfect Poison* (London: Pluto Press, 2004).

- ¹⁷Major Tony Raimondo, "The My Lai Massacre: A Case Study" (Fort Benning: Human Rights Program, School of the Americas), URL: http://www.buffgrunt.com/buffgrunt_pdf/Four%20Hours%20in%20My%20Lai%20A%20Case%20Study.pdf.
- ¹⁸Oxfam, "Stop the Dumping! How EU Agriculture Subsidies Are Damaging Livelihoods in the Developing World," Briefing Paper 31: 2002 and "Milking the CAP: How Europe's Dairy Regime Is Destroying Livelihoods in the Developing World," Briefing Paper 34: 2002, URL: http://www.oxfam.org/eng/policy_pape.htm.
- ¹⁹For instance, Alison Jaggar argues that the structural adjustment policies implemented by the World Bank and WTO have foreseeably and avoidably contributed to a global feminization of poverty, producing serious human rights deficits for many women and children. See Alison Jaggar, "A Feminist Critique of the Alleged Southern Debt," *Hypatia* 17, no. 4 (2002): 119–42. See also Pogge, *World Poverty and Human Rights* and "Severe Poverty as a Violation of Negative Duties."
- ²⁰Pogge, *World Poverty and Human Rights*.
- ²¹Accountability for human rights deficits may also be shared between a democratic society and a foreign government, such as if one state helps to establish an unjust regime that systematically imposes human rights deficits upon its own people.
- ²²This account underlies modern tort law. For a helpful discussion of this and several other accounts of compensatory justice, see Renée A. Hill, "Compensatory Justice: Over Time and Between Groups," *Journal of Political Philosophy* 10, no. 4 (2002): 392–415.
- ²³Loran Lomasky defends this interpretation. See Loran Lomasky, "Compensation and the Bounds of Rights," in *NOMOS XXXIII: Compensatory Justice*, ed. John W. Chapman (New York: New York University Press, 1991), 13–44.
- ²⁴Of course, some individuals will be born into deficit-imposing conditions and thus will never have enjoyed a pre-deficit level of well-being. In such cases, compensation will consist of whatever is needed to bring her to the level of well-being she would have enjoyed if the deficits were not imposed upon her.
- ²⁵See Shelley Wilcox, "American Neo-Nativism and Gendered Immigrant Exclusions," in *Feminist Interventions: Feminist Ethics and Social Theory*, ed. Barbara Andrew, Jean Keller, and Lisa Schwartzman (Lanham, MD: Rowman & Littlefield, 2005), 213–32. Ruth Rubio-Marin, *Immigration as a Democratic Challenge: Citizenship and Inclusion in Germany and the United States* (Cambridge: Cambridge University Press, 2000). Joseph Carens, "Membership and Morality: Admission to Citizenship in Liberal Democratic States," in *Immigration and the Politics of Citizenship in Europe and North America*, ed. William Brubaker (Lanham, MD: University Press of America, 1989), 31–50.
- ²⁶National security exclusions are subject to exaggeration and abuse in practice, and thus must be applied extremely carefully. For exclusions to be justified, there must be good evidence that damage will occur in their absence; the hypothetical possibility of a threat is not sufficient. See Carens, "Migration and Morality," 30–31.
- ²⁷It may be necessary to assess a country's fair share of humanitarian-based admissions duties independently of its harm-based duties in order to prevent countries that have produced widespread human rights deficits abroad from avoiding their humanitarian-based duties on the grounds that they are unable to accommodate both those prospective immigrants they have harmed and those who need humanitarian aid.
- ²⁸Again, while I cannot fully develop such a principle here, it is clear that it must define "family" broadly enough to include all legitimate moral claims to reunification.
- ²⁹See Wilcox, "American Neo-Nativism and Gendered Immigrant Exclusions;" Carens, "Membership and Morality;" and Rubio-Marin, *Immigration as a Democratic Challenge*.
- ³⁰For a full defense of this view, see Shelley Wilcox, "Culture, National Identity, and Admission to Citizenship," *Social Theory and Practice* 30, no. 4 (2004): 559–83.