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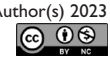
Published in:
Journal of International Political Theory

DOI:
https://doi.org/10.1177/17550882231193456

Article

JIPT

Journal of International Political Theory
1–22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The ethics of immigration enforcement: How far may states go?

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Abstract

The ethics of immigration has largely remained on the abstract level, prescribing ideal principles for non-ideal circumstances. One striking example of this tendency is found in the ethics of immigration enforcement. Many authors contend that even though immigration restrictions are legitimate in principle, enforcement renders them illegitimate in practice. In this article I argue, in response to this claim, that if one supports immigration restrictions, one should also support immigration enforcement, even if it entails the use of physical force. Not enforcing immigration restrictions is unjust to law-abiding migrants, undermines the rule of law, and amounts to virtually open borders. In order to illustrate the case, I will draw upon the enforcement of tax law. My argument is that if states are allowed to go to great lengths in the enforcement of tax law, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law. This analogy will provide us with the moral baseline with which to judge the permissibility of immigration enforcement. The proposal takes the rights of migrants seriously, only the right to immigrate is not one. The article also anticipates some potential objections and responds to them.

Keywords

Border control, ethics of immigration, immigration enforcement, immigration restrictions, open borders, right to exclude

Introduction

The ethics of immigration has largely remained on the abstract level, prescribing ideal principles for non-ideal circumstances. One striking example of this tendency is found in the ethics of immigration enforcement. Political philosophers have focused on questions

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of admission and exclusion, questions of who may be let in and who may be kept out. But whether states have a right to exclude does not settle the question of whether and, if so, how they may permissibly enforce it (Mendoza, 2015b). This is a neglected topic in the ethics of immigration, especially by advocates of the right to exclude, who tend to remain silent on the question of enforcement.[1] How far may states go in their attempt to restrict immigration?

In order to answer this question, I will draw an analogy with tax law. In broad terms, the argument is that if states are allowed to go to great lengths in the enforcement of tax law, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law. And just as they are able to do the former without violating the rights of taxpayers, there is no reason why they should not be able to do the latter without violating the rights of immigrants. The article will proceed as follows. The first section considers the implications of not enforcing immigration restrictions. The second section draws an analogy with tax law and shows how far states are willing to go in their attempt to enforce this law. With that in mind, the third section argues what steps states may permissibly take in the enforcement of immigration law. The fourth section anticipates some potential objections and tries to respond to them. The fifth section closes with some concluding remarks.

Unenforced immigration restrictions

Immigration restrictions are, on the face of it, problematic because they constitute a prima facie rights violation (Huemer, 2010), as they prevent individuals from freely associating with one another (Hidalgo, 2019) and accessing the full range of existing life options (Oberman, 2016). This does not mean that immigration restrictions are always wrong, but they require a compelling justification. Critics of the right to exclude contend that immigration restrictions are coercive (Abizadeh, 2008; Huemer, 2010), violent (Jones, 2016; Sager, 2020, chap. 4), and discriminatory (Fine, 2016; Mendoza, 2014), so they can hardly (if ever) be justified (Carens, 2013; Hidalgo, 2019; Oberman, 2016). Advocates of the right to exclude think that immigration restrictions can be justified under certain conditions, but they still impose significant constraints on how states can enforce them. First and foremost, they "cannot use force to exclude outsiders from entry when those outsiders are coming from countries that are insufficiently attentive to basic human rights" (Blake, 2013: 125–126). Second, they cannot discriminate against people on the basis of their race, gender, origin, sexual orientation, religion, political beliefs, and so on (Miller, 2016: 103–104). Third, they must treat immigrants with equal respect, granting them full citizenship rights after a certain period of residence (Walzer, 1983: 61–62; Wellman and Cole, 2011: 140–142; Miller, 2016: 7). However, when it comes to the steps that states may permissibly take to exclude potential immigrants, they do not specify what these are.

Interestingly enough, critics have taken up the slack, setting out a series of conditions that must be met in order for the enforcement of immigration restrictions to be permissible. Although they do not dismiss the possibility that these conditions are met, and some even allow that immigration restrictions are justified in principle, it should come as no surprise that all of them conclude that these conditions are not met under current

circumstances and so immigration restrictions are not justified in practice. For instance, according to Mendoza (2014: 80), "anti-discriminatory commitments cannot coexist with a state's presumptive right to control immigration, at least not if we take enforcement into consideration." Fine (2016: 141) concedes that "some form of right to exclude is defensible in principle, under the correct conditions, but these arguments in support of a right to exclude are not applicable in the here and now, in the world as we know it, in circumstances far from ideal." In the same vein, Schmid (2022: 965) argues that "[e]ven if they [states] are permitted to make sweeping rules of exclusion, this does not entail that they are permitted to enforce such rules." Finally, Sager (2017: 48) concludes that:

> even if there are reasons at the *level of principle* that states' claims to regulate migration outweigh the competing claims of many people to migrate, *practical difficulties* in avoiding dominating migrants in the process of enforcing migration controls make them unjust. The result is that the nature of immigration administration and enforcement commits us to much more open borders even *if there are in principle good normative reasons for allowing states to restrict immigration*.

In this article I will argue, in response to these claims, that if one supports immigration restrictions, one should also support immigration enforcement, even if it entails the use of physical force. Not enforcing immigration restrictions or doing so inconsistently (1) is unfair to law-abiding migrants, (2) undermines the rule of law, and (3) amounts to virtually open borders. But before addressing these concerns, it is important to make clear what I am not saying. First of all, I do not mean to suggest that immigration restrictions are just, but I am taking it for granted for the sake of argument. This is because I am not concerned about the implications of not *having* immigration restrictions, but about the implications of not *enforcing* immigration restrictions once they have been democratically enacted and are presumed to be just. Maybe imprisoning people is not just either, but this does not detract from the fact that not enforcing criminal convictions has major practical and ethical implications. Second, I do not take a stand on the presumptive duty of immigrants and citizens to obey the law.[2] My focus is on states rather than individuals.

The first concern with not enforcing immigration restrictions is that it is unfair to law-abiding migrants. Again, my claim is not that people who enter without authorization are acting "unfairly" because they are engaging in a sort of "queue-jumping" (Miller, 2016: 117, 126), since it is obvious that there is no such queue. As Huemer (2019: 46) notes, "[i]t is not the illegal immigrants who are preventing other would-be immigrants from migrating; it is the state that is preventing would-be immigrants from migrating." Rather, my claim is that the government offends law-abiding migrants by not upholding a law that it requires them to comply with. To illustrate this point, suppose that two people, who do not know each other, want to go to the concert of their favorite group, but only one of them has bothered to buy the ticket in advance. The other, for her part, intends to sneak in, but she gets caught. Let us assume that she did not buy the ticket, not because she did not want to, but because they were already sold out, so she would have had to wait several years for the next concert. At the end of the day, many unauthorized migrants would rather apply for a visa, but their chances of getting one within a reasonable time

are very low, if any. Let us further assume that attending this concert is her biggest dream, tantamount to what it might mean for another person to move abroad. That being said, how would the person who paid for her ticket feel if the security guard decided to let the other in for free?

I believe that she would be reasonably annoyed by the security guard's decision. Her reaction would not be the product of envy, but of a lack of consistency in the application of rules. I believe that law-abiding migrants might feel exactly the same about the state not enforcing immigration laws uniformly all else being equal.[3] They are being asked to comply with a law that is not equally applied to all. In fact, it could be argued that the state acts unfairly not only toward actual migrants, but also toward would-be immigrants (Joshi, 2018). There are a lot of people who would rather migrate but do not do so out of respect for the state's immigration laws, and many more who attempted to migrate through official channels before but were denied entry because they did not meet all the visa requirements. Suppose that you are stopped at a sobriety checkpoint and you test positive for alcohol. How would you feel if you get a ticket, but the driver before you, who has also tested positive, does not? These examples capture the injustice involved in an inconsistent application of the law. The injustice in question does not arise from the willingness to favor or disfavor any particular group of migrants—assuming, as we are, that the state does not engage in any form of wrongful discrimination[4]—, but from the contempt it shows for the law.

This brings us to the second concern, namely, that it undermines the rule of law. Even though there is no generally agreed definition, from a purely formal point of view the rule of law requires—at the very least—*generality* of the law, legal *certainty*, and *equality* before the law (Lautenbach, 2013). This means that, irrespective of its content, the law must be applied evenly to everyone who falls within its scope; it must be public, predictable, and non-retroactive, allowing its subjects to regulate their conduct accordingly; and it must afford all persons equal protection without discriminating on arbitrary grounds. In the case of immigration enforcement, the rule of law would require a high degree of predictability in the conduct of immigration officials and border guards, along with certain consistency in the application of norms, so that immigrants knew exactly what to expect and could act wittingly. This would, in turn, require a considerable reduction in the discretion of immigration enforcement agencies so as to prevent discrimination in the exercise of their powers. These seemingly uncontroversial pillars of the rule of law are eroded by an inconsistent application of immigration law. First and foremost, the principle of generality, in that the law is applied to some migrants, but not to others. Secondly, this selective application of the law all too often gives room to discrimination, thereby violating the equality of immigrants (vis-à-vis other immigrants) before the law. Thirdly, prospective immigrants are deprived of the legal certainty necessary to plan their lives.

Some authors argue that states must come to terms with unauthorized migration because they tacitly consented to it by failing to enforce immigration restrictions. The state's inability to prevent unauthorized migration must not be taken as a sign of acquiescence, though. What matters is that "it takes *reasonable* steps to prevent unauthorized entry and stay" (Joshi, 2018: 178, emphasis added). However, when immigration restrictions are deliberately ignored, the state can be said to be de facto authorizing

unauthorized migration. Lack of enforcement conveys the message that immigrants are welcome, and that irregular entry is a regular form of entry. This amounts to virtually open borders. Accordingly, if a state is not willing to enforce immigration restrictions, it should do away with them altogether and open its borders.

Tax and immigration law: An analogy

Taxes and borders are two of the most important instances of the exercise of political power. Although their origin goes back to antiquity, having to do with the financing of war and the protection of territories, respectively, their development to the present stage is largely due to the increasing capacities and needs of modern bureaucracies. From the nineteenth century onward, fiscal pressure increased significantly following the expansion of the state, but also thanks to population censuses, progress in statistics and data recording, and more precise controls carried out by tax officials (Anceau and Bordron, 2023: 22–23). Similarly, it was only by World War I that Western countries "had developed the full technical and bureaucratic capacities to control their borders and regulate a growing share of activities and events taking place in their territories" (Sassen, 1999: 5).

Immigration and tax law are similar in two important respects. First, both are considered a moral obligation by some and an unjust act of coercion by others, although they may not always coincide. Accordingly, their breach will be seen as an impermissible act of free riding or, conversely, as a permissible form of personal disobedience and non-compliance. For staunch anarcho-capitalists, taxes are a form of theft, and so not paying them is morally justified. For convinced egalitarians, taxes are a means of redistribution, and so tax avoidance is considered a selfish act of "free riding." For recalcitrant nationalists, immigration restrictions are necessary for preserving culture, and some see migrants as "free riders" who live off the rest of the population. For strong cosmopolitans, immigration restrictions are an unjustified form of coercion that violates the moral equality of all persons, and migrants are thereby deemed to be within their right to resist them. Second, both target citizens and non-citizens alike. Although taxes are mainly borne by citizens and permanent residents, irregular migrants and visitors too contribute to public funds through indirect taxes. Similarly, although immigration laws are primarily aimed at migrants, citizens must also abide by these laws at the risk of penalties for non-compliance.

Yet immigration and tax law are different in two important respects. First, whereas non-compliance with tax law may harm the poor, non-compliance with immigration law is thought to benefit them. Tax avoidance undercuts state resources that could otherwise have been devoted to the provision of public services and the funding of social welfare programs for those who need them the most. In contrast, evading immigration controls does, on the face of it, benefit irregular migrants, who are usually among the poorest segments of the global population. Second, whereas citizens have to some extent chosen their fiscal regime, immigrants have no say in the border regimes of other countries. In light of these differences, my argument will not bear on people fleeing persecution and destitution in their home countries, but it does hold for people who, despite having their human rights adequately protected where they live, move to another country in search of a better life. While non-compliance with immigration law may be said to benefit the

latter, otherwise they would not attempt to do it, the refusal of their visa does not entail as great a (risk of) harm as to the former and so does not require so strong a justification as a democratic one (Miller, 2010: 115).

One might challenge the relevance of this distinction between forced and unforced migration to the legitimacy of immigration enforcement. According to democratic theory, any exercise of political power must be justified to everyone subject to it. This includes borders, which "are among the most important instances of the exercise of political power" over members *and* non-members (Abizadeh, 2008: 46). Consequently, foreigners are owed a democratic justification, no matter how well protected their human rights are in their home countries. I will discuss the democratic legitimacy objection in greater detail later, but for the moment let us note that not every institutional arrangement or political decision requires a *procedural* democratic justification to be legitimate. Some arrangements or decisions can be justified in reference to a democratic *principle* that is itself ultimately addressed to everyone subject to them in a way that they could not reasonably reject. This is acknowledged by Abizadeh (2008: 48, emphasis added) himself when he suggests that "a closed border entry policy could be democratically legitimate only if its justification is addressed to both members and nonmembers *or* is addressed to members whose unilateral right to control entry policy itself receives a justification addressed to all." How can the right to unilaterally control one's borders be justified to all in a way that they could not reasonably reject?

In a world of states that claim exclusive jurisdiction over a given territory and take primary responsibility for the human rights of their citizens, the right to exclude can be best justified in reference to the principle of non-interference with the exercise of their right to self-determination. As long as states adequately protect the human rights of their citizens, they have a right to self-determination (Brock, 2020), which presumably includes the determination of the "self" (Wellman and Cole, 2011: 41). Such a principle could not be reasonably rejected by anyone whose human rights are adequately protected by their own state, since it is by virtue of this principle that their state is able to do so. By contrast, if a person's human rights are not adequately protected by their own state, other states cannot appeal to the principle of non-interference with the exercise of their right to self-determination in order to exclude them, for no one can reasonably be expected to accept a principle that makes them vulnerable to human rights abuses. This principle allows us to make sense of the distinct normative force of the claims raised by forced and unforced migrants. More importantly, it is a principle that the latter, but not the former, could not reasonably reject.

Coming back to the analogy, why is taxation relevant to the debate over immigration restrictions? I think it shows the latitude states have in the enforcement of just laws. Recall that I am taking for granted that immigration restrictions (and, for that matter, taxation) are just in principle. Advocates of the right to exclude already accept that, but they are hesitant when it comes to the justice of immigration restrictions in practice. At the same time, advocates of the right to exclude are for their most part egalitarians, that is, they believe that we have an obligation to pay taxes for the sake of redistribution, and that the state should prosecute tax avoidance. In other words, they accept the justice of tax law both in principle and in practice. As I said before, the point of this article is to show that if one accepts the right to exclude in principle, one should also accept the right

to exclude in practice. If the analogy between tax and immigration law is sound, and they accept the enforcement of tax law, advocates of the right to exclude should come to terms with the enforcement of immigration law, even if it entails the use of physical force against migrants. In the remainder of this section, I will consider how far liberal democratic countries are willing (and presumably allowed) to go in their attempt to collect taxes.[5]

To begin with, there is no firewall between the different government branches and public administrations when it comes to tax enforcement; in fact, they cooperate closely with each other to detect tax fraud (Trecet, 2015). Tax authorities may carry out random (and even covert) labor inspections and investigate citizens without judicial authorization (Ghamlouche, 2022). States also resort to third parties for the enforcement of tax law. For example, they require banks to disclose financial information of their customers, they provide a website where people can anonymously report tax offenses, and some go as far as publishing a list of defaulters for public scorn. Lastly, governments are implementing ever more intrusive measures with the aim of detecting anomalous banking transactions and expenses that do not match the taxpayer's stated income. Some of these measures include restrictions on cash payments, the use of big data to find out people who fake their residence abroad in order to eschew their tax duties, and the creation of a central record that compiles all the invoices issued by businesses. This is not to mention all the effort and time it usually takes to file a tax return.

So far, we have only considered the costs of compliance with tax law. But what happens when someone refuses to pay taxes? Let us say they do not submit a tax return. The first measure usually consists in a fine. If they ignore the fine, they will be subject to an embargo. If they resist the embargo, the police will enforce it. And if they confront the police, they will be liable to physical force, followed by a conviction for obstruction of justice and resistance to authority. In other words, the enforcement of tax law entails the use of gradual coercion, from the imposition of small fines to the employment of physical force and, in the worst case-scenario, imprisonment. But when someone commits tax fraud, they are directly prosecuted if the defrauded amount exceeds a certain limit. By contrast, there are a number of substantive legal and procedural safeguards. For instance, fiscal offenses expire after a few years, taxpayers have access to judicial review, and they can appeal the decision in court. Every action has to be duly motivated, so there is barely any room for arbitrariness and discrimination in the application of norms.

This section has argued that tax and immigration law are similar in important respects, yet different in others. In order for my argument to hold, they need not be exactly the same. What matters for present purposes is the extent to which states are allowed to go in the enforcement of just laws, and whether they are able to do so without violating the rights of individuals. As the case of tax law illustrates, states are not only allowed to go to great lengths in the enforcement of just laws, but they are able to do so without violating the rights of individuals. The upshot is that if states are allowed to go to great lengths in the enforcement of tax law while respecting the rights of taxpayers, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law while respecting the rights of migrants. However, despite tax and immigration law being similar in important respects, their offenses are treated rather differently. Irregular migrants are arbitrarily detained, discriminated on racial grounds, denied basic

procedural rights, and subjected to disproportionate border controls. In this context, I believe that the analogy with tax law can serve not only as evidence of the legitimacy of the right to exclude in practice, but also as a yardstick against which to judge the permissibility of immigration enforcement practices.

Enforcing immigration restrictions

We are now ready to delve into the question of how far states may go in the enforcement of immigration restrictions. This discussion will draw on the previous one on the enforcement of tax law. It is important to note that the following prescriptions do not necessarily reflect my personal views on immigration,[6] but the extent to which, in my opinion, states are allowed to go in the enforcement of what they take to be a just law. If it turns out that immigration restrictions are unjust, there will be no reason to discuss the limits to their enforcement, since states ought as a matter of justice to refrain from restricting immigration altogether save for exceptional circumstances. As I said before, the article is aimed at those who accept the right to exclude in theory, but think it is unfeasible in practice. My argument is that immigration enforcement does not render immigration restrictions illegitimate, just as tax enforcement does not render taxation illegitimate, so long as states comply with the following prescriptions.

First and foremost, states cannot exclude people who are fleeing persecution, war, natural disasters, extreme poverty, or any other human-rights threatening situation in their home countries. I have already discussed how the differences between tax and immigration law make exclusion in such cases untenable. This is relatively uncontroversial among advocates of the right to exclude, who submit that there is "a *remedial responsibility* on the part of other states to step in when the refugee's home state is unable or unwilling to secure her basic rights" (Song, 2019: 115). This might take the form of humanitarian assistance or intervention in the country of origin (Wellman and Cole, 2011: 120–123), but more often than not asylum is the only realistic option. Therefore, states are forbidden from returning people to a country where they are likely to suffer human rights abuses (Blake, 2020: 104–106; Miller, 2016: 78).

Secondly, even in those cases where states have a right to exclude potential immigrants because their human rights are not at stake, the same procedural safeguards and legal guarantees as in the enforcement of tax law should apply. Just as tax offenders cannot be prosecuted sine die, irregular immigrants can only be deported within a reasonable period of time. This means that there should be a statute of limitations for immigration-related offenses, after which point irregular immigrants become eligible for permanent residency. And just as tax offenders have a right to counsel and judicial review, irregular immigrants should be entitled to a fair and public hearing, with the possibility of appealing the decision (Lenard, 2015: 475–476). In other words, they cannot be subjected to expedited removal.[7] Even if their human rights are not at stake, it does not mean that they cannot make a compelling case to remain. There are countervailing considerations that might outweigh the initial breach of immigration law. For example, if their lives or that of their relatives and close friends would be seriously affected by their removal, or when they have made outstanding contributions to the host society that make up for the putative wrong of unauthorized entry.

There are a number of less coercive, yet more effective, ways to secure compliance with immigration law, so deportation should always be the last resort. As we saw in the discussion of tax enforcement, states typically begin with small fines, followed by the freezing of assets and other incremental sanctions designed to make tax avoiders comply with the law. Should all these strategies fail, states may permissibly deport unauthorized migrants within a reasonable period of time. If actual citizens and permanent residents are subject to coercive measures when they fail to comply with tax law, I see no reason why aspiring citizens and temporary residents should not be subject to equally coercive measures when they fail to comply with immigration law. However, I am not sure that my interlocutors will agree with me. They might object that immigration controls tend to target racial minorities and affect vulnerable people the most (Mendoza, 2014, 2015b; Sager, 2017). This is a serious concern that will be addressed in the following section. For the moment, let us note that if these people do not face persecution or destitution in their home countries, their removal will not put their human rights at risk.

My argument so far is in line with conventional accounts in the ethics of immigration enforcement. It is at this point when it departs from these accounts. Most authors are wary of immigration controls because they pose a danger to the freedom of migrants and citizens alike. As Kukathas (2021: 158–159) warns:

> it [is] difficult to account fully for the economic costs of controlling immigration, since these encompass—along with the expenses incurred by governments in policing national borders—the costs borne by governments in the regulation and monitoring of all aspects of civil society, from business enterprises to public service providers (including education, transport, and healthcare, to name a few examples) to private institutions (such as universities, seminaries, and charities). On top of this must be added the costs borne by the regulated and monitored firms, institutions, and organizations which have not only to comply with regulations but also to demonstrate that they have endeavoured to do so. (The opportunity costs of compliance might be high, but the risks of compliance failure can be higher still.)

These are exactly the same strategies that liberal democratic countries routinely resort to in the enforcement of tax law. Yet most people—and, for that matter, philosophers—take them to be justified (or at least necessary) to ensure compliance. On what grounds can we justify that the state monitors, overregulates, coerces, and imprisons citizens as well as immigrants for the purpose of collecting taxes but not for the purpose of controlling immigration? Again, if actual citizens and permanent residents are liable to these intrusive measures to ensure compliance with tax law, I see no reason why aspiring citizens and temporary residents should not be liable to the same intrusive measures to ensure compliance with immigration law. If the analogy I have drawn between tax and immigration law enforcement is correct, it would not be possible to accept the former and resist the latter. Consequently, if one supports the right to exclude *in principle*, one should also support the right to exclude *in practice*.

Does this make all the strategies described above permissible? Yes, with a few exceptions. I will not endorse what I consider to be the most controversial steps that states routinely take to ensure that citizens pay their taxes. For instance, the publication of a list with the names of irregular migrants for public scorn is out of the question. I will also

dismiss immigration enforcement practices that run counter to fundamental rights and freedoms or impose excessive costs of compliance on private agents (both citizens and non-citizens), such as the reliance on racial stereotypes as predictors of citizenship status and the requirement that third parties disclose private information of a "suspect" without judicial authorization. But the rest of the strategies are, by analogy, permissible.

On the one hand, the authorities can cooperate with each other for the purpose of immigration enforcement, so there is no need to build a blanket firewall of the sort advocated by Carens (2013: 132–135). One might worry that this will discourage irregular immigrants from going to the doctor, taking their children to school, and reporting crimes out of fear that their irregular status might be found out and they will be subsequently deported (Lister, 2020: 5–6). I am happy to grant an exception in these cases, but only insofar as it is necessary to protect their human rights to health, education, and security. This means that non-emergency healthcare, non-compulsory education, and non-criminal offenses are excluded from the firewall. On the other hand, authorities can require third parties to comply with immigration regulations and sanction those who fail to do so. For instance, universities might inquire into the citizenship status of their students, employers and landlords may be fined for hiring or renting an apartment to unauthorized migrants, and banks can be required to disclose financial information of their customers prior judicial approval. Finally, governments may resort to surveillance technologies, big data, and centralized computer records to keep track of visitors and find out people residing in the country without authorization.

My proposal resembles to some extent the "hostile environment" policy implemented by the Government of the United Kingdom from 2012. The stated aim of this policy was "to deter people without permission from entering the UK and to encourage those already [t]here to leave voluntarily" (Home Affairs Committee, 2018: 20), and included measures such as prosecuting landlords for renting their property to unauthorized migrants, requiring the National Health Service and schools to disclose confidential information of their patients and students, and preventing unauthorized migrants from obtaining a driver's license and opening a bank account, among others (Global Justice Now, 2018). According to its critics, "it seems unlikely there was any significant macro level impact on net migration or migrant behaviour generally." The result was instead the creation of "an illegal underclass of foreign, mainly ethnic minority workers and families who are highly vulnerable to exploitation and who have no access to the social and welfare safety net" (Yeo, 2018). There are a number of problematic aspects to this policy that my proposal would not endorse, such as the removal of long-term unauthorized residents, deportation to unsafe countries, racial profiling, data-sharing of victims and witnesses of crimes, access to confidential information and searches without judicial warrant, disclosure of citizenship status of underage students and patients, non-suspensive appeals, and so on. However, my proposal does endorse other controversial measures such as the creation of a dataset, the enlistment of citizens and private companies, the denial of non-essential services to unauthorized migrants, and the cooperation among government agencies.

I acknowledge this is a somewhat radical departure from most prominent accounts in the ethics of immigration enforcement, one that even those who support immigration restrictions are likely to find problematic. In order to contextualize the most controversial aspects of this proposal, it might be helpful to present an overall

picture of my argument so far. I began the article by pointing out the implications of not enforcing immigration restrictions for law-abiding migrants, the rule of law, and the right to exclude. This places states under a prima facie obligation to enforce the immigration laws they have democratically enacted. I argued that immigration and tax law are similar in many but not all respects. These differences rule out the possibility of returning refugees and necessitous migrants, but they allow for the exclusion of people whose human rights are not at stake. If states go to great lengths in the enforcement of tax law, and we accept that, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of immigration law.

However, just as there are a series of legal and procedural safeguards in the enforcement of tax law, states must respect due process and rule of law standards in the enforcement of immigration law. These include the principle of non-refoulement, the right against arbitrary detention, a statute of limitations, the right to judicial review, and the right to appeal, among others. Additionally, states must facilitate access to legal residence after a few years and refrain from deporting irregular immigrants with strong ties in the host country and those whose life would be severely disrupted. This is in line with social membership (Carens, 2013: chap. 8), rule of law (Ellermann, 2014; Song and Bloemraad, 2022), and autonomy (Hosein, 2014) accounts of regularization. On the other side of the coin, irregular immigrants may be deported within the first years of residence,[8] provided their rights are duly respected in the process and there are no less intrusive means to achieve the goal of exclusion. This entitles states to resort to gradual coercion, including the use of physical force, to ensure compliance with immigration law. In short, this proposal takes the rights of immigrants seriously, only the right to immigrate is not one. I would now like to anticipate some potential objections to my proposal and see whether it holds up all things considered.

Objections

The first objection is that the analogy between tax and immigration law is not apt, because they are different in nature, the interests protected by each are not comparable, and they do not have the same legitimacy.[9] Let us consider each of these claims in turn. First, if immigration and tax law are different in nature, it must be in a legal sense, because from a moral point of view both immigration- and tax-related offenses are *mala prohibita*, that is, "[t]hey are wrong only because the state has chosen to forbid them" (Huemer, 2019: 35). It may be argued, though, that immigration law imposes a *negative* obligation on foreigners not to enter without authorization, whereas tax law imposes a *positive* obligation on citizens to pay taxes. Moreover, immigration offenses are usually considered administrative offenses and are thus liable to administrative penalties, whereas tax offenses are usually considered criminal offenses and are thus liable to criminal penalties. However, this depends on the gravity of the infringement. To give just one example, tax avoidance in Spain qualifies as a crime if the defrauded amount exceeds 120,000 euros, but minor avoidances are only subject to a fine. Conversely, irregular immigration constitutes a crime in some countries. For instance, recidivism in unauthorized entry is considered a criminal offense in the United States.

This shows that the judgment of immigration and tax offenses as a minor or serious offense does not necessarily reflect the threshold of legitimate law-breaking, but rather prevailing social values and contingent political interests in persecuting certain conducts more harshly than others. As for the difference between positive and negative obligations, I just do not see how this is relevant to my argument, since it is with the enforcement of allegedly just laws by the state that I am concerned with, not with the duties individuals are bound by. In fact, it could be argued that we have stronger moral duties to respect negative obligations than to fulfill positive obligations, so there might actually be a stronger duty of compliance with immigration law. This reinforces rather than undermines my claim that states must enforce what they take to be just immigration restrictions. But it is not true that immigration and tax law impose different kind of obligations on people. For one thing, immigration law also imposes positive obligations on landlords, schools, hospitals, and other institutions to inquire into the citizenship status of their tenants, students, patients, and so on.

The second claim is that the interests protected by immigration law are not comparable to those protected by tax law. It is often said that if it were not for taxation, the welfare state would not exist, and so no one would take care of the poor, the elderly, and the severely disabled. By contrast, if there were no immigration restrictions or they were loosely enforced, millions of poor people would be able to move to the countries that offer the greatest opportunities, thus directing their labor to where it is most productive. This would arguably not only benefit the host countries and the migrants themselves, but also their home countries due to the spillover effects of migration in the form of remittances, human capital development, transmission of knowledge, and the building of transnational networks, among others. In short, whereas taxes promote social justice, immigration restrictions hinder it.

What matters for the purposes of my argument is not whether immigration restrictions protect important interests, but whether their enforcement is ultimately justified. The legitimacy of the right to exclude as a deontological right does not depend on its being exercised to protect or promote a higher-order value or an overriding goal, but on its being justified on independent moral grounds. As long as the value or goal at stake is not blatantly unjust and the right to exclude is exercised in a way that respects the human rights of migrants, enforcement should not render all immigration restrictions illegitimate. The first condition is relatively uncontroversial among advocates of the right to exclude,[10] since they believe that "legitimate political states occupy a privileged position of moral dominion over immigration" (Wellman and Cole, 2011: 4). The second condition is more controversial than the first, but if what I have said so far is correct, immigration enforcement is not necessarily at odds with the human rights of migrants. In conclusion, even if the interests protected by immigration law are not as weighty as those protected by tax law, one should not jump to the conclusion that states are not allowed to enforce immigration restrictions.

Third, maybe the crucial difference lies not in the weight of the interests each of them protects, but in whether what the state sets out to do in each case is ultimately justified. In the case of tax law, the state coactively draws resources from its citizens, but it is them who ultimately decide how the costs and benefits of social cooperation are to be distributed. In the case of immigration law, the state coactively excludes foreigners from this

scheme of social cooperation, but gives them no say in such decision. According to democratic theory, in order to exercise political power legitimately, the state should give a say to everyone subject to it. This explains why tax law wields legitimate authority over citizens, but immigration law does not wield legitimate authority over foreigners.

This is a very powerful objection against the legitimacy of border controls, but it is beyond the scope of my argument, for my goal here is not to determine whether border controls are legitimate in principle, but whether enforcement renders them illegitimate in practice. Surely, if border controls were illegitimate in principle, they would be illegitimate in practice, but the question here is whether they are illegitimate in practice despite being *ex hypothesi* legitimate in principle. The democratic legitimacy argument poses a challenge not only to the enforcement of borders, but also to their very constitution. Therefore, if one accepts the unbounded demos thesis, one cannot assert the legitimacy of immigration restrictions even in principle, at least not without a democratic justification.

There is a more promising way of pressing this objection: if foreigners are excluded from the benefits of compliance with the immigration laws of other states, why should they be expected to comply? Citizens usually benefit from compliance with tax law, so it seems reasonable to expect them to comply. In contrast, foreigners are expected to comply with a law that is aimed specifically at excluding them from the very benefits of compliance with the law (Huemer, 2019: 42). This difference is emphasized by Miller (2023: 848, n. 19):

> The analogy between immigration law and tax law is complicated by the fact that most taxpayers have not only natural duties of justice but also fair play obligations to comply with tax law: they are among the beneficiaries of a reasonably just practice that also imposes burdens. There is no parallel to this in the case of most prospective immigrants, since they are likely to be refused entry.

Accordingly, it would be unreasonable to demand their compliance. In response, note that my argument is not that foreigners are duty-bound to comply with the immigration laws of other states, but rather that states are allowed to enforce these laws against them. States do not actually expect foreigners to abide by their immigration laws, nor do they hold them liable for their breach; they enforce such laws against them, tout court. If no compliance is demanded of foreigners and they are not liable to punishment for their failure to comply, I do not see why states should give them a say in a law that they are not bound by.[11]

This is confirmed by the fact that states do not *punish* irregular migrants for their unauthorized entry, but enforce their duty of reparation (or the duty to *restore* the status quo ante) against them through deportation.[12] This is no more a punishment, as painful as it might be, than making burglars return the stolen property and repair the damage they have caused to its legitimate owners. Unless they receive a penalty (e.g. a fine or jail sentence), they cannot be said to have been punished for the burglary; they are merely having their duty of reparation enforced against them. The same holds true for irregular migrants: unless they receive a penalty, they cannot be said to have been punished for their unauthorized entry; they are merely having their duty of reparation enforced against

them. And unless someone is punished for their *deliberate* unlawful actions, they cannot be said to be held liable for such actions.

It is very important to distinguish deliberate from unintended actions, on the one hand, and negligent from innocent omissions, on the other, for the purpose of determining whether liability gives rise to a penalty in addition to the duty of reparation or to a duty of reparation without penalty. Only when the unlawful action is deliberate or the result of a negligent omission does the agent's putative liability involve punishment. Conversely, if the action is the result of an innocent omission or the agent is not acting on their own volition such that their actions can be said to be deliberate, they cannot be held liable to punishment for their innocent omission or unintended action, but the state can nevertheless enforce the duty to restore the status quo ante against them or their legal guardian(s). There is still another possibility: that the agent is not expected to comply with the law because they fall outside its subjective scope of application.[13] Once again, they cannot be held liable to punishment for their unlawful actions, but the state can nevertheless enforce the duty to restore the status quo ante against them.

To sum up, when there is no penalty attached to an unlawful action, but only a duty of reparation, this can mean two things: (1) that it is not the result of a negligent omission, but of an innocent omission, or (2) that the agent is not liable for their actions. And an agent is not liable for their unlawful actions either (a) because they do not act on their own volition such that their actions can be said to be deliberate or (b) because no compliance with the law is demanded of them insofar as they fall outside its subjective scope of application. Irregular migrants, at least the adult, are definitely able to act on their own volition, and their entering a country without authorization is not the result of an innocent omission. There is only one option left, namely, that no compliance with the law is demanded of foreigners by the state because they fall outside its subjective scope of application. This explains why irregular migrants, despite having committed an unlawful action, are not liable to a penalty, but only to a duty of reparation or a duty to restore the status quo ante. And the only way to restore the status quo ante is through their deportation.[14]

The second objection is that immigration controls are systematically biased against racial minorities and other historically discriminated groups. Racist prejudices continue to inform admission and surveillance practices, making it almost impossible to insulate immigration enforcement from racial discrimination (Aitchison, 2023: 608–610; Fine, 2016; Sager, 2020: 58–59). For this reason, even if immigration restrictions may be justified in principle, they are unjustified in practice. One could respond that, in voluntarily subjecting themselves to the authority of the state, they consented to this treatment (Oberman, 2017: 101–102); and that as long as they have the option of returning to their country of origin, where their rights were adequately protected, the host country is under no obligation to extend them full citizenship rights (Sandelind, 2015: 499). But the most convincing response comes from Mendoza (2015a) himself, who—remember—argued that enforcement renders immigration restrictions illegitimate. According to him:

> opening borders will not put an end to larger and more ubiquitous structures of oppression such as patriarchal and racist social structures [. . .] Justice, in a general sense, requires that structures

> of patriarchy and racism be addressed, but there is a limit to what immigration policies can do to bring about these changes (Mendoza, 2015a: 179–180).

Irregular immigrants may be granted *legal* status and nonetheless suffer wrongful *social* discrimination due to their perceived undocumented status (Reed-Sandoval, 2016). There seems to be something inextricable about this problem that immigration laws cannot account for, let alone solve. If political institutions such as borders are presumably the product of social practices and beliefs, eliminating the former will do little to eliminate the latter. To suggest the opposite would commit us to the absurd conclusion that since there were no clear territorial boundaries or formal immigration restrictions in the past, our forebears were less averse to foreigners and immigrants were not discriminated against. Political change without social change is unlikely to make any significant change, especially if it is perceived as an imposition from above. For this reason, even if we abolished immigration controls, discrimination would still probably reproduce itself on a smaller scale and in other realms of life, such as the local level and more informal relationships.

Moreover, it is not sufficient reason to abolish a law the fact that it has some undesirable side effects. Even when the negative outcomes of a law outweigh its expected benefits, and there are less harmful alternatives at hand, we should not jump to the conclusion that the law in question is unjust. Think about the following case: it is sometimes reported that minimum wage laws and other labor regulations slow down economic growth and hinder job creation. Does it mean that we should abolish them? Not necessarily. Public policymaking does not boil down to maximizing aggregate welfare, achieving economic efficiency, or promoting distributive justice. Rather, it is a matter of adjudicating on competing interests according to relevant criteria. Provided these criteria are not deliberately unjust, the existence of undesirable side effects does not call the whole legitimacy of a law into question. Similarly, discrimination in immigration enforcement does not necessarily render immigration restrictions illegitimate. At most, it gives us a compelling reason to reform immigration law.

Some object that it is plainly not possible to enforce immigration restrictions in a way that respects the human rights of migrants. Therefore, any attempt to reform immigration enforcement practices is doomed to failure. This is due to the way the border regime operates and the inherent vulnerability of migrants. Immigration enforcement is a rather complex matter that involves a number of private and public actors across different jurisdictions, well before and after migrants have set foot in the territory (Shachar, 2020). This enables discretion, diverts responsibilities, and hinders democratic control, exposing migrants to abuses along the way. Opening borders, the objection concludes, is the only way to break these powerful dynamics and eliminate the perverse incentives that are built into the system. Sager (2017: 45) makes this case forcefully:

> the obstacles to overcoming domination for immigration agencies are significantly greater than what we encounter in many other areas. In particular, strategies used to mitigate domination fail because of the inherent vulnerability of immigration populations and the dispersion, externalization, and privatization of migration enforcement. The only plausible way to avoid

> bureaucratic discretion and dominating migrants is to reduce the power of the state and of private actors to enforce border controls and to significantly open borders.

If Sager (2014) is right, one of the things that makes immigration enforcement particularly troubling is the vulnerability of migrants that stems from their lack of political rights. However, this is neither a necessary nor sufficient condition to suffer or avoid bureaucratic domination, respectively. On the one hand, most migrants from the Global North (and some from the Global South) can travel with relative ease, and their chances of suffering abuses and exploitation in the destination countries are few and far between. Their lack of political rights does not seem to render them especially vulnerable to bureaucratic domination. On the other hand, many migrants from former colonies, despite having visa-free access to and an easy naturalization process in the "mother" country, live in miserable conditions and are victims of all kinds of abuses. Putting their vulnerability down to immigration enforcement and suggesting that opening borders will put an end to it is a form of reductionism that obscures the manifold interrelated social, political, and economic factors at play both in countries of origin and destination.

Another reason why, according to Sager, immigration enforcement is bound to impinge on the human rights of migrants is administrative discretion, which often leads to bureaucratic domination. But administrative discretion and bureaucratic domination are not unique to immigration enforcement. As Max Weber noted, they are defining features of the contemporary public administration (Fry and Raadschelders, 2023: chap. 1). See, in this regard, the following statement by a former director of the Spanish Tax Agency:

> in Spain, as in any state that respects the rule of law, the individual is protected by the principle of legality, which obliges the Administration to respect the laws and other provisions in its actions. But when inequality is reflected, contained, and enshrined in the norms themselves, with a set of exorbitant administrative powers, as it happens in tax law, the guarantee that the principle of legality provides to the individual is significantly compromised. This is so because the state uses and abuses what administrative law experts call the *self-attribution of powers*, flooding the legislation with powers or prerogatives in its favor. Sometimes, it is even the case that, once a power has been established in a statutory provision, its subsequent regulatory development expands the power to truly unprecedented limits. As a result, we Spaniards find ourselves in a situation of great inferiority to the tax authority (Ruiz-Jarabo, 2022: 190).

Yet, we do not conclude that enforcement renders taxation illegitimate. If states have considerable discretion in the enforcement of tax law despite the risk of bureaucratic domination, there is no reason why they should not have similar discretion in the enforcement of immigration law. If administrative discretion leads to problematic outcomes, as it often does, states should institute a system of checks and balances that prevents the concentration of power and holds enforcement authorities accountable for their actions. In the end, if immigration enforcement renders migrants vulnerable to human rights abuses, it is not because of purely external constrains over which we have no control, but above all because of our lack of political will. And when it comes to willingness, constituents are as a matter of fact less willing to support open borders than immigration reform. So, if we can open borders, then a fortiori we can reform immigration enforcement practices.[15]

Conclusion

The ethics of immigration must come to terms with the principles that should guide the admission policies of states in a non-ideal world like ours. It is not enough to say that states have a right to exclude immigrants in theory, we must say something about *how* they can enforce it in practice. This is why the ethics of immigration enforcement is an important part of the ethics of immigration. This is all the more so in a world where immigrants are systematically discriminated, structurally exploited, routinely searched, arbitrarily detained, illegally deported, and (in)directly killed. We cannot simply dismiss these facts as unfortunate incidental deviations from the ideal world, for they are deeply entrenched in the practice of most (if not all) contemporary states. This is not to say that all instances of exclusion are irredeemably unjust, leaving states with no choice but to open their borders. Instead, my point is that states must carefully devise the means to be employed in the enforcement of immigration restrictions.

Contrary to what many authors contend, enforcement does not render *all* immigration restrictions illegitimate. The case of tax law discussed above provides a benchmark for the range of steps that states may permissibly take in the enforcement of immigration restrictions. Provided the analogy I have drawn between tax and immigration law is sound, if states are allowed to go to great lengths in the enforcement of the former, there is no reason why they should not be allowed to go to comparable lengths in the enforcement of the latter. And just as enforcement does not render taxation illegitimate, neither should it render immigration restrictions illegitimate. With the adequate procedural safeguards in place, states should have the right to exclude some unwanted immigrants without violating their basic human rights.[16] I do acknowledge, however, that the majority of states fall short of complying with the legitimacy standards set out in this article. In this sense, rather than as a reason for complacency, my proposal should be read as a push for reform.

Does not this disprove my argument that it is possible to enforce immigration restrictions without violating the human rights of migrants? I think this conflates the normative and the descriptive claims of my argument. The normative claim is that states must enforce immigration restrictions in a way that respects the human rights of migrants. The descriptive claim is that states already enforce other laws without violating the human rights of citizens (and migrants). Critics also make a normative and a descriptive claim. Their normative claim is that the violation of human rights in immigration enforcement renders immigration restrictions illegitimate in practice. Their descriptive claim is that the violation of human rights in immigration enforcement is inevitable. The normative claims are in both cases the same, for if states must enforce immigration restrictions in a way that respects the human rights of migrants, then surely the violation of human rights in immigration enforcement renders immigration restrictions illegitimate in practice. What is at stake, then, is whether immigration enforcement *inevitably* renders immigration restrictions illegitimate in practice because they are bound to violate the human rights of migrants, or immigration enforcement practices *can* be reformed in accordance with the prescriptions outlined above so that they are more respectful of the human rights of migrants. If it turns out that the latter is impossible, there may be a good reason to embrace the former. But we still have a long way to go before we reach that conclusion.

This article has dealt with the question of whether and, if so, how states may permissibly enforce immigration restrictions. My answer to this question is affirmative in the first part, qualified by the second, conditional on the third, and contingent on the fourth: (1) states have a right to enforce immigration restrictions (2) so long as they establish adequate procedural safeguards and there are no less intrusive means to achieve the goal of exclusion, (3) if and only if they have a right to exclude, and (4) provided that they are allowed to go to great lengths in the enforcement of tax law. My interlocutors already grant parts 3 and 4, but they are usually reluctant to accept part 1 because of their skepticism about the feasibility of part 2. I have sought to substantiate part 2 by way of analogy with tax law, so that they have no choice but to accept part 1. Of course, the analogy could be wrong, but the onus is on critics now to show why. On the contrary, if the analogy is right and they support the right to exclude in principle, then they should also support the right to exclude in practice, even if it entails the use of physical force.

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Notes

1. As Miller (2016: 73) says, "the question is whether the act of exclusion itself, as opposed to the means used to enforce it, is coercive." Similarly, Wellman (Wellman and Cole, 2011: 46) makes it clear that, "in defending a legitimate state's right to exclude potential immigrants, I am offering no opinion on the separate question as to how countries might best exercise this right."
2. For opposing views in this debate, see Hidalgo (2019), Huemer (2019), and Aitchison (2023), on one side, and Yong (2018) and Miller (2023), on the other.
3. What if the other person was in need? The present example is only meant for people whose human rights are adequately protected. The case of refugees is discussed below.
4. To be sure, states do engage in several forms of wrongful discrimination against migrants, but this adds insult to injury rather than absolve them from their actions.
5. I have taken Spain as an example for the discussion of tax enforcement in the belief that its practices do not differ substantially from those of the rest of liberal democracies.
6. I have developed these views elsewhere (Niño Arnaiz, 2022).
7. One might worry that this will overburden the administration of justice. This is a legitimate concern, but just as states can condone a fine, they could revoke a deportation order if they were worried about the accumulation of administrative files (Song and Bloemraad, 2022: 500).
8. Carens (2013: 151) himself concedes this point: "My argument that time matters cuts in both directions. If there is a threshold of time after which it is wrong to expel settled irregular migrants, then there is also some period of time before this threshold is crossed."
9. Another potential objection is that immigration law cannot be judged by the yardstick of tax law because the former invades autonomy to a greater extent than the latter. I agree that different degrees of political power require different legitimacy standards, but I disagree that this is necessarily the case. In fact, the very point of this article is that immigration law should be subject to the same legitimacy standards as tax law.
10. According to Yong (2017: 475; 2018: 475), as long as immigration laws are not egregiously unjust, are guided by public reason, and serve to promote the general interest, they wield

legitimate authority. In this vein, the containment of the national population size, the reduction of poverty at home, the protection of the local environment, and the preservation of the public culture are often cited as legitimate reasons for restricting immigration (Miller, 2016: 64–68).

11. Nagel (2005: 129–130) makes the same argument: "Immigration policies are simply enforced against the nationals of other states; the laws are not imposed in their name, nor are they asked to accept and uphold those laws. Since no acceptance is demanded of them, no [democratic] justification is required."
12. Is the bar from ever returning to a country a form of punishment? On my account, only proscription of actions people have a prior moral right to constitutes punishment. Therefore, to the extent that foreigners have no prior moral right to immigrate, they cannot be said to have been punished if they are deemed ineligible for return. However, there are some enforcement practices that do constitute punishment. For example, detaining irregular migrants for indefinite periods of time in prison-like centers can hardly be considered a legitimate attempt to restore the status quo ante.
13. Abizadeh (2022) has recently defended a "logically narrow-scope interpretation" of legal requirements in order to distinguish the jurisdictionally circumscribed scope of domestic laws from the universal scope of so-called border laws. According to him, "[t]hose to whom a legal requirement applies fulfill the requirement by doing as it requires, and violate it by not doing as it requires; but those to whom it does not apply, so long as it does not apply to them, can neither fulfill it (because it requires nothing of them) nor violate it (because, not requiring anything of them, there is nothing they could do to violate it)" (Abizadeh, 2022: 608). While he argues that there is a legal requirement not to enter a territory without the state's authorization that applies to everyone, I deny that there is such a requirement. For one thing, on the narrow interpretation of domestic laws that he favors, "the legal requirement does not apply to them [people outside the state's territory], and there is consequently no obligation imposed on, or threat of sanction directed towards, them" (Abizadeh, 2022: 607). As we have seen, there is no sanction attached to unauthorized entry. Consequently, foreigners cannot be said to be liable to border laws either.
14. This does not make it any less problematic when there are less draconian options available. To say that deportation is the only way to restore the status quo ante is not to say that there are no other (albeit less conducive to the status quo ante) ways to make up for the putative wrong of unauthorized entry that might be preferable to deportation.
15. The only times that opening borders may be more feasible than immigration reform is when states lack effective capacity to control their borders, or else they believe that the benefits from opening borders will outweigh its costs. The former is illustrated by the porous and irregular boundaries of pre-modern states, whereas the latter is illustrated by the institution of free movement within the Schengen Area. By contrast, when states are more or less able to exclude potential immigrants and doing so is in their interest, the best we can hope for is that they will reform their immigration policies so as to make them more compatible with the respect for the human rights of migrants. This last point is illustrated by the immigration policies of European member states: soft on the inside, hard on the outside. On the one hand, it is in their interest to open their internal borders, but not their external borders; and, on the other hand, they have the capacity to control the latter quite effectively. However, due to the pressure of public opinion and out of a certain (albeit insufficient) sense of commitment to the human rights treaties they have signed, the external immigration policies of European members states are not as hard as one would otherwise expect them to be.
16. As Arcos Ramírez (2021: 23) has argued: "what generates domination in most cases is not the content of immigration restrictions, but the excessive discretion that stems from the flawed

drafting and the irregularity in the application of the development regulations that articulate it. It is the latter that enables that the exercise of coercion is given effect not through public and impersonal norms, but by personal decisions. [. . .] With the introduction of laws bestowed with greater linguistic rationality, the elimination of some technical loopholes that hinder the proper implementation of some general norms, along with a more accurate implementation of their prescriptions, the room for discretion that allows for arbitrariness and domination would be narrowed down."

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