International human rights instruments establish both a fundamental right to collective self-determination and a right of individuals to free movement. What principles and priorities should guide us when these two sets of claims come into conflict? When and under what conditions are political communities morally entitled to exclude those who wish to enter? And when, on the other side, do the rights of individuals seeking entry take priority? These issues are both philosophically contested and of great practical import, and this chapter seeks to illuminate them.

Article 1 of the International Covenant on Civil and Political Rights (ICCPR) describes collective self-determination as the right of peoples to “freely determine their political status and freely pursue their economic, social and cultural development.” On the other hand, Article 12 of the ICCPR establishes that “Everyone shall be free to leave any country, including his own,” and the Universal Declaration of Human Rights (UDHR) contains similar language. The force of this right may be greatest in the case of refugees and asylum seekers fleeing persecution; and indeed the UDHR establishes the “right to seek and to enjoy in other countries asylum from persecution.”

What is the scope of the right to collective self-determination, and how can it be reconciled with various rights to free movement? In these twin commitments and in other ways, international human rights law seems to reflect the tension between what have come to be known as broadly “statist” and “cosmopolitan” conceptions of global justice. Statist or “membership-based” theories maintain that we have special duties of justice to our fellow citizens and that the full demands of social justice, however one
conceives them, apply only within well-defined political societies. Cosmopolitan or “globalist” conceptions of global justice, on the other hand, hold that in the most important respects all human beings are citizens of one world: members of one community of mankind, and that demanding and extensive duties of justice, such as Rawls’s difference principle, apply to all individuals on a global scale. With respect to immigration policy specifically, “statists” tend to emphasize that political communities are entitled to a fair range of discretion in determining their entry policies, whereas cosmopolitans emphasize a right to free movement.

Those on the statist or membership side include John Rawls, David Miller, Joshua Cohen, and many others, including the present authors. Rawls has emphasized that one important role of legitimate states is to act as the agent of particular peoples, politically organized, in regulating the use of the land and other resources and the population so that “the people’s territory” can support them “in perpetuity”: “People must recognize that they cannot make up for failing to regulate their numbers or to care for their land by…migrating into another people’s territory without their consent.”

David Miller has argued that the basic right of movement is limited: people have a right to live within a territory with an adequate range of options, and to move around in that territory. But there is, he emphasizes, no basic right to live wherever one wants. These and other considerations have suggested to defenders of the statist or membership view that political communities have considerable discretion in shaping their immigration policies, at least (as Rawls is keen to emphasize) in an ideal international society of internally “well-ordered” peoples.

On the cosmopolitan or globalist side, Joseph Carens has argued for decades that “borders should generally be open and that people should normally be free to leave their country of origin and settle in another,” constrained only by the requirements of public order. We should insist on a right to migrate across borders, Carens suggests, for precisely the same reasons we insist on religious freedom and other familiar individual liberties (including freedom of movement within a political society): namely, because “it might prove essential to one’s life plan.” Restrictive citizenship laws, by contrast, are like “feudal birthright privileges,” restricting the freedom of some individuals on the basis of factors that are arbitrary from a moral point of view.

Other theorists argue from specifically democratic premises to the conclusion that political communities should not have the unilateral right, as Arash Abizadeh

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3 As Thomas Nagel puts it, it is only from political institutions “under strong centralized control” that we can claim “a right to democracy, equal citizenship, nondiscrimination, equal opportunity, and the amelioration through public policy of unfairness in the distribution of social and economic goods” (Nagel 2005, at p. 127); even if some of these demands can be pressed, in some form, against various transnational institutions, statists maintain that sharing membership in a state is necessary to trigger all of them.

4 See, for example, Rawls 1999a; Blake 2001; Macedo 2004; Cohen 2006; Freeman 2007; and Miller 2010. Precursors of the cosmopolitan statist view we develop below include Miller 2005a; Julius 2006, at pp. 191–2; Sangiovanni 2007, at p. 35, and Scheffler 2010.

5 Rawls 1999a, p. 8.

6 Miller 2007, ch. 8.

7 Rawls 1999a, pp. 38–9.

8 Carens 1987, at pp. 251, 258, 252. See also Carens 2013.
puts it, “to control and close the state’s boundaries.” He criticizes national border controls on the grounds that they are decided by only a subset of those affected by them. The reason, he says, is that “the demos of democratic theory is in principle unbounded, and the regime of boundary control must consequently be democratically justified to foreigners as well as to citizens”: what we need, then, are “cosmopolitan democratic institutions” to shape countries’ border control policies. Robert Goodin has similarly argued that “[t]he democratic ideal ought ideally be to enfranchise ‘all affected interests.’” Since virtually everyone in the world is affected by the actual or possible policies and actions of powerful states such as the United States of America, including by its immigration policies, the principle suggests that “virtually everyone everywhere” should “vote on virtually everything” via a system of world government.

These theorists raise doubts about the familiar idea that a right of collective self-determination includes the right to control one’s borders, even if a suitably organized global demos might be expected to endorse such a right.

Mathias Risse offers an interestingly mixed view, according to which states’ rights of self-determination are constrained by considerations flowing from what he asserts is mankind’s common ownership of the earth. He asserts that each person has a claim to an equal share of the earth’s resources, regardless of national membership. States, on his view, are justified in excluding others from their territory “only if that space is populated by sufficiently many people,” taking the average population-to-space ratio across existing states as a rough threshold of sufficiency.

This chapter will examine the scope of the right to self-determination by focusing on this tangled question of border controls. We join those scholars, including Rawls, Miller, Cohen, and others, who argue that legitimate forms of collective self-governance are of considerable moral significance. We espouse, therefore, the generally “statist” or “membership” perspective outlined above, according to which the content of what we owe to fellow citizens and what we owe to outsiders is different. This broad perspective admits of strong and weak variants. Strong statists hold that we have no obligations to non-members beyond certain minimal duties of non-aggression and mutual aid. Few people actually espouse that view, and certainly we do not. We defend a “weaker” version of statism that holds that our obligations to non-members extend, for a variety of reasons, beyond the humanitarian minimum. Indeed, in treating individual persons as the ultimate units of moral concern, in attaching this status to every living person equally, and in according this status global force, our view can be

9 Abizadeh 2008, at p. 38. He insists that “democracy may require boundaries, but not closed boundaries under unilateral domestic control.”
12 Risse 2008, at p. 29. See also Risse 2012, ch. 9.
13 A much-discussed exception is Nagel 2005.
14 This distinction between strong and weak statism follows Cohen & Sabel 2006, at p. 150, responding to Nagel’s strong statist view.
described, fairly and without contradiction, as a cosmopolitan variant of the statist approach, as per Thomas Pogge’s well-known definition of cosmopolitanism.15

While the full demands of justice are properly associated with membership in a political community, it is a grave mistake to hold that outside the state there is only minimal humanitarian concern. Confusion has been created by running together the idea that full obligations of justice apply only domestically, with the very different idea that beyond the state our moral relations, duties, and obligations to others are minimal. We argue that fairly extensive moral duties and obligations extend across state borders, and for easily discernible reasons. As our interactions with foreign populations and institutions deepen and broaden, our obligation to deal fairly with outsiders operate across a wider field. As our own society grows in wealth while others remain desperately poor, we acquire a more extensive duty to alleviate preventable deprivation and suffering wherever it occurs. So too, as our own political institutions stabilize, and we learn something about the foundations and prerequisites of stable and legitimate political order, we acquire a duty to do what we reasonably can to assist others to develop their own decent institutions of self-government. And finally, as our extensive interactions with outsiders make us prone to committing acts of injustice and domination in the absence of effective multilateral institutions, we acquire a duty to strengthen global institutions. These seem to us common-sense observations, and we develop them in this chapter. We also argue that our duties to outsiders may be more urgent than our domestic obligations, and may take priority over them, at least sometimes.

One other preliminary observation. Confusion has been introduced into these discussions by failing to note that the sorts of principles that Rawls has developed to govern the foreign policies of liberal states are avowedly aspects of ideal theory. As such, it seems to us that Rawls’s normative picture, while useful and illuminating, is importantly incomplete and even inadequate to the non-ideal world in which we live.16 In our non-ideal world, it seems obvious that wealthy political communities such as the USA ought to be doing more to promote greater distributive justice at home and also to address dire poverty abroad. And yet, there are also serious controversies concerning whether, for example, government-to-government foreign aid does more harm than good. The upshot, we think, is that there are no simple answers to the practical question of how we should prioritize the various moral imperatives that confront us from inside and outside the political community. Theory provides


16 Of course, statists in the Rawlsian tradition have not neglected the matter of non-ideal theory altogether, for it has been a central concern of that project to specify how “the foreign policy of a reasonably just liberal people” ought to adapt to others’ unwillingness or inability to comply with the norms of a justifiable international order (Rawls 1999a, p. 10, emphasis omitted); what this tradition has not addressed is the question of how a given political community ought to prioritize its moral responsibilities in the face of domestic noncompliance: that is, where its own institutions and policies are less than “reasonably just.” For a helpful discussion of the Rawlsian distinction between ideal and non-ideal theory more generally, see Simmons 2010.
only limited guidance in real-world decisions about how to fairly balance our duties to outsiders and fellow citizens in cases of conflict. However, we are not ultimately sceptics about the possibility of normative guidance in this domain and, keeping in mind the limitations of ideal theory, we offer some proposals about directions for institutional reforms at the end.

To move from ideal theory to the real world, we will focus on US immigration policy. Many scholars, politicians, and pundits argue that immigration policies that are “generous” to poor persons abroad will worsen the relative well-being of the least well-off Americans, thus presenting us with a possible conflict between the demands of domestic distributive justice and the duty of assistance to outsiders. Indeed, recent empirical work emphasizing the general ineffectiveness, or even counter-productiveness, of government-to-government foreign aid makes all the more pressing the question of whether freer migration of labour is the most promising “Plan B” for international development assistance.17

The argument of the chapter proceeds in three steps. Section 1 characterizes our version of the statist or membership account of political justice, emphasizing the wide range of moral responsibilities that statist theories standardly take us to have to those residing outside our borders. The membership view we defend makes extensive demands on individuals and public institutions in the developed world. In Section 2, we explore one way in which our membership-based obligations may come into conflict with our duties to outsiders by taking up the problem of large-scale migration from low-income countries into wealthy, yet substantially unjust, liberal-democratic states. Having earlier acknowledged the variety and stringency of our duties to non-members, we here introduce a further complication: when faced with an array of potentially competing moral demands, states have independent and, we suggest, normatively compelling interests in determining how to balance and prioritize their unmet responsibilities for themselves, free from the interference of agents outside their particular political community. Because distinct political societies may reasonably disagree about how best to prioritize their competing moral responsibilities, and should at times be left free to make policy choices that are in fact less than fully reasonable, we must afford states a modicum of discretionary authority over matters, such as national immigration policy, where divergent interests and duties may be at stake. At the same time, we acknowledge that unbridled state-level discretion may lead citizens and public officials to systematically neglect their outstanding moral duties altogether, and even to use the alleviation of domestic injustice as a false pretext for evading their moral responsibilities internationally. We therefore propose, by way of conclusion, a set of standards for holding states accountable for fulfilling their unmet moral responsibilities and suggest how these standards might guide the design and reform of global governance institutions and practices.

17 See Easterly 2006; Deaton 2015; Collier 2013, which emphasizes various risks of a shift toward unconstrained migration. And see Kapur & McHale 2006, pp. 137–72, 175. For a contrary take, see Pritchett 2006.
1. The Circumstances of Justice: Domestic and Global

All persons have natural duties to respect the equal basic freedom or agency of others, and to promote and support institutions that help secure our basic interests as agents. In conditions of mutual interdependence, these duties can be fulfilled, and our freedom secured, only by state institutions capable of making legitimate law. Following in the social contract tradition of Rousseau and Kant, we hold that humans are obliged when they can to remove themselves from the “state of nature”—the natural condition of lawless anarchy—and to form or support a legitimate state. That duty holds most powerfully and urgently, at least initially, with respect to those with whom we live in close proximity and with whom we regularly interact. In the absence of a common public authority capable of making authoritative law, and resolving disputes in a way that fairly represents the interests of all contending parties, individuals will be prone to disagree about their competing claims and the shape and borders of their rights vis-à-vis one another. Without a public authority in common we will find ourselves all too vulnerable to unjust treatment by others, and too tempted to use force in our defence that others cannot regard as fully authoritative. So, we have a duty to found a legitimate and effective public authority or to support one where it exists and work toward its improvement. We can live together with others in peace and security, cooperating on fair terms and respecting one another’s rights, only when we all submit our competing claims to legitimate political institutions.18

Legitimate states formed by and acting on behalf of particular political communities secure members’ agency interests (or basic freedoms) as individuals and as members of political communities with distinctive cultures, languages, and traditions. Legitimate states give definiteness to the rights and obligations of citizens, as well as assurance that these will be secured in practice, thereby facilitating their trustful interactions and allowing them to engage in complex forms of cooperation with one another. States also promote a wide variety of public goods, from national defence and domestic security to economic cooperation and excellence in education and the arts. Long-standing states typically promote and gain support from the existence of a common language and culture, which are public goods for the community in question. A shared language and culture may also be instrumentally important in helping build social capital and in supporting the trustful interactions that make political, social, and economic cooperation possible.19 Genuinely legitimate states—those that deserve to be and, for this reason are generally regarded as, legitimate—fulfil a variety of important moral and practical functions.

18 Here we follow Rousseau, Kant, and more recent “natural duty” theorists, such as John Rawls, Jeremy Waldron, and Anna Stilz. This paragraph and the next are indebted, in particular, to Stilz 2009, chs. 2–4 and Levitov 2013, ch. 1. A useful contrast is with John Locke, who argues that it is rational to leave the state of nature, but does not argue that we have an unchosen obligation to do so.

19 See Putnam 2007, and, more generally, Miller 1995, chs. 5–6. On our view, a purely public or civic culture can serve these important functions, and so need not be incompatible (at least in principle) with the presence of multiple national or ethnic cultures, as on the view of some nationalist theorists.
Following others, and our own past writings, we hold that the uniquely extensive burdens and benefits generated within the bounds of a political society, together with the unmatched power of states to regulate the incidence and distribution of these burdens and benefits, give members of political communities uniquely extensive justificatory obligations to one another. Domestic principles of justice regulate and shape the major social, political, and economic institutions that form the context and background of our endeavours and interactions, our strivings, successes, and failures. From cradle to grave (and beyond) our interests, identities, relationships, and opportunities are pervasively shaped by the political system that we collectively create and within which we live. As members of a political community we are joined in a collective enterprise across generations, and our individual prospects depend deeply on the opportunities we secure through these shared institutions. The “basic structure” of institutions in successful political societies furnishes a set of enabling capacities for doing justice under law and for deliberating about and promoting a wide variety of public goods. And so, the fullest moral demands associated with justice hold among members of political communities.

Legitimate states give shape and substance to their members’ rights and other entitlements in a way that is, as Walzer would put it, to some significant degree local and particular, reflecting their own distinctive culture and traditions. Rawls too in his later writings gave more weight to a respectable range of diversity among decent, “well-ordered” peoples. Local institutional discretion is bounded by an account of human rights understood as those common standards that ought to be recognized by the international community, whose violation by domestic governments is a matter of global concern. Human rights standards ought also to include moral criteria for legitimacy in law-making: adequate voice and inclusion for all of a society’s members in deliberative processes, such that governments can be justifiably regarded by the international community as the authoritative representative of all its people. Within

20 The basic institutions and laws of society—the “basic structure,” in Rawls’s parlance—which include the constitutional and political systems, the laws governing family life, inheritance, property, commerce, and taxation, pervasively shape people’s relations and life chances. The discussion that follows draws on a more extended explication and defence of the Rawlsian position in Macedo 2004. Others have developed versions of this approach, including David Miller, Michael I. Blake, Donald Moon, Joshua Cohen, Leif Wenar, and Andrea Sangiovanni.

21 In Rawls’s justice as fairness, these requirements include not only the provision of a fully adequate scheme of equal basic liberties, but also a guarantee that all socioeconomic inequalities are consistent with the principle of fair equality of opportunity (ensuring citizens roughly equal chances of success in a chosen field of endeavour, given similar natural abilities) and the difference principle (requiring that income and wealth be distributed so as to maximize the position of the least advantaged group). For a more general statement of the “full” requirements of social justice, see Nagel’s remarks, cited in footnote 3.

22 Rawls 1999a; and also among politically liberal communities that realize one among a family of reasonable liberal conceptions of justice. Samuel Freeman has a useful account of the increasing acknowledgment of diversity and reasonable disagreement concerning principles of justice in Rawls’s later work; see also Freeman 2003, pp. 37–44.

23 Here we follow Scanlon 2003 and Beitz 2009.

24 One of us says more about this in Macedo 2004, which interprets Rawls’s account of consultation hierarchies in decent political communities more robustly than some others. See also Wenar 2002.
these important bounds, the authoritative conception of justice for us is the one we have actually resolved upon as the law of our community: the constitution or fundamental political charter of our society. Different political communities will arrive at somewhat different conceptions of justice and the public good through their own deliberative and representative mechanisms, but those differing conceptions have local authority only where political institutions are and are seen to be legitimate. Legitimate law generates, as Waldron emphasizes, a “special kind of ‘ought.”’

The natural duty of justice directs us to create and uphold a particular kind of uniform institutional scheme, since it is only through such a shared system of authoritative and enforceable legal rules that we can secure the essential demands of justice in our relations with others. But if the duty of justice directs us in the first instance to establish a state with those with whom we interact most regularly, it points outward beyond the bounds of political communities as well. We call our view “cosmopolitan statism” because it both acknowledges the existence of special obligations among citizens, but also affirms that members of well-functioning and prosperous states owe a range of further duties to those who are not. The natural duty of justice enjoins us, in Rawls’s formulation, “to support and to comply with just institutions that exist and apply to us…[and] to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.”

What, then, do we owe to outsiders—those who are not members of our political community—on the membership view?

We have, first, general humanitarian duties to relieve those in distress, and to intervene in the event of gross and systematic violations of human rights. In the absence of some form of direct connection to or responsibility for a humanitarian crisis, this is a duty of beneficence: to help secure the basic interests of other persons who are in need, or who lack minimally adequate access to basic human needs, such as security and subsistence and the institutions needed to secure these basic interests, at least where this can be done without incurring undue costs to ourselves. Reasons of this sort become increasingly weighty as the urgency of the interests at stake increases and as the cost of action to the relevant agents—including the opportunity costs of neglecting their own valuable projects, relationships, and independent responsibilities—declines. Considerations of beneficence are sufficient, at the very least, to ground a duty of easy rescue, requiring that we make small or even moderate sacrifices to our own interests in order to prevent or alleviate the great suffering or misfortune of others.

25 Waldron 2003, p. 47, quoting Hart & Sacks 1994, p. 5. A particular political community might choose to enact a system of law that is thoroughly cosmopolitan in spirit, but societies are not required to do so.
26 Rawls 1999b, p. 99.
27 See Henry Shue’s account of basic rights to security and subsistence, Shue 1996, chs. 1 and 2.
28 Here we adapt the Principle of Rescue from Scanlon 1998, pp. 223–9. We leave open the question of whether considerations of this kind would also ground what Scanlon terms a duty of “helpfulness” to those at any level of need; in the face of reasonable pluralism about the good, it is at least not obvious to us that we must help advance the interests of well-off individuals, for example, even if this can be done at no (or only trivial) cost to ourselves.
duties hold irrespective of any historical or ongoing relationship or common institutional affiliation among persons.29

Second, as noted, we have a natural duty “to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.”30 This duty requires that those living in reasonably just and prosperous states help those burdened by unfavourable conditions to establish well-ordered institutions in their own societies. Following Rawls, we shall refer to this aspect of our natural duty of justice as the “duty of assistance.”31 Our duty of assistance (unlike the demands of social justice domestically) has a “target and cutoff point,” instead of operating “continuously without end.”32 It does not require that we replicate state institutions on a global scale, or that we stand in the same relations to all humans that we do with respect to our fellow citizens. It does not require ongoing efforts to regulate inequalities (on the basis of, for example, the difference principle or some other principle of distributive justice) among all persons regardless of political membership. As we shall see, however, this duty does not exhaust the moral principles that apply to wealthy and powerful societies in their interactions with others.

Thus whereas critics of Rawls have tended to assume that the target is bare sufficiency, designed to ensure a minimum “threshold of subsistence” for all,33 we agree with Caleb Yong that the duty of assistance is best thought of as “a duty of transitional justice, grounded in the natural duty to support and further just institutions.”34 Unlike the duty of beneficence, then, the duty of assistance directs us to help others not simply to advance their urgent interests as individuals but to achieve the specifically institutional and collective goal of establishing a well-ordered regime of their own. (Indeed, as Rawls points out, although poverty and other conditions of great need may be among the unfavourable circumstances, “not all [burdened] societies are poor, any more than all well-ordered societies are wealthy.”35 It is therefore at least conceivable that some societies owed the duty of assistance would not require aid on grounds of beneficence alone.) The important point is that there is a target, and after it is achieved societies should be in a position to support and sustain their own domestic institutions for social provision, to arrive at their own legitimate law based on their own shared

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29 See also Miller 2010, ch. 1, as well as the discussion of “strong beneficence” in Beitz 2009, pp. 167–8.
30 Rawls 1999b, p. 99.
31 See Rawls 1999a, pp. 106–7, noting that, like the duty of just savings in the domestic case, the aim of the duty of assistance “is to realize and preserve just (or decent) institutions, and not simply to increase, much less to maximize indefinitely, the average level of wealth, or the wealth of any particular class in society. In these respects the duty of assistance and the duty of just savings express the same underlying idea” (p. 107). Again following Rawls, we shall assume that the duty of assistance applies to “decent” non-liberal regimes that are well ordered under a conception of justice of this sort, and not simply to those organized under a (“fully reasonable”) liberal conception (see p. 106).
32 Rawls 1999a, pp. 119, 117.
34 Yong 2012, accessed online at: <http://www.nuff.ox.ac.uk/politics/papers/2012/Yong_working%20paper_2012_05.pdf>.
35 Rawls 1999a, p. 106.
understandings. Domestic constitutions will reflect different societies’ differing choices and their differing interpretations of justice and democracy, or, as Walzer emphasizes, the particular “social meanings” that are prevalent. The range of such differing interpretations of basic political morality is constrained by universal standards, as already mentioned, especially human rights, which include standards for decent domestic governance.

The importance of living with others under an effective and legitimate political authority supports the idea that citizens have special obligations to one another. It also provides guidance concerning our duties to outsiders who do not live under their own effective institutions: we ought to assist them to do so. The major difficulty with the second agenda is practical: it is often not easy to help others secure effective institutions of their own.

When individuals anywhere face grave risks to their most urgent interests, or when they lack the social preconditions of a decent political community, we have a duty to do our part in alleviating their plight and helping them build and maintain well-ordered institutions of their own. Our duties of beneficence and assistance thus comprise the cosmopolitan side of our statist view; these are “natural duties” owed to all human beings as such. Insofar as the most urgent problem of the global poor is persistent absolute poverty, and the common root of that problem lies in the difficulty that many peoples have experienced in establishing decent and effective governance institutions, these duties work in tandem to advance the basic well-being of all persons and to strengthen and improve the institutions under which they live.

Yet while beneficence and assistance are matters of natural duty—binding regardless of our past actions or ongoing relationships with others—we may incur a further range of moral responsibilities by choosing to interact with individuals and institutions beyond our borders. These obligations, too, the cosmopolitan statist account readily accepts.

Among these “duties of reciprocity,” as we might call them, are general duties of fair dealing with one another: duties of non-exploitation and non-domination, including the duty of political communities to curb the capacity of their citizens or corporations to exploit others. In addition, fair dealing would seem to include a duty not to be a free rider on the efforts of others to address common problems, including environmental issues such as global warming, disaster relief, and humanitarian assistance.

A second aspect of these duties of reciprocity grows out of the fact that particular relations of exploitation or domination give rise to specific obligations of rectification, redress, and reform. If our government has engaged in abusive relations with other states to their detriment, or if we have allowed our corporations to exploit or oppress

36 See Walzer 1983.

37 We should emphasize that on the Rawlsian view, “decent” societies that are fully respectable members of international society not only have a sufficient level of material resources, but also respect their members’ human rights and sustain governing practices which, if not fully democratic, really do represent and take seriously the interests and views of all groups in society. For a fuller exploration of these issues, see Macedo 2004.
poorer and weaker societies, then we acquire debts to these other societies. An account of rectification for past injustices across societies depends on the nature and extent of the injustices, so there is no general story to be told. Very likely, the USA has acquired substantial unpaid debts of this sort, though aggrieved parties lack authoritative impartial institutions to adjudicate claims against us and to specify the forms of redress and rectification.

Finally, these two general aspects of reciprocity argue for an important third, derivative duty that grows out of the fact of ongoing and fairly extensive interactions with others: if current institutional arrangements in the international realm permit or even facilitate the domination of weaker states by stronger states, then we have a duty to improve those institutions or to create new institutions (insofar as we can) that curb the abuses of the current state system, and that facilitate the development of the poorest regions, so that relations across states are reciprocally justifiable. In addition to righting various historical wrongs and creating the conditions for fair exchange and cooperation, these reforms would also seem to be aspects and implications of the “natural duty of justice”: the duty to foster the conditions within which just relations can be established and sustained.

2. Competing Duties under Non-ideal Conditions: The Case of Immigration

As we have seen, the statist account of social justice holds that, while we have more extensive moral obligations to the members of our political community than we do to non-members, we nevertheless have significant responsibilities to those living outside the boundaries of our state. But how should we balance or prioritize competing duties when both our domestic institutions and our global relations and institutions fall short of the ideal: under conditions, that is to say, in which our membership-based duties of justice are at least partly unfulfilled and in which we could and should do more to assist non-members whose basic needs are going unmet? If, in many cases, there is no strict order of priority or precedence, and instead a range of reasonable ways of balancing these competing moral demands, should countries have total discretion over how to prioritize their competing moral demands—in deciding, for example, whether to give greater weight to their unmet duties to members or to non-members—or are such choices governed by some further set of normative principles or guidelines?

To give some concreteness to this enquiry, we will focus our attention on the question of how the United States, and other countries similarly situated, should balance the claims of insiders and outsiders in the context of setting national immigration policy. Over the past half-century, American immigration policies and practices have become in some respects more accommodating to the less well-off abroad.38

38 The next several paragraphs draw on Macedo 2007 and especially Macedo 2011.
Yet evidence also suggests that increased migration of low-skill workers to the USA has exacted costs in terms of social justice at home. We can briefly note three ways—economic, political, and cultural—in which increased immigration appears to have had deleterious effects on the position of the worst-off Americans. First, the influx of low-skill workers into the American labour market has contributed to the substantial decline in the wages of less well-educated natives, especially high school dropouts (roughly the bottom 10 per cent of the workforce). Labour economist George Borjas has estimated that perhaps as much as half of the widening wage gap between more and less well-educated workers over the last few decades has been due to the increase in low-skill labour caused by immigration.39 Since the 1960s, the skills levels and earnings of immigrants have declined considerably relative to the native US population. Much of the growth in immigration since 1960 has been among people entering at the bottom 20 per cent of the income scale. As Borjas observes, “Since the immigration reforms of 1965, U.S. immigration law has encouraged family reunification and discouraged the arrival of skilled immigrants.”40 Whereas in 1960, the average immigrant man living in the USA earned 4 per cent more than the average native-born American, by 1998 the average immigrant earned 23 per cent less. The ethnic makeup of immigration has also changed with the percentage arriving from Europe and Canada falling sharply and the percentage from Latin America and Asia rising.

We can add one other element to this labour market story. As Borjas again observes, nations with notably more progressive domestic policies than the USA also often have immigration laws that are quite different. Canada’s immigration policy favours better-educated and high-skilled workers and this seems likely to have distributive effects that are the opposite of US policy. By increasing the pool of skilled workers relative to the unskilled, Canadian policy tends to lower the wages of the better off and to raise the relative level of the worse off.41

Other economists, such as David Card, disagree with Borjas’s estimates of the magnitude of the effects and argue that immigration’s contribution to the widening wage gap is much smaller than Borjas’s original estimate.42 Nevertheless, it is notable that it seems widely agreed among labour economists that there is some negative effect on the poorest US workers, and the debate concerns the magnitude of this negative effect.43

One response to the foregoing argument is that if immigration increases our collective wealth while worsening income disparities, why not welcome immigration and redistribute the surplus via tax and spending policies? This brings us to a second
possible negative effect of immigration on social justice in the USA. Recent patterns of immigration may help explain why increasing inequality has come about without a corresponding increase in political pressure for redistribution; because immigration to the USA has made the median voter better off relative to the median resident, it may have both worsened the relative standing of the least well-off Americans and made it less likely that pivotal (or median) voters would support redistributive programmes. Recent patterns of immigration to the USA may, thus, worsen the relative lot of the least well-off Americans while also making redistributive policies less politically popular. That is one more way in which recent immigration may worsen the lot of the least well-off.

Third, there is some evidence that the feelings of solidarity and mutual identification that help support social justice can be undermined by the increased racial and ethnic heterogeneity associated with immigration; increasing diversity can, in the short to medium term, diminish support for the provision of public goods, including programmes aimed at helping the poor, and may over time contribute to a slower rate of growth in the overall size of the welfare state.

It should be emphasized, of course, that all of these empirical claims are controversial. Just how immigration and increased ethnic and racial diversity inhibits social spending is unclear, for example: the rise of New Right political parties in Europe is associated with controversies over immigration, and mainstream parties may need to shift to the right in response.

The available evidence would thus seem to suggest that high levels of immigration from low-skilled non-members—while no doubt advancing the interests of the migrants themselves and (by way of often extensive remittances) their families and associates in their country of origin—nevertheless serves to weaken (somewhat) the position of the worst-off Americans, under conditions that already fall well short of the requirements of social justice.

If particular patterns of immigration to the USA are likely to worsen the position of the domestically least advantaged while at the same time advancing the urgent interests of non-members, how should citizens and policy makers in the USA respond? In effect, we might think of an American voter confronting two sets of opposed

44 See, for example, McCarty, Poole, and Rosenthal 2006, ch. 4. 45 Putnam 2007.
46 Soroka, Banting, and Johnston 2007.
47 Soroka, Banting, and Johnston argue that the “effect seems wholly political and wholly through its direct impact on mainstream governing parties,” and reflects the influence of “perceived cultural threat and economic cost,” pp. 278–9. The challenge is to devise ways to “combine openness at the global level with social integration at the domestic level,” Soroka et al. 2007, p. 279. There is a burgeoning literature on ethnic diversity and public good provision; see Habyarimana, Humphries, Posner, and Weinstein 2007, pp. 709–25, which notes that “the empirical connection between ethnic heterogeneity and the underprovision of public goods is widely accepted,” though there is no consensus on “the specific mechanisms through which this relationship operates,” p. 709.
48 On the importance of remittances as an effective vehicle of poverty relief in the developing world, see, for example, Deaton 2015, pp. 323–4.
complainants: from those at the bottom in the USA and from poor potential migrants abroad. Which group’s (if either’s) complaints takes priority?

One feature of this conflict is worth highlighting: in the case of immigration policy in the USA, as in many cases in which our foreign and domestic obligations appear to conflict, the barriers to our fulfilling these unmet responsibilities are put in place by our own fellow citizens and public officials, rather than by sheer resource constraints or other forms of scarcity. As we have noted, immigration to the USA generates a collective economic surplus, and it should be possible to use that surplus to improve the situation of the least well-off Americans, including those made worse off by immigration. If enough Americans were willing to do their part on both the domestic and the global fronts, there is reason to believe that the trade-offs would disappear or at least be greatly lessened. Indeed, it is partly others’ failure to support just institutions and contribute to the urgent needs of the global poor—their “noncompliance,” in Rawls’s terms—that makes the problem at hand one of non-ideal theory.49

So, let us suppose that we ought to redistribute the gains of immigration, so that both poor immigrants and poor Americans are made better off. But, we also know that high immigration will tend to unjustifiably reduce Americans’ willingness to support such redistribution. We do not see why the latter point lessens the force of the objection coming from poor Americans, at least assuming that the unfortunate attitudes and voting behaviour of better off Americans cannot be easily altered through persuasion or in other ways.

If what is at stake is the basic needs of potential migrants, on the one hand, set against the relative standing of poorer Americans whose basic needs are being and will be met, on the other, then the former, we think, should take priority. In the actual case, the issue is a bit trickier, for while many actual and potential poorer migrants to the USA come from very poor circumstances, it is not clear that their basic needs will be unmet if they are denied the opportunity to migrate for work. The poorest people in the world, including those whose basic needs are unmet, typically do not have the resources needed to migrate. As Massey and Denton explain, labour migration is part of the development process, and requires that the process is already under way. Nevertheless, immigration does seem to provide great gains to migrants and their home communities, while only marginally worsening the relative position of American poor, and it is at least not obvious that a membership-based account of justice would forbid the USA from giving precedence to the interests of non-members in such a case.

In hard cases such as these, where there exist a variety of reasonable policy responses to conditions of partial noncompliance, it seems clear to us that states should be left free to act on their own considered judgement about how best to balance their competing responsibilities to members and non-members. For even if there are compelling reasons to favour a given policy over another, states have independent interests in being able to decide these difficult questions for themselves, at least insofar as they are internally

49 See, for example, Rawls 1999b, pp. 7–8 and Rawls 1999a, p. 5, as well as Simmons 2010.
well ordered” and can therefore act as the collective agent or representative of their individual members. These interests in collective self-determination would be undermined if some external agent, including the “cosmopolitan democratic institutions” favoured by some theorists, were to impose a specific policy response on a well-ordered political community when other reasonable alternatives are available. The point, we believe, generalizes: if, as Rawls has suggested, we should allow a space for policies that are less than reasonable by the lights of liberal democratic values, yet at the same time “not fully unreasonable,” then these, too, should be shielded from external control in order to respect the self-determination interests of specific states.

While there is no precise way of demarcating the domain of policies over which states should enjoy political discretion in this sense, we might begin to give shape to this category with reference to the idea, mentioned above, that human rights specify a particularly urgent class of injustices that are a matter of international concern, in that violations of these rights give outside agents compelling reasons to undertake remedial and preventive action of various sorts. In cases in which the human rights of non-members are at stake, and the only way of preventing their violation is through some policy that will weaken the relative socioeconomic standing of current members (without dropping them below the threshold of human rights), we would suggest that a state’s refusal to implement such a policy would be fully unreasonable and thus subject, in principle, to external sanction or interference. But where non-members currently enjoy basic human rights protection and stand only to increase their material position above this basic threshold of need, it would not be unreasonable for states to give precedence to considerations of domestic distributive equality, even if their members are better off in absolute terms than the outsiders seeking assistance.

In the context of immigration policy, this proposal would require states to admit political refugees and other victims of human rights abuse if doing so is the only available means of securing those rights. But it would give states the discretion to deny entry to low-skill migrants whose human rights are secure in their country of residence and whose admittance would foreseably threaten the position of the domestically least advantaged. To be clear, we do not say that denying admittance in such a case would be the right policy to adopt, or even that it would be among the reasonable options available to policymakers in the developed world. Indeed, one of us has argued elsewhere that, in spite of immigration’s likely negative effects on

50 Abizadeh 2008, p. 48; see also Goodin 2007. As we make clear in Section 3, we think there is an important, though largely secondary and remedial, role for institutions of this sort to play in guiding the policy choices of particular states.

51 Rawls 1999a, p. 74. For a fuller account of the value of self-determination, see Levitov 2015, sect. 2.

52 Risse similarly proposes that states ought to secure the basic liberties of their members before turning to assist outsiders, but must prioritize non-members’ human rights over the goal of mitigating domestic socioeconomic inequality; see Risse 2012, pp. 330–2.

53 Compare Miller 2005b, p. 198 and Wellman 2008, at pp. 129–30. Because we view human rights as going beyond a mere right to be free from persecution, our approach would recommend a more expansive definition of refugees than that employed by the United Nations High Commission on Refugees; for a recent discussion and defense of the UNHCR definition, see Lister 2013.
distributive justice, the costs of excluding poor migrants to the USA appear to be too high.\textsuperscript{54} Our point is only that a policy of this sort would not be so clearly \textit{unreasonable} as to overcome the presumption in favour of states' collective self-determination. Within certain limits, states should enjoy the freedom to pursue policies that are nevertheless subject to valid moral criticism, and our suggestion is that the idea of human rights can help give content to these limits.

3. Conclusion: Human Rights and Self-Determination in International Practice

In a range of familiar if non-ideal conditions, states in the developed world must ultimately choose between policies that advance the interests of non-members in need and those that further the cause of socioeconomic justice at home. We have argued that, in confronting these hard choices, different societies may reasonably disagree about whose competing claims should take precedence, and that each has an independent interest in being able to decide such matters of moral weight and controversy for themselves, free from the interference of other states or multilateral bodies. So while the right of self-determination is by no means absolute, and must be constrained by the need to secure the human rights for all, states nevertheless ought to enjoy a moderate range of discretion over decisions, such as the choice of a national immigration policy, that affect the core interests of members and non-members alike.

At the same time, we recognize that well-ordered states, marked as they are by electorally accountable or at least popularly consultative institutions, may wind up systematically favouring the interests of members over non-members in practice. Worse, some states may use the rhetoric of compatriot priority to justify ignoring their responsibilities abroad without actually going on to address outstanding domestic injustices. A system of unbridled state-level discretion would thus seem to license widespread moral neglect and complacency, and would for this reason fail to do justice to the full range of commitments that underlie the cosmopolitan statism we favour.

 Appropriately structured multilateral organizations, by contrast, could enable needy parties, or international organizations acting on their behalf, to bring public grievances against neglectful states, compelling powerful actors to justify their actions to those most acutely impacted by them and imposing reputational and perhaps material costs on egregiously irresponsible agents. While according states primary authority over their own political affairs, such a mechanism would nevertheless ensure that the interests of outside parties are adequately represented, and that the coercively backed decisions of states—including restrictions on movement across borders—are in due course “actually justified” (and not merely abstractly “justifiable”) to all persons over whom that

\textsuperscript{54} See Macedo 2011.
power is exercised.\textsuperscript{55} By the same token, properly constrained multilateral institutions, far from undermining the collective self-determination of particular states, could in fact serve to heighten the level of transparency and improve the processes of deliberation and public justification already under way in well-ordered states.\textsuperscript{56}

 Needless to say, the details of this institutional proposal remain to be worked out. Without trying to settle these matters here, we will conclude by recapitulating three more general features of the cosmopolitan statist approach developed above. First, on our view, the statist account of social justice is fully consistent with, and most compelling when complemented by, a range of significant obligations to those beyond the borders of a given political society. Indeed, the very duties of justice that oblige us to support our local political institutions also enjoin us to advance the cause of justice abroad and assist those burdened by unfavourable natural and social conditions. Second, the defining commitment of statism—that our obligations to co-members are more extensive than those to non-members—does not imply that these obligations must take precedence over duties to outsiders in cases of conflict. We are instead permitted, and may at times be required, to prioritize the urgent interests of non-members over the demands of domestic justice when the two sets of responsibilities are for whatever reason mutually unrealizable. Third, and finally, even though cosmopolitan statism is committed to preserving the self-determination of particular states by according them a degree of discretion over matters of domestic policy, this discretion is limited by the global responsibility to secure basic human rights. So while states ought to enjoy primary authority over immigration policy and other questions calling for collective moral judgement, they must be able to demonstrate—before representative multilateral institutions, as necessary—that these decisions are ultimately consistent with treating the most urgent interests of all persons as matters of international concern. To this limited but not insignificant extent, our view shares the commitment to cosmopolitan democracy voiced by the most ardent critics of the traditional statist approach.

References

\textsuperscript{55} Abizadeh 2008, p. 41. Our proposal diverges from Abizadeh’s in that it does not require the “actual participation” of all coerced parties in the initial process of collective decision-making, although unlike Abizadeh, Goodin, and other cosmopolitan democrats, we doubt that democratic values are always or only served by procedural mechanisms that give equal decision-making authority to all affected individuals. For illuminating discussion, see Beitz 2011.

\textsuperscript{56} See Keohane, Macedo, and Moravcsik 2009, esp. at pp. 18–22.


