**Migration, Structural Injustice and Domination**

**On “Race”, Mobility and Transnational Positional Difference[[1]](#footnote-1)**

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**Abstract**

This article addresses current norms of the ‘dispersed’ regime of global migration governance centred on state control of borders as pivotal to the reproduction of structural injustice in the form of racialized patterns of transnational positional difference. It focuses on the implications of this structural injustice for global inequality and, more specifically, for fair access to migration opportunities. Drawing on Rawls’ discussion of background justice and Young’s work on structural injustice, it argues that addressing this structural injustice requires constructing a regime of global migration governance that regulates state migration policies and proceeds to outline, within the terms of non-ideal theory, the basic norms of such a regime and to indicate some practical steps that could be taken toward such a regime.

**Introduction**

In *The Ethics of Immigration*, Joseph Carens remarks:

In many ways, citizenship in Western democracies is the modern equivalent of feudal class privilege – an inherited status that greatly increases one’s life chances. To be born a citizen of a rich state in Europe or North America is like being born into the nobility (even though many of us belong to the lesser nobility). To be born a citizen of a poor country in Asia or Africa is like being born into the peasantry in the Middle Ages (even if there a few rich peasants and some peasants manage to gain entry into the nobility). Like feudal birthright privileges, contemporary social arrangements not only grant great advantages on the basis of birth but also entrench these advantages by legally restricting mobility, making it extremely difficult for those born into a socially disadvantaged position to overcome that disadvantage, no matter how talented they are or how hard they work. (2013: 226)

Here Carens draws attention to the pivotal role that the norm of unilateral state control over borders in conjunction with birthright citizenship plays in controlling access to opportunity and sustaining global inequality. His own liberal response to this constraint – and the rhetorical structure of the analogy is designed to support this response - is to argue for freedom of movement between states as a human right. However, we need not endorse that response in order to recognize the force of his analogy for our contemporary global order. A rather darker analogy is offered by the economist Thomas Schelling in which it is not feudalism but racial apartheid that is analogous to contemporary border practices:

We live in a world that is one-fifth rich and four-fifths poor; the rich are segregated into the rich countries and the poor into poor countries; the rich are predominantly lighter skinned and the poor darker skinned; most of the poor live in “homelands” that are physically remote, often separated by oceans and great distances from the rich. Migration on any great scale is impermissible. (Schelling, 1992: 200 cited in Falk, 1999: 14)

In this article, I explore the relationship of migration, global justice and “race” in the conceptual space identified by these two analogies.[[2]](#footnote-2) I do so through recourse to John Rawls’ reflection on background justice and Iris Young’s development of Rawls’ point in the concept of structural injustice. In presenting this argument, I will also be concerned to demonstrate the limitations of normative approaches to justice in migration that fail to adopt a transnational perspective on migration (i.e., one that focuses on migrants as both emigrants and immigrants) and that elide the historical context of contemporary background norms governing migration. I start by exploring Carens’ and Schelling’s analogies in the context of contemporary global inequality and the historical conditions of production of the patterned structure of global inequality. The second section of the paper introduces the normative frame of structural injustice as a way of approaching this patterned structure of global inequality and the place of norms governing migration within it.[[3]](#footnote-3) I turn in the third section to sketching norms of justice for a regime of global migration governance capable of addressing the identified form of structural injustice. The final section attempts to sketch indicatively some practical ways in which these norms might be realized.

**Migration, “Race” and Global Inequality**

The features to which Carens’ analogy with feudalism points – birthright citizenship and unilateral state control over ‘voluntary’ immigration – are a part of the background institutional rules that enable and constrain human agency in our contemporary world of states. One indicator of the pivotal role that these features of transnational social structure play can be illustrated by noting recent work on global income inequality by Milanovic (2016: 128) which points out that, from the mid-20th century, the contribution of *inter*-state inequality accounts for 80% of global income inequality, whereas *intra*-state inequality accounts for only 20%. This fact is further illustrated by what Milanovic calls ‘the citizenship premium’ (see also Shachar 2009). Thus Milanovic notes:

In a regression I use Congo, the poorest country in the world, as the “omitted country,” so that the citizenship premium is expressed in terms of income gain compared to Congo. The average national premium for the United States is 9,200 percent; for Sweden, 7,100 percent; for Brazil, 1,300 percent; but for Yemen, only 300%. It turns out that we can “explain” (in a regression sense) more than two-thirds of variability in incomes across country-percentiles by only one variable: the country where people live. (2016: 133)

This does not imply that income inequality within states is not also significant. Thus, for example, Milanovic also notes that if we compare the lowest decile, Sweden’s premium increases to 10,400 percent, whereas for the highest decile it decreases to 4,600 percent, while in the contrasting case of Brazil, the lowest decile comparison decreases to 900 percent and the highest decile comparison increases to 1,700 percent (2016: 134). However, the salience of Milanovic’s work for our immediate purposes is to draw attention to the point that transnational social stratification in terms of income is not primarily a matter of ‘national class position’ but of ‘state of residence’ (typically the state of birthright citizenship). To the extent that income can serve as an indicative proxy for opportunity, it would seem that Carens’ analogy with feudalism is well-grounded and draws attention to the point that disparate actors – states, corporations, individuals – pursuing their own interests against the background of a dispersed regime of global migration governance in which each state is entitled to determine unilaterally its own border policy with respect to ‘voluntary’ migration enables the ongoing reproduction of location-based global inequality.

The structure of contemporary global income inequality highlighted by Milanovic has been fairly stable since the global spread of the nation-state and of the norm of unilateral state control over ‘voluntary’ immigration in the period following the Second World War. However, in historical context, it marks a relatively new transnational pattern of positional difference. Here it is worth going back to Milanovic’s work looking at change over the past two centuries. He summarizes his results thus:

*Early 19th century*: Inequality between individuals in the world: Gini around 50, = about 30% due to differences in average country incomes (15 Gini points)+about 70% due to within-national income differences (35 Gini points).
*Early 21st century*: Inequality between individuals in the world: Gini around 65, = about 80% due to differences in average country incomes (53 Gini points)+about 20% due to within-national income differences (12 Gini points)

(Milanovic, B., 2011)

Notably over the past century the Gini-based inequality extraction ratio has remained broadly constant (at around 2/3rds maximum possible extraction). Milanovic concludes thus:

The implication of (a) changing composition of global inequality toward “locationally-driven inequality”, and (b) broadly stable inequality extraction ratio is that the main “inequality extractors” today are citizens of rich countries rather than individual national elites as was the case two hundred years ago. (ibid)

If we place this process in relation to apartheid analogy offered by Schelling, we can note that states are not simply clustered in terms of wealth and power, on the one hand, and poverty and powerlessness, on the other hand, but that this clustering is broadly “racialised” in character. Schelling’s description points us to the central role of European imperial and settler-colonial states over the course of the 19th and first half of the 20th century in the transformation of the world that is expressed in terms of the inter-state contribution to global inequality. This is not simply a matter of formal imperialism’s extraction of natural resources, capital and labour power from its imperial domain through a range of dominating practices (including slavery, indentured labour, state-authorised monopolies, etc.), but also the role of formal and informal modes of imperial power in structuring and restructuring the organization of global legal, economic and political order. There is a long and complicated story to be told here but, for our current purposes, what matters is that the transformation of the social determinants of global income inequality is not (for the most part) a product of the invisible hand guiding things in the wrong direction, but primarily the outcome of an historical process of domination and the reproduction of disadvantage that is racialized and racializing (i.e., productive of racial difference).

This process of domination in its racialized and racializing dimension is itself inextricably bound up with the history of migration, both forced and unforced, and of border policies. It is hardly news to note that the emerging immigration controls introduced by Western states in the late 19th and early 20th century were tied to racist policies. As the balance between intra-state and inter-state contributions to global income inequality shifted to the latter, so too did the relatively open migration regimes of the formal imperial era[[4]](#footnote-4) shift to more closed regimes that targeted specific racial groups such that immigration controls ‘“became a version of racial segregation on an international scale”’ (Fine, 2016: 129). Summarising the import of current scholarship, Fine puts it thus:

In short, race, racism, and racial and ethnic discrimination are embedded in the history of migration, in public responses to immigrations, in the apparatus of immigration controls, and in migration flows. And this is not just a regrettable historical fact; it remains true, even pervasive. (2016: 131)

Thus today, while wealthy and powerful liberal democratic states have formally bound themselves to principles of racial non-discrimination in immigration policy, Joppke’s study of this phenomenon is careful to note that

To say that role of ethnicity in contemporary liberal states immigration policy has shrunk [compared to the start of the twentieth century] is not to say that it has disappeared or will eventually disappear. (2005: 219)

Moreover, as Joppke points out – and as Dumbrava (2014) has amply demonstrated – the prohibition against negative discrimination does not apply to positive discrimination, that is, the privileging of certain ethnic groups who have cultural or other ties to the state of immigration. We may further note with Matthew Gibney (this issue) that the use of denationalization and denaturalisation policies has continued the dominant tradition of racialised bias by targeting dual citizens and naturalised citizens from Muslim-majority countries.

However, even if neither positive nor negative forms of discrimination were to apply directly in respect of contemporary liberal state migration policies, this would *prima facie* simply reproduce the existing patterns of domination and disadvantage concerning migration. The fact that, as Shachar (2016) makes clear, there has been a more general shift in Western state immigration policy towards ‘selecting by merit’ as part of a ‘global race for talent’, itself serves both generally to advantage the migration options of persons with access to high quality education and relatively developed economies, and specifically to enable recruitment of those who have developed relevant skills who are located in disadvantaged states. Moreover, as Boucher (this issue) demonstrates, existing skill definitions in “skilled migration” exhibit racialised biases manifest in stratification by ethnic origin across “skilled” and “unskilled” visas.[[5]](#footnote-5) We should note further that skilled migration policies may – at least in certain sectors of high-skilled labour – further contribute to the reproduction of global inequalities, for example, in terms of access to healthcare (it is notable that each of the three main states involved in the recent Ebola outbreak had been subject to very large scale emigration of health professionals, primarily to wealthy liberal states.[[6]](#footnote-6)) Finally, as Shachar notes, the major risk in a world of stratified mobility is that ‘some will be left behind, or completely outside, the new market-oriented boundaries of membership and belonging.’ (2016:199) and, one should add, those left behind or outside will (at least predominantly) be members of already unfairly disadvantaged racialised groups. In this respect, we might say that the border regimes of liberal western states are ‘extrinsically institutionally’ racist. As Shelby notes:

Extrinsic institutional racism occurs when an institution employs a policy that is race-neutral in its content and public rationale but nevertheless has a significant or disproportionate negative effect on an unfairly disadvantaged racial group. (Shelby, 2016: 24)

Consider an analogy with the history of black Americans in which slavery (analogous to formal imperialism) and Jim Crow (analogous to informal imperialism) were eventually superseded by civil rights but where black-white inequality remains a durable inequality. Fifty years after the Civil Rights legislation of the 1960s, the *New York Times* notes: “The unemployment gap is virtually unchanged over the last 40 years. The income and wealth gaps have actually widened. So has the gap in educational attainment.”[[7]](#footnote-7) No one considering social justice within the USA could sensibility ignore these facts, and the unjust advantage enjoyed by the white population relative to the black population. I propose that the same is the case for the durable inequalities that characterise racialized positional difference in transnational social structure including inequalities in access to transnational mobility. Defences of the unilateral right of wealthy liberal democratic states to regulate their border regimes may insist on the importance of racial non-discrimination, but they exhibit what Shelby (2016: 3) calls ‘the *unjust-advantage blindspot*’ problem in failing to recognize the way that existing social structure serves to enable ‘opportunity hoarding’ on the part of advantaged states who are able to govern the terms of migration from disadvantaged states and reproduce historically rooted conditions of injustice. To flesh out the character of this normative claim, it will be helpful to introduce the idea of structural injustice.

**Structural Injustice and Background Injustice**

In the context of an ideal theory of justice, Rawls draws attention to the phenomenon of background injustice as part of his argument for identifying the basic structure as the primary subject of justice. Thus, in ‘The Basic Structure as Subject’, he remarks:

Suppose we begin with the initially attractive idea that social circumstances and people’s relationships to one another should develop over time in accordance with free agreements fairly arrived at and fully honored. Straightaway we need an account of when agreements are free and the social circumstances under which they are reached fair. In addition, while these conditions may be fair at an earlier time, the accumulated results of many separate and ostensibly fair agreements, together with social trends and historical contingencies, are likely in the course of time to alter citizens’ relationships and opportunities so that the conditions for free and fair agreements no longer hold. The role of institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place. (Rawls, 1993: 265-6 cited in Ronzoni 2009: 235)

As Miriam Ronzoni (2009:232-42) has argued, Rawls’ point is that, in contexts of pure or quasi-pure procedural justice, just interactions between the subjects of justice (i.e., individuals, corporations, states, etc.) cannot be assumed to be self-sustaining, rather these interactions can themselves give rise to conditions in which background justice is undermined. It is important to be clear here that Rawls’ point is that background justice can be undermined even if all participants fully comply with the norms of fairness internal to their local interactions. He writes:

Fair background conditions may exist at one time and be gradually undermined even though no one acts unfairly when their conduct is judged by the rules that apply to transactions within the appropriately circumscribed local situation. … We might say: in this case the invisible hand guides things in the wrong direction. (Rawls, 1993: 267 cited in Ronzoni, 2009: 241)

As Ronzoni acutely notes:

This is a recognition of the fact that, independently of the motivations of individuals or other noninstitutional actors in their various transactions, there is no feasible set of rules that can be applied to them directly and succeed in preventing the erosion of background justice. For the effects of accumulated, overlapping, and crisscrossing transactions are “so far in the future, or so indirect, that the attempt to forestall them by restrictive rules that apply to individuals would be an *excessive* if not an *impossible* burden.” There are tasks that individuals simply cannot fulfill. Due to problems of collective action and epistemic limits to how much one can foresee the consequences of one’s actions, no society can be just if no suitable institutions protecting background justice are in place. (2009: 235)

Thus, the main point that Rawls’ is making is that background injustice cannot be secure independent of the establishment of a just basic structure or, more precisely, that the basic structure must be designed not only to create a fair distribution at an initial point but also to prevent subsequent background injustices which could otherwise emerge without any individual acting wrongly.[[8]](#footnote-8) But there is a second, more subtle point that Ronzoni draws from Rawls’ discussion, namely, that the kind of basic structure and principles of justice that regulate it which are required are dependent on the kind of background injustice that is liable to arise out of the interactions in question. As Ronzoni (2009) argues, two points matter here. First, the same general point applies to background injustice at the transnational level in respect of the relations between the various kinds of global political actors. Second, the principles of justice that are relevant at a transnational level will be distinct from those that apply at a state level if the forms of injustice that are to be addressed are distinct. For example, it may plausibly be argued that in a world of states committed to the norm of state sovereignty, international background justice concerns the conditions under which all states can enjoy effective powers of self-rule, that is, powers of self-rule sufficient to maintain internal background justice and to engage as equals in cooperative process of international norm-making (Ronzoni, 2009).

To illustrate this general point, suppose one held that an attractive picture of justice in ‘voluntary’ migration was one of free and fair agreements between migrants (M) from a state of emigration (SE) and a state of immigration (SI), where a free and fair agreement is specified in terms of a relationship in which the power of M and of SI to set and pursue their ends is reciprocally shaped, that is, M and SI have equal access to the power to shape the terms of their relationship (to initiate, alter or end it without incurring unreasonable costs) and neither parties choice of whether to exercise of his power in relation to the other is a matter of (effectively) unconstrained discretion. One can easily imagine a process through which, on the basis of patterns of voluntary migration, social trends and historical contingencies, SI becomes relatively advantaged compared to SE such that migrants from SE no longer stand in this type of relationship to SI, rather in this context M’s power to set and pursue her ends is non-reciprocally shaped by SI’s choices because M lacks equal access to the power to shape the terms of their relationship and SI’s choice of whether to exercise of his power in relation to M is a matter of (effectively) unconstrained discretion for SI. This structure of unfree and unfair terms of migration is, if we abstract from particulars, the position described in the preceding section, though as I noted that was not primarily a case of the invisible hand guiding things in the wrong direction.

The concept of structural injustice is introduced by Young in the context of non-ideal theory to pick out the salience of the point to which Rawls has drawn attention:

*Structural injustice* exists when the combined operation of actions in institutions puts large categories of persons under a systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time as they enable others to dominate or give them access to an abundance of resources. Structural injustice is a kind of moral wrong distinct from the wrongful action of an individual agent or the wilfully repressive policies of a state. Structural injustice occurs as a consequence of many individuals and institutions acting in pursuit of their particular goals and interests, within given institutional rules and accepted norms. (2007: 170)

Young is not here denying that wrongful actions or repressive policies may have played a formative role in establishing the ‘institutional rules and accepted norms’, rather her point is that structural injustice is not dependent of any current agent acting wrongly when their conduct is judged by the widely accepted rules that apply to transactions within the appropriately circumscribed local situation, for example, the well-established norm that states’ are entitled to unilateral control of their border regimes with respect to ‘voluntary’ migration.[[9]](#footnote-9) As Catherine Lu nicely puts it:

Social structures consist of the normative, institutional and material resources that together compose the background institutional rules and conditions that enable and constrain agency. The concept of structural injustice focuses not on unjust acts or interactions between agents but on the social structures and processes that condition their interaction, embodied in “institutions, discourses, and practices”. (2017: 148)

Moreover, as Lu acutely argues:

While structural injustices are contemporary injustices perpetuated and experienced by contemporary agents, it “is not possible to tell this story of the production and reproduction of the structures without reference to the past.” … Under this approach, then, contemporary agents, however, they are (or are not) related to past agents, come to share a moral and political responsibility to reform the social structures in which they participate; but since structural injustices are typically historic productions, contemporary agents’ responsibility to reform unjust social structures is a responsibility that is derived partly from historic injustices. … A structural approach views the legacy of historic injustice … in terms of continued patterns of exclusion, domination, subordination, exploitation, and marginalization that are reproduced by contemporary social structures and relations. (2017: 148-49)

Under contemporary circumstances, the norm of state unilateral control over ‘voluntary’ migration is pivotal to the social reproduction of racialized transnational patterns of ‘exclusion, domination, subordination, exploitation, and marginalization’ between the citizens of advantaged states and those of disadvantaged states that are rooted in a history of formal and informal imperialism, on the one hand, and of racialized migration controls, on the other hand. How though should this condition of structural injustice be addressed?

**Justice and Global Migration Governance**

The structural injustice with which we are concerned pertains to the role of the current norms governing international migration in reproducing racialized patterns of transnational positional difference in terms of inequality between citizens of states, both generally and specifically in terms of fair access to migration opportunities. Our starting point is that this structural injustice cannot be addressed through a dispersed regime of global migration governance in which states have unilateral rights concerning border controls, rather it requires that the entitlement of states to determine their migration policies is constrained by norms of justice, where this requires a coordinated and cooperative regime of global migration governance whose focus is on transforming a transnational social structure that patterns access to migration opportunities and wider equality of access to advantage in ways that are unjust. There are two dimensions to our non-ideal enquiry. The first concerns the norms that should govern ‘voluntary’ transnational migration; the second concerns the construction of the regime of global migration governance.[[10]](#footnote-10) I’ll address each in turn, however, before doing so I should note the basic normative constraint under which the account that I offer will proceed, namely, that it takes a world of states as the default background for the account and conceives of individuals as having a fundamental interest in being members of a state that has effective powers of self-rule, that is, a state whose people can coherently (a) see themselves as engaged in collective self-rule, where this requires a secure range of human rights (Owen, 2016), and (b) see their state as able to engage as an equal in the cooperative process of international norm-making (Ronzoni, 2009; Laborde and Ronzoni, 2015).

Given the structural injustice with which we are concerned, one approach to addressing it would be to adopt a global harm principle and to argue it is a shared responsibility of justice of *all* states not to adopt migration policies that contribute to the reproduction of existing disadvantage. Thus, for example, Higgins has proposed the principle that ‘an immigration policy is unjust if it avoidably harms a social group that is already unjustly disadvantaged’ (2013: 110). Despite Higgins’ pioneering focus on structural injustice, there are, I think, two main problems with this principle. The first is that is taking *harm* to be the sole salient register, it does not recognize that being *harmed* and being *wronged* are normatively distinct: one can be harmed without being wronged and wronged without being harmed. Recall that the concept of structural injustice focuses on both domination and disadvantage, not merely the latter. Thus, state A may introduce an immigration policy that greatly benefits the unjustly disadvantaged citizens of state B in terms of access to valuable migration opportunities but that, at the same time, wrongs them by establishing a relationship of domination in which their access to these opportunities is significantly dependent on the discretionary choice of state A. The second is that it does not distinguish between social groups (for example, women) and political groups (for example, citizens of a state). This is important because the structuring of global political order in terms of states means that citizenship is not simply one form of group membership amongst others, but a distinct kind of membership that stands in a distinctive relationship to international norm-making. Thus, in contrast to Higgins, I suggest three basic norms should structure global migration governance (GMG):

1. GMG should enable individual’s enjoyment of fair access to migration opportunities[[11]](#footnote-11) and must not deny individuals the effective ability to exercise their right not to be prevented from leaving their state of nationality (or habitual residence);
2. GMG should not undermine the effective ability of any state to secure human and civic rights for its residents and citizens, or to engage in shaping reciprocally the construction of fair norms of global governance, including norms of global migration governance.
3. GMG should support global equality of access to advantage as far as compatible with (1) and (2).

The first norm recognizes fair access to migration opportunities as a right to which individuals are entitled as equal members of global political society to whom the coercively-backed territorial borders of the international system of states must be justified. It also registers the point that the human right to leave one’s state as a condition of not being subject to domination can be obstructed *either* by one’s state (in which case this state is a structure of domination) *or* by the denial of entry into any other state (in which case the international order of states is a structure of domination). The second norm recognizes that if global migration governance is to be compatible with a world of self-ruling states, then it needs to be structured in a way that does not undermine the ability of states to be self-ruling in either internal or external dimensions. The third norm widens the scope from justice-in-migration to the broader relationship of migration to global justice in which migration is one of the means through which global inequality can be addressed.

This account generates a general duty on states both to try to instantiate the relevant norms and to work to construct such a regime. These tasks are practically inter-related since establishing just norms of migration requires constructing a fair regime of global migration governance. But under current conditions of structural injustice although the responsibility to take up these tasks falls on advantaged and disadvantaged alike, the distribution of the shared responsibility to address structural injustice does not fall on them equally nor should the distribution of decision-making power concerning how to proceed in establishing a regime of global migration governance. I’ll take these points in turn.

While all states have an obligation to work towards realizing practices of global migration governance that instantiate these principles, we should also acknowledge that states that have accrued or maintained power and access to advantage through the structural injustice of the contemporary global order should bear the main burdens of the transformation of the transnational social structure toward a just global political order. Thus, for example, moving beyond the terms of the general obligations noted above, we could plausibly infer that advantaged states have a responsibility to adopt migration policies that seek to prioritize access to migration opportunities of those who are most disadvantaged, i.e., to overcome nationality-based extrinsic institutional racism through affirmative action, that are designed to support the development of the capacities for self-rule of disadvantaged states, and to promote global equality.

However, at the same time, we need to stress two further points that can be drawn out by reference to a characteristic that Young identifies in specifying the phenomenon of structural injustice:

The actions and interactions which take place among persons differently situated in social structures using rules and resources do not take place only on the basis of past actions whose collective effects mark the physical conditions of action. They also often have future effects beyond the immediate purposes and intentions of the actors. Structured social action and interaction often have collective results that no one intends and which may even be counter to the best intentions of the actors. Sartre calls such effects counter-finalities. (2007: 170)

The key issue here is that this characteristic also *necessarily* encompasses efforts to transform social structures in order to mitigate or remove wrongs and harms which the current structure produces. The first point to which I want to draw attention is that this stresses once more that addressing the structural injustice with which we are concerned requires establishing a cooperative regime of global migration governance. The second point is that the efforts of states in pursuing the task of constructing such a regime may themselves ‘have collective results that no one intends and which may even be counter to the best intentions of the actors’. This is particularly so because migration interacts with so many other aspects of global social, political and economic order. Given this, there is a compelling reason for those who are most dominated and disadvantaged by a given set of institutional practices and social processes to have a *pivotal* role in determining the courses of action to be taken in transforming these processes, namely, that they are most vulnerable to well-intentioned actions producing unintentional negative outcomes. Thus, on this account, whereas we might argue that *responsibility for change* should be distributed on the basis of the degree of causal role in reproducing structural injustice, of advantage accrued through structural injustice, and of power to transform the social structure; *decision-making power fo*r *(the direction of)* *change* should be arranged in terms of the degree to which actors are dominated or disadvantaged under the current social structure (Owen, 2014b).

What might these abstract considerations imply translated into more concrete practical terms? And how might the acceptance of such policies be motivated among actors for whom considerations of justice are not sufficient reason to surrender power and advantage? These are large questions, but I will at least try to provide the beginnings of a response to them. However, before I do so, let me recall attention to the racialized character of the structural injustice that we are addressing in order to note that the points made in this section can be seen as requirements of establishing the condition of equal respect for persons regardless of race in global political society.

**A Global Migration Compact**

The preceding section argued both for general norms of global migration governance and for three more specific claims: (a) that migration opportunities in advantaged states should prioritize the members of disadvantaged states, (b) that the policies – including migration policies – of advantaged states should aim to support the capacities of disadvantaged states to be self-ruling (i.e., to be human rights compliant, constitutional states, probably characterized by at least minimally democratic rule, and able to participate as more-or-less equals in international norm-making) and aim to promote global equality, and (c) that disadvantaged states should have greater decision-making power concerning the policies and practices through which any commitments to (a) and (b) are articulated (for example, by having a collective veto power over international policies in this area). How might these norms be established?

Let us start by noting that the relationship between advantaged and disadvantaged states has costs not only for the latter but also for the former in that it supports the production of fragile states that are liable to internal and external conflicts generating refugee flows as well as limited internal opportunities that generate incentives for migration, both regular and irregular. Moreover, as recent events exhibit, the ability of advantaged states to contain their exposure to such perceived costs is weakening, while also exacerbating political tensions within and between advantaged states, not least over immigration. There are, then, reasons for advantaged states to wish to reduce the fragility of disadvantaged states and associated refugee flows, on the one hand, and to reduce irregular immigration and the associated political costs of attached to the public perception of governmental or policy failure in relation to immigration. At the same time, significant levels of low-skilled labour immigration are generally advantageous to migrants, sending states, and receiving states – and feasible under conditions where such migration is seen as temporary and as involving restricted access to citizenship. Martin Ruhs (2013, see also 2016 & 2017) has demonstrated that there is a so-called ‘rights vs. numbers’ trade-off in the context: ‘The trade-off between openness and some specific migrant rights in high-income countries' labour immigration policies means that insisting on equality of rights for migrant workers can come at the price of more restrictive admission policies and, therefore, discourage the further liberalization of international labour migration.’ (2016: 288) As Ruhs and others (for example, Milanovic 2016) have argued, there are good reasons to engage in this trade-off within ‘a rights-based approach to international labour migration that is premised on ‘the protection of a universal set of "core rights" and accounts for the interests of nation-states by explicitly tolerating temporary restrictions of a few specific rights that can be shown to create net costs for receiving countries’ where this supports the liberalization of international labour migration (Ruhs, 2016: 289).[[12]](#footnote-12) Thus, a first concrete proposal would be for advantaged and disadvantaged states to seek a global agreement concerning (i) priority for members of disadvantaged states in access to low-skilled temporary labour migration opportunities and (ii) maximizing such opportunities within reciprocally justifiable limits to the trading of rights for numbers (see Ruhs, 2013: 185-86).

This view has been subject to three main lines of criticism. The first concerns exceptions to the empirical pattern that Ruhs identifies and asks whether ‘outliers’ such as ‘Sweden, which not only has an open migration policy but also grants equal social, residence, wages, family reunion, and other rights to all migrants, regardless of skill level’ (Leighton, 2015: 279) do not offer a feasible ‘high road’ forward that avoids the dilemma Ruhs identifies. However, extant empirical evidence at best supports the view that Sweden might be a plausible model for a limited range states with coordinated (rather than liberal) market economies and social-democratic or conservative welfare states (Ruhs 2017) and, hence, it supports only the view that

any common global policy approach needs to take account, at least to some extent, of institutional variations across countries. A list of universal and inalienable core rights that allows some room for differential restrictions on migrants’ access to the welfare state, for example, has a much better chance of acceptance and implementation than an approach that demands equality or near-equality in rights in all countries regardless of their institutional differences. (Ruhs, 2017: 29)

The second criticism is that such trade-offs are not risk-free either for migrants or for citizens of receiving states since accepting such trade-offs may erode commitment to equal rights protection more generally. If rights can be traded here on these grounds, why not elsewhere on other grounds? This is a genuine concern, but it gets part of its purchase from the framing as one of “rights vs numbers” which makes it appear as one of “rights versus welfare/utility”. If we think of it, as we should on my account, as one of a tension between two contexts of justice, as a conflict between the rights of admitted migrants (domestic justice) and the rights of potential migrants (global justice), then while it remains a difficult issue (Carens, 2013: 124-26), the ‘erosion’ concern is less directly pressing. The third criticism is that Ruhs’ argument is too restrictive in the trade-off that it is willing to admit and that we could achieve considerably more in terms of promoting global income equality if we allowed more rights to be traded off – for example, we allowed immigrant labour to operate at lower wage rates for the same tasks and under less demanding health and safety regimes than citizen workers, perhaps also without access to trade union membership. Immigrants might, after all, plausibly consent to such a bargain. There are at least two objections to this view. The first is that the appeal to consent is otiose under the radically unequal conditions that apply and amounts to exploitation of the dependent position of immigrants (as a specific form of domination). The second is that such a proposal is liable to introduce a racialized division of labour that is morally objectionable in itself and, to the extent that the receiving state has citizens who share ascribed characteristics with the immigrants, to undermine civil equality (or further exacerbate racialized civil inequality) within the state. The duty of advantaged states to contribute to the promotion of global economic equality involves identifying instrumental routes that do not constitutively contribute to undermining other dimensions of global equality.

The ‘rights-numbers’ trade-off does not apply in the context of high-skilled migration but the recruitment of high-skilled persons from disadvantaged states can have positive effects on economic development and opportunity creation in those states (for example, in terms of trading links and knowledge transfers) and negative effects on the access of the members of those states to human and civic rights, both directly in terms of the loss of significant numbers of medical professionals, for example, and indirectly in terms of the effects of the loss of significant numbers of middle class professionals on establishing or supporting stable democratic institutions (Blake and Brock, 2013: 36-59). The key issue here is trying to ensure an agreement that regulates the recruitment of high skilled migrants by advantaged states from disadvantaged states in ways that support opportunity-creation and capacities for self-rule. Rather than merely compensating disadvantaged states for the loss of high skilled citizens (typically skilled in virtue of state investment in their education) in fiscal terms, such regulation could sensibly (i) encourage circulatory migration of the high-skilled between advantaged and disadvantaged states and, independently, (ii) tie high skilled migration to increased access for temporary low skilled migration and/or resources for development and capacity-building in the state of emigration (Kapur and McHale, 2005: 178). However, whereas cooperation between advantaged and disadvantaged states with respect to low skilled labour migration has clear benefits for both sets of parties, it is much less clear what benefits advantaged states would gain from cooperating with disadvantaged state in respect of high skilled migration (Betts & Cerna, 2011), given that disadvantaged states cannot legitimately prevent (even if they may delay) high skilled citizens from leaving (Blake and Brock, 2013). Disadvantaged states do have some levers available to them. First, given the competition between advantaged states for high skilled labour, they may provide significant incentives for migrants to choose states that agree to regulations of the kind specified above. Second, they may bundle cooperation on high skilled migration with cooperation on low skilled migration and, indeed, on irregular migration. Third, they can engage in issue-linkage to put pressure on advantaged states by tying high skilled migration to international agendas on development and human rights.[[13]](#footnote-13)

Reflecting on these types of questions leads us to the third issue, namely, empowering disadvantaged states with respect to decision-making concerning how to realize (a) and (b). There are, I think, two conditions that can support this aim. The first hangs on the fact that power is a positional good and, more specifically, a positional good that is specified by the relation between parties that can be constituted in different ways. In other words, the power of X in relation to Y is one thing if X is a disadvantaged state and Y is an advantaged state and quite another thing if X is a coalition of disadvantaged states and Y is an advantaged state. It is this feature of power that gives rise to the basic political principles of the dominated: ‘In unity, strength’ – and of the dominator: ‘Divide and rule’. Disadvantaged states can be empowered insofar as they form a unified coalition for purposes of negotiating norms with advantaged states and are able to take advantage of the fact that advantaged states are in competitive relations to one another. The second is the strategy of mutual aid, that is, of encouraging mutually productive forms of migration (as well as other relations such as trade and knowledge/skill sharing) within the domain of disadvantaged states to augment their capacities. The kind of mutual bootstrapping not only supports development but also reinforces the capacities, dispositions and skills need for cooperation as a coalition in relation to advantaged states insofar as such states seek to create and exploit divisions in any such coalition. The history of the proposals for the *New International Economic Order* in the 1970s provide a relevant case-study in both the possibility of such collective action and the difficulties it will confront.[[14]](#footnote-14)

**Conclusion**

In this article, I have sought to draw attention to the way in which the conjunction of birthright citizenship, the unilateral right of states to control their borders with respect to voluntary migration, and the human right not to be prevented from leaving the territory of a state play a pivotal role in the reproduction of structural injustice in the global political order that is expressed as a racialized pattern of transnational positional difference. To address this condition of injustice, I have outlined an account of justice in migration in terms of general norms of global migration governance and highlighted some specific norms that may be contextually derived from this account. Finally, I have tried to give some indications of what this might imply for political practice. The argument provided in this essay is necessarily sketchy in terms of its historical reconstruction, the empirical evidence concerning contemporary labour migration that it adduces, and the indicative proposals that it offers. It is thus thoroughly defeasible. If the general form and thrust of the argument presented is cogent, it has the important methodological implication that accounts of justice in migration that attempt to specify just norms of immigration to the state conceived independently of attention to the fact that immigrants are also emigrants embedded in a racialized history of international order and migration controls are incapable of performing the task that they set themselves.

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1. An earlier version of this paper was presented at a workshop on "Race, Gender and Class in the Politics of Migration" organised by Antje Ellerman at the Social Science Research Center in Berlin, Germany, on May 12-13, 2017. I am grateful to Antje for the invitation and all her editorial work. I benefitted from comments from many of the participants but owe a particular debt to Sarah Song who acted as the commentator on my paper and also suggested that I ask Catherine Lu about her own work on structural injustice. I am grateful to Catherine for providing access to that work prior to its publication. I owe a particularly important debt to an anonymous reviewer who put his/her finger on a conceptual equivocation in the earlier version of the paper and offered a very constructive proposal to addressing it. I would also like to thank Martin Ruhs for discussion of the debate concerning the ‘numbers vs rights’ trade-off and for providing access to a forthcoming paper on this issue. [↑](#footnote-ref-1)
2. Although my focus is on racialised positional difference, the gendered and class dimension of positional difference – which often intersect with racialised positional difference can also be addressed in terms of structural injustice. See Antje Ellerman’s introduction (this issue) for a clear analysis of these three dimensions and the intersections between them. [↑](#footnote-ref-2)
3. A previous use of this concept in relation to migration justice to which I am indebted is Higgins (2013). [↑](#footnote-ref-3)
4. Freedom of movement within and across imperial and post-imperial domains was, and was intended to be, primarily freedom of ‘white’ movement. Thus, for example, Diego Acosta notes of post-independence South America that: ‘Open borders was primarily a civilising project in which the agents were to be white male productive Europeans.’ (2017: 1) [↑](#footnote-ref-4)
5. An issue that I do not address in this essay but which is raised by Boucher’s argument concerns the point that ‘migrant statuses’ are the product of exercises of public power and hence invite the question of to whom this exercise of public power must be justified, see Owen (2014a) for discussion of this issue. [↑](#footnote-ref-5)
6. See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2254438/> for data on loss of medical professionals and their destination states. [↑](#footnote-ref-6)
7. <https://www.nytimes.com/2014/08/20/upshot/americas-racial-divide-charted.html?_r=1> accessed 20/9/2017. [↑](#footnote-ref-7)
8. I am grateful to a referee for pushing me to be more precise and for providing the formulation that I use. [↑](#footnote-ref-8)
9. Young’s development of the concept of structural injustice builds on, and departs from, Rawls’ argument in certain respects of which two require mention here. First, whereas Rawls’ adopted the idealization of a closed society, Young does not. This matters for two reasons: (a) Young’s account of justice, and of structural injustice, is not bounded by the borders of the state and (b) while Rawls’ appears to construe the argument for the basic structure as the primary subject of justice variously in terms of institutions that regulate the terms of social cooperation, that have a pervasive impact on persons’ life-chances, or that subject persons to coercion, where these distinct criteria are liable to overlap significantly with the context of a state, Young needs to specify the relevant criterion of justice in a way that demarcates both its grounds and its scope. She argues that the normative basis of claims of justice lie in the social connections between persons situated in a scheme of power and, more specifically, in the extent to which such social connections support or undermine relations of non-domination and equal access to advantage amongst those so situated. On the basis of this view of the source of relations of justice, she defends the thesis that the scope of a given set of relations of justice is given by the extent of the social connections articulated in and through social structures that individuate the relations of justice in question. In the context of migration, the relevant scheme of power is a global structure of rule organised as an international system of states that are sovereign with respect to the determination of their border regimes for ‘voluntary’ immigration. Young’s second departure is to bring a more developed sociological theory than Rawls to bear on the issue of social structure as comprised of the following four features:

	1. A social structure is a multidimensional space (Blau) or field (Bourdieu) composed of positions and their relationships across which a given population is distributed.
	2. Social structures exist only in the actions and interactions of persons; as processes, not states, composed of the recursive employment of rules and resources (what Giddens call *structuration*).
	3. Social structures inherit the outcomes of past actions and interactions in the form of determinate material and ideational effects on the physical and cultural contexts (the *practico-inert* in Sartre’s terms) within which contemporary action and interaction is situated and which condition their possibilities for action in various ways.
	4. Structured social action and interaction often have consequences that extend beyond the intentions of the individual and collective actors involved and may produce effects that are counter to the best intentions of these actors (what Sartre refers to as *counter-finalities*). (2007: 170)This is particular salient in the context of the fact that she is developing a non-ideal approach to justice. [↑](#footnote-ref-9)
10. [↑](#footnote-ref-10)
11. Fair access to migration opportunities has two dimensions. First, a general dimension concerning access to an adequate range of valuable ‘civil associative’ options (i.e., moving to and acquiring membership of other states). Second, a more specific dimension that concerns access to an adequate range of valuable options for pursuing one’s personal projects. What is entailed by fair access to migration opportunities here will be dependent on the degree of access to an adequate range of valuable options in one’s home state. Hence, as a general presumption, citizens of wealthy liberal democracies would require less migration opportunities than citizens for poor fragile or wealthy illiberal states. [↑](#footnote-ref-11)
12. Ruhs is careful to stress the limits of this trade-off (2016: 288). [↑](#footnote-ref-12)
13. One objection raised by a referee is that this argument in being focused on states elides issue of “within state” racial hierarchies and depends on a presumption of “one state, one race” in advancing this claim about low-skilled and high-skilled migration. I don’t think this is quite right, since the argument can acknowledge that many sending states have racial hierarchies but also plausibly assume that who are high-skilled and who are low-skilled will tend to reflect those racial hierarchies and hence that privileging low-skilled migration still supports racial equality. But this is an assumption and inference that may be empirically mistaken, and it is possible that the benefits of such managed migration might accrue unevenly to the racially privileged in sending states, even if they also racially disadvantaged from a transnational perspective. Addressing this issue would require detailed empirical analysis but the point it raises may constitute a fourth objection to Ruhs’, and my own, argument. [↑](#footnote-ref-13)
14. For this analogy, see <https://hbr.org/2012/04/the-new-new-international-econ> accessed 20/9/2017. I am grateful to Leah Zamore for drawing the salience of NIEO to my attention. [↑](#footnote-ref-14)