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Which Borders?

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Abstract: The best arguments for a nation-state's right to exclude unwanted outsiders actually condemn nation-level regimes of restriction. Two argumentative steps lead to this conclusion. The first points out that the best arguments for exclusion generalize: if they show that nation-states have the right to exclude, they perform the same service for a great many towns, cities, subnational states, and provinces. The second step constructs a dilemma. The right to exclude is important enough to justify the suffering of would-be immigrants, or it is not. If it is, the right to exclude is very important indeed—would-be immigrants often suffer grievously. But nation-level regimes would then be a serious moral problem: they would deprive a great many municipalities of a right that matters a great deal. Turning to the dilemma's second horn, if the right to exclude is not important enough to justify the suffering of would-be immigrants, nation-level regimes are straightforwardly immoral. Either way, we arrive at this paper's central thesis: the best arguments for a nation-states right to exclude actually condemn nation-level regimes of exclusion.

Keywords: immigration control, open borders, immigration, right to exclude

Modern regimes of immigration control are nation-level. Of all the municipalities we have made—counties, towns, cities, subnational states, and provinces—nation-states are the only ones with the legal right to exclude unwanted outsiders from their territory.¹ Four defenses of this arrangement stand out: Christopher Wellman's argument from the freedom of association, Michael Blake's avoiding-unwanted-obligations account, Ryan Pevnick's mobilization of associative property rights, and David Miller's cultural argument. This paper's thesis, supported in two steps, is that each of these four arguments actually condemns nation-level regimes of exclusion.

§ 1 shows that the foremost arguments generalize: if they show that nation-states have the moral right to exclude, they show that many subnational

¹ I will use 'the right to exclude' as a shorthand for 'the right to exclude outsiders from territory' throughout. I will use 'state' to refer to subnational states.

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municipalities do too (hundreds of thousands of them, depending on the argument). The generalization problem is not entirely new, and advocates of border control have mounted replies. §1 develops the problem with rigor and shows that the replies fail.

Why is generalization a problem? How does it condemn nation-level regimes? §2 constructs a dilemma. The moral right to exclude is important enough to justify the suffering of would-be immigrants, or it is not. If it is, the right is very important indeed—would-be immigrants often suffer grievously. But if the right to exclude is so important, nation-level regimes are a moral problem because they deprive so many subnational municipalities of something that matters a great deal. On the dilemma's other horn, the right to exclude lacks the moral heft to justify the suffering of would-be immigrants. That too would (straightforwardly) make nation-level regimes a deep moral problem. Either way, we arrive at this paper's central thesis: the best arguments *for* a nation-state's right to exclude actually *condemn* nation-level regimes.

1 The generalization problem

This section examines the foremost arguments for a right to exclude—arguments by Christopher Wellman, Michael Blake, Ryan Pevnick, and David Miller. Each succumbs to the generalization problem.

1.1 Christopher Wellman: Freedom of association

For individuals, the freedom of association is not only the ability to be with the people you want, it is also the ability to refuse relationships with people you'd rather avoid. Women who cannot refuse marriage partners, for example, do not have the freedom of association.

Wellman's key idea is to say that what goes for individuals goes for groups as well. Groups have the right to the freedom of association, and that implies a right not to associate with unwanted others. His argument begins with small-scale examples—golf clubs, on his reckoning, are groups that have the right to exclude unwanted outsiders. He then scales up to argue that, as groups, nation-states have that right too.

Why are nation-states the sort of group that has a right to freedom of association? According to Wellman, for the same reasons that golf clubs are. Large numbers of new members can change the character of a golf club, and,

therefore, the experience of membership. Existing members have an interest in controlling such changes. Similarly, large numbers of new members can change the character of a nation-state. The changes might be positive. But Wellman's point is that citizens have an interest in control.

[Citizens will often care deeply about their country's culture, economy, and political arrangements, and thus, depending upon their particular preferences, may well seek more or fewer immigrants, or perhaps more or fewer immigrants of a given linguistic, cultural, economic, and or/or political profile. (Wellman 2016, p. 83)

So: members of a nation-state have an interest in the experience of membership; culturally different outsiders can change that experience; and that interest generates a right to exclude unwanted others. The generalization problem arises because, like nation-states, subnational municipalities can change drastically when culturally different outsiders move in—even if the culturally different outsiders happen to be co-nationals. The point is not that changes would be bad. The point is that if caring about the national culture, economy, and politics gives citizens of a nation-state the right to exclude, caring about the local culture, economy, and politics should give the residents of towns, cities, states, and provinces the right to exclude as well.

Every subnational municipality is vulnerable to change. Every subnational municipality houses residents who care about the experience of membership. Wellman began with golf clubs and scaled up to nation-states. Logical consistency demands that he scale up to towns, cities, states, and provinces as well.

To his credit, Wellman has recently considered a version of this criticism. He imagines that the Eastern and Western halves of the United States—divided by the Mississippi River—stopped allowing residents from the other half to migrate. He reluctantly concludes that such an arrangement would, strictly speaking, be legitimate (Wellman 2016, pp. 89f). But Wellman seems to underestimate the problem in two ways.

First, his view does not merely have implications for the Eastern and Western halves of the United States; it implies that each of the hundreds of thousands of subnational municipalities in the world has the same moral right to exclude that nation-states (allegedly) do. Second, Wellman is not merely stuck with the conclusion that, should municipalities under the same national flag begin curtailing migration from one another, the resulting arrangement would be legitimate; he is stuck with the conclusion that nation-level regimes are actively denying subnational municipalities their right to exclude unwanted outsiders.

1.2 Michael Blake: Avoiding unwanted obligations

Blake's argument begins with the observation that whatever 'else a state might be ... it is at its heart a *jurisdictional* project.' (Blake 2013; emphasis in original) Nation-states are joint undertakings that lay claim to a limited territory.

Why is jurisdiction significant? Given that nation-states wield authority over a particular territory, they are under an obligation to 'protect the human rights of those persons who are within its territorial jurisdiction.' (*ibid.*, 111) This is no small task. It requires the creation and maintenance of a wide range of institutions and services—law enforcement, courts, systems of health care, and others. So when new members join a nation-state, the host citizens acquire a new set of obligations. Their institutions and services have a brand new person to serve.

Blake's point is not that it is expensive or difficult for nation-states to accept new members. It is rather that new immigrants mean new obligations—or, at least, new objects of obligation—and that we have a right to refuse. To make that case, he repurposes Judith Jarvis Thompson's famous violinist example. Suppose that violinists must be attached to hosts to survive, and that hosts have an obligation to care for the violinist they are attached to. If a violinist wanted to switch hosts—attaching to you—you would have the right to refuse. You 'would seem to have some right to defend your liberty to live your life free from the obligation to support any particular violinist, at least where that violinist's rights are already adequately protected by another.' (*ibid.*, 116) But if that is so, Blake concludes, a nation-state should also have the right not to host new immigrants, provided a different nation-state is already doing the job.²

The generalization problem arises straightforwardly: Nation-states are not the only jurisdictional projects that are responsible for protecting human rights. Nation-states establish armed forces for security, foster an economy in which people can meet their basic needs, establish appropriate safety nets, develop networks of health care, and ensure that citizens have the chance to participate in politics. Towns, cities, and states do these very same things. They establish armed forces for security (e. g., police), and they regulate their respective local economies so that residents can get what they need. They often sponsor clinics so that residents can get health care, and they write laws to ensure that locals can afford housing. They hold elections and town hall meetings to ensure that residents can participate in local politics.

It is tempting to think that nation-states are a special kind of jurisdictional project: unlike smaller municipalities, they are *especially* important for protecting

² Blake does, for this reason, say that we are obliged to accept refugees. Refugees are not trying to 'switch hosts', they trying to get their basic rights respected.

our rights. But examples like the Jim Crow era in the American South prove the tempting thought false. Slavery was by federal law illegal; but local Southern governments used a combination of sharecropping, Black Codes, convict lease systems, and terror to functionally keep slavery alive. Centralized bureaucracies cannot be everywhere and do everything; they rely on local structures of governance to implement their laws and administrate their programs. The local sheriff is just as essential for protecting human rights as the national legislature. So if Blake explains why nation-states have a right to exclude, he explains why the rest of our rights-protecting jurisdictional projects do too.

Blake claims this problem can be dealt with quickly: subnational municipalities ‘may be unable to exclude unwanted outsiders, not because it is in principle forbidden for them to do so, but because the particular purposes of the legal union between those units make it impermissible for them to do so.’ He approvingly cites a Supreme Court opinion.

It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedients of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo: ‘The constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that, in the long run, prosperity and salvation are found in union, not division.’

On the simplest reading, Blake’s response is that subnational municipalities may not claim the right to exclude because it would undermine ‘prosperity.’ But this simple, prosperity-focused interpretation will not do. Blake is correct that cities and towns would undermine prosperity by excluding their co-nationals—people and economies prosper when folks can migrate to pursue jobs, education, and other opportunities. The problem, as economists have long pointed out, is that nation-states probably undermine prosperity when they exclude outsiders too.³

Is there a more nuanced reading? Perhaps Blake’s suggestion is that subnational municipalities have agreed to join together, voluntarily forming a union that looks out for constituent interests by, among other things, allowing free migration. Whereas the first interpretation emphasizes the moral importance of prosperity, the second emphasizes the moral significance of an agreement between subnational municipalities.

But the agreement-focused interpretation inherits many of the now-familiar issues with social contract theory. It imagines subnational municipalities as

³ This is a widely recognized consensus. See, for example, https://www.washingtonpost.com/news/wonk/wp/2016/10/14/why-economists-love-and-politicians-detest-the-idea-of-opening-the-borders-to-lots-more-immigrants/?noredirect=on&utm_term=.4b486b396ac2.

independent entities that, freely and fairly, decided to join hands. In reality, many subnational municipalities were forcibly annexed. Many that made an explicit choice to join hands did so under conditions that were hardly free or fair—a few wealthy, land-owning men consented to form a nation-state without consulting women, slaves, or poor people. And even if subnational municipalities do freely and fairly agree to form a nation-state, we are left with the difficult task of explaining why—from a perspective that emphasizes the moral importance of free choice—an agreement made long ago continues to bind people who had no hand in making it. Faced with these problems, Blake could seek a solution in tacit, hypothetical, or normative consent. But that move would of course run headlong into its own set of difficulties.

To sum up: Just about every large-scale subnational municipality is a human rights-protecting, jurisdictional project. If Blake's account justifies the nation-state's right to exclude, it performs the same service for hundreds of thousands of towns, cities, states, and provinces too. Blake claims that this objection can be dealt with quickly, but he is mistaken.

1.3 Ryan Pevnick: Associative ownership

Ryan Pevnick (2011) begins with property rights. Individuals acquire property rights through labor; citizens who labor to create and maintain a nation-state's institutions have an associative property right in their nation. There is a lingering question about exactly *what* citizens jointly own—political institutions, the benefits those institutions provide, or national territory (Grey 2013, p. 523). But for the sake of argument, grant the strongest version: citizens' civic labors confer something like an associative property right in their nation's territory. That property right, in turn, gives citizens a degree of latitude in deciding which outsiders to admit.

What civic labors do citizens perform? 'Paying taxes and contributing to collective political decisions.' (Pevnick 2011, p. 35) That answer is natural, and seemingly plausible. But it raises the generalization problem: If paying federal taxes confers an associative property right in one's nation-state, paying local taxes should confer an associative property right in one's town, city, state, or province. If citizens jointly own their nation-state by participating in national elections, they should jointly own their town, city, state, or province by participating in local elections. And if associative ownership of a nation-state entails the right to exclude, associative ownership of one's town, city, state, or province should do the same.

Pevnick recognizes this vulnerability and attempts a brief response. To explain why Californians may not exclude non-Californian Americans, he notes that non-Californians pay federal taxes, and that federal dollars help to

pay for roads, sewers, and the like in California. His brief response is that California may not exclude the rest of America because the rest of America *has* labored to maintain California's institutions.

The problem for Pevnick is that roughly half of U.S. households do not pay federal income tax.⁴ (The United States is not exceptional; any country whose progressive tax structure exempts low-income people will pose a similar problem.⁵) Pevnick might try to argue that U.S. citizens who don't pay federal income taxes can still acquire property rights in California by participating in politics—he identifies taxes *and* political participation as grounds for associative ownership. But there is again an obstacle: many Americans neither vote nor participate in national politics in any robust or meaningful way. Given the facts on the ground, Pevnick's view implies that California—or any other sub-national municipality in the U.S.—has the right to exclude the millions of non-voting Americans who live in tax-exempt households.

This, for Pevnick, is a thorny problem. His account is labor-based, which means that people who are not civic laborers have no associative property rights. The problem is not merely that otherwise reliable voters fail to turn out for certain elections, or that otherwise reliable taxpayers do not pay federal taxes every single year. The problem is that some citizens never vote in national elections; given the reality of generational poverty, the problem is that some will be exempt from federal income taxes forever. Such people are not, on his view, co-owners.

The only remaining move, for Pevnick, is to broaden the scope of 'civic labor'—to allow that contributions to the nation-state need not take the form of federal income taxes or voting. People who live in tax-exempt households still go to work, purchase consumer goods, and pay taxes on those purchases; so perhaps there is a sense in which they maintain the nation's economy. People who don't vote still watch the news, talk politics, and post about current events on Facebook; so perhaps there is a sense in which they maintain the nation's political discussion.

The problem is that this reply, should Pevnick make it, significantly undermines his original explanation of the nation-states right to exclude. Non-citizens who are visiting on vacation purchase consumer goods and pay the associated taxes. So do exchange students on visas, foreign diplomats, and foreign business people on work trips. These outsiders often contribute to our national political conversation too. If those activities are sufficient to make citizens

4 https://www.washingtonpost.com/news/wonk/wp/2012/09/18/who-doesnt-pay-taxes-in-charts/?utm_term=.8744b5caf6b7

5 By some estimates, roughly one-third of Canadians do not pay income tax. (<http://www.torontosun.com/2011/04/30/one-third-of-canadian-adults-pay-no-income-taxes>)

associative owners of their nation-state, a labor-based theory will have to conclude that they are sufficient to make outsiders associative owners as well. Anyone who has simply vacationed in a foreign country would be an associative owner and have a right to migrate there.

Pevnick could argue that outside visitors—students, diplomats, business people, and vacationers—do not contribute enough through their economic and political activities to earn associative ownership. But there are two problems. First, it is hard to see how one can specify the threshold contribution without resorting to *ad hoc* stipulation. Second, there is a dilemma. If Pevnick specifies a threshold contribution high enough that political engaged exchange students, wealthy diplomats, and vacationers who spend even somewhat lavishly are not associative owners, he will probably also undermine the ownership claims of the millions of citizens mired in severe poverty or experiencing homelessness. If Pevnick specifies a threshold contribution low enough that the millions in citizens in dire poverty do qualify as owners, he will have to draw the same conclusion about a great many outsiders too.

To recap: If civic labors on behalf of the nation-state confer an associative property right, consistency demands that civic labors on behalf of subnational municipalities do the same. If associative property rights in a nation-state entail the right to exclude outsiders, associative property rights in subnational municipalities should do the same. Pevnick's attempt to solve the generalization problem fails—many citizens do not perform the civic labors he identifies. And expanding the scope of 'civic labor' in response would significantly undermine his original account. So, in the end, Pevnick joins Wellman and Blake: if he proves that nation-states have the moral right to exclude unwanted outsiders, he proves that subnational municipalities do too.

1.4 David Miller: Preserving culture

Miller's overall argument proceeds down two paths: First, he argues that the right to exclude is justified because national culture is important to citizens' identities; second, he argues that nation-states can 'better discharge' their 'functions' if citizens share a culture (Miller 1995, p. 82).⁶

⁶ Here is the point in Miller's own words: 'It is possible to look at [the right to exclude] from two different directions. We can begin with a nation as a source of personal identity ... Alternatively, we can begin with a state as a political entity that wields certain powers and carries out certain functions, and ask why these tasks may be discharged better if the citizens of the state are also compatriots' (Miller 1995, p. 82).

Begin with the first path: a national culture ‘gives bearers a sense of where they belong and provides an historical identity.’ (Miller 1995, p. 85) National cultures are for Miller a constitutive element of who we are. We have an interest in seeing ourselves ‘as the bearers of an identifiable cultural tradition that stretches backward historically.’ (Miller 2005, p. 200) What is the connection to exclusion? An influx of culturally different outsiders might change our nation’s culture so much that we find ourselves adrift, identifying with a culture that no longer exists. Thus, according to Miller, our interest in cultural preservation is part of what justifies the right to exclude.

But national cultures are not the only cultures that define our identities; national cultures are not the only cultures people have a subjectively strong interest in preserving. Miller’s argument generalizes to any subnational municipality whose culture is similarly important for ‘giving bearers a sense of where they belong.’ Do any subnational municipalities fit the bill?

The culture in Holland, Michigan is a unique fusion of Americana, Midwestern sensibilities, and Dutch heritage. It features windmills, tulip festivals, and annual celebrations of Midwestern Dutch-ness. The first settlers belonged to the Christian Reformed Church, which has retained some of its original Dutch immigrant character while at the same time embracing elements of Midwestern Evangelical Christianity. The denomination still serves as a political and social hub, and it is routine for parents to send their children to private Christian Reformed schools. To whatever extent U.S. citizens share a culture, residents of Holland share one even more.

While Holland is an especially clear case, it is important to recognize that it does not set the baseline. The nation-state does. To earn the right to exclude, on a Miller-style view, a municipality needn’t have a culture as robust as Holland’s; it merely needs a culture as robust as a nation-state. And if we are honest about the thinness of our national cultures, many subnational municipalities will qualify.

Deep cultural and socio-economic division marks just about every modern nation-state. Take the United States as an example: Black culture is very different than Hispanic culture, white culture is different than both of these, and all of these are *vastly* different than the culture of the millions of American Indians who have been pushed onto reservations (note: we are already papering over significant differences within each of these categories). Some citizens are strongly committed to racist moralities, others are resolute egalitarians; some are socialists, while others are libertarians; some regard abortion as the greatest evil of modern times, while others see it as an obvious implication of women’s rights. Religious convictions are for many their most central values, and Christians harbor significant disagreements with Muslims, Hindus, and Jews. All of these religious groups disagree significantly with atheists.

And here is the point: any culture that includes all of these divisions and disagreements is necessarily quite thin. There is an unfortunate tendency, in Political Philosophy, to regard nation-states as a sort of abstract Westphalian atomic unit—a fairly homogenous people group committed to the same set of fairly extensive core values. The truth is that we can imagine national cultures to be so unified only by *erasing* fellow citizens who don't fit our mental archetype.

So which subnational municipalities would have a right to exclude? Holland stands out as a clear example, but a great many subnational municipalities have cultures that are just as thick as anything that deserves to be labeled American culture, and are just as important to residents' identities. In housing so many robust subcultures, moreover, the United States is clearly not exceptional. The generalization problem might not be as extensive for Miller as it is for the others: Wellman's account gives every municipality whose residents care about the experience of membership the right to exclude; Blake's account generalizes to every rights-protecting jurisdictional project; and Pevnick's argument generalizes to every municipality that collects taxes. But if we are honest about just how thin national cultures must be to accommodate rampant division and foundational disagreement, Miller's arguments generalize far beyond the case of Holland, Michigan.

What about Miller's second path? He defends the right to exclude not only for the sake of citizens' identities, but also because a shared culture helps nation-states discharge their responsibilities. The rough idea is that citizens' willingness to sacrifice for each other—to give up wealth for the benefit of others, for example—depends upon citizens' ability to identify with one another. As Miller puts it, a 'shared identity carries with it a shared loyalty, and this increases confidence that others will reciprocate one's own co-operative behavior.' (Miller 1995, p. 92) The right to exclude is justified, according to Miller's second path argument, because nation-states can promote a shared identity by keeping outsiders out. Now, there is room to doubt Miller's empirical premises, to doubt that cooperation among citizens depends upon a shared culture.⁷ But, for the sake of argument, grant that Miller is empirically correct.

The generalization problem is again straightforward. Nation-states are not the only municipality whose functioning depends on residents' cooperation. Towns, cities, states, and provinces collect taxes and dispense important social services too. If those functions depend upon cooperation in the nation-state, they depend upon cooperation in subnational municipalities too. If those functions justify a nation-state's right to exclude, it is hard to see why Miller shouldn't draw the same conclusion for towns, cities, states and provinces. They are doing many of

7 Pevnick (2009)

the same things for many of the same reasons. But imagine that the predominantly white, and relatively wealthy, residents of Holland stopped ‘urban’ migrants from Detroit, fearing that their cultural differences would cause city governance to fray. The residents of Holland would be claiming the right to exclude for the exact same reasons as David Miller: their municipality has important functions to discharge, and ‘a shared identity carries with it shared loyalty.’

Miller’s newest work—the provocatively titled *Strangers in Our Midst*—is just as vulnerable as the old.⁸ That is unsurprising. It makes essentially the same argument as the old. He reiterates the first-path argument by claiming that immigrants ‘will not simply replicate the indigenous population with respect to their beliefs values, interests, cultural preferences, and so forth.’ (Miller 2016, p. 62f.) He reiterates the second-path argument by claiming that ‘trust is important to a well-functioning democracy,’ and that culturally different outsiders will erode trust (Miller 2016, p. 64).

But if newcomers can change the composition of a nation-state, culturally different co-nationals can change the composition of subnational municipalities too. If culturally different outsiders can erode trust in a nation-state, culturally different co-nationals can erode trust in subnational municipalities as well. Miller continues to miss a relevant truth: The differences between subnational municipalities under the same national flag can be just as important for the project of living together as the differences between nation-states.

2 The dilemma

The moral right to exclude has the moral weight to justify would-be immigrants’ suffering, or it does not.

⁸ Miller’s newest work is not his best. He cites a discredited story from the *Daily Mail*—a source banned by *Wikipedia* because of its ‘reputation for poor fact checking and sensationalism’ (<https://www.theguardian.com/technology/2017/feb/08/wikipedia-bans-daily-mail-as-unreliable-source-for-website>). And he makes highly selective use of empirical sources, citing dubious sources that support his argument while ignoring reputable sources that weaken it. For an overview see Alex Sager’s excellent review in the *LSE Review of Books* (<http://blogs.lse.ac.uk/lserewviewofbooks/2016/09/06/book-review-strangers-in-our-midst-the-political-philosophy-of-immigration-by-david-miller/>). Sager writes, ‘Unfortunately, *Strangers in our Midst*’s normative arguments are built on popular myths, error and misrepresentation of evidence through omission and selective use of the empirical literature.’

If it can justify would-be immigrants' suffering, the right to exclude is very important indeed. Exclusion mires vulnerable people in poverty. It blocks others from pursuing the education they need for the life they want. It forces others, on pain of being ostracized, to acquiesce into cultures or religions they find utterly unlivable. Exclusion makes it impossible for many parents to provide for their children. The suffering of would-be immigrants—not to put an overly fine point on it—is morally serious. It's the sort of thing most of us would radically alter our lives to avoid. Some of us probably have.

Some advocates of immigration control suggest that wealthy nation-states can address the plight of non-refugee, would-be immigrants by 'exporting justice' rather than opening their borders (Wellman 2008, pp. 127f). But the idea that nation-states can unproblematically export justice is fiction. The factors making people suffer in the Sudan, Egypt, and elsewhere include predatory corporations, the incompetence or malevolence of local leaders, the incompetence or malevolence of foreign leaders, wealthy nation-states subsidizing domestic goods, global warming, natural disasters, and, arguably, the incentives built into capitalism itself. To fix the circumstances that would-be immigrants are trying to escape, the United States, China, Russia, the UK, Germany, and multi-national corporations would have to set their own interests aside and together launch an unprecedented, large-scale, and highly coordinated philanthropic campaign. If we are *at all* realistic about the frailties of our institutions—public and private—there is simply no getting around the fact that exclusion causes morally serious suffering.

Back to the first horn of the dilemma: if the moral right to exclude is so important, nation-level regimes deny something that matters a great deal to a great many subnational municipalities (perhaps hundreds of thousands of them). Advocates of immigration control sometimes admit that migration restrictions cause harm, but hasten to add that would-be immigrants' *interest* in moving is not strong enough to ground a moral *right*. We needn't enter into that debate. This horn of the dilemma takes no stand on whether there is a right to migrate and grants the foremost defenders of exclusion their best-case scenario: nation-states not only have a right to exclude, that right is weighty enough to justify would-be immigrants' suffering. Still, there is a serious problem. Nation-level regimes would violate an important moral right on a massive scale.

If, however, the right to exclude lacks the moral heft to justify would-be immigrants' suffering, nation-level regimes are straightforwardly immoral. So, either way, the best arguments *for* a nation-state's right to exclude end up *condemning* nation-level regimes of exclusion.

3 Conclusion

Might a different view succeed where Wellman, Blake, Pevnick, and Miller have failed? That is of course possible. But the arguments of this paper help us see why that task will be difficult. To defend a nation-level regime, one has to say what makes nation-states, and *only* nation-states, morally special. What distinguishes them from every other municipality?

The answer isn't obvious. If nation-states have a morally important interest in self-determination, many subnational municipalities do too. If people in nation-states are obliged to look out for one another's rights, people in subnational municipalities are too. If the average citizen labors for her nation-state, she labors for her town or city as well. If nation-states are unified by a common culture, people in many smaller municipalities are similarly unified. Nation-states are not the only municipalities with idiosyncratic economic interests, linguistic conventions, democratic governments, schemes of taxation, institutions to dispense social services, or forces dedicated to protection. Given these similarities, it will be hard to articulate a substantive reason that nation-states should have the right to exclude without inadvertently performing that service for a great many subnational municipalities as well.

And that—the generalization problem—sets up this paper's central dilemma. The right to exclude has the moral weight to justify would-be immigrants' suffering, or it does not. If it does, nation-level regimes are guilty of violating an important right on a massive scale. If it does not, nation-level regimes are straightforwardly immoral.

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