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Collective Self-Determination and Externalized Border Control

Abstract: According to a common argument in defense of border control, legitimate states have a right to exclude on grounds of collective self-determination. I argue that the value of self-determination can also serve as a basis for criticizing states' immigration policies. Specifically, I contend that the externalization policies of states in the Global North often undermine the self-determination of peoples in the Global South. I identify five pathways by which externalization policies undermine self-determination. I conclude by tentatively suggesting some potential implications of this argument for broader debates about the governance of migration.

Keywords: *self-determination; migration; externalization; republicanism; migration deals*

Introduction

A common argument in favor of the state's right to exclude appeals to collective self-determination (Blake, 2023; Brock, 2020; Miller, 2016; Moore, 2017; Song, 2019; Wellman, 2008; Walzer, 2010). According to this argument, a right to exclude is a necessary condition for political communities to achieve full political self-rule. In this paper, I argue that those who value collective self-determination should also oppose many of the ways that states in the Global North control their borders because these policies impair the collective self-determination of peoples in the Global South. Specifically, they should oppose certain kinds of externalization policies that outsource border control to states in the Global South.

Externalization is increasingly central to the global migration regime (Fitzgerald, 2019). It has been rightly criticized for its corrosive impact on human rights (Sandven, 2022; Schmid, 2022) and for denying individuals access to adequate international protection (Aleinikoff and Owen, 2022; Parekh, 2020). These critiques, in my view, speak decisively against most forms of externalization, and specifically against most migration cooperation agreements. So, why criticize these measures further?

First, it is sometimes argued that externalization policies can be reformed to be human rights compatible (Betts, 2021; Sandelind, 2021; see Aleinikoff and

Owen, 2022 for a critical discussion). My argument shows that there are additional criteria that must be met for reformed externalization to be defensible. Second, my argument begins from the same value on which defenses of border control rest — self-determination. It thus demonstrates that the value that allegedly justifies migration control also constrains how states may govern migration. Specifically, I argue that self-determination cannot justify, and may even prohibit, externalization as commonly practiced. Finally, my argument raises some deeper questions about the value of self-determination, which have been largely overlooked by defenders of the right to exclude.

I begin by suggesting that defenses of exclusion commonly occur against the backdrop of certain empirical presuppositions about how border control functions. I then show that these presuppositions are in tension with how migration control in fact functions. Next, I introduce self-determination arguments and extract some conditions that must be met for migration control to count as an expression of self-determination. I then demonstrate that externalization may undermine each of these conditions, thereby undermining the self-determination of peoples in the Global South. I proceed to argue that this means that many externalization policies not only cannot be justified on grounds of self-determination, but are also prohibited by it. I conclude by tentatively considering some broader implications of my argument.

Normative and Empirical Assumptions about Border Control

The standard philosophical debate about the right to exclude takes place against the background of certain tacit empirical assumptions about how global mobility is regulated and how states are positioned within the international order. Defenders of exclusion often assume that a state's discrete geographical borders are the primary sites where that state regulates entry to its territory and that each state sets its own immigration policy in an unconstrained manner.

For example, defenders of the right to exclude tend to treat control over borders, control over immigration, and control over territory as synonymous.¹ They often treat the issue of whether states may control their territorial borders as equivalent to whether states may control migration. In his discussion of whether border controls are coercive, David Miller equates 'border controls' with 'the act of preventing somebody from entering a specific territory without authorization.' He equates the power operative in border controls with that

1 This is not true of all defenders of the right to exclude. See, for example, Blake (2023: 100–103, 115–116).

involved in erecting a ‘physical barrier around [the state’s] territory’ (Miller, 2010: 112). Similarly, Margaret Moore describes the right to govern entry as a simple extension of the state’s *territorial* jurisdictional authority (Moore, 2017: 196). This makes sense as a justification for mobility governance only if one assumes that border control mostly happens ‘at’ the state’s geographic borders.

To be sure, defenders of the self-determination argument seldom make these assumptions explicitly nor are they necessarily committed to them. Yet, the relative silence about actual practices of border control among proponents of the self-determination argument is telling.

One reason for this silence is that these assumptions benefit defenders of the self-determination argument for the right to exclude because this argument has most force against their background. An exercise of exclusion only counts as an expression of self-determination if the actors who exclude doing so at the behest of the people they purport to represent. Thus, when Wellman writes that ‘just as my friends and family may not forcibly interfere with my imprudent decisions to get married or divorced, for instance, external parties must respect a legitimate state’s dominion over its borders,’ he assumes that external parties typically do not interfere with the state’s right to exclude in the current state system (Wellman, 2011: 48). He takes himself to defend the current practice, in which states have formal equal sovereignty.

Moreover, collective self-determination arguments are most persuasive when they purport to show not just that some individual state has an entitlement to exclude because it has an interest in self-rule, but that *generally* according states the right to exclude is a way of allowing *all* peoples to realize meaningful self-rule.² These assumptions thus license the inference that the current system of migration governance — imagined as a system of symmetrically situated states each controlling entry only at their borders and setting its immigration policy independently — enables all states to realize meaningful self-determination. Yet, matters are, in fact, more complex.

That defenders of exclusion presuppose an idealized picture of the connection between migration control and territorial borders is not a reason to reject their theories. Such assumptions may be defensible in constructing an ideal theory.

2 Not all defenders of the self-determination argument embrace this logic. The closest to an explicit embrace of this issue is found in (Brock, 2020: Ch. 3). Brock makes each state’s right to self-determination conditional on the state system meeting certain general legitimacy requirements. She doesn’t make state A’s right to self-determination conditional on it being part of an international system which in fact allows all states to exercise meaningful self-determination rights. One might, however, seek to generalize the logic of her position in this way.

However, that a unilateral right to exclude may be justified in ideal theory does not entail that the *current system* of migration management respects self-determination. To see whether it does, we must examine *actual practices* of border control.³

Border Control in the Real World

Defenders of exclusion, then, typically imagine territorial borders as the distinct site at which states exercise control over mobility and that states control migration by making independent decisions about how to govern their borders. This isn't how migration control really works. Although the border — imagined as a discrete geographic location — is often conceived of as the primary site at which migration control occurs, exclusion doesn't primarily happen at the border (Shachar, 2020). Rather, 'most control of access [to wealthy states' territories] by land, air, and sea takes place [...] far away from national territory' (FitzGerald, 2019: 4).

States control migration 'remotely'. One strategy to do so is the creation of what FitzGerald calls 'a virtual *dome* over national territories [...] that restricts access via airspace.' States do this through visa requirements: 'most member countries of the Organisation for Economic Co-operation and Development (OECD) have visa restrictions on most Asian and African nationalities' (FitzGerald, 2019: 7–8). These requirements have a domino effect as governments race to prevent the entrance of those migrants barred from other countries. Analogously, countries with maritime borders

'use the sea as a *moat* to keep out the unwanted by intercepting boats carrying passengers without visas [...] The U.S., Australian, and European governments have all used the high seas as a zone to intercept asylum seekers and keep them away from their coasts. Maritime interceptions sometimes take place thousands of kilometers from the home territory, such as when U.S. ships deploy in the Western Pacific and European ships patrol the coast of West Africa' (FitzGerald, 2019: 9).

Finally, bilateral agreements between states in the Global North and states in the Global South in which the latter assent — often under duress — to prevent onward mobility and to allow individuals seeking asylum in the Global North to be returned to their territories have become a central strategy by which states regulate mobility (Adepoju et al., 2009). I'll refer to these practices as *externa-*

3 My argument thus parallels Mendoza's enforcement approach (Mendoza, 2015). See also (Schmid, 2022) and especially (Sandven, 2022).

lization measures.⁴ The prevalence of externalization indicates that the excluding state's territorial borders are not the primary sites of mobility control.

Now, consider the second assumption: that states set their immigration policies independently and without significant influence from other states. This assumption allows one to regard states' immigration policies as expressions of peoples' agency in determining who may (not) enter. In practice, however, states in the Global North exercise considerable *de facto* control over who may move in the Global South.

First, states' migration control regimes impact one another. When country A pursues non-arrival policies, these policies have consequences for those who may enter other states as well. Consider (e.g.) the situation in the Northern Triangle. Under the Central American Regional Security Initiative, the United States provided equipment and training in security and border inspection activities to various states in this region. The initiative aimed to prevent onward transit to the United States. However, this initiative impacted who could move within and beyond the Northern Triangle region. For example, Honduran forces, trained by the U.S. Border Patrol, stopped buses nearing the Guatemalan border and searched them for unaccompanied minors and children traveling with a parent, to prevent them from continuing their journey (Hiemstra, 2019). This prevented these Hondurans from entering Guatemala. Likely, these women were stopped because they fit a particular profile regardless of whether their final destination was the U.S., Canada, Guatemala, or Mexico. This initiative impacted whether and how Honduran women could enter all these countries. Thus, state A's migration policies end up determining *de facto* who may enter states B and C.

This is characteristic of border externalization, which aims to stop mobility *towards* borders, rather than just border-crossings.⁵ As FitzGerald (2019: 9) notes,

'when the U.S. Coast Guard intercepts people on boats sailing from Caribbean islands, it engages in the most extreme form of the externalization of borders.

4 Some scholars reserve "externalization" for arrangements that purport to *externalize protection* for refugees and asylum seekers (Aleinikoff and Owen, 2022), while others use it for policies that *externalize border control* more generally (Zaiotti, 2016).

5 These policies typically rely on *interlocking border sets* (Miller, 2019) — in Central America, for example, the borders guards in various states all face southwards and seek to prevent northward mobility.

These interceptions control both entry — to the United States — and exit — from Cuba or Haiti to any other country. Such policies turn an island into a cage...that is guarded by a foreign power'.⁶

This is especially the case for the poorest and least mobile members of society who, due to visa restrictions and impoverishment, are effectively shut out from air travel.

Second, consider how migration deals typically come about. States in the Global South often face intense pressure to cooperate from more powerful actors. For example, in 2019, while engaging in talks with Mexico on a cooperative migration governance initiative, President Trump threatened to impose a 25% tariff on Mexican exports to the United States. He tweeted: 'We do not anticipate a problem with the vote but, if for any reason the approval is not forthcoming, tariffs will be reinstated' (Reuters Staff, 2019). These tariffs would have devastated Mexico's economy. In response, Mexico approved a broad package of migration measures (Rizzo Lara, 2022). These included a commitment to cooperate with the Migrant Protection Protocols — an initiative by which asylum-seekers apprehended in the United States are deported to Mexico to wait for their hearings — and an expansion of border policing on Mexico's Southern border. This raises doubts about whether these initiatives can be seen as expressive of the will of peoples in the Global South.

To be sure, affluent states also offer states in the Global South positive incentives to cooperate. However, these incentives are themselves problematic. In recent years, the EU has sent more than hundreds of millions of euros to the Libyan Coast Guard, a paramilitary group. These funds are largely provisioned for migration control activities. Huge sums of EU money are funneled to networks of militiamen, traffickers, and paramilitary 'coast guard' members. These actors 'torture, extort and otherwise abuse migrants for ransoms in detention centers' (Urbina, 2021; see also Hayden, 2022). By funding militias on one side of the Libyan conflict, the EU puts its thumb on the scale of a particular faction. The externalization policies of states in the Global North thus help determine not only who controls mobility, but *who rules* in the Global South. As we'll see, the Libyan case isn't exceptional: the EU's migration control efforts depend on channeling large amounts of money and dual-use security technologies to authoritarian actors.

These examples illustrate how externalization seems to negatively impact the

6 This also arguably violates the right to exit. For a discussion, see (Sharp, 2023).

self-determination in the Global South. They raise a fundamental question: *who* is controlling *whose* borders?

The Self-Determination Argument

However, to determine whether externalization policies violate self-determination, we must first understand what self-determination is, and how it allegedly generates a right to exclude. I first sketch the standard argument for a right to exclude based on collective self-determination. I then extract from this argument some conditions that must be met for migration control to count as an exercise of self-determination, to which defenders of self-determination do, or at least should, assent. In so doing, I try to remain ecumenical with regard to the many different versions of the self-determination argument.

Although self-determination arguments for exclusion come in several forms, they typically fit the following schema:

The Self-Determination Argument

(P1) Collective self-determination is a significant value.

(P2) Appropriately constituted peoples have a right to collective self-determination within certain bounds.

(P3) Legitimate and adequately representative states are the fiduciaries of peoples' interests and are therefore entitled to exercise their collective rights.

(P4) So, legitimate states who adequately represent their peoples' interests have a right to self-determination within certain bounds.

(P5) The right of self-determination includes the right to control who may enter the state's territory.

(P6) Therefore, adequately representative legitimate states have a right to control who may enter their territories.

Some observations about the argument are in order. (P1) remains neutral about self-determination's value. First, proponents offer different explanations of self-determination's ultimate value, typically, appealing to notions like autonomy, nonalienation (Stilz, 2019), or nondomination (Young, 2005). Second, this premise is neutral about whether self-determination is about collective *control* or whether collective self-determination matters because being ruled in a way that *corresponds* to peoples' values. While both matter (c.f. Enoch, 2022), the control specification is likely necessary for a

defense of the right to exclude, as this is commonly understood as control right.⁷

In (P2), the ultimate bearers of rights to self-determination are peoples.⁸ States exercise these rights on their behalf. These states, per (P3), must meet certain conditions to bear these rights — they must be *legitimate* and they must *represent* those they govern. Defenders of self-determination justify the inference from (P1) to (P2) in different ways. Some see the inference as direct — the fact that peoples have interests in self-determination straightforwardly justifies the right, based on some deontic claim (Wellman, 2008). Others see the inference as mediated in that a system of self-governing states is the best way to secure this value for all.

(P5) connects self-determination and immigration. The connection is understood variously (van der Vossen, 2015): as a matter of associative freedom (Wellman, 2008), as a right to control their own destiny relative to certain background circumstances (Walzer, 2010), or in terms of the range of effects immigrants might have on the character of a political community (Miller, 2016). I again leave this open.

The self-determination argument is appealing for two reasons. First, the argument is premised on a value that plays a foundational role in the international order and whose import is typically acknowledged by both critics and proponents of migration control (Carens, 2013). Second, the argument justifies a *right* to exclude, rather than a claim that exclusion is just (Wellman, 2008). This allows defenders to both support states' prerogatives while criticizing migration policies that contravene justice.

However, the above discussion reveals that it's not trivial to claim that a state's migration policies contribute positively to self-determination. Rather, certain conditions that must be met for a migration policy to do so can be extracted from the argument. The most discussed is

Legitimacy: The migration policy must be made and executed by a legitimate actor.⁹

7 While I have stated this premise in evaluative terms, some argue for it on a more deontic basis. I am very skeptical of these arguments, and later on, I explain one reason why I believe they fail. However, for many of my purposes, little hangs on the exact justification of the right to self-determination. I try to make explicit later when and how one's conception of self-determination matters in generalizing the conclusions of my argument.

8 Peoples can be defined in different ways; see (Moore, 2017; Stilz, 2019).

9 As Wellman puts it, 'I believe only that all *legitimate* states occupy a privileged position of moral dominion over their self-regarding affairs; merely being a *de facto* state is not enough to qualify a country for the right to group autonomy.' (Wellman, 2011: 15).

As Wellman (2011, 15) puts it, ‘only that all *legitimate* states occupy a privileged position of moral dominion over their self-regarding affairs.’ *Legitimacy* is important because immigration policies involve the exercise of power over others. Accordingly, peoples must delegate those powers to agents who have the standing to exercise them. Moreover, it is widely agreed that, at a minimum, an actor is only legitimate if it is disposed to respect the most basic human rights of outsiders and to protect the most basic human rights of insiders (Wellman, 2011).

A second condition is

Representativeness: the actor charged with making and executing migration policy must be representative of the people.

This rules out cases where a legitimate actor — say, Spain — makes and executes migration policy in another state — say, Morocco — that are contrary to Moroccans’ interests and preferences (Wellman, 2011: 17). This wouldn’t plausibly count as *Moroccans* exercising self-determination.

Third, a migration policy only counts as an expression of collective self-determination if a state freely sets that policy. Thus, defenders of the self-determination argument are committed to

Control: the people’s representative agent must be able to freely set migration policies.

Suppose a group, G, delegates its powers to A. Suppose A is then coerced by B to do B’s bidding with those powers. G’s self-determination is then undermined because G’s agent, A, is unfree. A people having the freedom to control migration requires that the agent to whom they delegate the power to control migration is herself free to set migration policy.¹⁰

A related condition is that the state’s migration policy must play a significant role in determining who may enter the state’s territory. We can state this condition here as follows:

Decisiveness: those migration policies must determine who enters the state’s territory.

Suppose you invite your friends to your house party and your friends want to attend. When they arrive, you’re freely associating with each other. But now

¹⁰ Compare Pettit’s argument that a free people requires a free state (Pettit, 2010).

suppose your neighbors dig a moat around your house and fill it with alligators. Your friends now can't reach your house. So, your preferences together with your friends' preferences are no longer decisive in determining who you associate with. This is decided by third parties. This undermines your associative freedom. Analogously, if state A's actions determine, in practice, who may enter state B, then B lacks full self-determination. A state only counts as having full control over migration if *its* policies determine which of the persons who would like to enter its territory can do so.¹¹

Finally, for a state to realize self-determination, it needs to capacity to fulfill basic state functions.¹² A people living in a state that had very limited abilities to *do anything* substantive in the domain of social policy, but protected the human rights of insiders and respected the rights of outsiders, would be far less self-determining than one who lived in a state with the capacities to govern its territory. Thus, defenders of self-determination are committed to:

Capacity: A state must have the capacity to govern its territory in a way that reflects the values, preferences, or interests of those it represents.

Thus, self-determination has a “negative” face — non-interference — and a “positive” face — the capacity for a people to pursue justice as they see fit.

I have identified five conditions that defenders of self-determination are committed to. I stress that I take these conditions to be uncontroversial. Indeed, defenders of the self-determination argument generally endorse them — although they sometimes disagree on their exact specification.

How Externalization Policies Undermine Collective Self-Determination

We can now show how externalization policies impair collective self-determination in the Global South. Schematically, my argument is that when state A's policies result in one or more of these conditions being violated in state B, A's policies restrict B's self-determination.¹³ I explore each condition in turn. My

11 This differs from Control: even if a state has the capacity to set its own migration policy, other actors can *de facto* interfere with this policy by acting in ways that prevent desired associations. Thus, your neighbor's moat doesn't interfere with your rules about who may enter the house, but it may impact who can *de facto* enter.

12 This is usually discussed under the heading of the conditions necessary for a collective of individuals to organize itself as a people. See e.g., Moore (2016: 50), according to whom a people ‘must have the capacity to establish and maintain political institutions.’

13 I argued above that the five conditions presented above are implicit in arguments for the right to exclude. Below, I argue, further, that when these conditions in state A are undermined by state B, this undermines the self-determination state A. This follows from the core commitments of the self-determination argument for the right to exclude, since these conditions play the role that they do in the case for the right to exclude because they are appropriately regarded as general conditions for a state to count as fully self-determining.

focus is mostly on bi- and multi-lateral migration deals, which are the clearest examples of self-determination-impairing externalization. For each condition, I first make the initial case that migration deals sometimes lead to these conditions being unfulfilled and then explore the empirical and normative assumptions that determine to what extent this argument generalizes. My aim is not to settle this second issue, but to invite reasonable debate about it. Finally, my argument in this section is that externalization policies can setback self-determination of states in the Global South. I consider what normative conclusions we should draw from this in the subsequent section.

Undermining Legitimacy by Propping Up Illegitimate Actors

Start with *Legitimacy*. The EU funding has provided hundreds of millions of euros to paramilitary groups linked to the Libyan government. This has likely played a role in propping up the factions who govern Libya. These groups lack legitimacy because they routinely violate the rights of both the migrants whom they detain and abuse and of ordinary Libyans. Yet, they wield *de facto* power in Libya. Plausibly, the hundreds of millions of euros provided by the EU have played a significant causal role in bolstering their fortunes. Although this is difficult to establish conclusively, if correct, this is a clear example of externalization undermines Libyans' self-determination: Libyans lack a suitable agent through whom to rule themselves.¹⁴

Similarly, in Sudan, the EU was involved in capacity building and funding for Sudan's security forces, including the so-called Rapid Support Forces (RSF), a paramilitary group rebranded as a border control force. However, 'much of the EU-funded training and equipment is dual-use. The equipment that enables identification and registration of migrants will also reinforce the surveillance capabilities of a Sudanese government that has violently suppressed Sudanese citizens' (Baldo, 2017; c.f. Tubiana et al., 2018: 53-56; Bohne and Jaschek, 2024). When the RSF attempted a coup in Sudan in 2021 and again in 2023, they may have relied in part on these technologies. This second attempt precipitated the ongoing Sudanese civil war.

This suggests that externalization measures sometimes play a significant causal role in bolstering the capacity of repressive states in ways that allow those

¹⁴ NATO military power assisted in overthrowing the Gaddafi government, precipitating a post-war power vacuum, subsequent crisis. My conjecture is the ability for various actors to bill themselves to Europe as effective partners in migration control, and thereby to recruit EU funding and support, has helped shape their fortunes in the wake of the First Libyan Civil War. This is, due to the complexity of the situation and intransparency of the dealings in question, difficult to conclusively establish empirically.

states to maintain power and more effectively violate people's rights. Similar arguments apply in a multitude of cases affluent states partner with neighboring autocracies to manage migration (Jakob and Schlindwein, 2019), such as the EU's recent partnership with increasingly authoritarian Tunisia.

How broadly this argument generalizes depends on two factors. The first is when support for externalization makes a causal difference in determining who rules in the Global South. I cannot settle the empirical debate about this issue; when this is the case will depend on contextual factors and the level and kind of assistance provided. The case is clearest for fragile regimes who receive substantial military and financial support which they can use with discretion. However, note that the assistance such illegitimate actors receive is often substantial — in the case of Tunisian dictator Kais Saied, the EU agreed to provide €1bn in support of various kinds.

The second factor concerns one's conception of legitimacy. A minimal condition based on respecting basic human rights is uncontroversial. But one might adopt more demanding standards, on which legitimacy requires (e.g.) instituting basic justice (Stilz, 2019).¹⁶ This would expand the argument's reach. Finally, it is plausible that legitimacy comes in degrees (Scherz, 2021), and higher degrees of legitimacy require more demanding standards. Externalization policies can thus likely impair legitimacy without wholly undermining it.

Empowering Non-Representative Actors and Policies

The Libyan juntas that the EU funds fail to represent the preferences, values, or will of ordinary Libyans. I haven't surveyed Libyans, but this isn't anyone's preferred system of government. This entails that the EU's policy doesn't just undermine *Legitimacy*; it also undermines *Representativeness*. It props up rulers who fail to represent the will of the Libyan people. This is true of many of the regimes that the EU funds. These are often led by authoritarians who run extractive states (Jakob and Schlindwein, 2019). Insofar as Northern states cause nonrepresentative actors to rule by funding and supporting their regimes through their externalization initiatives, they undermine the self-determination.

When the Representativeness argument applies depends again on the causal role externalization efforts play in shaping governance patterns. However, sati-

¹⁶ Sandven (2022) argues that externalizing states must not only not violate human rights, but also promote migration related human rights. His argument focuses on legitimating the border regimes of wealthy states, rather than the broader legitimacy of the states to which migration governance is outsourced.

sfying representativeness requires more than just meeting minimal legitimacy standards. What exactly requires it, however, is controversial. Two issues are particularly relevant.

The first concerns what it takes for a state to represent its people adequately. Song argues for a minimal view on which a state is representative if it ‘protects basic liberties’, includes ‘institutional mechanisms of accountability’, and ‘provide[s] public rationales for its decisions in terms of the common good of the society’ (Song, 2019: 55).¹⁷ However, Song’s account is implausibly minimal. It does not even require that the state’s decisions correspond to the people’s individual or collective will.¹⁸ Nor does it require that people exert any causal influence over their state’s policies. Because control matters for full self-determination (Miller, 2020), this is unsatisfying.¹⁹

Other specifications of *Representativeness* are more robust. Stilz argues that an actor is representative only if it includes some channel whereby ‘the formation of deliberative public opinion’ can guide the policy formation process and that there exists some mechanism for the people to revoke authorization (Stilz, 2019: 128). She believes that ‘there must be some causal connection between the shared will of the group and their institutions’ (Stilz, 2019: 130). This is because, for Stilz, self-determination is valuable to the extent that it helps the governed realize political autonomy, which requires that ‘a group must have the ability to control their institutions to serve their shared commitments’ (Stilz, 2019: 130).

Stilz’s interpretation of *Representativeness* entails that a wider set of outsider interventions may be self-determination undermining, and brings self-determination much more closely in line with the control condition. Self-determination is undermined when outside actors’ preferences cause a state to adopt a policy through a process in which citizens’ preferences exert little causal influence and which they have little ability to contest or reverse. This is often true of externalization policies. Indeed, states in the Global South assent to these migration deals usually has little to do with the preferences of those they purport to represent.

Second, *Representativeness* can be undermined in more and less extreme ways. One can assess not only the representativeness of a *government* but also

17 These conditions are clearly undermined in the case of Libya and Tunisia, both of which have engaged in major crackdowns on political opposition and have severely curtailed civil liberties.

18 On correspondence, see (Kolodny, 2023: 294).

19 Song’s position is best understood as identifying some workable proxies for adequate representation, rather than a sufficient condition.

of *individual policies*. When a state's policies in some domain are subject to control by some outside actor or do not correspond to the will of the people, these policies are not representative (c.f. Lovett, 2022: 312). Thus, even where a state remains *generally* representative, self-determination is reduced when that state is subject to pervasive influence by outside actors in some domain.

Consider Mexico's assent to the Migrant Protection Protocols (MPPs). The U.S. was not responsible for installing the López Obrador government. However, it shaped the Mexican government's acceptance of the MPPs. When pressure from an external actor causes a state to enact some policy that diverges from the preferences of voters, this undermines *that policy's* representativeness. Self-determination can be realized to a greater or lesser extent (Miller, 2020). Indeed, this assumption is key to the case for the right to exclude: it's implausible that lacking a right to exclude would *wholly undermine* a peoples' self-determination; it's more plausible that lacking such a right would *diminish* self-determination.

One might object that externalization policies may be popular in the Global South and so such policies represent the will of the people. But it isn't always so. According to a recent survey, many Mexicans express strongly anti-migrant attitudes (Sieff and Clement, 2019). This might seem to support the objection. However, the MPPs compel Mexico to host asylum-seekers, mostly from originating from Central America. This makes no sense for those who hold anti-immigrant attitudes for it is a policy that compels Mexico to accept asylum-seekers pending a decision on their case. Thus, only 33 percent supported allowing migrants to stay temporarily while the United States decides whether to admit them. Another 7 percent of Mexicans say their country should offer residency to migrants. But 55 percent say they should be deported to their home countries (Sieff and Clement, 2019). This indicates that this policy doesn't express the political will of Mexicans.

One might worry that this case depends anti-immigrant attitudes. Some externalization policies will indeed fail to be representative because they compel association against the wishes of the people of the state to which migration control is being externalized. But others hinder *desired* associations from taking place. People living in certain areas targeted by externalization sometimes favor increased mobility. According to a recent survey of attitudes in Africa, 'residents of Africa, as a whole, are more likely to favour keeping immigration levels the same (21%) or increasing them (26%) rather than decreasing them (40%)' (International Organization for Migration, 2015). Illustratively, nearly half of residents in Niger (45%)— a major transit country for migrants —would like to

see *higher* levels of migration. Niger has been a recent target of the EU's externalization efforts, even though migration is 'a huge source of income for many people in Niger' (Hahonou and Olsen, 2021). It is thus no surprise that, after a recent coup, Niger repealed a key anti-smuggling law passed by the previous regime in exchange for EU funds (Chanuneau, 2023).

Undermining Control over Migration Policy

Representativeness is closely connected to *Control*. However, the two conditions are not identical. The first concerns whether the state or its *policies* represent the people's will. The second concerns whether the state has the *power* to set its own migration policies. *Control* is relevant to debates about externalization. Many externalization policies are induced by forms of conditionality wherein a policy actor in the state to which migration control is externalized is either subject to the threat of sanctions or promised benefits in exchange for cooperation (or both) (Spijkerboer, 2022). The former clearly threatens *Control*. Trump's tariff threat against Mexico is illustrative. This case has the following structure:

Coercive Threat: A threatens to impose a significant cost C on B if B does not Φ .

It is widely thought that, when A threatens B with a significant cost C, B lacks suitable control or autonomy with respect to her Φ -ing (Raz, 1988; Miller, 2010). Trump credibly threatened Mexico with a very significant cost if it did not comply. Thus, externalization policies *can* undermine self-determination when states are compelled to agree with them.²⁰

How widely does this argument generalize? Credible coercive threats clearly undermine the freedom of states to set their own migration policy, but it is hard to know how often such threats are made, as migration diplomacy is often secretive (Gatti, 2022). A second issue is whether an agent's freedom may be undermined when such explicit threats are not made. There are two ways to develop the case that *Control* may be undermined absent threats.

The first focuses on positive conditionality. Many externalization policies arise because of inducements — usually, promises to provide funds. Although they

²⁰ A further complexity here concerns whether it would be permissible to do what is threatened. Still, actions that would be permissible to do may be impermissible to threaten because such threats involve a problematic exercise of power over others. For a discussion of threats, see (Kolodny, 2017).

may seem to improve the state's choice situation, such inducements may arguably be freedom undermining. Consider

Desert Island: Suppose Brad, a diabetic, is stranded on a desert island with little food. Alan, who lives on the affluent nearby mainland, makes Brad an offer: if Brad imprisons any passers-by on the island and ensures they don't make it to the mainland, Alan will ferry over weekly sustenance rations from the mainland. Without these, Brad will starve.

Alan's offer enhances Brad's freedom relative to the baseline of starvation; it provides Brad with an additional non-starvation option (Kolodny, 2017). However, whether this offer counts as freedom-undermining depends on: (1) how we analyze Brad's baseline entitlements and (2) Alan's relation to whether Brad can obtain those baseline entitlements (Zimmerman, 1981). Suppose that Brad has a baseline entitlement to minimal subsistence. Suppose further that Alan is in a position to prevent Brad from meeting this entitlement: when Brad attempts to build a boat to leave the island, Alan ferries him back; when Brad attempts to grow food, Alan salts his fields. When these factors obtain, Alan's offer may seem to undermine Brad's self-determination. Alan conditions Brad's access to something to which Brad is independently entitled but simultaneously denies Brad access to that thing by other means. This is a freedom-undermining coercive offer.

The case seems structurally analogous to some forms of conditionality at work in externalization policies. The EU often induces African states to participate in migration control initiatives by implicitly making development assistance conditional on such participation. This is the idea behind the EU's so-called Trust Fund for Africa, which explicitly ties development aid to migration control efforts (Mlambo, 2020). Yet, it is plausible that the EU is independently required to provide such assistance. It is also plausible that other EU policies, such as its agricultural and trade policy and interference in governance, undermine African states' ability to develop adequately on their own (Pogge, 2008).²¹ They thereby condition these states' access to things they are independently owed, and prevented from acquiring themselves, on their participation in externalization.

I am agnostic about this argument because I am unsure whether there can be coercive offers. However, there is a second way to capture what's problematic about positive conditionality in the domain of migration: what's freedom-impairing in Brad's case is not the individual offer, but the wider set of power re-

²¹ This argument depends on a broader account of states' duties of global justice and on an empirical claim that the Global South has thwarted human development in the Global South, neither of which I can argue for here.

lations by which Alan prevents Brad from meeting his needs. The broader fact that Brad asymmetrically depends on Alan to meet his basic needs undermines Brad's freedom (O'Shea, 2019). This can be well-explained by republican theories of freedom as non-domination. What's troubling, then, is not so much the individual exercises of conditionality but the fact that states in the Global North are in a structural position to determine whether peoples in the Global South can meet their basic needs.

To elaborate, republicans hold that an agent's freedom is undermined when they are subject to domination (Pettit, 2010). One agent dominates another, on standard accounts, when they can interfere in that another's choices on an arbitrary basis. More powerful actors in the international system, such as the EU and the U.S., dominate their less powerful regional partners. They have the power to credibly threaten sanctions and other severe economic and political costs on their regional partners in the Global South. They are in a position to interfere, even when they do not do so. Such interference is arbitrary. Affluent states' ability to interfere is neither 'reliably controlled by effective rules, procedures, or goals that are common knowledge to all persons or groups concerned' nor 'directly or indirectly controlled by the concerned persons or groups themselves' (McCammon, 2018). So, states in the Global South are generally subject to domination in a way that undermines self-determination.

One might argue, however, that externalization pressures are not arbitrary in this second sense. The Global North's obsession with migration control may give actors in the Global South increased leverage (Laube, 2019; Tittel-Mosser, 2018). This occurs when an actor has a comparatively high degree of economic independence and serves as a key node on a particular transit route. This is arguably the case for Turkey's position vis-à-vis the European Union. However, while states in the Global South in such a position do indeed possess a degree of counterpower over actors in the Global North, their position shouldn't be overstated. On the one hand, the *overall* power differential between these actors typically remains highly asymmetric. On the other hand, the ability of actors in the Global North to control migration through alternative externalization policies (i.e., by cooperating with other states in the Global South) limits the effectiveness of such exercises of counter-power in all but the rarest of cases.

These two theories have quite different implications in how they locate the problem with the control condition, and thus require different institutional responses to resolve them. The first argument locates the problem in the use of positive conditionality; the second account locates the problem in the broader power-relations that characterize the international order. Crucially, both accounts imply

that we cannot regard states in the Global South as fully self-determining with respect to migration control due to the power that states in the Global North wield and how this shapes migration policy.

Decisiveness: Constraining Associative Opportunities

The point of *Decisiveness* is that a state's migration policies should determine who enters its territory. Defenders of self-determination emphasize that freedom of association entails a right to decide with whom one associates. They emphasize the negative dimension of this right. However, they also believe that the positive dimension matters too (Wellman 2008). If one is prohibited by another actor from associating with someone, one lacks freedom of association with respect to that person. This goes as much for cases where one actor formally prohibits a consensual association (A prohibits B and C from getting married) as for cases where one actor erects obstacles to that association (A detains B and prevents her from marrying C).

However, this is what regional externalization initiatives often do. They prevent associations from being formed by erecting obstacles to them. Consider again the case of Hondurans seeking to transit into Guatemala or Mexico. Here, U.S. policy results in Honduran women being prevented from entering Guatemala and Mexico. So, the migration policies set by Guatemala aren't decisive in determining who may, *de facto*, enter Guatemala; this is determined elsewhere — by Honduras and the United States.

These cases might look marginal when one examines them on a single-country basis. However, externalization policies are often regional initiatives. The EU's migration policies have been pursued under the European Neighborhood Policy (ENP), which targets a wide bloc of states stretching from Morocco to Azerbaijan (Castan Pinos, 2014). Similar issues apply to the EU Trust Fund for Africa (Mlambo, 2020). The net effects on regional mobility are detrimental. Regions that once allowed considerable freedom of movement have become increasingly restrictive and securitized migration spaces. These efforts create *regional blocs of immobility*, wherein possibilities for mobility are severely hampered. They erect obstacles to desired forms of association. This limits collective self-determination since collective self-determination requires not only the right to exclude but also the power to choose with whom one associates (May, 2022).

Given the prevalence of anti-migration attitudes globally, the generality of *Decisiveness* depends on whether one thinks counterfactuals matter. Plausibly, to realize freedom of association, one needs to be able to choose with whom to associate with people who one currently does not want to associate with, if one's

preferences were to change. Impediments to indifferent or unwanted associations matter less than impediments to desired ones, but they still matter. Moreover, there are counter-currents in many regions targeted by externalization policies that strongly favor freedom of movement, as illustrated by the case of Niger above.

Undermining State Capacity

To be self-determining, a state must have the capacity to pursue the conception of justice favored by its inhabitants to an adequate degree. Yet, sometimes, externalization initiatives have negative effects on state capacity. The net result of externalization is that states in the Global South host a disproportionate percentage of the world's refugees (Aleinikoff and Owen, 2022). Yet, many of these states already have limited capacity to govern effectively. This may impair self-determination.²²

Consider Lebanon, one of the largest refugee hosts per capita. It hosts over 1.5 million Syrian refugees in a total population of around 7 million. Yet, Lebanon's state capacity is extremely limited. It is experiencing a fiscal crisis, there is a large gap in what's needed to meet the basic needs of both refugees and Lebanese people. Resource scarcity leads to problematic trade-offs: since Lebanon has obligations to refugees within its territory, it must then devote a portion of its capacity to protecting them. Being a major host state thus constrains Lebanon's ability to institute justice effectively. The same logic may apply to other states that bear disproportion burdens of hosting migrants and refugees.

Here, one might object that externalization efforts can enhance capacity in certain cases. Suppose A compels B to adopt migration control measures which B wants to adopt anyway via positive inducements. This builds B's capacity to further her ends either in the domain of migration control or in other domains. Moreover, refugees might contribute to economic growth and prosperity (Betts 2021), as the Jordan Compact aspired to do, with mixed success. Finally, relatively poor states use their status as a host to extract rents from wealthier ones (Micinski, 2021).

These things may occur in some circumstances. However, it matters how externalization initiatives are designed. To contribute to self-determination, the aid that flows to states like Lebanon must, first, be directed towards the pursuit of justice — or, at least, towards win-win economic policies (Betts, 2021). Yet, this is often not the case: often, the rents extracted from hosting refugees may

²² I thank Hallvard Sandven for suggesting this line of argument.

be captured by elites. Second, this assistance must not violate one of the other conditions discussed above. Yet, as I have argued, it often does. It is difficult to see how these conditions can be jointly met in most cases of externalization induced by positive conditionality.

Must Defenders of Self-Determination Reject Externalization?

I've distinguished five pathways by which affluent states' immigration policies can undermine self-determination in states in the Global South: undermining legitimacy, undermining representativeness, constraining control, hampering associative opportunities, and constraining state capacity. Externalization policies thus often impair self-determination. But what implications should defenders of the self-determination argument draw from this conclusion? I consider this question below in an exploratory fashion.

A first conclusion to draw from my argument is:

Weak: Forms of migration control that undermine self-determination in the Global South cannot be justified by appeal to self-determination.

The thought here is that, if a policy is self-determination undermining, self-determination cannot serve as its justification. This conclusion alone is significant: it entails that a case for the right to exclude cannot justify a central way exclusion is practiced.

This conclusion might be resisted. First, it might be argued that externalization policies do not *sufficiently* diminish the self-determination of peoples in the Global South. After all, these policies might enhance self-determination in the Global North more than they diminish self-determination in the Global South. This objection, so put, is not very plausible. The impact of migration deals on states in the Global South is often much more significant than their impact on states in the Global North. The subject the former, but not the latter, to coercive threats and domination and fundamentally patterns of governance within them. These impacts are empirically variable, but nothing remotely similar is typically at stake in states in the Global North. Thus, while there may be space for reasonable disagreement about which impacts in which cases count as sufficiently self-determination undermining, it is not plausible that at least the most flagrant cases in which externalization undermines self-determination can be justified by appeal to the self-determination.

A second objection is that even if externalization by states in the Global North undermine the self-determination of states in the Global South, it might still be justified on grounds of self-determination. After all, states often make sel-

f-serving decisions that setback the self-determination of other states, but any plausible conception of the right to self-determination must allow that states sometimes are entitled to make decisions that negatively impact other states.

The objection might be read in two ways. Viewed in one way, it raises a reasonable concern about how to balance the self-determination of one state against the claims to self-determination of other states. This is an important issue, which I cannot treat in detail here, and concerns the precise boundaries of the activities which the right to self-determination ought to protect. Again, it seems plausible that there may be realizable disagreement about what should fall within the scope of the right to self-determination and in how far states may, within their rights, negatively impact the self-determination of other states. Still, on any reasonable view, it seems implausible that supporting authoritarian regimes or coercively interfering in the migration policy of states in the Global South fall beyond can be justified by the right to self-determination. These kinds of activities clearly don't fall within the scope of what may be protected by the right to self-determination, for they directly and substantively impair the self-determination of other states.

Viewed another way, the objection might aim to establish that the self-determination of one state may justify that state in engaging in practices even if they are highly detrimental to the self-determination of other states. For this objection to succeed, one needs to conceive of rights to self-determination atomistically, such that included within the content of A's right to self-determination is a general entitlement to engage in activities that make self-governance in state B difficult or even impossible. This might be thought supported by a Lockean conception of the right to self-determination (Simmons, 2016), on which states' rights to self-determination as akin to property rights and may normally be exercised without considering the effects on other states.

While this is a coherent view, it is not, I think, an attractive one. Rather than being justified atomistically or through some direct justificatory strategy focusing on states in isolation, states' rights to collective self-determination rights need to be viewed as part of a *broader system of rights*. In a functional state system, the boundaries of one state's right to self-determination must be set in a way that leaves adequate space for the exercise of self-determination by other states. Given that all peoples have an interest in self-determination, a system designed to protect self-determination needs to specify such rights in a way that provides all peoples with a suitable opportunity to realize *at least a sufficient degree of self-determination*.

If this is correct, however, one cannot plausibly regard actions that directly

undermine self-determination of other states as justified on grounds of self-determination, for they overstep the bounds of what may be plausibly included in such a right. A system of rights must specify the content of rights such that they are compossible and must take the interests of all rights holders sufficiently seriously. The theories on which the objection's success rests, I submit, violates this requirement. Externalization measures that inhibit self-determination elsewhere thus cannot be justified on grounds of self-determination, although there is space for reasonable disagreement about how precisely the limits of the right to self-determination should be conceived.

If one endorses something like this broader view of how the right to self-determination ought to be justified, then these reflections motivate a stronger conclusion:

Strong: Forms of migration control that undermine self-determination in the Global South are impermissible.

Strong asserts that the self-determination of states in the Global South places limits how states in the Global North may pursue migration governance. If a state oversteps these limits, this is a *pro tanto* reason to regard its actions as impermissible.

The reasoning here as follows. Defenders of the right to self-determination regard it as a claim right, which involves a right against certain kinds of interference by third-parties, in particular other states. The reason for the right is to protect a people's interest in self-determination. However, externalization undermines self-determination of states in the Global South. It involves just this kind of interference that the right to exclude is designed to protect states against. In the case of policies that violate *Control*, for example, they directly coerce states into accepting migrants. So, these policies contravene the duty that correlates with right.

Now, one might resist this picture by denying that self-determination gives rise to claim-rights (Akhtar, 2023). While this may be plausible, this would have highly revisionary implications. It would imply, for example, that states in the Global South are entitled to generally coerce states in the Global North into accepting people they unjustly exclude (Owen, 2016) and that those who cross borders without authorization do no wrong. While these are conclusion I endorse, it is unclear that most defenders of the right to exclude would want to endorse them. Thus, while there may again be space for reasonable disagreement about the scope of the argument, my argument implies that states are prohibited from engaging in forms of externalization that substantially under-

mine the self-determination of others.

Important, one needn't endorse a broad right to exclude to reject externalization policies on grounds of their deleterious impact on self-determination in the Global South. This is because there are ways of valuing self-determination that ground concern about externalization but do not justify a broad right to exclude. Defenders of self-determination argument construe the value self-determination in a purely negative way, akin to the way libertarians value liberty. While this view may be coherent, it is neither the only, nor the most plausible, way to value self-determination.

Republican political theorists have developed an alternative conception of self-determination as non-domination. Laborde and Ronzoni (2016), for example, draw our attention to 'new forms of cross-border power' which lead to the 'domination of weak states' by stronger ones. Iris Marion Young (2005; 2004) defends a conception of self-determination rights grounded in non-domination. Mike Gadomski (forthcoming) has defended a similar view, on which self-determination rights protect against intergroup hierarchy. Since immigrants from the Global South pose no threat of social hierarchy and do not threaten to dominate peoples in the Global North, the value of self-determination does not justify a broad right to exclude them.²³

My aim here is not to defend these ideas. Rather, my claim is if one endorses an alternative conception of self-determination along these lines, then one may critique externalization policies, which may involve domination by states in the Global North over states in the Global South and cement authoritarian governance, on grounds that they violate self-determination, without endorsing a right to exclude. This is because the alleged impacts of real-world forms of migration to the Global North on self-determination do not pose risk of domination or undermine substantively most of the conditions I identify above.

Similar conclusions might be reached from within the liberal tradition. In the individual cases, it is a familiar point that protecting personal autonomy requires not only non-interference, but a system in which people can lead lives of their own making, which requires just background conditions. This need not require maximizing each person's opportunity, but it does require institutions that correct for inequalities in order to protect the social conditions necessary for people have the real opportunity to engage in meaningful self-determina-

²³ This fits with a broader, anti-colonial view of self-determination outlined in Getachew (2019). See also Sandven (2023).

tion. It is a well-worn criticism of libertarianism — one pressed by Rawls against Nozick — that its myopic focus on individual liberties can produce unjust outcomes by neglecting the ‘background injustice’ that such arrangements produce. We need political institutions to protect the ability of people to exercise their rights meaningfully over time.

This thought can be applied to the global order as well (Ronzoni, 2009) and, more relevantly, to the case of self-determination specifically. Suppose we want a global order that adequately protects self-determination. Suppose further meaningful self-determination involves the positive capacity for meaningful self-governance and insulation against at least coercive threats. To achieve this goal, it is not enough to put in place a system that grants states equal formal rights, for *de facto* power relations between states threaten to impair precisely these ends. Thus, a global order that appropriately values self-determination must not only grant states formal equal rights; it must ensure that all peoples have meaningful opportunities to govern themselves, at least within an adequate range. A system that allows powerful states support authoritarian regimes broad and to use their *de facto* unequal power to coerce states in the Global South into adopting certain migration policies does not adequately protect this right. Once one thinks about the liberal value of self-determination systematically, one must conclude that these forms of externalization violate the rights of self-determination. However, a system that places quite significant limits on the rights of states in the Global North’s to exclude still adequately protect self-determination, for adequately protecting self-determination does not require maximizing it.

The broader point is that we should evaluate the global order not only by considering whether negative rights are violated, but also by considering whether it secures for all peoples an adequate opportunity to pursue self-determination.²⁴ This is something the current global order fails to do. Thus, the nature and limits of a given states right to self-determination cannot be established without considering how this right is integrated within an overall system of reciprocal entitlements designed to secure adequate self-determination for all peoples.

Conclusion

My discussion thus suggests two provisional conclusions. Weakly, the specific forms of migration control I’ve criticized cannot be justified by appeal to

24 A failure to appreciate this is one reason why direct, deontic arguments for a broad right to self-determination fail.

self-determination. Strongly, those who value self-determination should agree that many ways in which affluent states attempt to control mobility globally are impermissible. Thus, the value that justifies immigration control also sets limits on how states in the Global North may exercise power. At a minimum, states in the Global North should not utilize their disproportionate leverage to compel states in the Global South to participate in externalization initiatives nor should they cooperate in ways that bolster the authority and power of illegitimate actors in the Global South. These conclusions are significant because these forms of migration management have become increasingly important to the overall migration governance strategies employed by states in the Global North.

However, it is important not to overstate the argument. I have not argued that externalization always undermines the self-determination of third parties. For example, the United States and Canada cooperate in forms of externalization. Under the Canada–United States Safe Third Country Agreement, persons seeking asylum must file their claim in the first country in which they arrive. This policy is a joint initiative favored by the United States and Canada because both regard it as favorable to their interests. Such cooperation is arguably not impermissible on grounds of self-determination, although there are other reasons to reject the policy (Aleinikoff and Owen 2022). Moreover, externalization policies undermine self-determination in different ways. Some externalization practices themselves undermine self-determination, whereas sometimes the way states are induced to participate in externalization undermines self-determination. *Capacity*, *Decisiveness* exemplify the former case, while *Control*, *Legitimacy*, and *Representativeness* illustrate the latter.

My main conclusion is thus not that all externalization policies are impermissible because they violate self-determination, but rather that self-determination constraints that must be respected if externalization policies are to be justified. Specifically, in addition to respecting and promoting human rights (Sandven, 2022), states should avoid engaging in migration cooperation with authoritarian states and actors. They should be cautious about creating regional blocs of immobility. They should attend to the migration policy preferences of the people in the states with whom they cooperate. Finally, states should avoid forms of externalization that infringe on migrants' rights and contribute to the illegitimacy of the actors who enforce them. Doing these things would require a fundamental transformation of states' current externalization policies; how much space this leaves, if any, for permissible externalization policies is an open question.

Let me conclude with two more speculative observations. First, my argument

illuminates a broader issue that defenders of self-determination have, to date, neglected: according to states formally equal rights to self-determination can result in inequalities in *de facto* capacities for self-determination. If all peoples' self-determination matters equally, we need to think more deeply about what kind of international system adequately realizes self-determination for all.

Second, if one takes the idea of non-domination seriously as necessary for self-determination, this plausibly requires a radical transformation of the international order. Specifically, it may require reigning in the power of states in the Global North. How such transformations might be achieved is a difficult question. The issues at stake here clearly transcend migration control. However, undermining domination in migration control requires thinking about migration governance *systematically* (Sharp, 2024). Specifically, it might require delegating certain aspects of border control to representative global institutions. If so, my argument then provides additional support for calls for (democratic) global migration governance which takes the power to control migration partly out of the hands of states (Bertram, 2018; Sandven, 2023).²⁵

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