# 1NC – Stilz

### Advocacy

#### I affirm that justice requires a conditional right to migration. Stilz 19 defines the conditional model:

Stilz, Anna. 2019. Territorial Sovereignty: A Philosophical Exploration. New York, NY: Oxford University Press. JS

This chapter focuses on what we might call opportunity migrants, those who are not suffering from persecution, persistent violations of their basic human rights (including subsistence rights), environmental devastation, or cultural or political oppression. Instead, opportunity migrants seek better job opportunities, reunification with their families, association with friends or organizations, education or training, or a more congenial political and cultural environment. I argue that the state has a conditional right to exclude migrants of this sort, if their settlement would significantly harm its inhabitants. A different view argues for a discretionary exclusion right: the view that the state has a moral right to exclude migrants at will, for any reason (or even for no reason). This discretionary right may sometimes be overridden by foreigners’ urgent competing interests (e.g., in the case of refugees), but it allows for the exclusion of many people. Some theorists hold that the discretion to exclude is justified on grounds of collective self-determination. Others hold that it derives from the citizenry’s right to avoid unwanted obligations. Instead, my conditional model suggests that a state may exclude would-be migrants only where it can offer a plausible case that their entry would cause harm. Developing this view requires answering two questions: first, what counts as a relevant harm? I should specify at the outset that I am not using the term “harm” to refer to any lowering of a person’s welfare from the status quo. Rather a “significant harm,” as I use the term, describes setbacks to certain legitimate moral interests that, as a matter of justice, ought to be protected. I will develop an account of these legitimate interests as the chapter unfolds. Second, how high is the burden of justification for restricting migration? If there is a human right to immigrate—as some have argued—threatened harms to inhabitants must be grave to justify restricting entry. But if migration is not the subject of a human right, then restrictions might be justifiable in a broader range of scenarios. On the conditional model, states have a standing duty to accept migrants if their entry would not set back locals’ legitimate interests. I call this the duty to allow harmless migration. Much cross-border movement is harmless, so this standing duty is not trivial. States have duties to allow outsiders to enter for travel, study, business, and visits to friends, relatives, and associates, for example. This extends to a duty to permit permanent settlement, if the numbers and consequences are manageable. Significant harms generally derive from the dislocations caused by a high rate of migration over a short period of time. In cases that are more complex, where there is some threat of harm, the conditional model requires the state to balance the interests of would-be migrants against the costs to its members. These competing interests should be assessed according to the urgency of the objective human needs they serve, not according to the strength of either migrants’ or locals’ preferences. An important question is whether the claims of would-be migrants and locals must be balanced impartially or whether government is permitted to attribute greater weight to its own members’ claims. If would-be migrants’ fundamental territorial interests are satisfied in their home country, then I argue that a government can grant priority to its constituents. This priority is not infinite: where harms to locals are relatively minor, and the benefits to would-be migrants very great, states should accept increased migration.

#### That’s in opposition to open borders.

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How might the conditional model of exclusion work? Here it is worth making two assumptions explicit. First, unlike proponents of open borders, who generally hold that only catastrophic social costs can justify exclusion, I believe that migrants’ interests in settling must be balanced against the interests of the receiving society’s inhabitants without a strong presumption in favor of the would-be migrant. While I reject the human right to immigrate, I do not believe that states should regulate immigration solely in the interests of their own members, e.g., to promote national economic well-being. Instead, in crafting immigration policy, citizens and officials have a moral duty to take the interests of would-be migrants into account. But I deny that we should begin with a strong presumption that migrants’ interests will be dispositive

### Offense

#### Self-determination is vital for the stability of just institutions.

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The basic thought is this: in the ideal case, the group’s self-determination is valuable for individuals because cooperation together as a people is a shared project of those individuals. But why is it important that political cooperation count as the citizens’ own project? Why isn’t it instead sufficient that individuals be brought to sustain a reasonably just state, regardless of whether they endorse that common purpose? I discuss three individual interests served when citizens endorse their politically cooperative project: an interest in stability, in well-being, and in political freedom. The interest in stability is the least controversial, so let me consider it first. Widespread affirmation on the part of citizens is often essential to stabilizing just institutions. As I noted above, as institutional “takers,” individuals have interests in benefiting from a reasonably just state’s rule, through protection of their rights, and the provision of distributive justice and public goods. Yet it is difficult to stabilize even substantively just institutions when most participants reject their participation in them. The importance of political stability thus provides us instrumental reason for valuing citizen affirmation, since everyone’s “taker” interests are better served when most citizens willingly cooperate to sustain the state. Even dissenters benefit from the lower levels of insecurity, mistrust, and repression that widespread affirmation often brings. Citizens’ shared will is valuable, then, in part because it is instrumental to justice

#### Migrants can have an adverse effect on self-determination and rights in cases such as colonialism – states must possess a limited right to exclude in such instances.

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Is a right to exclude migrants necessary for the state to protect its members’ personal and political autonomy? In some cases, yes. It does seem warranted to exclude migrants who pose a threat of institutional usurpation. To threaten usurpation, (i) migrants must differ sharply from locals in their political values; (ii) they must come in numbers large enough to bring about a significant transformation of a society’s institutions; and (iii) that change must be produced, not through persuasion of prior inhabitants, but by coercive imposition. Political autonomy would be jeopardized by a large influx of theocrats, say, who rejected liberal values and intended to use their majority in the political process to impose illiberal policies.21 Institutional usurpation is analogous to colonial annexation: it destroys a social order that reflects a population’s shared commitments and replaces it with one that does not. Such usurpation might occur if newcomers rendered prior inhabitants a permanent minority in their country. Settler colonialism differs from ordinary migration because settlers typically threaten the political autonomy of locals. Settlement projects usually transfer migrants onto a territory with the aim of establishing political control of the area. Consider the ongoing settlement of Israelis in the West Bank or the Han Chinese in Tibet. To forestall Tibetan and Palestinian self-determination, the Chinese and Israeli governments are subsidizing the massive influx of their nationals into these areas. These projects aim to establish a majority large enough to control the local political process. If newcomers are party to a project of political usurpation, it seems permissible to exclude them even where their reasons for entry would otherwise be compelling. Citizens also have an interest in protecting their political institutions against changes that fall short of usurpation. Sometimes political concerns are more widely shared within a constituency than they are in the world at large. When a group can control migration into their unit, they have a greater ability to ensure that their institutions reflect their (morally acceptable) shared preferences. For example, I believe Norwegians would have a legitimate grievance at being “swamped” by an influx of libertarians who so outnumbered them that they were required to give up their welfare state, even if other features of their institutions were not threatened. It is true that not every Norwegian values the welfare state. Still, even those who dissent from this specific decision may value the Norwegians’ ability to shape their own policies. Thus, limits on immigration could sometimes be necessary to protect political programs, so long as the process of self-determination that led to these programs is widely valued. None of this, however, entails that a self-determining state should have the same free association rights a self-determining individual has. If the state’s rights are justified by the role they play in securing the personal and political autonomy of its members, then the state’s moral prerogative to exclude migrants is limited to those scenarios where migrants actually do threaten members’ political autonomy. But this is very rarely the case. Most of the time, the admission of new migrants has no effect on members’ ability to continue to be governed by institutions that reflect their shared commitments. For that reason, in most scenarios, I believe the state has no right—on self-determination grounds—to exclude migrants.

### Egalitarian Justice Add-On

#### Egalitarian justice at best justifies only a conditional right to migration for opportunistic immigrants.

Borja Niño Arnaiz (2022) Should we open borders? Yes, but not in the name of global justice, Ethics & Global Politics, 15:2, 55-68, DOI: [10.1080/16544951.2022.2081398](https://doi.org/10.1080/16544951.2022.2081398) JS

However, a human right to migrate must be understood as the right of every human being, irrespective of their talents, resources or any other circumstances, to travel and establish their residence in any country. And, as such, ‘it attaches as much to the rich Canadian wishing to settle in Germany as it does to the desperate Somali trying to cross the border into Kenya’ (Miller [2016a](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398), 49). We can now clearly see how these remedial policies come into conflict with the very idea of freedom of movement. In all these cases, the state would be favouring one type of immigration over another, or to put it bluntly, it would be restricting the freedom of movement of the relatively better-off for the benefit of the least advantaged.[10](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398)

One could plausibly respond that both kinds of migration (qualified and unqualified, rich and poor) are in fact compatible, since qualified migrants contribute to the economy of the receiving country, thus compensating for an eventual cost imposed by less qualified migrants. Thus, all things considered, domestic distributive justice would go unaffected. This makes some sense, but as we have already said, insofar as migration is subject to terms and conditions, it is not free.

From the moment that borders are placed at the service of redistribution, the honourable cause of global justice perverts the very idea of open borders, since it legitimizes the promotion of one type of immigration (that of the relative poor) and the limiting of another (that of the relative rich). As a result, freedom of movement and open borders become empty signifiers. By this we do not pretend to suggest that such policies are necessarily unjust, but rather that the idea of open borders is not compatible with that of global distributive justice. In fact, global justice could under certain circumstances justify the imposition of severe restrictions on mobility and even the obligation to remain in one’s country.

If justice is concerned with the needs of the disadvantaged, just as it would not be morally wrong to prevent a rich person from entering a soup kitchen or to deny her the minimum subsistence income, to what extent would a government act badly if it forbade her entry into the country? Distributive justice, by its very nature, requires us to put needs in order of priority, and to give some (the most pressing) preference over others (the least pressing).

To this end, it might be helpful to distinguish between interests and rights. Just as my interest in a particular thing does not always give rise to a right to that thing, many of the claims of potential immigrants, however strong and legitimate, are not always adequately captured by the language of justice. And if what takes us to open our borders are the claims of justice, when there is no such claim, we are under no corresponding obligation to open them. According to Blake ([2020](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398)) and Miller ([2016b](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398)), what justice requires is access to a sufficient range of options.[11](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398) In this sense, a state could not be accused of injustice for prohibiting the entry of persons whose only motivation was the maximization of their options, provided that they were already adequately covered in their country of origin. Similarly, it would not be unfair to deny entry to a person whose claims could be adequately addressed where she was currently living (Wellman and Cole [2011](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398)).

One might criticize this conception of justice for being too narrow. But no conception of justice, not even the most ambitious one, could plausibly demand an unrestricted freedom of movement, nor does it include the right to choose one’s country of preference (Blake [2020](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398)). One can have access to a sufficient range of means to develop an autonomous life without having free rein to move all over the globe, so it is difficult to derive the principle of freedom of movement from the requirements of global justice. If freedom of movement is to be defended, it cannot be done by appeal to global justice. In conclusion, the remedial or instrumental argument fails at justifying unrestricted migratory rights for everyone, especially for those who already have access to an adequate set of opportunities. What is more, as we will argue in the next section, global justice may run counter to the very idea of open borders.

#### Furthermore, egalitarian justice prohibits an absolute right to migration once distributive obligations have been fulfilled.

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Two contradictory concepts

The proposal of open borders as a remedy of justice stands in an unsolvable contradiction with the idea of open borders understood as an unrestricted right to freedom of movement between countries. This is because the obligations of justice are not unlimited, as enshrined in the Latin legal principle ultra posse nemo obligatur (no one is obliged beyond what she is able to do). Under normal circumstances, an act of justice should not place the duty-bearer (that whose interests and freedom are reduced) in a comparatively worse situation than that of the rights-holder (that who is benefited by the act).[12](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398) If we apply this maxim to distributive justice, the obligations of the rich towards the poor should not exceed the point of absolute equality among the parties,[13](https://www.tandfonline.com/doi/full/10.1080/16544951.2022.2081398) unless that inequality was the result of a relation of exploitation or past grievances.

This is not to defend radical egalitarianism, but to notice how any demand for justice (distributive or otherwise) has its limits. Therefore, if we try to reduce poverty and/or inequality by opening borders, considering that there are limits to redistributive duties, borders cannot be always open. If distributive obligations (X) from A to B are discharged in the form of open borders (Y), then borders need not remain open after a certain point in redistribution has been reached (X ≥ Y). At issue here is the stringency of distributive obligations, but on no account can they be unlimited. Several objections can be levelled against this approach:

### A2: Threat Construction

#### The NC doesn’t justify restricting migrants at the mere possibility of harm – it instead requires justification for restriction that is impartial. Judicial review solves their offense.

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A familiar worry is that the remotest possibility of a threat to these values can be exploited as a reason to close borders. A mere subjective perception of threat is not sufficient to restrict migration. Nor is it sufficient for authorities simply to claim that they have considered migrants’ interests. Instead, government must be required to publicly justify its exclusionary policies before an impartial forum. One way of institutionalizing this may be to give domestic courts a greater role in reviewing immigration policy.64 Excluded migrants might be given legal standing to challenge the state’s migration policies in its own courts. To defend exclusion, government would need to make a reasonable showing of harm—drawing on the objective methods of social science, and publicly available evidence—and to demonstrate that migration limits have a realistic prospect of averting this harm. For example, if threats to the welfare state are at issue, authorities must demonstrate that large percentages of migrants are dependent on public benefits, and that the programs’ fiscal stability is threatened. A court that was not convinced that the restrictions served a legitimate objective might be empowered to strike them down. I recognize that this justificatory model still leaves much room for debate over when evidence is “clear” and when threats become “significant,” but it would be a significant advance over the status quo.