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The Egalitarian Case for Open Borders: Moral Arbitrariness

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Abstract: This paper argues that recent debates on egalitarian objections to immigration restrictions overlook a crucial, powerful normative principle that underpins objections to inequalities: any inequalities between morally equal persons – whether in goods, resources, welfare but also in powers, statuses, rights, and freedoms – that arise from *morally arbitrary factors* are pro tanto unjust. This principle of moral arbitrariness is fundamental to both luck and relational egalitarianism yet is often missing from debates that apply such theories to migration ethics. The result of this omission is that certain arguments that purportedly reject luck egalitarian cases for open borders in fact fail since they fail to recognise the normative force of the principle of moral arbitrariness; yet, simultaneously, relational egalitarian cases for open borders are not fully successful since they fail to recognise that the principle of moral arbitrariness is required to distinguish immigration restrictions as unjust where other (relational) inequalities may not be. Hence, the overall argument of this paper is that the recognition of the principle of moral arbitrariness is essential for the success of both the luck and relational egalitarian cases, and thus a proper recognition of the full normative force and implications of this principle entails the egalitarian case for open borders indeed succeeds.

Keywords: borders; migration; luck egalitarianism; relational egalitarianism; open borders

The egalitarian case for open borders represents a powerful objection to a state's right to control borders and restrict immigration. According to its paradigmatic articulation, advanced by Carens (1987, 2013), all persons have equal moral worth and one's global birth location is a morally arbitrary fact, yet those born into affluent and stable states have significant advantages compared to those born into less affluent and stable states, resulting in an undeserved inequality. A system of controlled borders and immigration restrictions sustains this arbitrary inequality and is thereby unjust. Call this the *luck egalitarian case for open borders*. More

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recently, Sharp (2022) has advanced a different articulation according to which a system of controlled borders and immigration restrictions instantiate an unjust relational inequality where citizens of affluent and stable states exercise substantially unequal power over disadvantaged prospective immigrants from less affluent and stable states in being able to determine the options, goods, and opportunities available to those immigrants. Call this the *relational egalitarian case for open borders*.

This paper argues that debates on the egalitarian case for open borders often overlook a crucial normative principle that is fundamental to egalitarian critiques of inequalities between persons. This is the principle of moral arbitrariness, according to which, since all persons are moral equals, any inequalities between such persons – whether in goods, resources, welfare but also in powers, statuses, rights, and freedoms – that arise from morally arbitrary factors are *pro tanto* unjust. This principle is fundamental to the luck egalitarian case for open borders, and also, so I shall argue, to the relational egalitarian case for open borders. Yet, this principle is overlooked in current debates in two ways. The first way is that arguments that reject the luck egalitarian case for open borders often fail to sufficiently recognise or engage with the full normative force and implications of the principle of moral arbitrariness. This oversight entails that the rejections of the luck egalitarian case often miss their mark and/or rest on false analogies, and, as a result, are not successful. Hence, due to the principle of moral arbitrariness, the luck egalitarian case remains untroubled by such objections. The second way is that the relational egalitarian case for open borders fails to incorporate the principle of moral arbitrariness within its conditions for unjust relational inequalities. As a result, the relational egalitarian case as it stands is unable to distinguish immigration restrictions as necessarily an *unjust* relational inequality. The recognition and incorporation of the principle of moral arbitrariness is thus required to ensure the relational egalitarian case is successful. Therefore, the principle of moral arbitrariness is essential in blocking the rejection of the luck egalitarian case, and in ensuring the success of the relational egalitarian case. Hence, a proper recognition of the principle of moral arbitrariness entails that the egalitarian case for open borders indeed succeeds as a powerful objection to immigration restrictions since it demonstrates that such restrictions instantiate and sustain arbitrary inequalities between morally equal persons, and are, for that reason, unjust.

Section 1 outlines the luck egalitarian case and the standard rejection of it. Section 2 outlines how the standard rejection fails to recognise the (full significance of the implications of the) principle of moral arbitrariness. Section 3 motivates how this principle sustains a particularly powerful objection to immigration restrictions and thus ultimately entails that the standard rejection fails. Section 4 outlines the relational egalitarian case and raises a novel objection to it. Section 5 outlines how an

incorporation of the principle of moral arbitrariness ensures the relational egalitarian case avoids this objection and thus succeeds. Section 6 then considers how the principle of moral arbitrariness strengthens relational egalitarian objections to contemporary immigration restrictions. Section 7 concludes.

1 The Luck Egalitarian Case for Open Borders

Carens's (1987, 2013) famous case for open borders has been characterised as the luck egalitarian case and as primarily concerning distributions of certain goods.¹ For reasons that will become clear throughout this paper (especially Section 3), I believe this characterisation is too reductive. Rather, Carens's case encompasses elements of, and is thus the foundation of, *both* the luck and relational egalitarian cases. However, only for the sake of clarity, I will retain the label luck egalitarian.

Carens's case (2013, 226–54) proceeds as follows. All persons have equal intrinsic moral worth. One's global birth location is a morally arbitrary fact just as one's race or sex-assigned-at-birth: one has no control over whether one was born into one state or another; and, just as one's race or sex-assigned-at-birth, this fact is morally irrelevant and thereby wrongful as a basis on which to discriminate between morally equal persons or to confer advantages to some over others.² Yet, those born into affluent and stable states have significant advantages compared to those born into less affluent or stable states, for example, in terms of access to and enjoyment of certain goods, resources, welfare, income, wealth, healthcare, education, employment, security, and also certain freedoms, rights, and powers. This vast inequality between morally equal persons based on a morally arbitrary fact of mere global birth location is undeserved and thereby unjust. A system of controlled borders and immigration restrictions, which prevent the free movement of those from less affluent and stable states to access the advantages available only to those in affluent and stable states, coercively sustains this unjust inequality.

1 For example, Wellman (2008) critiques Carens's case as being premised on a commitment to luck egalitarianism (120–22). Pevnick (2011, 107–109) explicitly characterises Carens's case 'the distributive argument' and as primarily concerned with securing equality of opportunity to access certain economic and social goods. Moreover, Sharp (2022) holds that Carens's case is the 'canonical statement' of the distributive argument for open borders (see 646, fn. 5). Angell and Huseby (2019) also cite Carens as a proponent of the global luck egalitarian case for open borders.

2 I use 'global birth location' to designate both contemporary legal principles conferring automatic membership of the political communities of states via birth either through *jus in soli* (right of soil): being born within the relevant geographical territory, and/or *jus sanguinis* (right of blood): being born to the relevant parents. See Shachar (2009, 7).

Carens famously invokes a comparison to the feudal system of birthright privileges:

Citizenship in Western liberal democracies is the modern equivalent to feudal privilege – an inherited status that greatly enhances one's life chances. To be born a citizen of a rich state in Europe or North America is like being born into the nobility. To be born a citizen of a poor country in Asia or Africa is like being born into the peasantry in the Middle Ages. Like feudal birthright privileges, contemporary social arrangements not only grant great advantages on the basis of birth but also entrench these advantages by legally restricting mobility, making it extremely difficult for those born into a socially disadvantaged position to overcome that disadvantage, no matter how talented they are or how hard they work. Like feudal practices, these contemporary social arrangements are hard to justify when one thinks about them closely. (Carens 2013, 252–253)

Since a system of controlled borders sustains an unjust inequality based on a morally arbitrary fact (akin to the system of feudal birthright privileges), more open borders and freer movement of persons are required to enable those from less affluent states to migrate to access the goods and opportunities currently precluded to them by a system of controlled borders, and to thereby ameliorate this unjust global inequality (Carens 2013, 254; see also Holtug 2020).

Carens's case is *prima facie* compelling. However, it faces the following standard rejection, which is perhaps best articulated within Wellman's (2008) analysis, but is also found (in full or in part) among other defenders of a right to control borders.³ Wellman's own justification for a right to control borders is that states and their citizens have a right to freedom of association analogous to that of an individual, which includes a right to exclude any and all others whom they do not wish to associate with (111). Wellman then proceeds to reject the egalitarian case for open borders, which he takes from Carens's analysis, on the basis of two reasons (119–129).

First, the egalitarian case presupposes *luck egalitarianism*, yet we ought to reject luck egalitarianism in favour of *relational egalitarianism* as the more compelling understanding of the aims of egalitarian justice (Wellman 2008, 120–125; see also Pevnick 2011, 123–4). Luck egalitarianism is the view that any inequalities in goods, resources, or welfare between persons that arise only as a result of persons' unchosen characteristics and circumstances (including their race, sex-assigned-at-

³ Pevnick (2011), for example, like Wellman, argues it is mistaken to assume that egalitarian justice requires that all distributive inequalities in goods and resources that result from arbitrary factors of luck are necessarily unjust and ought to be rectified (123–4). Instead, again like Wellman, Pevnick argues that only a subset of inequalities are unjust, such as those that undermine relational equality in shared political communities (127). Ayelet Shachar (2009) agrees that global inequalities that arise from brute luck are *pro tanto* unjust, but concurs with the second component of the standard rejection: this unjust inequality need not entail open borders, but rather redistribution of wealth, in her terms, through a birthright privilege levy.

birth but also their natural endowments and talents) are undeserved and unjust, since those unchosen characteristics and circumstances are merely the result of morally arbitrary brute luck. Therefore, the proper focus of egalitarian justice is (re) distribution to offset inequalities in goods, resources, or welfare that arise out of such brute luck.⁴ In Arneson's (2008) articulation: 'Distributive justice stipulates that the lucky should transfer some or all of their gains due to luck to the unlucky.'⁵ Hence, luck egalitarianism is an inherently 'distributive ideal' that seeks 'to eliminate the effects on distribution of brute luck' (Scheffler 2003, 21). Wellman, echoing well-established critiques of luck egalitarianism (Anderson 1999; Scheffler 2003; Wolff 1998), writes that 'the most compelling understanding of equality does not require us to guarantee that no one's life prospects are affected by matters of luck; more minimally, equality demands that we address those inequalities that render people vulnerable to oppressive relationships' (2008, 120). Hence, Wellman endorses relational egalitarianism, which is the view that the proper focus of egalitarian justice is not primarily *distributions of goods*, but *relations* between persons: unequal relations where inequalities in power and status enable some to be in positions of superiority and oppress others are unjust. Therefore, the proper aim of equality is to secure the requisite conditions whereby persons can relate to each other as equals (Anderson 1999, 313; Nath 2020; Scheffler 2003, 22). Wellman (2008) suggests achieving luck equality *does* matter, but less than relational equality, and, crucially, that 'even if achieving relational equality is important enough to trump other values like freedom of association, realising luck equality is not important enough to deny people their rights to self-determination' (122). This rejection thus assumes the egalitarian case for open borders is premised on luck egalitarianism and argues from this basis that luck inequality between citizens of affluent states and citizens of less affluent states is not sufficiently morally important to override a state's right to restrict immigration. Only relational inequality would be sufficiently morally important to do so, but the relations between citizens of affluent states and citizens of less affluent states are insufficiently robust to constitute morally relevant relations, and hence to generate a relational egalitarian case for open borders (Wellman 2008, 123; see also Pevnick 2011, 120–128).⁶ Therefore, the egalitarian case for open borders, based as it is on luck egalitarianism, does not undermine a state's right to control immigration.

⁴ See Lippert-Rasmussen (2023).

⁵ Quoted in Anderson (1999, 290).

⁶ Pevnick (2011) too argues that only a subset of arbitrary inequalities within 'certain contexts' are unjust and subject to reform, such as those that undermine relational equality (127), and such relational inequalities do not obtain between citizens of affluent states and those of less affluent states (125).

The second reason for rejecting the egalitarian case for open borders is that, even if luck egalitarianism is the most compelling understanding of the aims of egalitarian justice and (citizens of) affluent states have stringent distributive duties to offset global inequalities, this would nonetheless not establish the conclusion that states are obligated to open their borders. This is because (citizens of) affluent states could instead discharge duties of distributive justice through transferring material resources via foreign aid (Wellman 2008, 126; see also Shachar 2009).⁷ To motivate this argument, Wellman draws the analogy that wealthy couples are not obligated to open up their marriages to meet duties of distributive justice. For instance, Jeff Bezos has staggering wealth but is not obligated to marry a person enduring extensive poverty to meet duties of distributive justice. Rather, Bezos is instead required to donate a portion of his wealth (127). Hence, for Wellman:

If wealthy couples need not open up their marriages to those less well off, why think that wealthy countries must open their borders to less fortunate immigrants? Just as relatively wealthy families are required merely to transfer some of their wealth to others, why cannot wealthy countries fully discharge their global distributive duties without including the recipients in their political union, simply by transferring the required level of funds abroad? (127)

Therefore, for these two reasons, the egalitarian case for open borders is rejected.

2 The Principle of Moral Arbitrariness

There are numerous potential responses to the standard rejection. One might highlight important moral differences between an individual's free association and that of a state and its citizens, which would entail that states but not individuals lack a right to exclude, and would instead be required to open up their associations to meet duties of distributive justice (Fine 2010). Or one might demonstrate that there are indeed sufficiently robust relationships between citizens of affluent states and (certain) citizens of less affluent states, and thereby motivate a relational egalitarian case against immigration restrictions (Hillier-Smith 2024; Sharp 2022; Wilcox 2014).

I suggest that an alternative means of resisting the rejection is revealed once we revisit Carens's case of the feudal system of birthright privileges. Call this the *feudal case*. To expand on this case, suppose, for example, that egalitarian-minded agitators advocated for the abolishment of the controlled class system of feudal societies. They pressed the egalitarian case that all persons are moral equals, yet those born into the

⁷ Shachar (2009) argues that meeting duties of global distributive justice are not best achieved through more open immigration admissions (73–85), but redistribution of wealth via a birthright privilege levy (96–101).

higher noble classes have significant advantages compared to the serious disadvantages to those born into the lower peasant classes based on the morally arbitrary fact of mere feudal birth class. Since this system of controlled feudal classes sustains this inequality between morally equal persons on the basis of such a morally arbitrary fact, it is unjust. Therefore, the higher classes ought to open up their classes and allow free (upward) social mobility of persons across classes. This would ameliorate the unjust inequality since, no matter what class one was born into, one would have a more equal chance to access the advantages currently precluded to the lower classes by the system of controlled classes. Call this *the egalitarian case for open classes*.

Now suppose, in response, members of the nobles class offered a rejection of this case along similar lines to the standard rejection of the egalitarian case for open borders. The nobles would argue that ‘indeed, it is only by mere chance that we were born into the nobles class with all the advantages and wealth that come with it, whilst the peasants were born into their lower class with the poverty and early death that come with it, and this is certainly unfortunate and bad luck for those peasants. However, the proper aim of egalitarian justice is not to offset such inequalities that arise out of brute luck: this is not a sufficiently compelling concern for us to allow those peasants to access the wealth, goods, rights, freedoms and powers that we have, nor a sufficiently compelling concern for us to give up our right to our free association as nobles or to protect this association from the entrance of unwanted peasants. Only a relational inequality might require us to do so, but there is no sufficiently robust relationship between us nobles and the peasants (indeed we seek to avoid them). Moreover, even if achieving luck equality between us *was* sufficiently important, we need not open up our classes and allow peasants to enter, we can instead keep excluding them and keep them in their place so long as we transfer a sufficient portion of the wealth we have as nobles to them’.

I take it that such a response on behalf of the nobles to the egalitarian case for open classes is not only entirely unconvincing but also insulting in its inadequacy. But if this rejection is ineffective against the egalitarian case for open classes, why then is it considered effective against the egalitarian case for open borders? It is instructive to consider precisely why the rejection of the case for open classes fails as this will reveal why the rejection of the case for open borders must also fail.

I suggest a crucial reason why we recognise the rejection of the case for open classes fails is because we recognise that it is not only the case that the nobles have done nothing to deserve the unequal wealth and goods that they enjoy and the peasants lack, but additionally that the nobles have done nothing to deserve the greater freedoms, rights and powers over others that they enjoy as nobles and which the other classes lack, and hence, crucially, the nobles have done nothing to deserve their powers of exclusion over the peasants. For this reason, they lack moral entitlements to control access to the association or to control the mobility of the peasants.

Colloquially speaking, the nobles are in no position to be dictating to the peasants what they may or may not have access to.

This analysis of why the rejection of the case for open classes fails can be more formally captured in the principle of moral arbitrariness.⁸ This principle takes moral equality as its foundation: all persons have equal moral worth. Indeed, such moral equality must be the foundation of any egalitarian theory.⁹ From this basis, the principle of moral arbitrariness holds that any inequalities between such morally equal persons – in goods, welfare, resources, but *also* in freedoms, rights, status, and powers, or any other morally salient property – that arise as a result of morally arbitrary factors are *pro tanto* unjust. Morally arbitrary factors can include those (but not only those) that are arbitrary in the sense of their random assignment on the basis of birth such that persons have no control over them – such as one's race, sex-assigned-at-birth, global birth location, feudal birth class – but crucially are those factors that are (also) arbitrary in the sense that they are morally irrelevant or morally insignificant: there is no moral reason to take such factors as relevant or significant.¹⁰ Therefore, such factors will be wrongful as a basis on which to discriminate between persons, or to confer certain advantages to some over others, or to suppose some ought to have a higher status or entitlements that others lack. This

8 I am grateful to a reviewer for recommending Cole's (2012) analysis, which explicitly recognises the relevance and normative force of moral arbitrariness within egalitarian objections to immigration restrictions. I thus see my present argument as aligned with, and a development of, Cole's analysis.

9 See Williams (2016 [1973]). For Williams, moral equality is the foundation for objections to egalitarian social structures, ideologies, and discrimination. For Kymlicka (1990) moral equality constitutes the 'egalitarian plateau' for all contemporary egalitarian political theories (5), quoted in Gosepath (2021). Moral equality is also the foundation for any plausible theory in normative ethics more broadly, see Nagel (1979).

10 In more detail, a factor lacks a moral reason to take it as relevant if, for example, that factor is not itself, constitutive of, instrumental to, or derived from a basic moral claim or an essential component of wellbeing, or otherwise similarly tied to something of comparable moral significance, and thus will not generate reasons to take it as morally relevant. So a person's skin colour is a morally irrelevant basis on which to distribute vital goods between persons (excepting, of course, cases to undo previous unjust inequalities based on this irrelevant factor), but so is a person's shirt colour (even if it is a chosen factor): it is obviously without moral significance. In contrast, potentially nonarbitrary factors that can underpin *nonpro-tanto* unjust inequalities may include, for instance, unequal treatment or distributions based on correcting previous injustice, desert, merit, consent, absolute needs, just entitlements, basic moral claims, and/or basic components of human wellbeing. For instance, there may be an inequality in the enjoyment of effective freedoms between a citizen and a convicted and imprisoned criminal, but this inequality may be based on a nonarbitrary factor of desert or retributive justice. And, to invoke an example discussed in more detail in Section 5, Jeff Bezos's unequal power over others to determine access to his own personal and intimate association is based on the nonarbitrary factor of his basic moral claims over his own body and intimate association, which are basic claims that all persons have and that are further essential to basic wellbeing.

principle thus entails not only that distributions of goods, but also that discrimination between persons, or unequal treatment, or social hierarchies, or unequal powers, rights, freedoms, or relations between persons, on the basis of morally arbitrary factors are *pro tanto* unjust.¹¹

The normative force of this principle derives from that of moral equality. If all persons are moral equals, then any inequalities between them in salient properties must be grounded in an adequate moral reason. In Berlin's (1978) words 'equality needs no reasons, only inequality does so' (quoted in Viehoff 2019, 6). And for Williams (2016 [1973]), given moral equality, 'for every difference in the way [persons] are treated there must be a [morally relevant] reason given' (241). Hence, inequalities in salient properties based on *arbitrary* factors – that is those *without* moral relevance or significance – will *ipso facto* be *pro tanto* unjust.

The principle of moral arbitrariness is therefore not to be confused as identical with luck egalitarianism. Luck egalitarianism focuses only on (re)distributions of certain (often only material) goods,¹² and treats as morally arbitrary any, all and only those factors that are unchosen (including, for example, natural endowments and talents), rather than also being morally irrelevant. The principle of moral arbitrariness (1) concerns not only distributions of goods, but also inequalities in (often nonzero-sum properties of) rights, statuses, freedoms, and powers, and hence relational issues,¹³ and (2) holds that arbitrary factors are not only (or necessarily) those that are arbitrary in the sense they are randomly assigned and unchosen but are

¹¹ I thank a reviewer for pressing me to clarify whether *arbitrariness* is simply *lack of moral justification*. It is not. These are related but distinct considerations since they can be separated. There can be arbitrary inequalities that are *ipso facto* *pro tanto* unjust, but nonetheless may be all-things-considered morally justified. If for example, after a shipwreck, five survivors happen to find themselves on flotsam, while another does not and is at risk of drowning, this is an arbitrary inequality and hence *pro tanto* unjust: there is no adequate moral reason why that inequality has arisen. That inequality may nonetheless be justified due to compelling consequentialist reasons: it yields greater consequences while addressing it may entail far worse consequences, such as the (risk of) death of the five. There can also be nonarbitrary inequalities that are not *pro tanto* unjust but are nonetheless not morally justified. Vast inequalities in wealth even if somehow nonarbitrary may lead to disastrous societal consequences and so may not be morally justified. And, to invoke an example discussed later in Section 6, if an employer in some sense 'earned' their being in a position of having unequal power over their employees (through their use of their resources and hard work), this nonarbitrary inequality may not be *pro tanto* unjust but may nonetheless not be morally justified if it results in exploitation, serious hardship for those employees, and/or overall negative consequences.

¹² There are some exceptions, Cordelli (2014) treats unequal opportunities for nonmaterial goods such as trust and supportive relationships as a site for (luck) egalitarian justice. However, this too is not concerned with unequal interpersonal relations, statuses, or power imbalances between persons, but rather distributions of goods, resources and opportunities.

¹³ Inequalities in properties that are nonzero-sum include enjoyment of rights, freedoms, social status, concern and respect, and certain powers.

(also) arbitrary in the sense that they are morally irrelevant.¹⁴ And since the principle concerns both distributions of goods and relations between persons, it ought to be understood as foundational to *both* luck and relational egalitarian objections to inequalities. (I explain in more detail in Section 5 how the principle relates to relational egalitarian concerns).

So understood, the principle of moral arbitrariness explains why, in the feudal case, the rejection of the egalitarian case for open classes fails. The nobles are not only not entitled to the unequal wealth and goods they possess merely in virtue of their feudal birth class; they are also not entitled to their enhanced freedoms, rights, and powers over others which similarly arise from the morally arbitrary grounds of their feudal birth class. Hence, the nobles do not deserve, nor are entitled to, their powers over the peasants, or to control the peasants' admission into their class, or thereby determine the peasants' life chances. And there is something deeply objectionable (from an egalitarian point of view) about some having unequal power over their fellow human beings due to a mere fact of birth and inherited status (Anderson 1999, 312). What matters therefore is the involuntary and arbitrary nature of the nobles' membership of their association and resultant powers. The nobles did

¹⁴ To explain this latter difference in more detail, luck egalitarianism goes beyond the principle of moral arbitrariness and arguably errs in treating any factor that is arbitrary in the first sense of being unchosen as being necessarily arbitrary in the second sense of being morally irrelevant. It is true that many factors that are randomly assigned and unchosen will for that reason be obviously without moral significance, but it is not necessarily true in all cases. And it is precisely this equivalence that is the site of much criticism of luck egalitarianism. For one prominent example, one's natural talents may be unchosen and the result of brute luck, but it is an open debate on whether such factors may nonetheless be morally relevant in distinguishing between persons. For instance, it is not obviously unjust to reward a person for their athletic talents over a person who is less talented, nor is it necessarily unjust that my colleagues have greater natural (and unchosen) talents in philosophical thinking than I do and thus greater acclaim. See Scheffler (2003) for comprehensive discussion on this point (especially page 33). By contrast the principle of moral arbitrariness holds that arbitrary factors must be those that are (also) morally irrelevant (see footnote 10). One example that might demonstrate the difference and independent normative force of the principle is the following. Intuitively, the primary objection to an employer discriminating between persons (for example, paying greater wages or promoting them) on the basis of their 'superior' physical appearance or 'looks' is not necessarily (or just because) a person's physical appearance is unchosen, but because such a factor is morally *irrelevant* and thus wrongful as a basis to discriminate. For instance, it would still be wrongful to discriminate in this way even if a person's 'superior' appearance was in some sense 'chosen' due to undergoing appearance-altering surgery. Such a factor would remain morally irrelevant and therefore wrongful as a basis to confer such advantages on some and deny them to those with 'inferior' appearance. Therefore, the principle of moral arbitrariness is distinct from luck egalitarianism in (1) concerning not only goods but also rights, powers, freedoms and statuses, and also, importantly, (2) in specifying the condition of moral irrelevance (rather than merely unchosen or the result of luck) as necessary for moral arbitrariness.

nothing to deserve to be members of that association, their membership was simply an inherited birthright, and this undermines the moral legitimacy of their claims to deny others access and their powers to do so.

Accordingly, the rejection of the egalitarian case for open classes fails for at least two main reasons. First, the rejection assumes the egalitarian case only concerns distributions of goods, when in fact there are deeper and wider inequalities at stake in terms of freedoms, rights and powers that are also *pro tanto* unjust due to their morally arbitrary source, and which cannot be offset by mere redistribution of goods. (This, in part, explains why the nobles' offer of redistribution of goods is misplaced: the transfer of wealth is incommensurable with and thus unable to address the inequalities where some have greater rights, freedoms, and powers over others in virtue of their birthright). Second, the rejection presupposes the nobles are entitled to possess the power of exclusion over the peasants (and thereby decide whether they will open their classes or merely redistribute), when instead that power is itself derived from morally arbitrary factors, which undermines its moral legitimacy. Therefore, the nobles' attempts to justify the *exercise* of their power of admission and to exclude the peasants strikes us as particularly objectionable since it rests on the mistaken presupposition that they are entitled to that power in the first instance. Indeed, to those nobles it might be replied 'on what grounds do you have that power over the peasants and to determine access?'

3 Arbitrary Inequalities Across Borders

We may now begin to see why the standard rejection of the egalitarian case for open borders will similarly fail. It is mistaken to hold (as, for example, Wellman does) that that case is reducible to luck egalitarian concerns about the unequal distribution of certain goods alone. Rather, the principle of moral arbitrariness reveals there are far wider and deeper inequalities at stake that are also arbitrary and (*pro tanto*) unjust.¹⁵ Hence, akin to the nobles in the feudal case, citizens of affluent states not only have

¹⁵ Indeed, Carens's (2013) case certainly concerns unequal global distributions of, and opportunities to access, certain goods, but also much more. Carens's case also explicitly concerns restrictions on immigrants' fundamental freedoms, and hence the powers that affluent states have (and indeed exercise) over immigrants to prevent their access (227, 235–8). Accordingly, Carens critiques the control that affluent states have over disadvantaged migrants (230), social and political inequalities between citizens of affluent and citizens of less affluent states (228–229), affluent states' unequal power over in the imposition and maintenance of far-reaching global structures of migration governance (258–60), and the use of coercion (235), physical force (260), and violence (225) against immigrants. After all, for Carens, what stands in need of justification is the coercive enforcement of migration governance: the 'borders have guards, and the guards have guns' (225).

(access to) significant goods, privileges and advantages, but also enhanced rights and freedoms that citizens of less affluent states lack (or have less of); and, crucially, substantial powers over prospective immigrants from those less affluent states to determine whether they may or may not be granted access to their associations, to exclude them and thereby substantially determine their life prospects (Sharp 2022).¹⁶ And, akin to the feudal case, such unequal goods, freedoms, rights, and powers over others are derived from arbitrary grounds, in this case, one's particular global birth location: membership in political communities is automatically assigned via birth through the two legal principles of *jus soli* (right of soil) and *jus sanguinis* (right of blood).¹⁷ Hence (the vast majority of) citizens of affluent states¹⁸ will enjoy significantly greater wealth and advantages, but also enhanced freedoms, rights, and powers over others simply in virtue of their birth circumstances in being born in the relevant geographical location and/or possessing the relevant blood.

For instance, it is well-established that the enjoyment of substantive human rights varies considerably across states (Shue 1980). Where and to whom one is born is a significant determinant of whether, and the extent to which, one will enjoy rights against persecution, arbitrary imprisonment, cruel and degrading treatment, sexual and gender-based violence, torture, enslavement, and rights to legal protection, equality before the law and others. For a stark example, those of us born in stable liberal democracies in the Global North, due to protective infrastructures in place, will typically be able to securely enjoy our human rights against torture throughout our life without fear or even mild concern. By contrast, as Arendt (2017 [1951]) identified, those refugees born into and then displaced from states where they suffer extensive human rights deprivations, and whom have not been granted protection by another state, exist in a condition of 'rightlessness' where their human rights are routinely and systematically violated with impunity and without protection or recourse. As a result, many such refugees will not enjoy substantive human rights, even those as basic as a right against torture.¹⁹

¹⁶ It may be objected that an important disanalogy is that in the feudal case, the nobles' enjoyment of goods and advantages depends on their exploitation of the peasants, where this is not the case with citizens of affluent states' enjoyment of unequal goods and advantages. However, though I cannot demonstrate this here, plausible cases have been made that the goods that citizens of states in the Global North enjoy depend heavily on exploitative global economic orders, trading arrangements, labour arrangements and supply chains, and resource extractions affecting citizens from states in the Global South. See for example Pogge (2008). If this is true, then we cannot draw the disanalogy since citizens of affluent states will similarly enjoy goods as a result of the exploitation of citizens of states in the Global South, among whom are the disadvantaged migrants they seek to exclude.

¹⁷ See Shachar (2009, 113).

¹⁸ That is those who are not themselves arrived migrants and subsequently acquired citizenship.

¹⁹ For harrowing accounts of the abuses refugees are subjected to whilst displaced and/or on migration routes see Hayden 2023; Parekh 2020; Refugees, United Nations High Commissioner for.

Moreover, it is again well-established that those born in affluent and stable states enjoy a wider range and greater scope of formal and effective freedoms compared to those born in less affluent and stable states (Nussbaum 2006; Sen 1999, 2011). Global circumstances of birth pervasively determine one's political, religious, and personal liberties: whether one has or lacks freedom of religion and conscience, thought, speech and expression, association, assembly, domestic free movement, choice of whom to have a relationship with or marry, of where and for whom one will work, and, particularly, whether women will enjoy economic, political, or reproductive freedoms.²⁰ And for another illustrative example, inequalities in freedoms also include the freedom to move across borders itself. Consider, for instance, a UK citizen who travels to volunteer in the Calais refugee camp in northern France to help provide subsistence aid to refugees and migrants encamped there seeking to enter the United Kingdom via irregular means. After volunteering, the citizen is free and able to travel safely to the United Kingdom simply by boarding a coach which travels across the English Channel via the ferry direct to London; whilst the refugees and migrants are not free to do so, but must instead remain in squalid and dangerous conditions in the camp and whose only *de facto* means of travel to the United Kingdom is on perilous journeys (often on small and unsafe boats across the English Channel) where some of them will die. The only reason the UK citizen is free and able to board the coach and travel safely, whilst the refugees and migrants are not, is because that citizen has a British passport. Yet, there is nothing of sufficient moral significance that citizen has done to deserve or be entitled to that passport that the refugees and migrants have not, nor that could justify such disparities in effective freedoms. That citizen was merely born into one geographical location whilst those refugees and migrants were not.

Further, and crucially, citizens of affluent states have significant powers (through the instrument of their state) over prospective immigrants from less affluent states to restrict their freedoms and exclude them from their states and associations, where those excluded immigrants have no comparable reciprocal power over those citizens (Sharp 2022, 661). In the feudal case, the primary reason the nobles were in a position of power to determine the prospects of the peasants in whether they would be permitted to access the nobles' association and related goods or not was because they were born into the nobles class, and this fact undermined the moral legitimacy of their claims to do so. Analogously, the primary reason why (the majority of) citizens in affluent states are in a position to wield power over prospective immigrants to determine their prospects in whether they may or may not be permitted access to their states, association and the goods those citizens currently enjoy is because those citizens were born into those affluent states. Consider, for

²⁰ See Nussbaum (2000).

instance, a citizen of the United Kingdom who is hostile to immigration. That citizen has the power to vote for, support, join and lobby UK political parties to implement his preferences, the power to have his interests taken into account and represented by the UK government, and have his interests given greater weight in the deliberations of those policymakers over the (often far more urgent) interests of prospective immigrants in entrance. As a result, that citizen possesses certain powers (through the government) to restrict the freedoms and determine the lives and prospects of prospective immigrants by denying them entrance. Yet, it is only because that citizen was born into the United Kingdom that they possess such powers. The source of these powers is thus morally arbitrary. Akin to the nobles, citizens of affluent states did nothing to be entitled to such powers, nor to be members of their involuntary association and state (their membership was simply an inherited birthright), and this therefore undermines the moral legitimacy of their claims to deny others access and their powers over fellow human beings to exclude them. Indeed, to such citizens who restrict the freedoms, prospects and opportunities of immigrants who seek entrance, it might be replied ‘on what grounds do you have that power over those immigrants and to determine access?’ One’s birth location alone obviously fails to suffice as an adequate moral justification.

Therefore, the principle of moral arbitrariness demonstrates that there are wider and deeper inequalities (beyond mere goods) at stake in terms of rights, freedoms, and, crucially, powers that also derive from morally arbitrary factors. These wider and deeper inequalities, in part, explain why the offer of a redistribution of goods will fail to nullify egalitarian concerns: the transfer of wealth is incommensurable with, and thus cannot address, inequalities where some have greater rights, freedoms, and powers over others in virtue of their birth circumstances. Moreover, the arbitrariness explains why (Wellman’s) analogies between the state and marital or romantic associations will fail, and will fail to demonstrate that since individuals need not open their associations to offset inequalities, states too need not do so. Whilst affluent citizens’ power to determine access is arbitrary, the source of individuals’ power to determine access to their own personal associations is not. For example, Jeff Bezos’s power to determine access to his own personal association is derived from his moral claim over his own body and intimate, personal relations, itself grounded in his moral worth as a person. (I explain this in more detail in Section 5). And this is not something only he has (or has more of) and that others lack (or have less of) due to some morally arbitrary fact. All persons have this moral claim over their own bodies and intimate relations, and hence this is not something of legitimate egalitarian concern or liable to forfeiture for egalitarian reasons. By contrast, citizens born in affluent states, do have *unequal* goods, rights, freedoms, and, crucially, also membership of that valuable association itself and the powers over others to exclude them, simply in virtue of their mere birth circumstances.

Hence, these arbitrary inequalities as well as the powers to exclude, which are themselves arbitrary, are thereby liable to forfeiture for egalitarian reasons.

It may now be objected that the unequal goods, rights, freedoms, and, crucially, powers that citizens of affluent states possess over citizens of less affluent states who seek entrance are not arbitrary since they instead derive from morally relevant interests, claims, and rights. States, and their citizens, are held to have morally important rights and interests in self-determination – to determine their own internal affairs – which include political interests in determining who may become member of the political community, economic interests in determining who has access to the labour market and economic goods of the state, and cultural interests in determining the public culture of their communities (Miller 2005, 2016). States and their citizens are also held to have claims of associative ownership over their state institutions and public goods (including national security, social welfare systems, healthcare systems, domestic public security). These institutions and goods exist (are created and maintained) only because of citizens' contributions (through their labour, economic contributions through taxes, participation in the political processes, and compliance with state institutions and the law). These citizens therefore possess moral claims to determine access to those institutions and goods (Pevnick 2011). Moreover, a state and its citizens have an important interest and presumptive right (based on their liberty) not to be imposed upon and to avoid (legal) obligations associated with accommodating and protecting arrived immigrants, and hence a presumptive right to avoid incurring unwanted obligations (Blake 2013). Further, citizens within a shared political community have morally important relations with each other, and as such have agent-relative permissions to give compatriot partiality and thereby additional (but not absolute) weight to the interests of fellow citizens over those of noncitizens (Miller 2016, 24–27, 71). Citizens also have morally important ties and social connections to and within their specific political community (which noncitizens do not), which has shaped their life development, choices, and prospects, and hence have strong(er) claims to residence in those political communities (Carens 2013; Shachar 2009).²¹ And states and their citizens are held to have rights to freedom of association to determine whom (if anyone) may be permitted to join their political associations (Wellman 2008). Since affluent citizens' unequal goods, freedom, rights and, crucially, their powers over prospective immigrants to exclude them derive from these morally relevant interests, claims and rights, there is nothing arbitrary about it.

This is a vital objection. Citizens of affluent states certainly have important interests, claims, and (purported) rights in controlling access to their political communities. However, the relevant factor that the principle of moral arbitrariness identifies

21 This is the basis for Shachar's (2009) *jus nexi* principle for conferring citizenship (166).

is that the prior source of these interests, claims and (purported) rights is itself arbitrary and is thus the target of the egalitarian objection, as I shall now explain.

The reason the (majority of) citizens of affluent states have important political, economic, and cultural interests in excluding prospective immigrants is because those citizens were born into a certain political community with significant, particular, and desirable advantages that they now have an interest in preserving and precluding from those born into states without such advantages. The reason those citizens had the opportunities to contribute to the state institutions and the production of public goods they enjoy is because they were born into that state, whilst the prospective immigrants they seek to exclude (and thereby also exclude from contributing) were not. It is that very membership and opportunity to contribute, in the first instance, that citizens possess and that prospective immigrants who are excluded lack only in virtue of the arbitrary grounds of their birth circumstances. Hence the claims over public goods that citizens enjoy *as a result* of their having that membership and an opportunity to contribute cannot be invoked as nonarbitrary to then justify denying others that very same opportunity to become members and similarly contribute. As Cole (2012) points out, the fact that immigrants have not (yet) made a contribution ‘does not carry much weight [in justifying exclusion], because what is at stake is the right to make a contribution’ (128). Moreover, the reason citizens would have an interest and presumptive right to avoid being imposed upon by obligations to protect and accommodate prospective immigrants is because they were born into a secure political community with advanced and effective (and thereby costly) protective infrastructures, whilst others may not have been, and hence have an interest in avoiding the (costly) obligations associated with extending that accommodation and protection to others. Further, the reason why fellow citizens may have agent-relative permissions for compatriot partiality and special obligations to one another where they do not towards outsiders is because they were born into those particular communities, whilst the outsiders were not (Cole 2012, 128). And the reason why such citizens may have important connections to their political communities is because they were born there, and hence, as Carens (2013) suggests, though these ties have moral significance, they do not justify the exclusion of those who wish to join and form them (282). Finally, the reason those citizens are within that particular association and thereby purportedly have a right to exclude others they do not wish to join their association is because they were born into it, whilst those they seek to exclude were not. Therefore, citizens may indeed have interests, claims, and (purported) rights in virtue of their membership of their political communities, but these are themselves derived from the arbitrary source of mere birth location, which undermines their normative force as a prospective justification for the possession of unequal goods, freedoms, rights, and powers over others to exclude them. The overall concern then is that citizens of affluent states

cannot invoke the interests, claims, and rights that are possessed or gained *as a result of* their prior membership as a nonarbitrary justification to exclude others from that membership and resultant opportunities to similarly possess and gain such interests, claims and rights, since it is precisely that opportunity to have membership itself that gives rise to those interests, claims, and rights that is arbitrary in its source, being conferred to some over others based on mere birth circumstances, and hence what stands in need of justification as nonarbitrary.²²

These points are further illuminated by again revisiting Carens's feudal case. Suppose the nobles claimed they have an important interest in self-determination – to determine their own internal affairs as nobles – which included important political interests in determining who could become a noble, economic interests in determining whom could contribute and have access to the economic goods and opportunities of the nobles, and cultural interests in preserving certain noble rituals and ways of life, which the peasants may not share. Furthermore, the nobles have actively contributed to the functioning and maintenance of certain institutions that provide collective goods to the nobles (for example, the fortifications and estates that provide security and housing for the nobles) that the peasants have not contributed to, and thus have associative ownership claims over such institutions and goods and a right to deny the peasants' access and an opportunity to contribute. The nobles also have an important interest and presumptive right (based on their liberty) not to be troubled by the obligations that would be associated with accommodating and protecting the peasants. The nobles also have important relations with fellow nobles through co-participation in their shared community, and so have special obligations to (and may give additional weight to the interests of) their fellow nobles over (the often greater interests of) the peasants. The nobles also have special ties to and within their community of nobles, which has been formative in shaping their life development, choices, and prospects. Lastly, they have a right to preserve their free association of nobles and to exclude any whom they do not wish to join.

I take it that the moral legitimacy and force of each of these interests, claims, and purported rights of the nobles as a justification for their unequal goods, freedoms, rights, and powers of exclusion is undermined by the fact that those interests, claims, and purported rights are themselves derived from the fact they were born into the nobles class, and hence by the moral arbitrariness of their source. (The nobles only have those interests, claims, and purported rights in virtue of being born into the

²² As Cole (2012) highlights, many purported justifications of a state's right to exclude outsiders are based on existing citizens' (interests and rights in) membership of the political community, but it is precisely the membership of that political community that it is the target of the egalitarian objection: why do some possess this valuable membership while others are excluded? Hence these defences risk begging the question.

nobles class, whilst the peasants only lack them because they were not and are instead excluded). And if the moral arbitrariness of the source of the interests, claims and purported rights of the nobles mitigates their moral legitimacy and force as a justification for unequal goods, rights, freedoms, and powers over others to exclude them, then the moral arbitrariness of the sources of the interests, claims and purported rights of citizens of affluent states similarly mitigates their moral legitimacy and force as a justification for their unequal goods, freedoms, rights, and powers over others to exclude them.²³

Hence, to conclude this section, we are now in a position to see that the rejection of the egalitarian case for open borders fails for similar reasons that the rejection of the egalitarian case for open classes failed. Both rejections fail to recognise the full normative force and implications of the principle of moral arbitrariness that underpins those cases. That principle entailed that, in the feudal case, it was not the mere distribution of goods that was of egalitarian concern, but the deeper and wider range of inequalities in rights, freedoms, and, crucially, powers of exclusion, which

²³ I thank an anonymous review for raising the concern that if arbitrariness in prior source undermines the moral legitimacy of powers to exclude, then this might problematically overgeneralise. Many (all?) associations are in some sense arbitrary at source. A chance encounter can be the foundation of a life-long relationship and marriage. Or one may be born into a wealthy family. Or one may be born a member of a religious minority who enjoy special ties and a community together. Yet, all these associations clearly possess legitimate powers to exclude. In response, these associations may in some sense be arbitrary in their prior source, but those associations and their powers to exclude are not arbitrary since they either have intrinsic moral significance and/or are connected to morally relevant factors insofar as they are either the result of free choice, and/or essential to basic wellbeing or basic rights. For instance, to draw from Sarah Fine's (2010) analysis, a romantic partnership is a voluntary association and a deeply personal and intimate one. Denial of this right to associate and exclude others would interfere with free choice regarding one's most personal and intimate life, disrespect the moral worth of subjects in denying their claims to determine their own lives, and cause immense psychological distress. The family membership is not a voluntary association, but again is a deeply personal association, and denial of this right through forcing involuntary family associations and separations would interfere deeply with private, personal lives and cause immense psychological suffering. And the religious minority, again as demonstrated by Fine (2010), constitutes an expressive association tied to freedom of conscience and deeply held beliefs integral to one's conception of the good and/or performs an important moral function in providing community support and protection as a minority within a political community. Denial of this right to associate and to exclude would compel involuntary religious practices, constitute religious oppression, and/or render the minority additionally vulnerable to further oppression. Therefore, these associations retain the normative force of their powers of exclusion, tied as they are to factors of great moral significance. These factors – for instance, being voluntary associations, intimate or expressive associations, and/or essential for basic rights and basic wellbeing – that render their claims to associate and to exclude nonarbitrary, do not obtain in the case of the nobles born into that class, or in the case of citizens born into their affluent political communities. Therefore, the moral force of those associations' powers to exclude is undermined by their arbitrariness.

were also derived from morally arbitrary grounds and thereby pro tanto unjust, hence the nobles were not entitled to their arbitrary powers over others to determine their access (as was presupposed by the rejection). The principle also entails the rejection of the egalitarian case for open borders fails, since, first, again, it is not only the distribution of certain goods that is of egalitarian concern (as the rejection assumes), but far deeper and wider inequalities in terms of rights, freedoms, and, importantly, powers at stake that are also pro tanto unjust due to their morally arbitrary source (and which cannot be offset through redistribution of goods). And, second, the principle demonstrates that (just as in the feudal case) citizens' membership of their association and their resultant powers to exclude others are themselves derived from morally arbitrary factors, which undermines their moral legitimacy, and hence such citizens are not entitled to such arbitrary powers over others to determine their access (as was presupposed by the rejection). Therefore, the principle of moral arbitrariness highlighted certain unjust inequalities in goods, rights, freedoms, and powers that rendered the rejection of the egalitarian case for open classes ineffective, and since comparable arbitrary inequalities also obtain between citizens of affluent states and citizens of less affluent states who seek to enter, they similarly render the parallel rejection of the egalitarian case for open borders ineffective. Therefore, the proper recognition of the full implications and force of the principle of moral arbitrariness entails that the rejection of the egalitarian case for open borders fails.

4 The Relational Egalitarian Case for Open Borders

Defenders of a state's right to control borders and to restrict immigration might accept that, in the feudal case, the rejection of the egalitarian case for open classes fails. However, this is because, in the feudal case, there are robust relationships between the nobles and the peasants and therefore an objectionable *relational* inequality between them, whereas this is not the case between citizens of affluent states and citizens of less affluent states. Wellman (2008, 122) and Pevnick (2011, 120–128), for example, argue that vast inequalities in goods between different groups within a shared society (for instance, one that includes both nobles and peasants) are more objectionable than comparable inequalities between separate societies, since the former will affect the relative power between the groups, carry risks of oppression, and will entail that persons will be unable to relate to each other as equals. Accordingly, the relational inequality in the feudal case requires opening the closed class system, where 'the lack of a robust relationship between the constituents of wealthy states and the citizens of a poorer countries implies that [inequalities in

goods between them] does not generate sufficient moral reasons to obligate the wealthy state to open its borders' (Wellman 2008, 123).

In response, as suggested in the previous section, there is a relevant sense in which citizens of affluent states stand in unequal relations with citizens of less affluent states who seek to migrate. This argument is original to and developed most comprehensively by Daniel Sharp. Sharp's (2022) ground-breaking intervention in the debate on migration ethics argues that, contra Wellman, there is a relevant relational inequality between citizens of affluent states and citizens of less affluent states at the site of immigration restrictions: 'by excluding [disadvantaged] immigrants, the citizens of affluent states exercise power over them by dictating the options, goods, and opportunities available to them' (650). For Sharp, this power-over is precisely the form of inequality to which relational egalitarians (including those who defend a right to control borders) ought to object. Hence, since there is a relational inequality in this migration context, Wellman and others may not draw the disanalogy between this and the feudal case. Moreover, as Sharp presses, Wellman's commitment to relational equality being sufficiently morally important to trump freedom of association entails that a state's right to freedom of association may not permit the exclusion of prospective immigrants if and when it entails such an objectionable relational inequality (676).

I argue that Sharp's relational egalitarian case for open borders is ultimately correct.²⁴ There are objectionable relational inequalities between citizens of affluent states and prospective immigrants from less affluent states. However, Sharp's case as it stands is not fully successful since it too does not sufficiently consider the principle of moral arbitrariness, and as a result is unable to distinguish objectionable relational inequalities from nonobjectionable relational inequalities, and thereby establish immigration restrictions as objectionable relational inequalities. To see how, it is worth considering Sharp's case in depth.

Sharp's case (650–666) proceeds as follows. Significantly asymmetrical power relations where some have significant power over others constitute objectionable relational inequalities. Affluent states' immigration restrictions are a form, and involve the exercise, of a significantly asymmetrical power relation where citizens of affluent states have significant power over disadvantaged immigrants who seek entrance. This is because, in determining access and excluding immigrants, citizens

²⁴ Sharp does not explicitly characterise his arguments as a case for open borders, but as a more modest relational egalitarian objection to certain forms of immigration restrictions. But we can take Sharp's arguments as a case for open borders to the extent that immigration restrictions ought to be reformed and/or abolished if and when they instantiate unjust relational inequalities. And given that Sharp argues that any instance of power over disadvantaged migrants instantiate unjust relational inequalities, I suggest (and welcome) that the scope of this argument is perhaps greater than Sharp acknowledges.

of affluent states (through the instrument of their state) exercise power over the lives and prospects of disadvantaged prospective immigrants who seek entrance. Therefore, such immigration restrictions constitute an objectionable relational inequality (650).

A crucial component of Sharps' argument is that the relevant kind of unequal power between persons required to constitute an objectionable relational inequality is *power-over* (652). Power-over is where one agent has the capacity to unilaterally significantly interfere with another's choices. One agent having unequal power over another to interfere with them is what makes it an asymmetrical power *relation* between those persons, and thereby what makes it an objectionable relational inequality. Moreover, crucially for Sharp, power-over can include not only *directive power* – the power to compel a person to choose a particular option; but also *preventative power* – the power to prevent a person from choosing a particular option or to withhold that particular option from them (654). And, specifically, Sharp holds that A's preventative power over B is subject to egalitarian complaint if and only if:

- (1) B has a significant interest in the goods G (or options O) withheld (or foreclosed) by A (significance condition), (2) A's withholding determines whether B can access G (or O) without prohibitive cost (decisiveness condition), and (3) B does not possess some equivalently significant power over A (inequality condition). (655)

Sharp then demonstrates that such objectionable relations of preventative power-over obtain at the site of immigration restrictions. Citizens of affluent states (through the instrument of their state) have (and indeed exercise) the power to exclude disadvantaged immigrants who have substantial interests in entrance and thereby decisively foreclose certain vital goods and options from those prospective immigrants; and those disadvantaged immigrants have no comparable power over those affluent citizens in return (661). (Disadvantaged immigrants may exclude citizens of affluent states from their own states, but the value of the goods at stake is not comparable, nor would that preclusion prevent those affluent citizens from accessing those goods *tout court*, as is often the case with affluent states' exclusion of disadvantaged immigrants (662–663)).

Sharp's case is *prima facie* compelling. However, a defender of a state's right to control borders (such as Wellman) might respond that the possession of mere unequal preventative power-over is not sufficient to generate a relational egalitarian objection. For instance, Jeff Bezos has significant wealth. A person enduring extensive poverty would have a substantial interest in entering into a marital or close personal association with Bezos, since it would enable access to substantial goods and opportunities. Bezos has preventative power-over that disadvantaged prospective partner to withhold and foreclose that association and resultant goods and opportunities. Bezos's refusal would be decisive. And, the refused person would not

have comparable power over Bezos (their refusal of Bezos's offer of marriage would set back no objective fundamental interest of his, and the value of the goods precluded is not comparable). Therefore, this appears to be a problematic instance of asymmetrical preventative power-over according to Sharp's analysis. However, there is nothing (sufficiently) objectionable about Bezos having preventative power over others with regards to his own personal association that would require Bezos to open this association.

For another example, suppose Oxford University offers a unique, prestigious, and highly-sought-after degree programme in the Ethics of Artificial Intelligence. Suppose one prospective student has a substantial interest in being admitted into Oxford University and into this programme as it would be essential to their long-term life plans and self-conception as an ethicist of AI, be instrumental to a lucrative career, would significantly improve their life prospects, and would thus have far-reaching and deep implications over the course of their life. Oxford University – comprised of, for example, the admissions board, faculty, and existing members – have power over the prospective student in being able to foreclose these options and goods, their rejection of the application would be decisive, and the prospective student has no reciprocal power over the (members of the) university. This again meets Sharp's conditions for an objectionable relational inequality, yet there appears to be nothing (sufficiently) objectionable here to morally require Oxford to relinquish their power to determine admissions, and so open access to their institution and association.

These examples demonstrate that certain cases of asymmetries in power-over are not intuitively objectionable or unjust.²⁵ How are we to distinguish which are just or unjust relational inequalities, and thereby verify whether immigration restrictions are among the unjust instances or not? Sharp is alive to such a concern. For Sharp, not all inequalities in power-over are all-things-considered unjust. Sharp advances certain desiderata to adjudicate (653–654). First, not all inequalities in power-over rise to the threshold of sufficient significance since they do not affect persons' important objective interests. Second, an agent's power-over may be limited by contextual factors. For example, a professor's power over her student is limited to a certain context (the classroom), a limited period of time (the duration of the class), in content (only to grade), is checked by higher-order powers (university regulations), and is easily avoidable (the student can drop the class). However, these two

²⁵ I thank a reviewer for suggesting that there may indeed be something objectionable about the unequal power that both Bezos and Oxford have. I agree there may be something objectionable about the disproportionate power and influence such actors have in society more broadly (their interests may be unjustly taken into greater account by policy-makers for example), but suggest what is not obviously objectionable is specifically their power over others to determine those others' access to their associations.

desiderata do not obviously help establish the examples above as just. In those examples, both Bezos's and Oxford's power-over concern substantial objective interests of those subject to it. Moreover, both possess a substantially wide domain of unconstrained and unilateral discretion over whom and to what extent they foreclose certain goods or admission into their associations. Sharp also advances a third desideratum: certain inequalities in power-over may be *pro tanto* objectionable but nonetheless justified all-things-considered (yet the objectionable inequalities ought to be mitigated) (654). However, Sharp does not provide much further explanation on what inequalities may be all-things-considered justified or why (or why inequalities in power-over, such as in the cases of Bezos and Oxford, are necessarily *pro tanto* objectionable and thus ought to be ameliorated). Thus, this third desideratum does not, as it stands, (provide a principled explanation to) distinguish just from unjust inequalities in power-over. Sharp's relational egalitarian case for open borders may therefore be vulnerable to the objection that not all inequalities in power-over are objectionable or unjust, and immigration restrictions (just as the Bezos and Oxford cases) are among the instances of inequalities in power-over that are not objectionable or unjust.

5 The Requirement of the Principle of Moral Arbitrariness

The principle of moral arbitrariness can again strengthen the egalitarian case for open borders. In this instance, the principle is required for the relational egalitarian case to demonstrate when and why inequalities in power-over are unjust. This is because inequalities in power-over are particularly objectionable when those inequalities and their source are morally arbitrary.

This principle is (implicitly) integral to relational egalitarianism. The paradigmatic inequalities that relational egalitarians oppose are those heritable, group-based hierarchies of status and power such as those premised on racism, sexism, and/or homophobia, and hence based on morally arbitrary factors (Nath 2020, 7–8). Accordingly, the principle is found within, and gains support from, canonical articulations of relational egalitarianism. For Anderson (1999), egalitarian justice opposes ideologies that

assert the justice or necessity of basing social order on a hierarchy of human beings, ranked according to intrinsic worth [where] those of superior rank were thought entitled to inflict violence on inferiors, to exclude or segregate them from social life, to treat them with contempt, to force them to obey, work without reciprocation and abandon their own cultures ... This is the core of inequalitarian ideologies of racism, sexism, nationalism, caste, class and eugenics. (312)

Anderson continues that

egalitarianism opposes such hierarchies [and asserts] the equal moral worth of persons ... Negatively, the claim repudiates distinctions of moral worth based on birth or social identity – on family membership, inherited social status, race, ethnicity, gender or genes. There are no natural slaves, plebians or aristocrats. Positively, the claim asserts that all competent adults are equally moral agents. (312)

This represents a clear statement of the core relational egalitarian commitment to the moral equality of persons and hence that any hierarchies and asymmetries in power between such morally equal persons based on morally arbitrary factors (such as race, inherited status, ethnicity, gender or genes) are objectionable (see also Scheffler 2003, 22). This principle thereby explains why, for instance, an apartheid system of racial discrimination, segregation, power asymmetries and inferiorising treatment represents a paradigm of unjust relational inequality.²⁶

Hence, the principle of moral arbitrariness, as integral to relational egalitarianism in understanding when and why relational inequalities are unjust, can thereby provide a means for Sharp to distinguish between just and unjust asymmetries in power-over.

For instance, Bezos has moral claims over (and is thereby entitled to determine access to) his own body and intimate personal relations. Hence his power over others accessing his body and his intimate personal relations is not morally arbitrary. It is not arbitrary in the sense that it not something that only he possesses (or has more of) and that others do not (or have less of) due to some arbitrary fact. Rather, *all* persons have a moral claim over (and are thereby entitled to determine access to) their own bodies and intimate associations, derived from their moral worth as persons. It is also not morally arbitrary in the additional sense that it is not morally irrelevant. Instead, that all persons (including Bezos) have a claim over their own body and intimate associations is a morally important consideration, the recognition of which is required to respect persons' moral worth. To deny or violate anyone's claim over their own body or intimate relations would be an egregious failure to respect their moral worth as a human being: it would be to treat them as some object without substantial interests or an autonomous will over what happens to them, their body or close personal relations, and whose body and intimate relations can instead legitimately be interfered with, used, and appropriated by others against their will. Therefore, such a claim is not some mere arbitrary fact that has no direct bearing on obligations to treat persons, rather it has substantial moral significance. Hence, Bezos's preventative power over others to determine access to his body and intimate

²⁶ See Anderson (1999) discussed in Nath (2020, 7).

personal relations is not derived from morally arbitrary sources but from a morally significant and relevant source.

Similarly, Oxford's (admissions committee, faculty, and current members') power over prospective students is not derived from some morally arbitrary factor such as race or sex-assigned-at-birth: they were not born into Oxford University with inherited rights to exclude others. Rather, it is derived from the fact it is a voluntary association whereby members freely assent to join, are themselves admitted on the basis of relevant characteristics, and who associate together to achieve certain specific goals. And the collectively determined end of that voluntary association is its specific function as a higher education and research institution, and selecting admissions is morally relevant as a constitutive component of realising that function. Hence, Oxford University's power over prospective students is not sourced in morally arbitrary factors. (I leave aside here complications arising from a lack of diversity at certain universities. Notice here, however, that if Oxford's power-over *was* derived from morally arbitrary sources such that, for example, membership was reliably determined by, and dominated by those of, a certain race and gender (for instance, white males) due to biases and structural privileges, then this intuitively undermines the moral legitimacy of their power over prospective students from underrepresented groups to exclude them. This would support my overall argument that arbitrary sources of power-over *do* undermine their moral legitimacy).

By contrast to these two examples, as demonstrated in Sections 2 and 3, citizens of affluent states *do* have certain goods, advantages, rights, freedoms and powers over others, and membership of the valuable association itself, that others lack only in virtue of the morally arbitrary fact of their mere birth circumstances. Crucially then, such citizens' power over disadvantaged immigrants to restrict their freedom, deny access to their association, and foreclose important goods and options to those immigrants is a paradigm case of moral arbitrariness in the source of asymmetries in power. That those citizens' power over disadvantaged prospective immigrants is derived from their birth location is akin to how the nobles' power over peasants was derived from their feudal birth class, and to how the power of white beneficiaries of apartheid over black citizens was derived from their race. Hence, the arbitrariness of affluent citizens' power over immigrants renders it comparable in kind (if not degree) with the paradigmatically offensive unjust inequalities based on equally arbitrary factors such as feudal class or race to which relational egalitarians object.

Therefore, the principle of moral arbitrariness is required as a principled explanation to demarcate just from unjust instances of relational inequalities of power-over. The inclusion of this principle then enables the relational egalitarian case for open borders to accurately classify the Bezos and Oxford cases as not instances of unjust relational inequalities, whilst simultaneously accurately identify immigration restrictions as an unjust relational equality precisely because they

instantiate an arbitrary asymmetry in power-over. With this inclusion, the relational egalitarian case can thus effectively dispel the objection that immigration restrictions are an instance of just relational inequalities.

6 Arbitrariness and Relational Inequalities

However, there is an important objection worth considering. Namely, that my analysis has misidentified the aims of relational egalitarianism: the principle of moral arbitrariness is *not* integral to relational egalitarianism nor required to identify unjust relational inequalities. Rather, relational egalitarians oppose any and all forms of oppression and unequal relations of superiority and inferiority between moral equals, even if such inequalities result from nonarbitrary factors. As Anderson (1999) writes, negatively, relational egalitarians ‘seek to abolish oppression – that is forms of social relationship by which some people dominate, exploit, marginalise, demean and inflict violence upon others’ (313). Anderson continues that ‘diversities in socially ascribed identities, distinct roles in division of labour or differences in personal traits ... valuable talents and virtues, or unfortunate disabilities and infirmities, never justify the unequal social relations listed above’ (313). Hence, *any* inequality in status or power between persons that involves domination, exploitation, marginalisation, degradation, and/or violence is unjust even if it results from nonarbitrary morally relevant factors (such as individuals’ free choice, voluntary labour, skills, virtues, prior claims, just entitlements and so forth). Anderson provides the example that relations of domination or servitude would be objectionable even if voluntarily entered into via consent or contract (315). And for another example, if an employer, who justly owns her company due to an application and investment of her skills, time, labour, energy, and resources, nonetheless pays barely subsistence wages, fails to provide safe or sanitary working conditions, regularly and arbitrarily withholds sick pay or holiday leave, sets degrading and meaningless tasks, and verbally abuses her employees, this would certainly be an objectionable relational inequality, even if that employer had ‘earned’ their being in a position of power-over.²⁷

In response, it must be correct that *any* inequality in power and status between persons which involves domination, marginalisation, exploitation, degradation, or violence is an objectionable relational inequality notwithstanding the source of that inequality. However, I suggest that both (1) morally arbitrary asymmetries in power-over, and (2) asymmetries in power-over that involve domination, marginalisation,

²⁷ See Anderson (2017) for a developed account of how employers wield objectionable unequal power over employees.

exploitation, degradation, and violence, are each sufficient conditions for a pro tanto unjust relational inequality. That is, they are both wrong-making features of asymmetries in power-over. Call these the *arbitrariness condition* and the *oppression condition* respectively.

The arbitrariness condition would explain why, for example, the nobles' inherited superior status and power over the peasants would be unjust, even if those nobles were particularly benign and did not oppress the peasants insofar as they did not arbitrarily interfere with, marginalise, exploit, degrade, or inflict violence on them. And the arbitrariness condition gains further support from the following pair of cases taken from Viehoff's (2019, 17) analysis.²⁸

Medical Services: A society grants certain people (medical doctors on duty) a right to park their car in spots where others are not permitted to park. It also gives them flashlights that they can attach to their cars, and when they turn them on, others are expected to scramble out of the way and let the doctors pass.

Lord's Carriage: A society grants certain people (lords) the right to park their carriage in places where others are not permitted to park. It also gives lords certain insignia, and if those are attached to the lord's carriage, others (commoners) are expected to scramble out of the way and let the lord's carriage pass.

In both these cases, certain persons have unequal advantages and powers over others, yet one is entirely unobjectionable whilst the other is not. The arbitrariness condition explains this. The advantages and powers possessed by the lords are arbitrary, as they derive from their 'birthright' alone, whilst those possessed by the doctors are not, as they derive from their necessity to serve important moral functions in saving lives, and derive from (and exercised in virtue of) the consent and interests of those affected (considered equally).²⁹

Hence, the arbitrariness condition is plausible. And the oppression condition is already established and explains why cases of relational inequalities arising from nonarbitrary factors but which nonetheless enable some to oppress others, such as the above case of the exploitative employer, are unjust (for further examples, see Kolodny 2014, 293; Threet 2021).

Moreover, it is highly plausible that since both the arbitrariness and oppression conditions are wrong-making features, this explains why we find inequalities where both obtain particularly egregious. For example, the historical system of race-based

²⁸ Viehoff (2019) takes these examples to demonstrate that not all inequalities in power entail inequalities in social status more broadly. I am appropriating them here since they also demonstrate that not all inequalities in power are objectionable, and the principle of arbitrariness explains why.

²⁹ This aligns broadly with Viehoff's (2019) own explanation, though Viehoff does not use the terminology of arbitrariness.

institutional chattel slavery is rightly regarded as perhaps the most abhorrent relational inequality precisely because the mere arbitrary fact of race was taken to determine the intrinsic worth of persons, and then ostensibly ‘justify’ the domination, exploitation, marginalisation, degradation, and violence against those enslaved.

Therefore, the principle of moral arbitrariness is not irrelevant to objections to relational inequalities, but rather represents a sufficient condition and wrong-making feature of unjust inequalities in power-over alongside the oppression condition. And these two conditions can combine to yield particularly egregious relational inequalities.

The above analysis also yields important implications for the relational egalitarian case for open borders. The relational egalitarian case does require the principle of moral arbitrariness in two ways. First, the case as it stands, does not itself demonstrate (nor seek to demonstrate) that immigration restrictions involve the oppression of domination, marginalisation, exploitation, degradation, and violence. Rather, the case seeks to demonstrate that immigration restrictions are themselves unjust simply in virtue of the asymmetries in power-over, even if those restrictions do not involve the oppression of domination, marginalisation, exploitation, degradation, and violence. Hence, the case requires the principle of moral arbitrariness in order to explain when and why asymmetries in power-over are themselves unjust. Only then can the case succeed and demonstrate that immigration restrictions where affluent citizens possess and exercise unequal power over disadvantaged immigrants simply in virtue of their birth circumstances are themselves an instance of unjust relational inequalities precisely in virtue of the fact that they instantiate morally arbitrary asymmetries in power-over, even if those asymmetries do not involve additional oppression. Second, the principle of arbitrariness is required, alongside the oppression condition, to demonstrate why contemporary immigration restrictions in practice are particularly egregious, as I shall now explain.

Affluent states use a variety of policies and practices to prevent the arrival of disadvantaged migrants and refugees, including border violence and pushbacks, arbitrary detention, forced encampment, externalisation of borders, and containment. These practices result in extensive mental and physical suffering and human rights deprivations for those affected (FitzGerald 2019; Hillier-Smith 2020; Parekh 2020). Crucially, as I have argued elsewhere (Hillier-Smith 2024, 21–22), such practices meet the precise criteria for an unjust relational inequality according to the oppression condition. (Though my 2024 analysis focuses primarily on refugees, these practices are used in response to mixed migratory flows and thus also impact disadvantaged migrants who are not necessarily definitional refugees). These practices involve:

Domination: Refugees and disadvantaged migrants in having relatively little or no political power or voice whilst displaced and/or on migratory routes, or sufficient

recourse to any authority, cannot but be subjected to the arbitrary will of states that (through their officials and policies) subject them to violence, push them back, detain, encamp, or contain them. Their will, for example to seek safety, or have their human rights protected, or access important goods or opportunities, or simply to not be harmed, detained, encamped, or contained is ignored and overruled. Instead, they are subjected to the will of others who arbitrarily physically control them and their movements.

Exploitation: Affluent states and their citizens benefit from using these practices, which cause significant harms to refugees and migrants, to prevent unwanted arrivals and protect their interests. And these practices force refugees and migrants into conditions in which they can easily be exploited by others: traffickers, criminal groups, police, or border officials. In particular, women and unaccompanied children face significant risk of (sexual) exploitation.³⁰

Marginalisation: Such practices marginalise and exclude refugees and migrants away from participation in affluent societies and political communities. Refugees and migrants are cast as unwanted and undesirable elements, enclosed, or pushed away from society, communities, and state protection to the margins of an adequate human existence.

Degradation: These practices reduce refugees and migrants affected to an existence below acceptable standards for a dignified human existence. Consider the arbitrary detention of refugees and migrants in disease-ridden conditions in Libya or the encampment in squalid conditions that deny free movement in Greece as a result of EU containment policies.³¹ Furthermore, refugees and migrants being detained, encamped, and contained in these ways – treated as dispensable or as if they were cattle – is not consistent with their being treated with respect as human beings with (equal) moral worth. Aside from the degrading conditions refugees and migrants are made to endure, this treatment of them is itself degrading.

Violence: Such practices involve the direct infliction of violence at borders and in push backs or through forced apprehension, incarceration, coercion as part of detention, encampment, and containment. And violence and human rights violations are endemic within detention centres, camps, and areas of containment (Parekh 2016, 2020).

Hence, these practices are paradigm examples of unequal relations which instantiate domination, (arguably) exploitation, marginalisation, degradation and

³⁰ See for example Parekh (2016). See also Ball-Blakely (2021), who argues that immigration restrictions can entrap persons from less affluent states in bad opportunity sets, rendering the vulnerable to exploitation by others (for example, transnational corporations).

³¹ See for example ‘Libya Fails to Stop Migrant Detention Abuses, as EU-Backed Returns Soar’ (The New Humanitarian 2021); ‘Why the EU-Turkey Migration Deal Is No Blueprint’ (Human Rights Watch 2016).

the infliction of violence and so meet the precise criteria for the oppression condition for an unjust relational inequality.

Therefore, to complete the analysis, since the source of the affluent citizens' power over disadvantaged immigrants is morally arbitrary, and since immigration restrictions also involve domination, exploitation, marginalisation, degradation, and violence, then such immigration restrictions meet both wrong-making sufficient conditions for an unjust relational inequality (the arbitrariness condition and the domination condition). Immigration restrictions that meet such conditions are thus an instance of the most egregious relational inequalities where wholly morally arbitrary grounds enable some to oppress – dominate, exploit, marginalise, degrade, and inflict violence upon – their fellow human beings. This renders it comparable in kind (if not degree) to the most egregious relational inequalities that include the nobles' arbitrary and oppressive power exercised over the peasants and the white beneficiaries of apartheid's arbitrary and oppressive power exercised over black citizens.

Thus, the principle of moral arbitrariness remains essential to the relational egalitarian case for open borders. The principle grounds a sufficient condition of wrongful inequalities alongside the oppression condition and therefore is required first to establish that immigration restrictions are themselves unjust when and because they instantiate arbitrary asymmetries in power-over; and second to demonstrate that since affluent citizens' contemporary power over disadvantaged immigrants is both arbitrary and involves oppression, it constitutes an unjust relational inequality of the most egregious kind.

7 Conclusions

The proper recognition of the principle of moral arbitrariness strengthens (both components of) the egalitarian case for open borders. It diffuses the objection to the luck egalitarian case and underpins the normative force of that case; and it ensures that the relational egalitarian case establishes immigration restrictions as unjust. In doing so, this principle underpins why immigration restrictions are particularly objectionable from an egalitarian point of view: Immigration restrictions instantiate and sustain arbitrary inequalities between morally equal persons where those born into affluent states not only possess unequal goods and advantages in virtue of their birth circumstances, but also unequal rights, freedoms, and powers over their fellow human beings to exclude them and dictate their life prospects, and in some instances, even oppress them. Such immigration restrictions are, for this reason, unjust.

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